



Report of the Queensland Ombudsman



The Miriam Vale IPA Report

An investigation into the Miriam Vale Shire Council's management of development applications under the Integrated Planning Act 1997

December 2006

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5 December 2006

The Honourable Mike Reynolds MP
Speaker of the Legislative Assembly
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Reynolds

In accordance with section 52 of the *Ombudsman Act 2001*, I hereby furnish to you my report,
An investigation into the *Miriam Vale Shire Council's management of development applications under the Integrated Planning Act 1997*.

Yours faithfully

A handwritten signature in black ink, appearing to read 'David Bevan'.

David Bevan
Queensland Ombudsman

Enc.

ombudsman

Foreword

The Queensland Ombudsman has a dual role under the *Ombudsman Act 2001*, of investigating possible maladministration by state and local government agencies, and assisting those agencies to improve the quality of their decision-making and administrative practices.

Accordingly, the Office's mission is to promote high standards of administrative practice and decision-making in public sector agencies for the benefit of the community.

This report presents the findings of an investigation conducted by my Office into complaints about the administrative actions of the Miriam Vale Shire Council (MVSC) in relation to its management of development applications under the *Integrated Planning Act 1997*.

The complaints were wide-ranging but all essentially related to allegations that MVSC had not complied with the requirements of the Act when assessing and deciding applications, and that its customer service processes are inappropriate or inadequate.

Our investigation revealed that some of these complaints were well-founded, while others were not. I have made a series of recommendations to MVSC in line with these findings, with the aim of assisting MVSC to improve its management of development applications and its customer service functions. I intend to conduct a compliance audit before 30 June 2007 to assess MVSC's response to the recommendations made in this report.

Our investigation also revealed the presence of several broader systemic issues which exist across rural councils in Queensland. In response to this, I have made several recommendations to the Department of Local Government, Planning, Sport and Recreation (the administering department for the *Integrated Planning Act 1997*) with the aim of improving community understanding of the legislative requirements, particularly in rural and regional Queensland.

Because the issues dealt with in the report are of significant public interest, I have decided to present the report to the Speaker for tabling in the Legislative Assembly as provided for in s.52 of the *Ombudsman Act 2001*.

I place on record my appreciation for the efforts of my investigating officers, Mr Greg Jesberg and Mr James Millward of my Office's Local Government and Infrastructure Team (LGIT).



David Bevan
Queensland Ombudsman

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Abbreviations and Dictionary

AO	Administration Officer, Development Services, Miriam Vale Shire Council
CEO	Chief Executive Officer, Miriam Vale Shire Council
CMC	Crime and Misconduct Commission
CTP	Consultant Town Planner, Miriam Vale Shire Council
DA	Development Application
DDS	Director of Development Services, Miriam Vale Shire Council
DLGPSR	Department of Local Government, Planning, Sport and Recreation
DSU	Development Services Unit, Miriam Vale Shire Council
EPA	Environmental Protection Agency
IDAS	Integrated Development Assessment System established by Chapter 3 of the <i>Integrated Planning Act 1997</i>
IPA	<i>Integrated Planning Act 1997</i>
LGA	<i>Local Government Act 1993</i>
LGAQ	Local Government Association of Queensland
MCU	Material Change of Use
MVSC	Miriam Vale Shire Council
OA	<i>Ombudsman Act 2001</i>
ROL	Reconfiguration of a Lot
RTC	Agnes Water Rural Transaction Centre
Complainants	Collectively the various persons who made complaints to my Office about actions taken by the MVSC in its assessment of development applications, or persons whose complaints to the CMC or Member for Burnett were referred to my Office.
Days	All references to days in this report are to business days unless otherwise specified.
Discussion Paper	The discussion paper entitled <i>Dynamic Planning for a Growing State: A Discussion Paper</i> , released by the DLGPSR during 2006 as part of the department's Improvement Project (see below).
DSU staff	In this report, the Director Development Services, Consultant Town Planner and Administration Officer in the Development Services Unit at MVSC (although the DSU actually employs other staff in a variety of roles).
Improvement Project	A process being run by the DLGPSR at the time of this report, and approved by the Minister for Local Government and Planning, which aims to develop improvement strategies and legislative changes for the IPA.
IPA website	The website hosted by DLGPSR with public information on the <i>Integrated Planning Act 1997</i> – http://www.ipa.qld.gov.au
LGAQ survey	A report prepared by the LGAQ in March 2006 entitled <i>LGAQ Survey of Development Application Process</i> , reporting on a statewide self-assessment exercise conducted by councils in relation to their management of IDAS processes in March 2005.
Member for Burnett	Mr Rob Messenger MP, the Member for the state electorate of Burnett, in which Miriam Vale Shire is located.
Minister	The Minister for Local Government, Planning and Sport (currently the Hon Andrew Fraser MP; prior to the 9 September 2006 state election, the Hon Desley Boyle MP).
My officers	Investigators Greg Jesberg and James Millward
P&E Court	The Planning and Environment Court

Executive Summary

Background

During 2006, my Office received 14 complaints about the Miriam Vale Shire Council's (MVSC) handling of development applications (DAs) under the *Integrated Planning Act 1997* (IPA). Some were received via the Member for Burnett or the CMC. In summary, the allegations received by my Office were that MVSC:

- fails to comply with the requirements of the IPA;
- fails to process and decide DAs in a timely manner;
- gives inaccurate advice about the IPA and the Council's planning scheme;
- is not timely in responding to planning inquiries;
- unreasonably charges for meetings with its planning staff;
- DSU staff have poor customer service skills;
- decisions on DAs are inconsistent; and
- imposes irrelevant and unreasonable conditions on development approvals.

I commenced an investigation under the *Ombudsman Act 2001* (OA)¹ into these matters. My investigation was conducted informally² without invoking my coercive powers³. During June 2006, I advised complainants my investigation would be a systems audit, rather than a specific investigation of each issue raised. Some issues (including staff housing and council employment practices) were within my jurisdiction but not taken further because they did not raise sufficient concern that maladministration was present.

Role of Ombudsman

The Ombudsman's role is to investigate the administrative actions of public sector agencies and to consider whether those actions are (among other things):

- unlawful, unreasonable or unjust;
- taken on irrelevant grounds or having regard to irrelevant considerations;
- based wholly or partly on a mistake of law or fact; or
- wrong⁴.

The Ombudsman is empowered to make recommendations to the principal officer of an agency that action be taken to rectify the effect of maladministration, including improving administrative practice within that agency.

Public report

The OA provides that I may report to Parliament, as I consider appropriate, on a matter arising out of the performance of my functions. There are several compelling reasons for reporting to Parliament on this investigation. The most important is that there is significant public concern about the issues, demonstrated by the number of complaints received by my Office. On 18 July 2006, the then Minister referred in a Parliamentary Estimates Committee hearing⁵ to complaints she had received about MVSC. There has also been extensive coverage of the issues in the local media.

¹ OA s.12(a)(ii)

² OA s.24(a)

³ OA, Part 4

⁴ OA s.49(2)

⁵ Queensland Parliament – Estimates Committee E – Environment, Local Government, Planning and Women, 18 July 2006 Public Hearing Transcript, p.54.

My Office's approach to this investigation has not been solely an investigative one, as the OA's objects are:

- (a) to give people a timely, effective, independent and just way of having administrative actions of agencies investigated; and
- (b) to improve the quality of decision-making and administrative practice in agencies.⁶

Accordingly, I informed MVSC I would provide, where appropriate, recommendations to improve its administrative practices under IPA. I advised MVSC it was not my intention to investigate the conduct of specific officers, nor to apportion blame for errors. I consider this approach appropriate given the commonality among the issues complainants raised.

My investigation has revealed several systemic problems in the MVSC's administration of the Integrated Development Assessment System (IDAS) which are likely to be found in many small councils. Therefore, reporting publicly on the investigation will assist councils to review and improve their own processes. Finally, it is in the public interest to place on record what action the MVSC needs to take to improve its management of DAs. I am confident implementation of my recommendations by MVSC (and other councils with similar systemic problems) and, where relevant, by the DLGPSR will assist in improving the administration of IDAS across the state.

De-identification

Given the breadth of the issues raised by complainants, I directed my officers to conduct an audit of the MVSC's handling of applications under the IDAS system, as well as its customer service standards. To protect the privacy of complainants, no applicants are named in this report. I have also deleted address and lot number details from references to specific DAs. It is unavoidable that the identities of MVSC staff referred to in this report will be apparent to some readers. However, our investigation did not focus on the conduct of any individual MVSC officer, and therefore I have deleted references to the names of officers, where practicable.

Principal objects of the investigation

The principal objects of the investigation were:

- to determine whether the MVSC is complying with the requirements prescribed on it as the assessment manager in development applications under IDAS;
- to determine whether the MVSC has appropriate customer service and record keeping standards and procedures for managing IDAS processes; and
- to identify ways to improve the MVSC's procedures and policies for IDAS.

Investigative process

During May and June 2006, my officers conducted interviews with a number of complainants. From 13 to 20 June 2006, my officers visited Miriam Vale to audit MVSC's DA files. Eighty-four files were inspected from 2004-05 and 2005-06. At the commencement of the visit, my officers discussed the audit with Councillor Tom Jeffery, Mayor of Miriam Vale Shire. My officers also interviewed the following MVSC staff:

- Chief Executive Officer;
- Director Development Services;
- Consultant Town Planner; and
- Administrative Officer, Development Services.

6. OA s.5

The file inspection consisted of an assessment of the actions recorded on file against the requirements prescribed in the IPA. This was done via a checklist my officers developed with the assistance of the DLGPSR. My officers also inspected Council's record keeping and frontline customer service processes. The preliminary findings of this assessment were tabulated and provided to the MVSC for comment on 2 August 2006. MVSC responded on 14 September 2006, and a number of preliminary findings were adjusted in light of MVSC's comments.

A copy of my proposed report was provided to both MVSC and the DLGPSR for comment, as required under the OA.⁷ Where appropriate, the agency response is included in this report and, where relevant, I have included my own comments. Where no comment is included in this report, MVSC indicated it agreed with the opinion or recommendation concerned.

Outcomes and systemic issues

I identified the primary factors behind the complaints about MVSC as:

- a rapid increase in DA workload, in an environment and staffing structure designed for the far lower volumes of development normally experienced by a rural council the size of Miriam Vale Shire Council;
- inadequate record keeping or customer service systems;
- a lack of applicant knowledge of the process requirements; and
- the complexity of the IPA itself.

Our audit revealed many instances of MVSC having failed to fully comply with the IPA. Major concerns were inadequate record keeping and training provided to the DSU's staff (at all levels) on the technical requirements of the IPA, and basic customer service skills and standards. While I accept the demands of the DSU's workload limit the time and resources Council can devote to staff training, my opinion is that the failure to provide more than minimal training on either matter amounts to unreasonable administrative action within the meaning of s.49(2) of the OA.

Many applicants lack the professional expertise required to manage such applications. The public information provided by DLGPSR about the IDAS process, while commendable, is often produced at the level of the IDAS professional and may not be readily understood by many applicants. MVSC provides no material to inform applicants about the development assessment process. In light of this, I have made certain recommendations to DLGPSR in relation to public education on the IDAS process.

I intend to conduct a compliance audit before 30 June 2007 to assess MVSC's response to the recommendations made in this report.

⁷ OA s.26(3)

Opinions

I formed the following opinions:

Opinion 1

There is no evidence that MVSC is deliberately delaying applications during the assessment process under IDAS.

Opinion 2

MVSC's failure to implement a formal means of recording, and reporting on, the performance of its DSU in relation to the timeliness of completion of IDAS processes is unreasonable administrative action within the meaning of s.49(2)(b) of the OA.

Opinion 3

There is no evidence that the high rate of DAs in Miriam Vale Shire, which are assessed by MVSC as not having been properly made, is attributable to any unfair or unreasonable action on the part of MVSC.

Opinion 4

The high error rate detected by the audit findings in relation to MVSC's production of acknowledgment notices constitutes unreasonable administrative action within the meaning of s.49(2)(b) of the OA.

Opinion 5

In some cases, MVSC has extended the timeline for dealing with DAs in which an acknowledgment notice is not required under s.3.2.3 of the IPA by including the application stage in the timeframe. This is administrative action which is contrary to law within the meaning of s.49(2)(a) of the OA.

Opinion 6

The audit findings indicate that MVSC has regularly failed to comply with the IPA in issuing information requests in IDAS processes, including information requests containing requirements of applicants not permitted by the IPA. This is administrative action which is contrary to law within the meaning of s.49(2)(a) of the OA.

Opinion 7

The audit findings indicate MVSC has regularly failed to meet the timelines for the issuing of information requests or extensions under s.3.3.6 of the IPA. This failure is contrary to law within the meaning of s.49(2)(a) of the OA.

Opinion 8

The audit findings indicate that MVSC has regularly failed to issue decision extension notices within the timeframe required by s.3.5.7(2) of the IPA. While decreasing in frequency, this failure is still unacceptably common, and constitutes administrative action that is contrary to law within the meaning of s.49(2)(a) of the OA.

Opinion 9

MVSC has frequently failed to comply with its obligation under s.3.5.15 of the IPA to send each principal submitter a copy of the decision notice in respect of DAs where submissions had been sought. This failure is contrary to law within the meaning of s.49(2)(a) of the OA.

Opinion 10

Significant and unnecessary delay is being caused to the DA approval process by the MVSC's policy that the full council must consider most DAs.

Opinion 11

The evidence does not support the opinion that MVSC is consistently imposing unreasonable conditions on DAs approved under IDAS or otherwise making unreasonable decisions in relation to DAs.

Opinion 12

MVSC has not provided sufficient training to DSU staff in the drafting of conditions for development approvals.

Opinion 13

The lack of any formal policy or guidelines to ensure MVSC's Compliance Officer follows due process is unreasonable administrative action within the meaning of s.49(2)(b) of the OA.

Opinion 14

While, on the whole, MVSC's mail receipt system for DAs is adequate, the processes require review in light of several instances of DA-related material being mislaid or delayed, and disputes with applicants over the date material was received.

Opinion 15

The functioning of the DSU, and its capacity to report on its performance under IDAS, would be significantly improved by further developing its database.

Opinion 16

The training and guidance provided by MVSC to its staff on its Customer Service Charter has, to date, been inadequate. MVSC has also failed to provide DSU staff with specific and relevant customer service training. This amounts to unreasonable administrative action within the meaning of s.49(2)(b) of the OA.

Opinion 17

The MVSC's Customer Service Charter does not make it clear to applicants for development approvals that, in some circumstances, the requirements of the IPA may override any timelines prescribed in the charter.

Opinion 18

MVSC's Complaints Management Policy is, on the whole, appropriate and is generally followed when dealing with complaints arising from IDAS processes, which are not otherwise dealt with under statutory processes.

Opinion 19

MVSC's Customer Service Charter and Complaints Management Policy specify different timelines in which officers must respond to correspondence and are potentially confusing for applicants.

Opinion 20

The MVSC does not have an effective complaints recording and management system for use in its IDAS application and assessment system.

Opinion 21

The evidence does not support the opinion that the MVSC consistently or deliberately fails to return telephone calls of applicants for development approvals.

Opinion 22

The evidence supports the opinion that officers of the DSU, in returning calls, regularly fail to comply with the timelines set out in MVSC's Customer Service Charter.

Opinion 23

The MVSC practice of charging a meeting fee for pre and post-lodgement development application meetings is reasonable and lawful.

Opinion 24

The fee of \$175 for development meetings, as prescribed under the 2005-06 and 2006-07 MVSC budgets, is not excessive in comparison with similar fees charged by a sample of other Queensland councils selected by my Office.

Opinion 25

The MVSC publication Regulatory Fees and Non-Regulatory Charges 2006-2007 incorrectly implies that MVSC's meeting fees are authorised under the IPA.

Opinion 26

The level of advice and assistance MVSC gives to applicants for development approvals is appropriate given council's primary statutory responsibility as the assessment manager under the IPA.

Opinion 27

MVSC's DSU does not have effective measures in place for obtaining additional assistance with its planning workload other than seeking to recruit extra staff.

Opinion 28

The acquisition of a technical para-professional planning qualification by the AO responsible for planning matters at MVSC would assist the DSU in managing its workload and in assisting applicants for DAs in the shire.

Opinion 29

MVSC's failure to ensure its DSU staff receive ongoing training in the IPA is unreasonable administrative action within the meaning of s.49(2)(b) of the OA.

Opinion 30

MVSC has failed to take advantage of the training and assistance offered by the Minister and DLGSPR on IDAS processes and local planning matters generally.

Recommendations

I make the following recommendations under s.50(1) of the OA:

Recommendation 1

MVSC develop a formal means of recording and reporting on the timeliness of the DSU's management of IDAS processes.

Recommendation 2

If s.3.2.1 of the IPA is amended so that an assessment manager may not accept an application that is not properly made, DLGPSR should produce information to guide local councils as assessment managers on what constitutes a properly made application.

Alternatively, if s.3.2.1 of the IPA is retained in its current (or a substantially similar) form, DLGPSR should consider means of increasing uniformity among councils at the acceptance stage of IDAS as part of its Improvement Project.

Recommendation 3

DLGPSR consider producing a basic guide (for non-professional applicants) to the legislative responsibilities of state government and local councils in the IDAS process, in both hard copy and web page format for use by local councils.

Recommendation 4

MVSC provide written guidance to relevant officers that they not use the date of issue of the acknowledgment notice in calculating IDAS timelines for those DAs where no acknowledgment notice is required under s.3.2.3 of the IPA.

Recommendation 5

A random sample of acknowledgment notices produced by the DSU be regularly audited by an officer nominated by the CEO with a view to identifying any ongoing issues requiring correction, and reducing the error rate identified in this report.

Recommendation 6

MVSC provide written guidance to relevant officers to ensure that future information requests do not seek amendments or additions to applications, but are limited to requests for relevant information.

Recommendation 7

MVSC ensure that any training undertaken by DSU and other relevant staff on the IPA includes training specifically on the correct use and drafting of information requests.

Recommendation 8

MVSC provide written guidance to relevant officers to ensure that they meet the timelines for the issuing of information requests and extensions under s.3.3.6 of the IPA.

Recommendation 9

MVSC give consideration to upgrading its Practical database to provide notice to DSU staff of relevant dates for issuing information requests and extensions.

Recommendation 10

MVSC implement a system whereby an officer nominated by the CEO undertakes a periodic audit of a random sample of information requests and extensions to check their compliance with the IPA requirements and timelines.

Recommendation 11

DLGPSR consider, in light of the difficulties some applicants appear to be experiencing with the public notification process, whether further public education (particularly for non-professional applicants) is required about this aspect of IDAS.

Recommendation 12

DLGPSR take into account, as part of its Improvement Project, that a reduction in the notice period for applicant compliance with the notification stage of IDAS may increase the frequency of applicants not complying with the process and implement measures to avoid that outcome.

Recommendation 13

MVSC develop procedures for relevant officers to ensure extension notices are issued according to the requirements of s.3.5.7 of the IPA.

Recommendation 14

MVSC develop procedures for relevant officers to ensure copies of decision notices are sent to principal submitters in accordance with the requirements of s.3.5.15 of the IPA.

Recommendation 15

In line with strategy 3.2.5 in its Operational Plan, MVSC grant further delegations of decision-making power under the IPA to a standing committee of MVSC or to appropriate MVSC staff. Alternatively, or in addition to granting further delegations to officers, MVSC establish a sub-committee of council to determine specified categories of DAs.

Recommendation 16

DLGPSR take steps to have the jurisdiction of the Building and Development Tribunal expanded to cover specified categories of planning and development matters currently considered by the Planning and Environment Court.

Recommendation 17

MVSC implement training for DSU and other relevant staff and councillors on providing clear and consistent reasons for DA decisions.

Recommendation 18

As part of its overall training program for DSU staff (and councillors), MVSC provide training on clear, concise and legally sound drafting of development conditions. MVSC should take advantage of any relevant training developed by the DLGPSR in this regard.

Recommendation 19

MVSC prepare formal guidelines for the Compliance Officer in relation to how and when potential breaches of the IPA and related state and local laws are to be investigated and enforcement action taken. These guidelines should be made available to the public and should cover matters such as investigative procedure, prioritising work, recording of actions, findings and outcomes, and natural justice procedures.

Recommendation 20

MVSC develop a formal policy on whether material received at the Agnes Water RTC is considered as having been formally received by MVSC.

Recommendation 21

If MVSC determines that material is not to be considered as having been received until it arrives at its Miriam Vale offices, MVSC advise all applicants for DAs of this decision and the potential for delay if material is lodged at the Agnes Water RTC.

Recommendation 22

MVSC review its mail receipt system to add additional safeguards to ensure all DA-related material is stamped as received and recorded according to its mail receipt procedures.

Recommendation 23

MVSC review the functions of its Practical database as soon as possible with a view to improving its usefulness for DSU staff, and capacity to report on the DSU's performance.

Recommendation 24

MVSC review its Operational Plan to ensure its objectives in relation to customer service and complaints management align with those in its Customer Service Charter and Complaints Management Policy.

Recommendation 25

MVSC provide training, as soon as practicable, for its staff in the practical application of the standards prescribed by its Customer Service Charter, and for DSU staff in general customer service practices, including the management of complaints and customer service skills.

Recommendation 26

MVSC review the Customer Service Charter to deal with any inconsistency with IPA requirements.

Recommendation 27

MVSC develop key performance indicators (KPIs) based on its Customer Service Charter and regularly assess its performance against these KPIs.

Recommendation 28

MVSC review its Customer Service Charter and Complaints Management Policy to ensure the obligations on staff to respond to correspondence are clearly stated for members of the public and MVSC staff.

Recommendation 29

MVSC develop and implement a formal mechanism for recording, and reporting on, complaints made about the actions of the DSU.

Recommendation 30

During 2007-08, MVSC conduct a client satisfaction survey among its DA applicants to determine levels of applicant satisfaction with the DA process as managed by MVSC (with particular reference to customer service matters such as the return of telephone calls), and consider the results of the survey in a review of its work practices.

Recommendation 31

MVSC develop its record keeping system to incorporate a more formalised mechanism for recording both incoming telephone calls from DA applicants, and DSU staff responses to applicants.

Recommendation 32

MVSC amend the relevant entries in Regulatory Fees and Non-Regulatory Charges 2006-2007 to clarify that its meeting fees are commercial fees for the purposes of s.36(2)(c) of the LGA, and not regulatory fees under the IPA.

Recommendation 33

MVSC develop a guideline on its DA meetings to provide applicants with a clear understanding of what can be expected from such meetings, including:

- *the meeting fee and why it is charged;*
- *length of meetings;*
- *the nature of the information council can, and cannot, provide under the IPA;*
- *the records which will be made of meetings and their availability; and*
- *alternative methods of obtaining desired information at no (or lesser) cost, including sending the DSU an email.*

Recommendation 34

MVSC explore alternative arrangements for providing limited advice to DA applicants in order to deliver a higher level of customer service and reduce the DSU's workload.

Recommendation 35

MVSC consider establishing a panel of planning advisers, or some other similar arrangement, to increase the level of assistance applicants are able to access when involved in IDAS processes.

Recommendation 36

MVSC develop a formal strategy for the continuity of the DSU's function when there are absences among the DDS, CTP and AO .

Recommendation 37

In the interests of stability in the planning staff of DSU, it is desirable that the Senior Planner position be filled permanently as soon as possible.

Recommendation 38

MVSC review the position description and salary for the current Town Planner position to determine whether it can be made more attractive for applicants, subject to Council's budgetary constraints.

Recommendation 39

MVSC implement appropriate arrangements for meeting staffing shortfalls in its DSU.

Recommendation 40

MVSC provide the AO in its DSU with the opportunity to undertake the LGAQ's Diploma in Local Government (Planning).

Recommendation 41

MVSC develop a formal position manual for the role of the AO, describing in detail the roles and responsibilities of the position within the DSU.

Recommendation 42

DLGPSR develop further strategies for encouraging rural councils to provide relevant planning staff with access to para-professional training such as the LGAQ's Diploma in Local Government (Planning).

Recommendation 43

MVSC arrange for its DSU staff to receive formal training in IPA within the current financial year.

Recommendation 44

MVSC develop an ongoing training program for all DSU staff for 2006-07 and beyond.

Recommendation 45

MVSC take advantage of the offer of assistance and training made by the then Minister in her letter of 11 April 2006.

Chapter 1: Background

1.1 Miriam Vale

The Shire of Miriam Vale is located between Bundaberg and Gladstone and has a population of around 5,300 people. The MVSC's chambers are at Miriam Vale, about one hour by road south of Gladstone. MVSC employs approximately 90-100 people. Council's Development Services Unit employs a number of people in connection with all aspects of planning and development (in areas such as assessment, compliance, plumbing, health, engineering, building certification, etc). For this investigation, I focused on the DSU's Director, the shire's planning staff, and administrative support.⁸

The shire has recently experienced rapid population growth (up to 6% per annum), and this is expected to continue. This is due to inwards migration, much of it caused by the increasing numbers of people choosing to retire to, or visit, the shire on a long term basis for lifestyle reasons.⁹ While the population growth in the shire itself is recent, there has been a longer term trend of growth throughout the region.

The growth of the tourism industry has been a major factor in the rapid expansion of the shire's main coastal community, Agnes Water, as well as the neighbouring Town of 1770. Agnes Water is about 40 minutes by road from Miriam Vale. Attractions of the area include a large surf beach, Lady Elliott Island and several national parks.

Development activity is varied. Many applications are for multi-unit complexes along the coast from Agnes Water to 1770, or further development of existing accommodation, shopping or office facilities. The second category involves approval for sheds on vacant land, reconfiguration of lots or minor works. There has also been development of camping/caravan facilities and related infrastructure in the Baffle Creek area to the south of the shire.

1.2 The legislation

Planning and development in Queensland is regulated by the *Integrated Planning Act 1997*. The IPA is the responsibility of the Minister for Local Government and Planning and is administered by DLGPSR. Chapter 3 of the IPA establishes the Integrated Development Assessment System.¹⁰ The IPA defines IDAS as a system for 'integrating state and local government assessment and approval processes for development'. The IPA defines 'development' as:

- (a) carrying out building work;
- (b) carrying out plumbing or drainage work;
- (c) carrying out operational work;
- (d) reconfiguring a lot;
- (e) making a material change of use of premises.¹¹

Having regard to the type of development referred to in the complaints, only reconfigurations of lots and material changes of use were considered in this investigation.

⁸ See section 6.1 for further detail.

⁹ Statistical data is drawn from DLGPSR, *Population and Housing Fact Sheet – Miriam Vale Shire*.

¹⁰ IPA s.3.1.1

¹¹ IPA s.1.3.2

Particular developments may be classified as ‘exempt’, ‘self-assessable’ or ‘assessable’, as follows:

Exempt development – an IDAS application is not required and the proposal is not required to comply with any ‘codes’ or standards.

Self-assessable development – an IDAS application is not required. However, the proposal must comply with any ‘applicable code’ or standards (for example, development standards in a transitional planning scheme, codes in an IPA planning scheme or a state code).

Assessable development – an IDAS application is required and a development permit is required prior to undertaking any new use or works.¹²

Assessable DAs may be subject to ‘code assessment’, ‘impact assessment’, or both.¹³ **Code assessment** refers to assessment solely against a relevant code. **Impact assessment** refers to the assessment of the environmental effects of proposed development and the ways of dealing with those effects. There are four possible IDAS stages, although (as stated in s.3.1.9) not all stages, or all parts of a stage, apply to all applications. These stages are as follows:

1. Application – The applicant submits completed forms to the council, describing the development proposal and paying the relevant fee. Following receipt of the application, the council verifies that the application has been correctly completed according to the IPA requirements. If not, it is considered ‘not properly made’ and the applicant will usually be asked to rectify any defects. Assuming the application is accepted, the IPA requires that the council issue an ‘Acknowledgment Notice’ within 10 days if the proposed development is ‘impact assessable’. A council may, but need not, issue an Acknowledgment Notice in some circumstances where the development is ‘code assessable’ only.

2. Information request – If the council determines that further information is required, it has 10 days following the issuing of an Acknowledgment Notice to request the information. The council can extend this for a maximum of 10 days. The process is further complicated if the IPA requires the involvement of referral agencies where, for example, the proposed development affects an environmentally sensitive area. In such cases, the applicant is generally required to refer the proposal to the applicable state agency (such as the EPA).

3. Notification – Once the applicant has finished responding to the council’s information request, it has a limited period in which to advertise the proposal. This usually consists of the placement of a notice in a local newspaper, a sign on the property concerned, and writing to adjoining landowners, inviting submissions to be made to the council.

4. Decision – Assuming the applicant has followed the IPA processes correctly, the council has 20 days to decide the application from the date of the last relevant action in the process. The action which triggers the start of the decision period will vary depending on the type of DA involved. This period can be extended by council for a further 20 days. A council will either approve the application (with or without conditions), or refuse the application. Where an applicant disagrees with the conditions set by council, the IPA provides for a process leading to a ‘negotiated decision notice’ based on representations by the applicant and reconsideration of the matter by council.

This series of stages does not apply in all cases. For example, in a simple code assessable application, the process may move directly from the application stage to the decision stage. If the council determines that further information is not required, there is no information request period. Ultimately, a dissatisfied applicant has the right to appeal to the P&E Court.

¹² See IPA s.3.1.3. Adapted from IPA Implementation Guideline p.7.

¹³ IPA s.3.1.3

1.3 The role of local government

Under the IPA, DAs are assessed by an ‘assessment manager’. For development completely within a single local government area, the local council will generally be the assessment manager. The primary role of a council under IDAS is to consider and decide DAs according to the IPA, local planning scheme and council policies.

Where a DA involves a ‘state interest’ (such as environmental protection), the relevant state government agency also has a role in the assessment process. In these cases, the state agencies may prescribe conditions which must be included by the council in the list of conditions imposed on the approval.

The council is also responsible for preparing and enforcing its planning scheme. MVSC’s existing planning scheme commenced in 1997. The planning scheme guides the decision-making on the types of development a local council will permit in specific localities within its area. Councils may choose to adopt policies on specific matters such as car parking, signage or rainwater tanks. All local councils have been required to introduce new schemes under the IPA. MVSC is currently developing a new planning scheme which has been subject to public consultation and is likely to be introduced within the next 12 months. A regional planning process is occurring as part of the Wide Bay Regional Growth Management Framework.¹⁴

1.4 Development applications to Miriam Vale Shire Council

As noted above, our investigation included an audit of material change of use applications and reconfiguration of lot applications made to MVSC during 2004-05 and 2005-06. As can be seen from a comparison with such DAs received since 2000-01, these two years saw a significant increase in overall DA workload, with both years being well above the six-year average.

Table 1

DAs to MVSC (Material Change of Use (MCU)and Reconfiguration of Lot (ROL)) – Annual applications received					
Year	MCU	ROL	TOTAL	% change on previous year	% change on 2000-01
2000-01	28	8	36	-	-
2001-02	39	16	55	+ 52.8%	+ 52.8%
2002-03	58	13	71	+ 29.1%	+ 97.2%
2003-04	42	10	52	- 26.8%	+ 44.4%
2004-05	86	23	109	+ 109.6%	+ 202.8%
2005-06	81	18	99	- 9.2%	+ 175.0%

¹⁴ See the *Wide Bay Burnett Regional Plan* draft produced by DLGPSR, described as a ‘non statutory policy document’ (p.109).

1.5 Administrative audit

Of the 84 files audited, 43 were for applications lodged in 2004-05, and 41 for those lodged in 2005-06.¹⁵ The audit sample comprised approximately 39% of all relevant files¹⁶ for 2004-05 and approximately 41% of all relevant files for 2005-06. In total, my officers audited approximately 40% of relevant files for the two years. I am satisfied this constitutes a sufficient sample on which to base the findings of this report.

The focus of the audit was twofold – ‘reconfiguration of lot’ (ROL) applications and ‘material change of use’ applications. ROLs involve boundary realignments or subdivisions of property.¹⁷ Material change of use applications may range from a relatively minor alteration to an existing property through to the construction of a major new facility on previously vacant land.¹⁸

The audited files were examined according to a checklist developed with assistance from the DLGPSR. My officers determined whether, in each file, the IDAS requirements had been complied with (by both MVSC and the applicant) and, if not, the extent of the error. On completion of the audit, the findings were tabulated. The data takes account of MVSC’s responses to the preliminary findings of the audit, received on 14 September 2006. To assist the analysis, I obtained a copy of the Local Government Association of Queensland’s (LGAQ) report entitled *Survey of Development Application Process*, published in March 2006. This involved voluntary participation and self-assessment by 67 Queensland councils of their DA processes during March 2005. Although the parameters of our audit and the LGAQ survey are different, they are sufficiently similar to allow meaningful comparisons.

1.6 Involvement by the CMC

The concerns raised by the 14 complainants were wide-ranging and in some cases crossed into areas over which I have no jurisdiction.¹⁹ These included the conduct of certain officers (including allegations of bullying) and the employment history of the CEO. Matters in this category were considered by the CMC prior to its referral of cases to my Office, or were referred by my Office to the CMC. All such matters were dealt with by the CMC under its own processes and are not covered in this report.

1.7 DLGPSR’s Improvement Project

The DLGPSR is undertaking an IPA/IDAS Improvement Project to develop proposals for amendments to the IPA to streamline and otherwise improve the operation of the Act. I have already made recommendations to DLGPSR on its proposals, and some of those recommendations are repeated in this report.

¹⁵ Up until the time of my officer’s visit to MVSC in June 2006.

¹⁶ Relevant files for the purposes of this report are MVSC files relating to applications for reconfiguration of a lot, or a material change of use.

¹⁷ IPA, s.1.3.5, definition ‘reconfiguring a lot’

¹⁸ IPA, s.1.3.5, definition ‘material change of use’

¹⁹ That is, matters which do not constitute ‘administrative action of an agency’ for the purposes of s.7 of the OA.

Chapter 2: MVSC's compliance with IDAS

2.1 Timeliness

The IPA specifies strict timelines for the various stages of the IDAS process. An applicant's failure to adhere to the timelines results in the application lapsing. Our audit examined the timeliness of MVSC at each stage of the IDAS process, as well as the overall time from receipt of applications to decision. It is important to note the overall completion time is affected as much by actions of the applicant as by council. For example, an applicant can take up to 12 months to respond to an information request.

Of the 84 DA files my officers audited, 35 (42%) were either ongoing (open) at the time of our audit, or had lapsed or been withdrawn prior to the decision stage. Of the 49 files (58%) audited which had reached the decision stage, the completion times were as follows:

Table 2

Completion time	Percentage of audited MVSC files	MVSC Cumulative Total	LGAQ Survey results	LGAQ Cumulative Total
≤ 1 month	18.3%	18.3%	23.4%	23.4%
≤ 2 months	18.3%	36.6%	20.6%	44.0%
≤ 3 months	18.3%	54.9%	16.9%	60.9%
≤ 4 months	10.2%	65.1%	11.7%	72.6%
≤ 5 months	2.0%	67.1%	27.5% for all QLD DAs over four months MVSC equivalent is 34.3%	
≤ 6 months	6.1%	73.2%		
≤ 7 months	6.1%	79.3%		
≤ 8 months	6.1%	85.4%		
≤ 9 months	2.0%	87.4%		
≤ 10 months	2.0%	89.4%		
≤ 11 months	2.0%	91.4%		
≤ 12 months	8.2%	99.6%		

(Note: percentages have been rounded to nearest 0.1)

Table 3

Council	Average DA processing time
MVSC (from Ombudsman audit)	11 weeks
Rural average (from LGAQ survey)	10.5 weeks
Queensland average (from LGAQ survey)	12.3 weeks

The differences between the two methodologies should be taken into consideration in this comparison. Based on information provided to this Office by the LGAQ, differences include:

- while my Office's audit related to a sampling of MVSC DA files over a two-year period, the LGAQ survey related to DAs received by 67 councils during March 2005;
- the LGAQ survey was based on self-assessment by the councils, whereas my Office's audit was conducted by auditors external to the MVSC;
- the LGAQ survey reported overall times for IDAS stage completion, rather than IDAS-related errors, as is the case with my Office's audit; and
- the LGAQ survey included councils from throughout Queensland, and did not focus solely on rural councils such as MVSC.

With these caveats in mind, the MVSC's performance in respect of time taken to process DAs appears broadly comparable to that of other councils. However, this only indicates that MVSC's timeliness is in line with those of other councils. It does not indicate whether these councils comply with the IPA timelines.

I found that the primary causes of delay in the MVSC's IDAS processes include the time taken:

- by applicants to:
 - amend their applications so they can be considered properly made
 - respond to information requests
 - correctly carry out the referral process
 - repeat the public notification process where the initial attempt was not correct
- by MVSC to:
 - consider whether an application has been properly made by an applicant
 - put applications forward to a council meeting for decision.

Opinion 1

There is no evidence that MVSC is deliberately delaying applications during the assessment process under IDAS.

The investigation revealed a lack of overarching recording and reporting systems which would allow MVSC to gain a statistical overview of the DSU's timeliness. No formal record is kept on the MVSC's Practical database of when actions were taken under the IPA in each case (at least not in a readily reportable format). When combined with the lack of a formal recording and reporting mechanism on complaints, this means MVSC does not:

- have a readily available means to respond to complaints about service or timeliness;
- have an effective system for internally reviewing its performance against either the Customer Service Charter or IPA timelines; and
- have a reliable means of reviewing whether it has achieved its performance objectives under its 2006-2007 Draft Operational Plan, specifically:
 - 1.1.8 – Corporate Services: To ensure that public inquiries are dealt with in a timely manner; and
 - 3.1.1 – Development Services: To ensure that all applications are dealt with in a professional and timely manner.

Opinion 2

MVSC's failure to implement a formal means of recording, and reporting on, the performance of its DSU in relation to the timeliness of completion of IDAS processes is unreasonable administrative action within the meaning of s.49(2)(b) of the OA.

Recommendation 1

MVSC develop a formal means of recording and reporting on the timeliness of the DSU's management of IDAS processes.

MVSC response to opinion 2 and recommendation 1

Opinion 2 is incorrect. The current computer system 'Practical' has the ability to produce reports ... These are printed out twice weekly to ensure deadlines are not missed.

In response to recommendation 1 - A formal process is already in place. Council is also one of the pilot councils for the National electronic development application programs. The directorate is continually auditing itself in order to improve processes and timelines and works with Practical to develop reports templates that assist in this process.

Comment

I accept MVSC's comments in relation to the reporting capacity of its Practical database, and also acknowledge and commend MVSC's participation in the national project on development application programs. However, opinion 2 and recommendation 1 relate to a broader reporting process to enable senior MVSC management to gain an overview of the timeliness of the DSU in managing DAs to help it achieve its performance objectives. This recommendation, and others in this report relating to MVSC's database, should be interpreted in light of the need for council to have a capability to report against its Operational Plan and Key Performance Indicators and so inform its broader strategic planning process.

2.2 Application stage - General

Applicants for development approvals must submit an application in the form prescribed by the DLGPSR Chief Executive under the IPA. These are produced by the DLGPSR and publicly available on the IPA website²⁰, and from the MVSC. The forms are used for all applications to all Queensland councils. Once an applicant submits the form(s) to a council, the council must assess the application to determine whether it has been 'properly made'. The IPA states that an application is properly made if (among other things):

- (a) the application is made to the assessment manager; and
- (b) the application is made in the approved form; and
- (c) the mandatory requirements part of the approved form is correctly completed; and
- (d) the application is accompanied by the fee for administering the application.²¹

My officers' audit of DA files at MVSC found that applicants frequently made errors at the beginning of the process. Over the two years covered by the audit, 28% of applicants did not submit properly made applications. If applications made in 2005-06 are considered alone, 50% of DAs to MVSC were not properly made by applicants.

The manner in which DAs failed to meet the requirements varied, and included a failure to pay the prescribed fee or the use of an outdated version of the application form, as well as the provision of insufficient information. In many cases, the time applicants then took to address the problem caused delays even before the real assessment process commenced. This led to complaints being made against MVSC about the timeliness of the process overall.²²

²⁰ <http://www.ipa.qld.gov.au>

²¹ IPA s.3.2.1(7)

²² The P&E Court has confirmed that local councils, as assessment managers, have the power to require applicants to address these issues prior to the IDAS timeline formally commencing. See, for example, *Quinn Group (Suncoast) Pty Ltd v Maroochy Shire Council* [2003] QPEC 016.

Table 4

Time between receipt of DA by MVSC and MVSC deeming application to be properly made						
Time	2004-05	Percentage of files for year	Cumulative	2005-06	Percentage of files for year	Cumulative
Within 2 business days of receipt	27	62.8%	62.8%	11	26.8%	26.8%
Between 3 and 5 business days of receipt	3	7.0%	69.8%	6	14.6%	41.4%
Between 6 and 10 business days of receipt	3	7.0%	76.8%	8	19.5%	60.9%
Between 11 and 20 business days of receipt	4	9.3%	86.1%	7	17.1%	78.0%
21 business days or longer	2	4.7%	90.7%	9	22.0%	100.0%
Unknown	4	9.3%		NIL	NIL	

Strictly speaking, the IPA requires only an accurate description of the land, owner's consent, and the applicable fee.²³ MVSC rarely accepts applications which meet the minimum requirements but are not otherwise properly made. Were MVSC to accept all applications provided they met the minimum requirements of the IPA, later stages of the IDAS process would be delayed as the necessary further information would have to be sought in any event.

Opinion 3

There is no evidence that the high rate of DAs in Miriam Vale Shire, which are assessed by MVSC as not having been properly made, is attributable to any unfair or unreasonable action on the part of MVSC.

DLGPSR produces 'Implementation Notes' on the requirements of the IPA on specific topics. The relevant Implementation Note for the primary application forms states:

When the IPA and IDAS system commenced in 1998 many local governments, private building certifiers and State agencies prepared their own IDAS application forms ... This made working across local government boundaries or with various State agencies difficult, cumbersome and time consuming. This was contrary to the objective of IDAS to create a single integrated assessment system across government.²⁴

In line with this objective, DLGPSR should seek to ensure all councils are applying approximately the same levels of scrutiny to DAs at the application stage. DLGPSR does not provide any guidance to councils on accepting applications which are not properly made; nor does there appear to be any other formal guidance. At present, there is scope for considerable variation, with the result that development proposals to some councils may not initially be assessed as rigorously as those elsewhere. In the Discussion Paper, DLGPSR proposes to amend the IPA so that:

- an assessment manager may only accept a DA if it is properly made;
- in the event an application is not properly made, written notice is to be given to an applicant stating the changes required; and
- an applicant may change an application within a reasonable time without additional fees to ensure it can be accepted.²⁵

²³ IPA s.3.2.1

²⁴ IDAS Implementation Note 2 (IDAS Forms 1 & 2), p.1

²⁵ Discussion Paper, p.51

Provided councils are given guidance as to what constitutes a 'properly made application', these proposals have merit. However, the first proposal may increase levels of frustration as applications may be rejected more often than at present. It is therefore imperative that applicants are provided with clear information prior to lodging an application.

Recommendation 2

If s.3.2.1 of the IPA is amended so that an assessment manager may not accept an application that is not properly made, DLGPSR should produce information to guide local councils as assessment managers on what constitutes a properly made application.

Alternatively, if s.3.2.1 of the IPA is retained in its current (or a substantially similar) form, DLGPSR should consider means of increasing uniformity among councils at the acceptance stage of IDAS as part of its Improvement Project.

DLGPSR response to recommendation 2

DLGPSR did not provide specific comment on this recommendation, but indicated general support for the contents of the report and its findings.

2.3 DLGPSR's role

My officers' audit revealed many applicants had little knowledge of the IDAS process and made errors based on a misunderstanding of the IPA. Applicants frequently confused the role of MVSC as assessment manager with that of a consultant and also wrongly attributed IDAS requirements to council policies rather than to the IPA. Consequently, some applicants expressed their frustration with the complexities of the process to MVSC rather than recognising that some of the most difficult aspects of the process are prescribed by the state legislation.

MVSC recognised the value of a short guide to the IPA process from a Miriam Vale perspective. However, staff were wary of providing extensive advice given each application could contain many issues, and that a generic guide may mislead applicants. MVSC has recently proposed to 'prepare and develop easy to read and understand information kits ... available in hard copy and on Council's website' in relation to planning and building matters.²⁶ I commend this strategy and encourage MVSC to expedite this.

The target audience for DLGPSR resources appears to be applicants who have some understanding of planning matters, and an ability to understand complex legal and administrative terms and concepts. The provision of a broader guide by DLGPSR would enhance consistency and assist in removing the perception held by some applicants that the IDAS is a policy of their own council rather than a state-level scheme. Such a guide might explain the basic division of responsibilities between the state government and local councils, and could be produced in a format for use by councils as part of their own web pages.

Recommendation 3

DLGPSR consider producing a basic guide (for non-professional applicants) to the legislative responsibilities of state government and local councils in the IDAS process, in both hard copy and web page format for use by local councils.

DLGPSR response to recommendation 3

Agree. It is important to note, however, the Smart electronic Development Assessment (Smart eDA) project will significantly enhance the understanding of IDAS by transforming it from a paper-based process to an electronic one. This electronic lodgement process will assist applicants by taking them through what they need to do step by step. In this way, the web page will be a valuable tool for non-professionals involved in the IDAS process.

²⁶ MVSC Operational Plan 2006-2007, Strategy 3.1.2

2.4 MVSC's acknowledgment notices

Once a council has received a properly made application, it may be required to issue an 'acknowledgment notice'.²⁷ No time is set in the IPA within which a council must determine whether an application has been properly made after it has been received and, to an extent, this depends on the quality of the application. The IPA specifies certain matters which must be contained in an acknowledgment notice²⁸ as well as a maximum of 10 days for its production once an application has been assessed as properly made. The audit of the acknowledgment notices in MVSC's DA files revealed there were council errors in approximately 37% of all files.

Table 5

Application Stage – errors in Acknowledgment Notices		
Year	Total with errors	% of total DAs audited
2 years of audit sample	31	36.9%
2004-05	21	48.8%
2005-06	10	24.3%

The nature of these errors varied, and included:

- a failure to issue the notice within 10 days after the application was properly made;
- a failure to correctly specify whether the application was code or impact assessable; and
- a failure to correctly specify referral or concurrence agencies based on information provided by applicants.

Overall, the seriousness and number of MVSC errors in relation to acknowledgment notices fell in 2005-06. During 2004-05, almost 49% of files contained at least one MVSC error at the application stage. In 2005-06, the total had dropped to around 24%. Further, whereas delays during 2004-05 were, on occasions, as high as several months, in 2005-06, the longest delays were about one week. Nevertheless, any error in an acknowledgment notice may result in serious consequences for applicants and the council further into the process.

²⁷ See 1.2, above.

²⁸ See IPA s.3.2.3(2)

Opinion 4

The high error rate detected by the audit findings in relation to MVSC's production of acknowledgment notices constitutes unreasonable administrative action within the meaning of s.49(2)(b) of the OA.

MVSC response to opinion 4

Based on the fact that council issues acknowledgment notices based on the applicant's mandatory checklist, which IPA clearly states is the responsibility of the applicant, it is expected that errors will occur. There have been instances when the staff have attempted to investigate an issue and seek additional technical advice in relation to a checklist issue from the relevant state agency, the applicant has become aggressive and demanded that the acknowledgment notice be issued and in some instances the state agency has not been able to clarify the issue. In fact at times the EPA and DPI have indicated to include them as a referral agency as they are unsure of the requirements in the context of the site. If the relevant agency is unsure, how can council staff be expected to know?

Overall IPA timelines do not facilitate appropriate time to allow detailed investigation of issues to get the acknowledgment notice correct within 10 business days and this is further complicated by unclear triggers on the checklist. This opinion should therefore be expanded to acknowledge the deficiencies of the IDAS checklist and that relevant state agencies be required to provide clear guidelines to applicants to assist with completing the form.

Finally, current practice is that staff do not have delegation to amend details of an application or to issue an acknowledgment that does not reflect the IDAS checklist. Current practice is to get the applicant to amend the checklist if it is an obvious error. If the error is not obvious, the acknowledgment notice is issued and if staff become aware of the error, the application is deemed 'not properly' made and the process is recommenced at the application stage.

Council, in an attempt to assist the process, could consider delegating authority to the CEO to amend details of an application whereby it is noted that the applicant has incorrectly completed the IDAS checklist.

Comment

In several instances where an acknowledgment notice failed to identify (or wrongly identified) referral agencies, MVSC stated: 'It is the applicant's responsibility to complete the IDAS checklist correctly. Council is not responsible for identifying Referral Agencies as these are generated by the (application) checklist which is mandatory for the applicant to complete.'

I have considered the IPA and related material such as the Implementation Guidelines, and discussed the matter with DLGPSR, and do not believe MVSC's response sufficiently addresses my concern in relation to referral agencies. It is clear that the IDAS checklist is mandatory, that MVSC is entitled to rely on the accuracy of the information provided by the applicant, and that applicants may, on occasions, omit information from the form which is vital information in terms of identifying relevant referral agencies.

However, under the IPA (s.3.2.3), MVSC as assessment manager also has a statutory responsibility for producing accurate acknowledgment notices which correctly specify whether or not there are referral agencies, and, if so, what those agencies are.

In any event, only 4 of the 31 instances of errors in this category across the two financial years related to incorrect or missing referral agency advice. Therefore, MVSC's response does not provide cause for me to change opinion 4.

Finally, I note the DLGPSR proposes to address this issue through several recommendations it is making as part of its Improvement Project (see 2.6 , below).

Calculation of timelines

MVSC issues acknowledgment notices for all DAs, regardless of whether the IPA requires one. MVSC states this is done for procedural consistency and to provide applicants with relevant information. I commend this practice. However, I stress the need for MVSC to ensure that, in its calculation of IDAS timelines, it does not use the date of issue of the acknowledgment notice as the start date for the next stage of the process where an acknowledgment notice is not required.²⁹ In several files among the audit sample, MVSC had incorporated the acknowledgment notice timing into the overall time calculation for DAs which did not require them, resulting in a delayed commencement of the next stage.

Opinion 5

In some cases, MVSC has extended the timeline for dealing with DAs in which an acknowledgment notice is not required under s.3.2.3 of the IPA by including the application stage in the timeframe. This is administrative action which is contrary to law within the meaning of s.49(2)(a) of the OA.

Recommendation 4

MVSC provide written guidance to relevant officers that they not use the date of issue of the acknowledgment notice in calculating IDAS timelines for those DAs where no acknowledgment notice is required under s.3.2.3 of the IPA.

MVSC response to opinion 5 and recommendation 4

Opinion 5 – Noted – this has occurred in the past – however, over the last six-twelve months processes and procedures have been introduced to ensure that this no longer occurs.

Recommendation 4 – Council continues to issue acknowledgment notices for applications that do not technically require one to be issued under s 3.2.3 of IPA on the basis that many applicants are lay people and do not understand the process and expect to receive some formal notification that their application has been received. It is acknowledged that this has occurred in the past – however over the last three-six months processes and procedures have been introduced to ensure that this no longer occurs.

Comment

Despite the apparently falling error rate for MVSC's acknowledgment notices, any council error at this stage of the process may have potentially serious consequences for a DA applicant. Therefore, risk management practices should be adopted so as to limit the risk of the current system giving rise to significant problems.

²⁹ See IPA s.3.2.3

Recommendation 5

A random sample of acknowledgment notices produced by the DSU be regularly audited by an officer nominated by the CEO with a view to identifying any ongoing issues requiring correction, and reducing the error rate identified in this report.

MVSC response to recommendation 5

If only DDS and planners have working knowledge of IPA/IDAS within the organization it is difficult to delegate this task to other staff. This is currently done by DDS and errors have been and are continually identified (when obvious) and rectified.

Comment

While I accept that only the DDS and planners in the DSU are likely to have a working knowledge of the IPA, I still consider it necessary from a quality assurance perspective for some form of ongoing audit program to be conducted by MVSC in light of the high error rate in its acknowledgment notices. A suitable audit framework could be developed and be conducted by a reasonably skilled officer with appropriate guidance by the DDS.

2.5 Information and referral stage

Council must decide whether further information is required to assist in determining an application. If so, the council may (but need not) issue an information request.³⁰ If a council chooses to, it must do so within 10 days of issuing the acknowledgment notice. Should it wish to extend this time, it must send notice of the extension to the applicant. In the 84 files my officers audited, around 58% involved an information request by MVSC. Common errors included MVSC:

- issuing an information request late;
- failing to send the applicant notice of the extension; and
- sending the applicant comments outside the parameters of the IPA.

Table 6

MVSC Information Requests				
Year	Total DAs audited	Number of DAs in which information requests were made	Number of Information Requests made which did not conform to IPA	Percent of Information Requests made which did not conform to IPA
Total audited	84	49	16	32.6%
2004-05	43	18	10	55.5%
2005-06	41	31	6	19.3%

The audit revealed that MVSC made errors at this stage in over half the files for 2004-05 in which an information request was made, and almost one in every five such files for 2005-06. As with MVSC's errors at the application stage, errors at this stage are declining in both number and gravity. However, the error rate is still unacceptably high.

³⁰ See IPA s.3.3.6

Several complainants alleged MVSC's information requests were unreasonable. In a 2004 case involving the validity of an information request in an IDAS process, the P&E Court commented:

The Council's authority extends to asking for further information needed to assess the application, and no further... Suggestions about amendments and the like were inappropriate, and ineffective. That is, they went beyond the power to request information.³¹

Ultimately, an applicant who believes an information request made by a council is unnecessary, irrelevant or inappropriate can elect to have council proceed with its assessment without responding to the request.³² Beyond that, applicants have a right to seek a declaration in the P&E Court in respect of decisions made by Council under the IPA.

An IDAS assessment manager may communicate with applicants outside the formal IPA process and, indeed, such communication is an essential part of a council's role. Regardless, this communication must be clearly separated from the information request element of IDAS. As the P&E Court stated:

It is obviously desirable for councils to exchange information, criticism, and suggestions with developers. Many difficulties can be overcome by negotiation. The important thing to make clear is that such informal contact should not be mixed up with the formal request for information.³³

My officers' audit of MVSC's DA files revealed that MVSC has issued information requests which breach the principle in Caswell that information requests should not seek amendments to proposals. Examples include information requests in which MVSC:

- requested amendments to a building design;
- requested an applicant to 'address the detrimental visual impact' of garages;
- requested amendments to the setback of a building; and
- required an applicant to address its non-compliance with Council's Off-Street Car Parking Policy.

Opinion 6

The audit findings indicate that MVSC has regularly failed to comply with the IPA in issuing information requests in IDAS processes, including information requests containing requirements of applicants not permitted by the IPA. This is administrative action which is contrary to law within the meaning of s.49(2)(a) of the OA.

Recommendation 6

MVSC provide written guidance to relevant officers to ensure that future information requests do not seek amendments or additions to applications, but are limited to requests for relevant information.

Recommendation 7

MVSC ensure that any training undertaken by DSU and other relevant staff on the IPA includes training specifically on the correct use and drafting of information requests.

³¹ *Caswell v Maroochy Shire Council* [2004] QPEC 78 at pp 5-6 per Judge Brabazon QC

³² See IPA, s.3.3.8(1)(c)

³³ Caswell at p.8

MVSC response to opinion 6 and recommendations 6 and 7

Opinion 6 – *Applicants generally appreciate the guidance and like the fact that we do this but in future we won't and will separate and attach an additional comments sheet to information requests in future.*

Recommendation 6 – *Not required.*

Recommendation 7 – *This should not be limited to DSU as identified in the report as engineers, plumbers and health inspectors provide input into applications and information requests.³⁴ It may also be appropriate that DLGPSR prepare guidelines and fact sheets in relation to the do's and don'ts of IPA to assist all local governments in carrying out the process.*

Comment

In relation to recommendation 6, I remain of the opinion that formal written guidance on this matter is important given the complaints about information requests going beyond their intended purpose and given that this issue has been the focus of a recent P&E Court decision. In the circumstances, I believe recommendation 6 is warranted.

I have amended recommendation 7 in accordance with MVSC's response.

Timelines

The IPA prescribes time limits for issuing information requests.³⁵ The audit revealed that in almost 25% of those files containing information requests, MVSC:

- issued them late;
- failed to seek an extension; or
- issued a request after an extension had expired.

I acknowledge MVSC has a high DA workload and limited staffing. It is to be expected that deadlines may occasionally be missed. However, this is an area of concern to applicants and there were numerous instances in the files where applicants became aggrieved by MVSC's management of IDAS processes as a result of missed extensions or deadlines at this stage.

³⁴. Proposed recommendation 7, which was referred to the MVSC for comment, referred to training for DSU staff only.

³⁵. IPA, s.3.3.6(4). If a council cannot meet the 10-day timeframe, the IPA allows for an extension of a further 10 days.

Opinion 7

The audit findings indicate MVSC has regularly failed to meet the timelines for the issuing of information requests or extensions under s.3.3.6 of the IPA. This failure is contrary to law within the meaning of s.49(2)(a) of the OA.

Recommendation 8

MVSC provide written guidance to relevant officers to ensure that they meet the timelines for the issuing of information requests and extensions under s.3.3.6 of the IPA.

Recommendation 9

MVSC give consideration to upgrading its Practical database to provide notice to DSU staff of relevant dates for issuing information requests and extensions.

Recommendation 10

MVSC implement a system whereby an officer nominated by the CEO undertakes a periodic audit of a random sample of information requests and extensions to check their compliance with the IPA requirements and timelines.

MVSC response to opinion 7 and recommendations 8, 9 and 10

Opinion 7 – *This is incorrect based on a random audit of files. In the last 6 months we have not missed issuing an extension letter or information request and have complied with IPA timelines.*

Recommendation 8 – *This is not required. Staff are fully aware of IPA timelines and over the last twelve months have improved the processes and procedures to ensure that all timelines are achieved.*

Recommendation 9 – *Ongoing consultation is occurring with Practical to improve its operational systems to assist staff in achieving their outcomes.*

Recommendation 10 – *If only DDS and planners have working knowledge of IPA/IDAS within the organization it is difficult to delegate this task to other staff. This is currently done by DDS and errors have been and are continually identified (when obvious) and rectified.*

Comment

MVSC's response stated that in the last six months (that is, prior to late October 2006), the DSU has not missed issuing an extension letter or information request and has complied with the IPA timelines. I do not consider MVSC's advice in this regard to be contradictory to the findings of my officers' audit. The six months referred to by MVSC commenced in or around April 2006. My investigators audited files up to mid-June 2006, and many relevant documents on open files had not been filed at that point. This means it is possible that the errors referred to in this section of the report occurred entirely (or mostly) pre-April 2006.

I accept that it is possible that MVSC has met all IPA timelines since that time. However, the gravity of the errors, and the error rate, recorded by the audit were such that I consider opinion 7 and recommendations 8, 9 and 10 to be still warranted.

In relation to recommendation 10 in particular, while I accept that only the DDS and planners in the DSU are likely to have a working knowledge of the IPA, I still consider it necessary from a quality assurance perspective for some form of ongoing audit program to be conducted by MVSC in light of the issues raised in this report. A suitable audit framework could be developed and be conducted by a reasonably skilled officer with appropriate guidance by the DDS.

2.6 Referrals

Where a DA involves issues affecting 'state interests', the IPA requires the application to be referred to the relevant state agencies. For example, where a proposed development could affect the environmental value of an area, the application would be referred to the EPA. This referral occurs after the council has issued its acknowledgment notice and is generally the responsibility of the applicant. The referral is often carried out as follows:

1. Applicant lodges an application with council with (for example) potential environmental implications;
2. Council identifies certain aspects of the application as 'referral triggers';
3. Council issues an acknowledgment notice which identifies the relevant 'referral agencies' (in this example, the EPA);
4. Applicant refers the application to the EPA;
5. EPA provides its response to the applicant; and
6. Applicant provides the EPA's response to the council which takes this response into account in its decision (including the setting of any conditions).

In practice, referrals are an area of IDAS where applicants appear to have significant difficulty. In many of the audited files involving referrals, it was clear applicants had failed to refer applications to the relevant agencies, not taken account of the referral agency's response or failed to advise MVSC of the referral agency's response. In some files, the complexity that developed in the process during the referral stage led applicants to become frustrated and to eventually formally withdraw their application or abandon the process (resulting in the application lapsing under s.3.2.12 of the IPA).

There were also cases among the files my officers audited where MVSC had gone well beyond its statutory responsibilities and directly assisted applicants in referral matters. Some of those were non-professional applicants who were experiencing difficulties with the process.

In its Discussion Paper, DLGPSR proposes to:

- amend schedule 8 of the IPA to clarify and simplify referral triggers.³⁶ Specifically, DLGPSR has stated its intention to rationalise referral triggers over the longer term;
- prepare guidelines to clearly define the scope and jurisdiction of referral triggers and publish these on the IPA website.³⁷

Given the difficulties which applicants clearly face in the referral process, I fully support these proposals. DLGPSR's two proposed actions in relation to referral triggers appear to be the most effective means of reducing the complexity of the process and addressing the types of problems my officers observed in this aspect of the IDAS process at MVSC.

³⁶ Discussion Paper, p.45

³⁷ Discussion Paper, p.44

2.7 Notification stage

Thirteen percent of applications contained some form of error by applicants at the notification stage.³⁸ MVSC made few errors at this stage, which is in keeping with its role as assessment manager.

Table 7

Notification stage errors				
Year	DAs requiring notification	Applicant errors	MVSC errors	Applicant errors as percent of DAs which went to notification
Total	23	10	1	43.5%
2004-05	13	5	1	38.5%
2005-06	10	5	Nil	50.0%

Public notification of an application entails the publication of the application details³⁹ in a newspaper circulating in the region, as well placing signs on the property. Adjoining property owners must also be notified. Common applicant errors included:

- failure to notify the application;
- failure to advise council that notification had occurred;
- failure to notify for the correct time or in the correct manner; and
- notification of incorrect details in respect of the application.

Until recently, MVSC's policy was that advertisements had to be placed in both the Gladstone Observer and the Bundaberg News-Mail. Where an applicant made a notification error, they were required, effectively, to publish four separate advertisements (two on the first attempt and two on the second), at considerable expense. This policy has now been amended to require publication in only one newspaper.

The IPA requires an applicant to provide a notice of compliance to the council within three months of undertaking the public notification. The DLGPSR proposes to reduce this to 15 business days, believing this will improve the currency of pending applications.⁴⁰ However, this may also increase the number of lapsed applications. This outcome is particularly likely for non-professional applicants with little experience of IDAS processes. Therefore, it would be appropriate for DLGPSR to ensure that any reduction in timelines is accompanied by increased public information on the process.

Recommendation 11

DLGPSR consider, in light of the difficulties some applicants appear to be experiencing with the public notification process, whether further public education (particularly for non-professional applicants) is required about this aspect of IDAS.

Recommendation 12

DLGPSR take into account, as part of its Improvement Project, that a reduction in the notice period for applicant compliance with the notification stage of IDAS may increase the frequency of applicants not complying with the process and implement measures to avoid that outcome.

DLGPSR response to recommendations 11 and 12

DLGPSR did not provide specific comment on these recommendations, but indicated general support for the contents of the report and its findings.

³⁸ Note – not all DAs require public notification.

³⁹ In the form prescribed under the *Integrated Planning Regulation 1998*.

⁴⁰ Discussion Paper, p.50

2.8 Decision stage

An unreasonably high number of completed DA files contained an MVSC error or non-conformity at the decision stage of the IDAS process.

Table 8

Decision stage errors			
Year	Number of DAs completed	Number of completed DAs with an error at this stage	Percentage of completed DAs with an error at this stage
Total	49	29	59.2%
2004-2005	29	20	69.0%
2005-2006	20	9	45.0%

The majority of errors identified at this stage related to timeliness, in particular, MVSC:

- making late decisions;
- failing to properly extend the decision-making period; and
- failing to issue the decision notice to the applicant and other relevant parties within the statutory timeframes.

Most DAs at MVSC are decided by council, rather than by a senior officer under delegated authority.⁴¹ This means the DSU must await a council meeting for a decision, rather than deciding an application as soon as the other stages in IDAS are complete. Quite often council's decision on an IDAS application is delayed simply due to the backlog of DAs.

Where a council will be unable to meet the IPA deadline for a decision, it is required to issue an extension⁴². This permits a further 20 days to make the decision. In 44% of the completed files audited, MVSC should have issued an extension but either did not, or did so after the IPA timeline had expired. The equivalent is approximately 53% for completed applications in 2004-2005, and 30% for those files from 2005-06 completed at the time of my officers' audit.

⁴¹ Refer to 2.11 for discussion of delegations at MVSC.

⁴² IPA s.3.5.7(2)

Opinion 8

The audit findings indicate that MVSC has regularly failed to issue decision extension notices within the timeframe required by s.3.5.7(2) of the IPA. While decreasing in frequency, this failure is still unacceptably common, and constitutes administrative action that is contrary to law within the meaning of s.49(2)(a) of the OA.

Recommendation 13

MVSC develop procedures for relevant officers to ensure extension notices are issued according to the requirements of s.3.5.7 of the IPA.

MVSC response to opinion 8 and recommendation 13

Opinion 8 – *This is not required. Staff are fully aware of IPA timelines and over the last twelve months have improved the processes and procedures to ensure that all timelines are achieved.*

Recommendation 13 – *This is not required as processes and procedures are in place (a report is printed out twice weekly identifying each current application's status and the deadline for the next action) and staff are fully aware of IPA timelines and over the last twelve months have improved the processes and procedures to ensure that all timelines are achieved.*

Comment

I acknowledge that MVSC's performance in this area improved considerably in 2005-06, and also note MVSC's advice that reports are run regularly on current DA status. Nevertheless, I remain of the opinion that recommendation 13 is justified, based on my finding that 45% of the finalised and audited DAs in 2005-06 had some form of error. Furthermore, the availability of relevant procedures to guide officers in issuing extension notices is simply good administrative practice, particularly in the event of new officers joining the DSU.

2.9 Objections

Members of the public are entitled to make submissions to a council about publicly notified applications. Councils must give a copy of their decision notice on a DA to each submitter.⁴³ MVSC admitted it did not send out a copy of the decision notice to submitters and, indeed, there was no evidence on any files examined in the audit that MVSC had done so.

In one case, the building in question was partially constructed by the time the objector received notice from MVSC (14 months after the fact) that the application had been approved. The applicant developer advised the objector that, were the matter to go to court, work would have to cease pending the outcome, resulting in a potentially large financial loss for the developer. The developer indicated it would counterclaim for such losses in the event that the appeal proceeded. Faced with this, the objector withdrew the appeal.

The objector lodged a complaint with the MVSC about the matter. In May 2006, MVSC advised it did not consider further action necessary as the objector's substantive rights had not been affected. MVSC said it had received the objection in 2004 and the developer had been required to address the issues raised in the objection prior to the granting of the approval. As this case demonstrates, a delay in advising objectors of an outcome, or a failure to do so, can have significant implications for the legal rights of both the objector (should the objector later wish to lodge an appeal) and the developer.

⁴³ IPA s.3.5.15(3) and (3A)

Opinion 9

MVSC has frequently failed to comply with its obligation under s.3.5.15 of the IPA to send each principal submitter a copy of the decision notice in respect of DAs where submissions had been sought. This failure is contrary to law within the meaning of s.49(2)(a) of the OA.

Recommendation 14

MVSC develop procedures for relevant officers to ensure copies of decision notices are sent to principal submitters in accordance with the requirements of s.3.5.15 of the IPA.

MVSC response to opinion 9 and recommendation 14

Opinion 9 – Noted and agreed that in the past this has occurred. However processes and procedures are in place (a report is printed out twice weekly identifying each current application's status and the deadline for the next action) and staff are fully aware of IPA timelines and over the last twelve months have improved the processes and procedures to ensure that all timelines are achieved.

Recommendation 14 – This is not required as processes and procedures are in place (a report is printed out twice weekly identifying each current application's status and the deadline for the next action) and staff are fully aware of IPA timelines and over the last twelve months have improved the processes and procedures to ensure that all timelines are achieved.

Comment

I acknowledge that the case study referred to in this section resulted from the action or inaction of staff prior to the arrival of the current DDS and CTP. Nonetheless, there was no evidence at the time of my officers' audit that MVSC was complying with its obligation under s.3.5.15 of the IPA to give each principal submitter a copy of the decision notice, where relevant. Further, DSU staff admitted in interviews with my officers that even at that point in time (June 2006) they sometimes failed to meet the IPA requirements in this area. Therefore, I consider opinion 9 and recommendation 14 to still be warranted.

2.10 Council meetings

An area of significant delay is the final decision-making stage for those applications which are required to go to council for determination. MVSC meets monthly and considers a number of DAs at each meeting. My officers raised with DSU staff the possibility of having DAs considered by a committee of council, or of holding council meetings more frequently to process DA decisions. These possibilities raised separate concerns, as follows:

More frequent meetings: A suggestion made by my officers was that MVSC hold its meetings fortnightly. The DDS advised this was impracticable, as each council meeting must be supplied by the DSU with agendas and reports, and it would be impossible (based on current staffing numbers) to service twice as many meetings.

Committee of Council: My officers also suggested that MVSC could form a committee of council specifically tasked with deciding DAs. DSU staff stated this would be impracticable as council comprises only seven councillors, and deciding DAs is considered to be a major part of council's role. Therefore, most if not all councillors would wish to be involved. There was a view that committee decisions would need to be ratified by full council, meaning the process could potentially take even longer than at present.

2.11 Delegations

A council is permitted to delegate decision-making power in certain circumstances to the mayor, a standing committee or the CEO (amongst other entities)⁴⁴. The CEO, in turn, is permitted⁴⁵ to further delegate powers to other employees. Accordingly, a final possibility raised with MVSC was to increase delegations to staff.

The CEO advised that council had already delegated some powers to decide certain applications. These applications were for code assessable matters where the application demonstrated compliance with the relevant code(s).

On 19 July 2005, MVSC also resolved that the CEO be delegated authority to appoint officers as authorised officers provided council is advised of the appointments.⁴⁶ Accordingly, the DDS has approved some DAs directly. Any refusal or any application which DSU staff consider may warrant consideration by council is still referred to a council meeting.

The DDS has stated⁴⁷ delegations would streamline the process of assessing DAs and would improve MVSC's compliance with statutory timeframes and, ultimately, reduce the number of complaints and the number of items required for consideration at ordinary council meetings.⁴⁸ It was clear MVSC as a whole is aware of the need to expedite DA processes, and of the benefits appropriate delegations are likely to have in that regard.

I note MVSC intends, following the introduction of its new planning scheme, to develop a list of delegations to enable the expeditious processing of minor DAs.⁴⁹ I fully support MVSC's strategy. Given that the major delay in DA processing by MVSC is at the decision stage, expanding the scope of delegations to appropriate staff would reduce the delays in moving applications onto the council agenda, and would enable councillors to devote their full attention to the more complex or controversial DAs.

The LGAQ survey revealed that 63% of DAs in the survey were determined by a council officer for the council under some form of delegated authority. The LGAQ recommends:

*In some councils, particularly rural councils, increased delegation of decision making would improve processing times.*⁵⁰

Opinion 10

Significant and unnecessary delay is being caused to the DA approval process by the MVSC's policy that the full council must consider most DAs.

Recommendation 15

In line with strategy 3.2.5 in its Operational Plan, MVSC grant further delegations of decision-making power under the IPA to a standing committee of MVSC or to appropriate MVSC staff. Alternatively, or in addition to granting further delegations to officers, MVSC establish a sub-committee of council to determine specified categories of DAs.

⁴⁴ LGA, s.472

⁴⁵ LGA s.1132

⁴⁶ MVSC Council Minute 3218 – 19 July 2005

⁴⁷ See the DDS' report to MVSC's 21 February 2006 meeting

⁴⁸ MVSC Minutes of 21 February 2006 p.20

⁴⁹ MVSC Operational Plan 2006-2007, Strategy 3.2.5

⁵⁰ LGAQ Survey Report, p.6

MVSC response to opinion 10 and recommendation 15

Opinion 10 – Noted and agreed that in the past this has occurred – however processes and procedures are in place (a report is printed out twice weekly identifying each current application's status and the deadline for the next action) and staff are fully aware of IPA timelines and over the last twelve months have improved the processes and procedures to ensure that all timelines are achieved, where practical.

Recommendation 15 – Based on current councillor involvement, a standing committee wouldn't work. Delegation is utilized whenever it can be but the problem is that nearly every application is seeking some form of council discretion (relaxation of standards) which means that it requires council decision, as a large portion of applications are impact assessable as they do not comply with Council's scheme, policies or local laws and hence council discretion is required. It is difficult for staff to have delegation to deal with these. Furthermore staff do not have delegation (nor do they want it) to refuse applications. However once the new scheme is in place and its provisions are able to achieve 'Black and white' assessment – this may improve the timelines.

Comment

Based on the policies and procedures of other local councils, I consider there is scope for MVSC to grant further delegations to staff or to a standing committee. The response from MVSC implies that all councillors will ultimately be required to consider all applications which go to council for decision (that is, that any decision made by a standing committee of council must be ratified by full council). This is incorrect, as a standing committee, with appropriate delegated authority under s.472 of the LGA, may decide DAs without reference to full council. I am therefore retaining opinion 10 and recommendation 15.

2.12 Changes to an application

Among the audited DA files, the applicant in a number of cases sought to change the application once the process had commenced in order to avoid potential difficulties or to adapt the proposal to deal with issues which had become apparent during the information request stage. Quite often, these changes amounted (in MVSC's view) to a new application, requiring the matter to return to an earlier stage of the process.⁵¹ This, obviously, causes applicants considerable uncertainty, inconvenience and expense.

In addressing this specific issue, the Discussion Paper commented:

In responding to an information request, an applicant may simply give further information to support [the] application, or may change the substance of the development itself. Currently, if the substance of the proposal changes significantly, the application should return to an earlier stage in IDAS. This often creates unnecessary hardship and uncertainty for applicants.⁵²

DLGPSR's comment was clearly borne out in my officers' audit. In the Discussion Paper, DLGPSR proposes that IPA be amended to specify how and when DAs can be changed without having to return to an earlier stage of IDAS.

One specific example given is that, where an applicant changes a DA, and new referrals are thereby required, the applicant will only be required to undertake the additional referrals arising from the amendment itself. I fully support this proposal in light of the audit at MVSC.

⁵¹ A recent example of a Miriam Vale DA where an applicant was required to return to the initial application stage following an amendment to the proposal can be found in *Reef Resorts 1770 Pty Ltd v Miriam Vale Shire Council* [2006] QPEC 041.

⁵² Discussion Paper, p.48

2.13 Dispute resolution

Although councils have some power to excuse minor errors under the IPA, a range of commonly encountered problems must be brought before the P&E Court. This is a formidable obstacle to applicants, particularly those in rural communities. Failing an appropriate declaration from the P&E Court, an applicant may have little option but to recommence the entire application, including paying fees again. Having an independent (but more accessible) arbiter in cases of procedural difficulty would be beneficial in resolving disputes.

DLGPSR proposes to extend the jurisdiction of the Building and Development Tribunal under the Integrated Planning Regulation 1998 to cover a wider range of planning and development disputes.⁵³ DLGPSR's comment is that: 'Litigants appearing before the tribunal do not need to be represented by a lawyer and generally represent themselves. The tribunal has proved a very effective and low-cost way of resolving technical disputes, and has strong support amongst users'.⁵⁴ This proposal would be of merit in Miriam Vale Shire, where resort to the P&E Court is beyond the reach of many applicants.

Recommendation 16

DLGPSR take steps to have the jurisdiction of the Building and Development Tribunal expanded to cover specified categories of planning and development matters currently considered by the Planning and Environment Court.

DLGPSR response to recommendation 16

DLGPSR did not provide specific comment on this recommendation, but indicated general support for the contents of the report and its findings.

⁵³ Discussion Paper, p.55

⁵⁴ Ibid

Chapter 3: Unreasonable and inconsistent decision-making

3.1 Unreasonable decisions

Several complainants were aggrieved by conditions imposed by MVSC on their DA approvals.⁵⁵ Accordingly, as part of the audit, extracts from 20 files were provided to the DLGPSR for comment.⁵⁶ The DLGPSR responded in a letter received on 11 August 2006 from the Director-General, Mr Michael Kinnane. The letter included the following caveat:

Comments provided by Departmental Officers are limited to general advice on whether the conditions imposed appear consistent with the Integrated Planning Act 1997 (IPA) and general legal principles where applicable. Advice over and above general comments would constitute legal advice requiring detailed investigations of case law and planning precedent. DLGPSR is not able to provide legal advice to the Ombudsman.

From the 20 selected files, a total of 47 separate allegations of unreasonable conditions were identified⁵⁷, relating to:

- conditions not being final;
- conditions not being relevant to the development approved;
- refusing the application rather than applying conditions;
- refusing the application on irrelevant grounds;
- making inconsistent decisions on similar applications;
- referring to elements of a council policy which had not been adopted at the time a condition was imposed;
- the MVSC planning scheme unlawfully setting levels of assessment; and
- unreasonably imposing a time limitation on how long a lawful use may continue.

Overall, the IPA requires that any conditions imposed on a DA be:

- (a) relevant to, but not an unreasonable imposition on, the development or use of premises as a consequence of the development; or
- (b) reasonably required in respect of the development or use of premises as a consequence of the development.⁵⁸

⁵⁵ Note that some complainants to my Office have specialised expertise in town planning, warranting inquiry into the reasonableness of conditions imposed by MVSC. My Office does not have personnel with planning qualifications.

⁵⁶ Full copies of files were not provided to DLGPSR. Photocopies of decision notices were provided, and in some instances copies of other correspondence from the file.

⁵⁷ Several allegations arose from each single file.

⁵⁸ IPA s.3.5.30(1)

DLGPSR commented as follows on the 47 allegations:

Table 9

Commentary by DLGPSR	No. of allegations to which comment applies
MVSC's decision or action is <i>prima facie</i> unreasonable, illegal or incorrect.	NIL
There may potentially be an error on the part of MVSC, however formal legal advice is required.	3
The MVSC decision or action appears to be correct (although it should be borne in mind that an applicant will still have the right to challenge the council in the P&E Court).	26
The complainant's allegation is irrelevant in the circumstances.	3
The new MVSC planning scheme is likely to address the issue raised and remove the problem.	2 ⁵⁹
DLGPSR cannot comment on the allegation without examining the whole of the case.	13

Therefore, the DLGPSR's review of these cases did not support the allegation that the MVSC is imposing unreasonable conditions on DA approvals.

Between 2001 and 2003, nine appeals were lodged with the P&E Court against a decision by MVSC. Of these, only two ended in a court hearing. Both resulted in decisions favourable to MVSC and only one was in relation to the actual merits of the decision. Since 2004, 17 appeals from MVSC decisions have been lodged with the P&E Court. From these recent appeals, there have been three Court judgments.⁶⁰ None of these three recent cases⁶¹ related to reasonableness of conditions, but to questions of procedure under the IPA. In none of the cases did the Court find any significant error on the part of the MVSC.

Opinion 11

The evidence does not support the opinion that MVSC is consistently imposing unreasonable conditions on DAs approved under IDAS or otherwise making unreasonable decisions in relation to DAs.

⁵⁹ One of the allegations raised two separate concerns and the total number of comments reflects this.

⁶⁰ An appeal to the court does not proceed to a hearing where the appellant withdraws the matter, or a consent order is granted (meaning the parties reach a court-endorsed agreement).

⁶¹ *Reef Resorts 1770 Pty Ltd v Miriam Vale Shire Council* [2006] QPEC 041; *Woodrow v Miriam Vale Shire Council* [2006] QPEC 048; *Davis v Miriam Vale Shire Council* [2006] QPEC 064

3.2 Inconsistent decisions

A few complainants raised a concern that some decisions made by the MVSC appeared to be inconsistent with others made on similar applications. Despite the recent delegations granted to staff, full council made all of the decisions in question. DSU staff also mentioned some occasions where they believed the council had decided DAs inconsistently.

One example included two similar but separate applications made for ROLs in the same general geographic area; one was approved but the other was rejected by full council on the basis it would result in the ‘further fragmentation of rural holdings’.

I have not investigated the merits of these decisions, as an examination of all possibly inconsistent decisions of MVSC is beyond the scope of this investigation. In some cases the problem appears not to be inconsistent decision-making, but a lack of clarity in MVSC’s reasoning for particular decisions. This problem could be addressed to a considerable extent by providing MVSC staff with training on giving clear and consistent reasons for decisions. Furthermore, if the full council intends to continue determining the bulk of DAs, there would be value in providing similar training to councillors.

Recommendation 17

MVSC implement training for DSU and other relevant staff and councillors on providing clear and consistent reasons for DA decisions.

MVSC response to recommendation 17

Over the past twelve months there has been ongoing refinement and drafting of conditions to ensure that they are clear, fair and reasonable. It is agreed that additional training would be beneficial, however it should not be limited to the DSU as identified in this report as all other staff have input into development application approvals and reasons for refusal.⁶²

Comment

I agree that extending the training to other relevant officers is appropriate and have amended recommendation 17 accordingly.

⁶² Proposed recommendation 17, which was referred to the MVSC for comment, referred to training for DSU staff only.

3.3 Drafting of conditions

The DLGPSR commented that one of the conditions imposed on an approval was unclear. While the condition appeared to be legal and reasonable, it was drafted in such a way that MVSC, as well as the approval holder, would likely have difficulty interpreting it. Many of the complainants also raised concerns about the interpretation of conditions.

The Discussion Paper referred to the issue of the drafting of conditions as part of the DLGPSR's proposed strategy to improve the efficiency and effectiveness of IDAS.⁶³ DLGPSR's specific proposal in this regard is as follows:

*DLGPSR will improve the quality of conditions in a development approval imposed by both assessment managers and concurrence agencies through providing training on drafting conditions, particularly in relation to compliance assessment under IPA, section 3.5.31A.*⁶⁴

Based on the findings of my officers' audit, there is insufficient evidence to enable me to reach a conclusion that MVSC regularly drafts conditions in an ambiguous manner. However, given the limited training DSU staff appear to have received, it is important that both they and the councillors (who ultimately make the majority of development decisions at MVSC) receive some form of training in drafting conditions under the IPA.

Opinion 12

MVSC has not provided sufficient training to DSU staff in the drafting of conditions for development approvals.

Recommendation 18

As part of its overall training program for DSU staff (and councillors), MVSC provide training on clear, concise and legally sound drafting of development conditions. MVSC should take advantage of any relevant training developed by the DLGPSR in this regard.

MVSC response to opinion 12 and recommendation 18

Relevant training opportunities have been limited and, when available, may have conflicted with other commitments or operational requirements. Regular, scheduled and ongoing training should be available to provide a number of opportunities.

⁶³ Discussion Paper, p.44

⁶⁴ Ibid

Chapter 4: Compliance

While compliance issues did not form a significant factor in the majority of complaints my Office received, there was a sufficient level of concern raised by several complainants to justify a consideration of MVSC's compliance action in relation to development approvals. The DSU has one compliance officer who conducts the majority of site inspections in Miriam Vale Shire to assess whether development is being undertaken in compliance with council approvals. It was apparent from discussions with DSU staff that compliance action is generally undertaken on an ad-hoc basis, in response to developing issues or complaints.

The CEO advised my officers that enforcement action in relation to possible breaches of the IPA is undertaken on complaint, a review of developments where subsequent applications are lodged, and on requests for compliance inspections. The CEO advised that action is undertaken on a 'first come, first dealt with' basis unless health or safety considerations justify higher priority action.⁶⁵ The DDS stated that a comprehensive compliance assessment system would be impossible given the large volume of work this would entail in proportion to staffing and resources. It is, however, clear that the level of development activity in the shire is now such as to justify a more formal framework for the management of compliance activity.

Some allegations were made by complainants about potentially inappropriate actions by MVSC during the compliance process. These related to an alleged failure by the Compliance Officer (and the DSU in general) to follow due process in the course of undertaking compliance action. Complaints I received claimed that those who were targeted for compliance action were not properly informed of the evidence justifying the action, and also that some inspections were undertaken improperly. While a detailed investigation of these allegations is outside the scope of this report, this is a further factor which indicates the need for greater formalisation by MVSC of its compliance process.

Opinion 13

The lack of any formal policy or guidelines to ensure MVSC's Compliance Officer follows due process is unreasonable administrative action within the meaning of s.49(2)(b) of the OA.

Recommendation 19

MVSC prepare formal guidelines for the Compliance Officer in relation to how and when potential breaches of the IPA and related state and local laws are to be investigated and enforcement action taken. These guidelines should be made available to the public and should cover matters such as investigative procedure, prioritising work, recording of actions, findings and outcomes, and natural justice procedures.

MVSC response to opinion 13 and recommendation 19

Opinion 13 – Noted. No interview took place with the compliance officer. If an interview had taken place the outcomes may have been different as the officers undertaking the investigation may have got a better understanding of the processes, procedures and record keeping that the compliance officer undertakes in relation to compliance issues. He has undertaken all possible training as it has been made available. He is currently undertaking the LGAQ Diploma in Local Government (Planning).

Recommendation 19 – Noted. The compliance officer follows the process as outlined in IPA for non compliance and works in close association with council's legal advisors.

Comment

Due to the limited time available during the June 2006 audit, my officers were unable to interview all MVSC staff who may have had involvement in its planning and development function. I accept that, in this instance, conducting an interview with the Compliance Officer would, as MVSC states, have provided a broader overview of the compliance process at MVSC.

However, my opinion and recommendation relate solely to the lack of any formal guidelines directing the Compliance Officer's work, and I am satisfied the CEO's written advice of 26 July 2006, indicating MVSC's unstructured approach to compliance activities, provides a sufficient basis for the opinion and recommendation.

⁶⁵ Letter of 26 July 2006 from the CEO to my Office.

Chapter 5: Record keeping, customer service standards and related issues

5.1 Receipt of applications

The majority of DAs are received by MVSC at its Miriam Vale offices. Documents received there are handled by the MVSC's records staff and forwarded to the CEO for noting and allocation according to a set of procedures relating to mail and records operations.

A small number of DAs are received via the Agnes Water Rural Transaction Centre. The RTC is staffed by MVSC officers, but also acts as an agent for State and Commonwealth government service providers such as Queensland Transport and Centrelink. MVSC staff gave conflicting accounts of when material lodged at the RTC is considered received. My officers found some evidence that material had not been considered received by MVSC until date-stamped at the Miriam Vale offices. Material handed in at the RTC has sometimes (albeit very rarely) been delayed in its recorded arrival at Miriam Vale by up to two business days. While this is not a problem for the vast majority of DAs, it may mean that occasionally MVSC considers an applicant to have failed to have met an IPA deadline even though the applicant believes they have complied.

Recommendation 20

MVSC develop a formal policy on whether material received at the Agnes Water RTC is considered as having been formally received by MVSC.

Recommendation 21

If MVSC determines that material is not to be considered as having been received until it arrives at its Miriam Vale offices, MVSC advise all applicants for DAs of this decision and the potential for delay if material is lodged at the Agnes Water RTC.

MVSC response to recommendations 20 and 21

Recommendation 20 – *This is now occurring.*

Recommendation 21 – *The most appropriate course of action may be not to accept applications at the Rural Transaction Centre but this would be detrimental to customer service standards.*

Comment

I note MVSC's advice that deeming DAs to be received at the RTC may be detrimental to customer service standards. If this is the case, MVSC could still uphold its policy of not formally receiving DAs until their arrival at Miriam Vale, provided this is made clear to the general public, and to DA applicants in particular.

Discrepancies in received dates

In the majority of files my officers audited, DA documentation had been properly receipted and forwarded to the DSU within a reasonable time. In a small minority of cases, disagreements arose with applicants over the exact date information or other material had been supplied. The gap between the date the applicant claimed to have supplied the documentation, and the date MVSC's records show the material as being received, was occasionally up to two weeks.

It was often unclear exactly why the discrepancy in dates had occurred, although this may have been due to routine problems such as faxes being received after 5 pm on a Friday, or applicants failing to post material for some time after applying a date to the correspondence.

Opinion 14

While, on the whole, MVSC's mail receipt system for DAs is adequate, the processes require review in light of several instances of DA-related material being mislaid or delayed, and disputes with applicants over the date material was received.

Recommendation 22

MVSC review its mail receipt system to add additional safeguards to ensure all DA-related material is stamped as received and recorded according to its mail receipt procedures.

MVSC response to opinion 14 and recommendation 22

Opinion 14 – Noted and agreed that in the past this has occurred. Processes and procedures are in place to ensure that this no longer occurs and furthermore, Council continues to upgrade its records management system with a new system proposed for implementation in 2007.

Recommendation 22 – Processes and procedures are in place to ensure that all DA material is stamped and clearly recorded. Staff are fully aware of IPA timelines. Over the last twelve months staff have improved the processes and procedures to ensure that all timelines are achieved, where practical.

Comment

Despite MVSC's response, I remain of the opinion that the existing system should be reviewed and the parameters of the new system checked to ensure it is in conformity with this recommendation.

5.2 Tracking of development applications

The DSU's Practical database appears appropriate for most daily applications in its IDAS workflows. However, currently it is only able to flag basic process information such as the present stage of an application, or the fact that a deadline has passed. DSU staff spoke of the desirability of expanding the functions of the database to incorporate a system warning staff of impending deadlines for individual files. My officers were advised, as with other improvement projects in the DSU, this had been delayed due to a lack of available staffing resources.

Opinion 15

The functioning of the DSU, and its capacity to report on its performance under IDAS, would be significantly improved by further developing its database.

Recommendation 23

MVSC review the functions of its Practical database as soon as possible with a view to improving its usefulness for DSU staff, and capacity to report on the DSU's performance.

MVSC response to opinion 15 and recommendation 23

Opinion 15 – The Practical system is one that is utilized by several councils throughout the state and in NSW and is continually being upgraded to improve its service delivery.

Recommendation 23 – The Practical system is one that is utilized by several councils throughout the state and in NSW and is considered to be one of the better programs available in the context of tracking DAs and is continually being upgraded to improve its service delivery.

Comment

I accept MVSC's comments in relation to the reporting capacity of its Practical database. However, as with opinion 2 and recommendation 1, this opinion and recommendation relate to a broader reporting process to enable senior MVSC management to gain an overview of the timeliness of the DSU in managing DAs and in turn the achievement of its performance objectives. This recommendation, and others in this report relating to MVSC's database, should be interpreted in light of the need for Council to have a capability to report against its Operational Plan and Key Performance Indicators and so inform its broader strategic planning process.

5.3 Customer service complaints

Most complainants were dissatisfied with the customer service standards of the DSU. The specific allegations made in this regard were that DSU staff:

- do not return telephone calls;
- unreasonably charge \$175 for meetings with planners;
- do not treat applicants in a professional or appropriate manner; and
- lack appropriate technical knowledge of the IPA.

5.4 Operational Plan

As required by the LGA⁶⁶, MVSC produces an annual Operational Plan. MVSC's Operational Plan for 2006-07 appears appropriate in respect of customer service and complaints management, and is commendable in its planning for management of MVSC's IPA functions. It is clear, however, that in certain respects the Operational Plan does not align neatly with other aspects of the MVSC's customer service and complaints framework. For example, strategy 1.1.8 of the plan requires: 'All enquiries to be acknowledged or responded to within 7 days of receipt'. This differs from the Customer Service Charter's standard of 10 days for replies to correspondence and two days for responses to emails (see 5.5 below).

Recommendation 24

MVSC review its Operational Plan to ensure its objectives in relation to customer service and complaints management align with those in its Customer Service Charter and Complaints Management Policy.

⁶⁶ LGA s.508

5.5 Customer Service Charter

MVSC has a Customer Service Charter which came into effect after most of the complaints in this report had been lodged with my Office.⁶⁷ Relevant extracts include:

PROMPT AND EFFICIENT SERVICE

We will respond quickly and effectively to your service requests by:

- *Making a commitment to 'how' and 'when' the service will happen.*
- *Notifying you if there is a delay in the service we promised.*
- *Referring you, when appropriate, to alternative places where the service might be available, if Council is unable to provide the service you seek.*
- *Preventing unnecessary return visits or calls to Council.*
- *Advising you promptly of the outcome of your request.*
- *Returning telephone calls before the close of business the day after they are received.*

CLEAR COMMUNICATION

We will ensure all communication is clear by:

- *Providing written replies to correspondence within 10 working days or advising you within five days if delays are expected.*
- *Responding to your emails within two working days. If we cannot respond fully within this time, we will provide you with an expected timeframe.*

MVSC's Operational Plan for 2006-07 has, as one of its objectives 'Provision of quality customer service to be achieved by ensuring that staff are appropriately trained in customer service'.⁶⁸ During 2005-06, MVSC reported it had trained customer services staff and primary reception staff in customer service, and that 'appropriate customer services' had been discussed at staff meetings, and relevant processes reviewed.⁶⁹ MVSC officers stated that a copy of the charter had been circulated to staff soon after its adoption on 16 May 2006, but that there had been only limited consultation or training with staff on the development or implementation of the charter either before or since its adoption. In light of this, and the concern expressed by complainants about customer service standards, I believe training for all staff should be undertaken on the MVSC Customer Service Charter.

I accept that, in a busy council with limited resources, it may not be possible to provide all staff with all desirable training within a short space of time. Nevertheless, the Charter has been in effect for several months. It appears the more senior DSU staff have not had any significant customer service training since their arrival. The lack of training is a particular concern given that the DSU has been the subject of widespread criticism in relation to customer service standards. It would also be appropriate for DSU staff to be provided with training in specific aspects of customer service, such as managing complaints or dealing with difficult clients.

Opinion 16

The training and guidance provided by MVSC to its staff on its Customer Service Charter has, to date, been inadequate. MVSC has also failed to provide DSU staff with specific and relevant customer service training. This amounts to unreasonable administrative action within the meaning of s.49(2)(b) of the OA.

⁶⁷ Adopted by Council on 16 May 2006 as part of a statewide process of implementation in local councils.

⁶⁸ MVSC Operational Plan 2006-2007, Strategy 1.1.9

⁶⁹ MVSC Operational Plan 2005-2006, p.6

Recommendation 25

MVSC provide training, as soon as practicable, for its staff in the practical application of the standards prescribed by its Customer Service Charter, and for DSU staff in general customer service practices, including the management of complaints and customer service skills.

MVSC response to opinion 16 and recommendation 25

The Charter is a relatively new initiative. It will require ongoing training of staff and document review.

DSU staff expressed concern about their capacity to comply with the Charter having regard to their current workloads. Staff stated they managed their workflow priorities according to the statutory timeframes prescribed by IPA and that, while they also attempted to meet the timelines set out in the Charter, this was virtually impossible in practice.

DSU concerns about the relation of the Charter to the IPA requirements had apparently been raised within council prior to the adoption of the Charter, but the Charter, when adopted, made no mention of IPA timelines. DSU staff expressed a strong concern that many applicants for DAs might now wrongly assume that the timelines specified in the Charter would apply to all aspects of the application process.

Opinion 17

The MVSC's Customer Service Charter does not make it clear to applicants for development approvals that, in some circumstances, the requirements of the IPA may override any timelines prescribed in the charter.

Recommendation 26

MVSC review the Customer Service Charter to deal with any inconsistency with IPA requirements.

Recommendation 27

MVSC develop key performance indicators (KPIs) based on its Customer Service Charter and regularly assess its performance against these KPIs.

5.6 MVSC's Complaints Management Policy

Local councils are required to have a process for responding to complaints⁷⁰. On 16 August 2005, MVSC adopted a Complaints Management Policy which governs its response to complaints, including those relating to development approvals. The policy has been embodied in a Complaint Management Procedure Manual.

In most of the files my officers audited which contained complaints, the AO had, where possible, attempted to address the issues raised. However, in more complex matters, the CEO or DDS had responded directly to the complainant. Many of the complaints are related to the requirements of the IPA. MVSC's Complaints Management Policy specifically excludes complaints made '*... where other legislation provides for a formal objection and appeal process (ie Integrated Planning Act, Building Regulations)*'.⁷¹

⁷⁰ LGA s.501D was inserted in the LGA on 31 May 2005 and required the development of a complaints policy by individual councils by 1 March 2006.

⁷¹ Miriam Vale Shire Council Administration Policy 1.26 – General Complaints Policy – paragraph 4(e)

Based on evidence gathered during my officers' audit, I am satisfied MVSC's Complaints Management Policy is appropriate and conforms to the relevant guidelines produced by DLGPSR⁷², and that MVSC generally responds to complaints in accordance with the policy.

Opinion 18

MVSC's Complaints Management Policy is, on the whole, appropriate and is generally followed when dealing with complaints arising from IDAS processes, which are not otherwise dealt with under statutory processes.

I note, however, that there is variation among the timelines specified for responses to members of the public between the Customer Service Charter, the Complaints Management Policy and the IPA. Clearly, the different systems relate to different matters. The IPA prescribes statutory timeframes for DAs, whereas the Charter relates to general correspondence and contact with the public, and the policy relates specifically to complaints issues. Nevertheless, these various timelines are potentially confusing for DA applicants.

While the distinction between the IPA requirements and those of the Charter is straightforward, dissatisfied applicants may not be able to determine whether their correspondence is to be handled by MVSC as general correspondence under the Charter, or as a complaint under the Policy. This could also prove confusing for staff. For example, the Complaints Management Policy states that council will generally respond to urgent complaints within 14 days and non-urgent or complex complaints within 30 days.⁷³ On the other hand, the Customer Service Charter states that written replies to correspondence from the public are to be provided within 10 working days.

The Complaints Management Policy defines a 'complaint' as:

an expression of dissatisfaction by a person regarding –

- (a) a decision or other action of the Council; or*
- (b) an alleged minor breach of the Councillor Code of Conduct.*

A complaint is not a request for information or request for service, or a suggestion.⁷⁴

However, it is arguable that a complaint also falls within the general category of 'correspondence' for the purposes of the Customer Service Charter and, therefore, is subject to the different timeframes set out in the charter.

Opinion 19

MVSC's Customer Service Charter and Complaints Management Policy specify different timelines in which officers must respond to correspondence and are potentially confusing for applicants.

Recommendation 28

MVSC review its Customer Service Charter and Complaints Management Policy to ensure the obligations on staff to respond to correspondence are clearly stated for members of the public and MVSC staff.

Local councils are required to implement appropriate measures for recording complaints made and resolved through their general complaints process for annual reporting purposes.⁷⁵ The CEO stated that MVSC informally tracks the number of complaints related to DAs.

⁷² See DLGPSR Local Government Bulletin 15/05

⁷³ MVSC General Complaints Policy, p.5

⁷⁴ Ibid, p.3

⁷⁵ LGA, s.501E(1)(j)

However, MVSC does not have a complaints tracking system at the level described on page nine of its Complaints Management Policy. Sound administrative practice requires a formal mechanism for recording, and reporting on, complaints, to ensure developing problems are brought to MVSC's attention for early resolution and business improvements identified.

Opinion 20

The MVSC does not have an effective complaints recording and management system for use in its IDAS application and assessment system.

Recommendation 29

MVSC develop and implement a formal mechanism for recording, and reporting on, complaints made about the actions of the DSU.

MVSC response to opinion 20 and recommendation 29

Opinion 20 – Should be dealt with under one complaints management process and not treated any differently to any other complaint.

Recommendation 29 – This recommendation should not be limited to the DSU and it should be all inclusive in relation to the overall operation of each section of council. The complaints management policy should, and does apply.

Comment

Opinion 20 refers only to complaints relating to the IDAS process simply due to the focus of this investigation on planning and development matters. I agree with MVSC's response but believe that any system used by MVSC to record complaints data should allow for IDAS complaints to be properly recorded.

5.7 Return of telephone calls

One common complaint was that DSU staff fail to return applicants' telephone calls. Complainants spoke of calling MVSC repeatedly for advice on the progress of their application, or for advice on technical issues, without calls being returned. Complainants also alleged that often, when calls were returned by DSU staff, it was after a substantial delay. Indeed, very few records appeared on audited DA files relating to telephone calls to or from applicants prior to October 2005, other than when a serious dispute had arisen between MVSC and an applicant.

My officers were informed that, in order to minimise the disruption caused by frequent telephone calls, and ensure a record is kept of all incoming calls, the DDS had implemented a practice in October 2005 whereby the AO takes all calls, notes the details and sends an email to relevant senior staff. Once the call is returned, a hand-written note is added to a print-out of the email with details of the returned call. This is then placed on the applicant's file. My officers inspected relevant files and a sample of memos which confirmed this.

Despite this new practice, the audit revealed the return of calls often takes longer than the timeline set in MVSC's Customer Service Charter.⁷⁶ It appears likely that this delay is due to the pressures of workload on DSU staff and the work arrangements whereby the CTP spends, on average, three days per week working at the MVSC offices, and two working at home in order to concentrate on completing files.

Given the community concern, it would be preferable for the DSU to have a more responsive and formalised record keeping process for managing telephone calls.

It would also be beneficial for a member of MVSC staff who is not part of the DSU to conduct a random inspection of telephone call records for DA files to determine whether calls had been returned in a timely manner. Nevertheless, on the whole, my officers did not find evidence of a consistent failure of DSU staff to return calls.

Opinion 21

The evidence does not support the opinion that the MVSC consistently or deliberately fails to return telephone calls of applicants for development approvals.

Opinion 22

The evidence supports the opinion that officers of the DSU, in returning calls, regularly fail to comply with the timelines set out in MVSC's Customer Service Charter.

MVSC response to opinion 22

Agreed. However, staff do not deliberately fail to return calls within the timelines set out in the charter. This is not achievable with the limited resources available, the high volume of telephone calls and complexity of questions which limits the staff's ability to answer. This is further complicated by the complexity of IPA and IDAS and the need for trained personnel to answer questions that could otherwise be answered by Administrative personnel rather than a planner.

In an attempt to be proactive customers/applicants are advised at the time of the calls if delays in responding are anticipated and the possible length of that delay.

Recommendation 30

During 2007-08, MVSC conduct a client satisfaction survey among its DA applicants to determine levels of applicant satisfaction with the DA process as managed by MVSC (with particular reference to customer service matters such as the return of telephone calls), and consider the results of the survey in a review of its work practices.

MVSC response to recommendation 30

This will be considered in the context of available resources.

Comment

The successful implementation of the recommendations made in this part of the report will depend on MVSC having accurate information on client satisfaction levels. The proposed survey will be an important mechanism to obtain this information. I therefore strongly encourage MVSC to make the necessary resources available to implement this recommendation.

⁷⁶ Before the close of business the day after the call is received.

Recommendation 31

MVSC develop its record keeping system to incorporate a more formalised mechanism for recording both incoming telephone calls from DA applicants, and DSU staff responses to applicants.

MVSC response to recommendation 31

Not agreed. There are insufficient staff resources as it is without using time in administrative tasks such as this. The long term aspiration is to automate the process allowing applicants to review their applications on line.

Comment

As a government agency, MVSC is obliged to keep proper records of communication with DA applicants regardless of resourcing concerns, and to document its record keeping system. Implementing this recommendation would also be of benefit to MVSC given the recent complaints about the failure to return and record telephone calls.

5.8 Meeting fee

Many complainants expressed their concern at the fee of \$175 charged by MVSC for meetings with DSU staff. My officers were informed that the fee is charged:

- for pre-lodgement meetings;
- for all post-lodgement meetings requested by an applicant (rather than the MVSC);
- regardless of the length of time for which the meeting is scheduled or actually takes; and
- per department involved in the meeting.⁷⁷

⁷⁷ That is, if two MVSC departments are required at the meeting, the fee is \$350.

Examples of meeting fees at other Queensland councils are as follows:

Table 10

Council	Fee	Details
Brisbane City Council	\$798	Pre-lodgement meeting (office or on-site). Minutes of the meeting are prepared and provided to the applicant.
	\$282	Request for written information on basic questions.
Burnett Shire Council	\$300	A meeting fee of \$300 was on the council's fees schedule. However, this was removed from 30 June 2006.
Cardwell Shire Council	\$500	Pre-lodgement meeting. Minutes are produced. If an application is subsequently lodged, the applicant receives a \$300 discount off the application fee. Post-lodgement meetings are free, but with the caveat that advice provided is not binding.
Cooloola Shire Council		Pre-lodgement meeting is free. However, the council places strict parameters around this meeting, including: <ul style="list-style-type: none"> • duration of up to 25 minutes; • prescribed meeting times; and • explicitly stated by the council to not be a forum for it to provide advice normally provided by a private consultant.⁷⁸
Hinchinbrook Shire Council	No fee until the application is submitted	
Isis Shire Council	Nil	
Logan City Council	Nil	Pre-lodgement meetings and advice about development proposals are provided free of charge.
Mackay City Council	\$100 (hour)	The first pre-lodgement meeting is free. All subsequent meetings are charged at \$100 per council officer per hour.
Noosa Shire Council	\$300 (hour) \$150 (per half hour)	Pre-lodgement meeting. Minutes are provided to applicant.

Based on this sample, it is clear MVSC's meeting fee falls within the range of fees charged by the sampled councils for this service. MVSC staff advised the meeting fee had been introduced in part to recover the cost of providing advice to applicants, and in part to encourage applicants to utilise other, less time-consuming methods of communication, such as emails. DSU staff spoke of a culture in the region whereby applicants expected to receive extensive free development advice from council. Staff stated that, in some instances, agreeing to an applicant's request for meetings and advice would lead to the council becoming a de facto planning consultant. It is apparent from anecdotal evidence that a similar situation exists at other rural councils.

A further reason given by MVSC staff for the fee is that the cost of the DA process should, in general, be borne by applicants rather than by ratepayers. MVSC expressed the view that it would be inequitable for the shire's ratepayers to be burdened by the expense of what is, in many instances, the giving of advice on large development proposals. Staff stated that, in many cases, a matter could be dealt with effectively via email or telephone in much less time than would be required to prepare for, and hold, a meeting. Given current workloads, MVSC views the meeting fee as an appropriate means of reducing unnecessary time in meetings.

⁷⁸ Cooloola Shire Council. Pre-Application Meetings – Information Sheet 11

Local councils have a general power to charge commercial fees for services they provide provided there is a clear connection between the service and the fee.⁷⁹ The LGA states that: 'A local government may ... charge for services and facilities it supplies, other than a service or facility for which a regulatory fee may be fixed.'⁸⁰ This provision provides authority for the MVSC's meeting fee.

Opinion 23

The MVSC practice of charging a meeting fee for pre and post-lodgement development application meetings is reasonable and lawful.

Opinion 24

The fee of \$175 for development meetings, as prescribed under the 2005-06 and 2006-07 MVSC budgets, is not excessive in comparison with similar fees charged by a sample of other Queensland councils selected by my Office.

In MVSC's *Regulatory Fees and Non-Regulatory Charges 2006-2007* publication, the planning meeting fees of \$175 per hour per council department represented are listed as deriving their regulatory authority from s.3.2.1 of the IPA.⁸¹ This is incorrect, as s.3.2.1 refers only to the requirements for an application and not the charging of meeting fees.

Opinion 25

The MVSC publication *Regulatory Fees and Non-Regulatory Charges 2006-2007* incorrectly implies that MVSC's meeting fees are authorised under the IPA.

Recommendation 32

MVSC amend the relevant entries in Regulatory Fees and Non-Regulatory Charges 2006-2007 to clarify that its meeting fees are commercial fees for the purposes of s.36(2)(c) of the LGA, and not regulatory fees under the IPA.

Most of the complainants stated their concern was, ultimately, not so much with the level of the fee, but the lack of information on what could be expected at a meeting and the fact that advice given by council staff during a meeting was not considered binding later in the process. MVSC acknowledged it does not have a written policy or guideline in relation to the fee, other than the brief entry contained in the council's *Regulatory Fees and Non-Regulatory Charges 2006-2007* publication. I note that most other councils in the sample selected provide meeting minutes to the applicant (at least for pre-lodgement meetings).

Recommendation 33

MVSC develop a guideline on its DA meetings to provide applicants with a clear understanding of what can be expected from such meetings, including:

- *the meeting fee and why it is charged;*
- *length of meetings;*
- *the nature of the information council can, and cannot, provide under the IPA;*
- *the records which will be made of meetings and their availability; and*
- *alternative methods of obtaining desired information at no (or lesser) cost, including sending the DSU an email.*

⁷⁹ See, for example, *Douglas Shire Council v Queensland Ombudsman* [2005] QSC 207 at para 33 per Moynihan J.

⁸⁰ LGA, s.36(2)(c)

⁸¹ See the 2006/2007 MVSC Fees publication at entry 4.4 (Planning Meeting Fees) on p.19 and entries 5.1.29-5.1.31 (Meeting Fees) on p.21.

5.9 Council as a source of IDAS advice

A recurrent theme of the complaints was the expectation that MVSC would provide advice to applicants on the IDAS process, and the perception that it does not do so.

MVSC's responsibility under the IPA is to administer and decide applications.⁸² The IPA does not require councils to offer advice to applicants on the IDAS process except in certain limited circumstances. A council may place itself in a conflict of interest if it offers substantial help to an applicant for an application which it must later impartially decide. This would be so where the council administration provides extensive assistance to an applicant prior to making a recommendation to council on the application. In such cases, an applicant may feel they have been given a preliminary approval by the council staff, only to discover the council then makes a different final decision, as it is entitled to do on sound planning grounds.

Complainants and MVSC staff agree the IPA is complex, and that its processes pose difficulties even for professionals. I also acknowledge that, in rural communities, the local council is the closest government agency and a logical place to seek assistance. It is clear many applicants for DAs in Miriam Vale Shire may find the cost of hiring a consultant prohibitive. It is not difficult to imagine that in more remote regions of Queensland this problem would be even more acute. Nevertheless, a local council as assessment manager has strictly defined responsibilities. The IPA does not require councils to act as a consultant, nor to provide planning or procedural advice to applicants.

Small rural councils do not necessarily have the resources or staff time to provide the level of assistance many applicants require to obtain a development approval. Despite this, it was clear from the audit that MVSC does frequently go beyond its strict legislative duty in providing assistance to applicants, particularly those who may be dealing with the IDAS for the first time and who have not hired consultants. I accept MVSC's argument, however, that council cannot act as a consultant for IDAS applicants.

Opinion 26

The level of advice and assistance MVSC gives to applicants for development approvals is appropriate given council's primary statutory responsibility as the assessment manager under the IPA.

Many non-professional applicants for development approvals find it difficult, if not impossible, to manage the process by themselves, and are not in a financial position to obtain the advice they require. This is a product of the complexity of the IPA and its requirements such as referrals and notification, rather than of any actions or inactions by any council.

⁸² s.3.1.7 of the IPA

There are a number of ways in which MVSC (and similar rural councils) could minimise the burden of providing advice to applicants while still ensuring applicants receive some level of assistance.

The most obvious method would be for MVSC to implement a system similar to that at Cooloola Shire Council, whereby council staff provide free pre-lodgement assistance but under strict parameters (see Table 8, above) with a limit, for example, of one free appointment of one hour per applicant. This has obvious implications for MVSC's resources and staff time. However, it is also likely to result in less frustration for applicants and a higher standard of application overall. Other councils in Queensland are exploring means of reducing DA processing workload, and the use by MVSC of similar arrangements may allow more time and resources to be devoted to providing applicants with pre-lodgement advice.⁸³

Councils (whether MVSC alone or with others) may wish to allocate a budget for advice per application (the expense to be built into the application fees) with applicants able to access advice from a panel of approved planners or other advisers under this budget. My officers discussed this type of arrangement with representatives of the LGAQ, who indicated that, despite some practical challenges, it would be an appropriate option for rural councils such as MVSC to consider. This could work as follows:

An applicant submits an application for an MCU to the MVSC. The applicant has not had professional advice from a town planner or solicitor. It soon becomes apparent to the MVSC that the applicant is having difficulty with the IDAS process (or alternatively, the applicant requests significant assistance from the MVSC). MVSC would inform the applicant that, while the MVSC itself cannot offer the level of assistance required, the applicant is able to access (say) two hours of assistance from one of the suppliers on the approved panel as part of the service covered by the application fee (that is, at no further cost to the applicant). MVSC would also advise the applicant that council is not responsible for the advice the applicant is given, and that any further arrangement beyond the initial two hours is entirely a matter to be negotiated between the applicant and the consultant.

There may be occasions where the decision made by council differs from the advice provided by a consultant on the panel. However, even currently, advice given by DSU staff may be later contradicted by the council's final decision.

There is a potential complication in that, in a small market such as Miriam Vale, the likely candidates for a panel of advisers would also be those most involved in recent DAs. Accordingly, alternative arrangements could be devised. For example, planners from further afield (for example, Rockhampton or Brisbane) and with less involvement in MVSC processes, could visit on a regular basis to provide a block consulting service for applicants. MVSC could also explore an on-line advisory service.

Recommendation 34

MVSC explore alternative arrangements for providing limited advice to DA applicants in order to deliver a higher level of customer service and reduce the DSU's workload.

Recommendation 35

MVSC consider establishing a panel of planning advisers, or some other similar arrangement, to increase the level of assistance applicants are able to access when involved in IDAS processes.

⁸³ See 6.2 (below) for further details.

MVSC response to recommendations 34 and 35

(These recommendations are) *impractical and unachievable for the following reasons:*

- Availability of consultants that do not have a conflict of interest in terms of preparing and lodging DAs with the shire
- Availability of consultants that are locally based
- Local councils in the region are experiencing staffing shortage and would not be available to provide the services
- Consultants protecting council interests are questionable
- Applicant expectation of getting guaranteed outcomes from meetings
- Applicants paying for services – complaints already received that our fees are too high
- Applicants accepting the fact that professional services are needed
- Expectation that approval will be given if process followed
- Inability to quality control advice and process
- Lack of local knowledge by consultants in assisting with processes and forms – Ombudsman criticised shire for incorrect Acknowledgment Notice based on applicant information – consultants can't get forms right so this could complicate issue further and increase criticism aimed at shire.

Comment

While the objections raised by MVSC have some substance, I took most of them into account before making these recommendations. The overall objective of these recommendations is to reduce the workload of the DSU by allowing consultants to provide the more routine assistance to applicants. I also reiterate that many of the objections raised by MVSC in response to these recommendations exist to some degree with the current arrangements involving applicants paying meeting fees to discuss applications with DSU staff.

5.10 MVSC's website and other material

MVSC's DSU provides only limited hard-copy advice.⁸⁴ MVSC's website⁸⁵ also contains a limited amount of information. Staff acknowledged the website could be improved with additional information for applicants, but advised this was not achievable immediately due to the pressure of work. A scan of local council websites in relation to the IDAS process reveals a wide variety of available information, ranging from far less than that provided by MVSC to extensive detail. Although not all applicants have the ability to access web-based information, the provision of more information on the website would be of benefit to many applicants, and may help to reduce the number of requests for assistance.

Although some aspects of the development process clearly relate specifically to the circumstances in Miriam Vale Shire (such as local planning policies), much of the information relating to IDAS which would assist applicants is common to all Queensland councils. It would be unreasonable to expect each individual council to separately produce such information. I accept, nevertheless, that MVSC may not have the resources available to produce comprehensive material for applicants on the IDAS process.

⁸⁴ Copies of the relevant planning and development policies.

⁸⁵ <http://www.miriamvale.qld.gov.au>

Chapter 6: MVSC's DSU – resourcing and technical knowledge

6.1 Staffing

6.1.1 Current staffing arrangements – general

At the time of my officers' audit of the MVSC's DSU, there were five staff employed on a full-time basis undertaking major roles in the council's management of IDAS (particularly MCUs and ROLs). These consisted of:

- Director of Development Services;
- Consultant Town Planner (effectively filling the Senior Planner role but not technically employed by council);
- Town Planner employed directly by council (but only on a short term basis at the time of the investigation);
- Compliance Officer; and
- Administration Officer.

The CEO of MVSC has the ultimate oversight of planning and development matters within the council administration, including some delegated authority from council itself.

6.1.2 Leave and contingency arrangements

Given that there are a small number of MVSC staff who deal with DAs, the possibility that several will be absent at once is high. DSU staff acknowledged that, when more than one of them is absent, the work of the unit is seriously affected. Indeed, complaints were received by my Office specifically about staff absence, although this has apparently only occurred occasionally. MVSC staff stated they attempt to manage this by taking only short periods of leave at a time and working overtime before and after leave periods. While I acknowledge staff efforts, I do not consider this situation to be appropriate over the longer term. It is also likely that other smaller councils face similar difficulties. However, all councils need to have proper arrangements in place to ensure a continuity of their planning and development function.

Recommendation 36

MVSC develop a formal strategy for the continuity of the DSU's function when there are absences among the DDS, CTP and AO.

MVSC response to recommendation 36

The shire has attempted to find 'fill in' staff – but none have been available – there is a nation wide shortage of planners. An additional planning consultancy has been appointed to deal with this issue.

6.1.3 Recruitment

Like other rural councils, MVSC has had difficulty in recruiting planning staff on a longer term basis. MVSC provided evidence of several attempts to source planners, each of which had met with limited success. According to the MVSC, there is difficulty in attracting qualified applicants across a range of fields due to its rural location, and a number of candidates who have accepted positions have either later withdrawn or taken up only short term contracts. The MVSC Budget Minutes of 25 July 2006 show that the DDS is intended to oversee three planning-related positions in the current financial year, namely the Planning Administration Support Officer, Senior Planner, and Town Planner. The Town Planner and Senior Planner positions remain vacant, although a long term contractor fills the Senior Planner position.

Recommendation 37

In the interests of stability in the planning staff of DSU, it is desirable that the Senior Planner position be filled permanently as soon as possible.

MVSC response to recommendation 37

Self evident. Continually advertising but there is a national shortage of staff.

Comment

Having considered the material provided by MVSC on this matter, I am satisfied it has made reasonable efforts to recruit a Senior Planner. MVSC may, however, need to give further consideration to reviewing the position description and benefits package for the other core planning position (Town Planner) to make it more attractive for a candidate.

Recommendation 38

MVSC review the position description and salary for the current Town Planner position to determine whether it can be made more attractive for applicants, subject to Council's budgetary constraints.

MVSC response to recommendation 38

The salary and conditions are in line with Council's budgetary constraints and EBA [Enterprise Bargaining Agreement]. Not enough planners available.

6.2 Outsourced arrangements

Between July 2004 and June 2005, a town planning consultancy was contracted by the MVSC to assist with DA work. Given the difficulty MVSC has in recruiting planning staff on an ongoing basis, and the further difficulties posed to the continuity of the DSU's operation during multiple staff absences, it would be prudent to have an ongoing backup arrangement for peak workload periods and when staff are on leave. Such assistance would not involve the highest level planning functions and would be aimed at simply ensuring continuity of the MVSC's planning functions.

On a broader level, it may be that such an arrangement is better organised by regional groupings of local councils. In that way, councils could share some of the expense for support arrangements. Local councils such as MVSC could then call on the assistance of an approved planning consultancy at times of need.

A possible model is the RiskSmart system currently being trialled in South-East Queensland and the South Burnett region. Under this trial, around 23 councils are collaborating on development of models for outsourcing aspects of the DA process to consultants where the application is considered low risk. The ultimate decision will still be made by the councils under the appropriate delegated authority. However, the aim is to reduce council workload and decrease DA processing time.

Opinion 27

MVSC's DSU does not have effective measures in place for obtaining additional assistance with its planning workload other than seeking to recruit extra staff.

Recommendation 39

MVSC implement appropriate arrangements for meeting staffing shortfalls in its DSU.

MVSC response to opinion 27 and recommendation 39

Incorrect. We have appointed an additional consultancy.

Comment

Subsequent to my preparation of this report, MVSC advised it had contracted the services of a Brisbane-based planning consultancy on an hourly rate basis. This arrangement commenced in August 2006, after my officers' visit to Miriam Vale. I will review whether this additional resource has led to improved timeframes in the IDAS process when I follow up implementation of my recommendations in 2007.

6.3 Administration Officer role

The AO in the DSU deals with initial applications, takes incoming telephone calls, and produces core IDAS documentation such as the acknowledgment notices, information requests and decision notices. DSU staff advised that the AO develops required skills on-the-job, rather than through any formal program of training. The AO experiences the same difficulties as other MVSC staff in terms of being able to obtain training due to workload pressures, geographical isolation and a lack of alternative staff to fill the role during absences. While MVSC has a position description for the AO role, there is no comprehensive manual guiding the occupant. This means the transition from one occupant to another may cause significant disruption to the work of the DSU.

On 14 March 2006, the Minister chaired an IPA/IDAS summit with the objective of identifying areas of improvement for IPA. One suggestion was that IDAS para-professionals be developed in response to the current demand for planners. I believe this suggestion has merit in light of the role of administration officers in council planning departments. It is difficult for local councils in rural localities to recruit appropriately qualified and experienced planners. However, it is usually less difficult to recruit generalist administration staff around Level 2-3 of the Queensland Local Government Officers Award.

The AO is expected to deal with relatively high levels of technical complexity in administering IDAS processes, albeit under the supervision of the CTP and DDS. One way of providing a more streamlined processing of DAs would be to train the AO on a more formal basis. LGAQ offers a Diploma in Local Government (Planning), entailing attendance at six face-to-face days in Brisbane (on a 3+1+2 basis). This is a significant investment for MVSC, although one that is warranted. Once qualified, the AO at MVSC (and equivalent at other rural councils) could undertake a more prominent role in managing the DAs and addressing applicant inquiries.

Opinion 28

The acquisition of a technical para-professional planning qualification by the AO responsible for planning matters at MVSC would assist the DSU in managing its workload and in assisting applicants for DAs in the shire.

Recommendation 40

MVSC provide the AO in its DSU with the opportunity to undertake the LGAQ's Diploma in Local Government (Planning).

Recommendation 41

MVSC develop a formal position manual for the role of the AO, describing in detail the roles and responsibilities of the position within the DSU.

Recommendation 42

DLGPSR develop further strategies for encouraging rural councils to provide relevant planning staff with access to para-professional training such as the LGAQ's Diploma in Local Government (Planning).

MVSC response to opinion 28 and recommendations 40, 41 and 42

Opinion 28 and Recommendation 40 – Agreed. The AO was offered the course and was registered, however she went on maternity leave and as such the compliance officer was offered the course and is due to complete it in December 2006.

Recommendation 41 – This will be undertaken when resources are available.

Comment

I acknowledge that the AO at MVSC has not been able to undertake the LGAQ Diploma to date due to circumstances outside MVSC's control. Despite this, I am of the opinion that the AO should also attend this training as soon as possible due to that position's central administrative role in all day-to-day aspects of the IDAS process at MVSC.

6.4 Technical knowledge

MVSC's DDS and CTP advised that, while they are qualified town planners, they had not had experience in the Queensland planning system prior to commencing at MVSC in April 2005. Both were required to learn the IDAS scheme on-the-job. Both said that although training is offered by the DLGPSR, the practicalities of their workload and the distance of Miriam Vale from training centres means they have not been able to take advantage of it.

Based on my investigation, it was clear DSU staff have an adequate working knowledge of IPA requirements. It is not possible to say whether that level is sufficient to enable the management of complex issues. At any rate, it is clear MVSC has not devoted significant resources towards the development of the technical expertise and knowledge of its DSU staff. It must be stressed that these comments relate to the MVSC's management of the DSU, and not to the professional expertise of any of its staff.

Opinion 29

MVSC's failure to ensure its DSU staff receive ongoing training in the IPA is unreasonable administrative action within the meaning of s.49(2)(b) of the OA.

Recommendation 43

MVSC arrange for its DSU staff to receive formal training in IPA within the current financial year.

Recommendation 44

MVSC develop an ongoing training program for all DSU staff for 2006-07 and beyond.

6.5 DLGPSR assistance

On 11 April 2006, the then Minister for Local Government and Planning⁸⁶ wrote to the Mayor of MVSC, Cr Tom Jeffery, offering to provide training assistance. The Minister stated:

I appreciate that Miriam Vale Shire is experiencing considerable growth and there is a strong impetus for development in the Shire, particularly around Agnes Water. This places significant demands on Council and its officers to meet their obligations under a range of legislation. It is my expectation that development in Miriam Vale Shire is sustainable and in the long term interest and benefit of the whole community and that Council is appropriately applying IDAS when dealing with development applications.

On 30 May 2006, Cr Jeffery replied, thanking the Minister for the offer but stressing that the large workload in the planning area limited MVSC's ability to provide staff training. DLGPSR has undertaken IPA training in Bundaberg. However, MVSC staff were unable to attend due to other work commitments. DLGPSR advises it is willing to visit councils individually to provide specific training according to particular requirements. While any assistance which the DLGPSR offers MVSC is welcomed, I am concerned this may only be on an ad-hoc basis and that MVSC may not take advantage of it due to its workload. Indeed, DLGPSR has advised me that, to date, MVSC has not requested any such on-site training.

DSU staff advised they subscribe to the DLGPSR's IPA update email service and seek the views of neighbouring councils (and the DLGPSR itself) on matters of difficulty. Nevertheless, the overall picture of MVSC's DSU is one of relative isolation from other councils in similar situations, and from the department responsible for the IPA scheme. This is clearly not deliberate; merely the result of the limited resources of MVSC and its location.

Opinion 30

MVSC has failed to take advantage of the training and assistance offered by the Minister and DLGPSR on IDAS processes and local planning matters generally.

Recommendation 45

MVSC take advantage of the offer of assistance and training made by the then Minister in her letter of 11 April 2006.

⁸⁶ The Hon Desley Boyle MP

Chapter 7: Rural councils and the IPA

In Miriam Vale Shire, the single greatest factor which has provoked the difficulties in the council's IDAS processes is undoubtedly the relatively sudden expansion of development activity in an area which had previously experienced little or no growth. Although the larger Wide Bay-Burnett region in which the shire is located has been growing for some time (particularly towns such as Hervey Bay and Bargara), the growth in Miriam Vale Shire itself has only occurred in the past few years.

This will not be a consideration for many rural councils where there may be little or no development activity requiring IDAS assessment. However, the key lesson from the Miriam Vale case is that rural councils in areas where development increases rapidly can be caught off guard with inadequate systems and resources. In such a situation, applicant satisfaction with council processes will almost inevitably fall. At a broader level, a constant theme throughout this investigation has been the difficulties both applicants and local councils experience with the IPA in rural communities. Common problems include:

- large numbers of non-professional applicants attempting to manage the IDAS process without professional assistance;
- a reluctance on the part of applicants to obtain professional assistance due to the expense and remoteness of planning consultancies;
- a cultural expectation that councils will provide high levels of advice and assistance to applicants;
- remoteness of appeal mechanisms for applicants;
- a limited ability of rural councils to recruit and retain qualified and experienced planning staff;
- difficulty for rural councils in budgeting for, and finding time for, staff to attend ongoing training and development activities;
- contingency planning difficulties to cover occasions when the small number of planning officers (sometimes only one staff member) are absent for any length of time; and
- the imperative of focusing on the processing of DAs working against any significant time or resources being devoted to developing the background infrastructure for planning departments, such as effective complaints management and customer service systems, guidelines, information sheets for applicants.

My officers contacted a small sample of comparable councils on staffing issues. They reported acute difficulty in obtaining planning staff, and cited the high turnover of qualified planners and associated professionals as a common problem. In light of these issues, rural councils need to respond with:

1. Greater public outreach/education on council roles and responsibilities, and on IDAS generally (preferably with the assistance of the DLGPSR).
2. Where necessary, a willingness to trial alternative methods of achieving outcomes under IDAS (for example, appointing a panel of consultants or sharing resources with other councils rather than attempting to recruit more planners in a tight market).

It is my intention that this report highlight for DLGPSR the particular challenges rural councils face in administering the IPA. It is also important for all stakeholders in the IDAS process to be aware of the sometimes uncomfortable fit between local community expectations of rural councils and the roles given to those same councils under legislation such as the IPA.

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