

How to bankrupt a council asset

- and get away with it

by

Neil Kelsey

SunRRA monograph no.6

How to bankrupt a council asset and get away with it by Neil Kelsey.

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Brimbank is one of Victoria's largest metropolitan municipalities, situated to the north west of Melbourne with a population of around 185,000 people. A Labor stronghold for over 50 years, it has long been home to some of the worst health, crime and social statistics in Melbourne. On practically every indicator from diabetes to public transport, from drugs to parks, from drains to pollution, Brimbank is distinguished by the worst of possible outcomes. This is due in large part to years of neglect from both sides of politics.

Yet for some Brimbank is a glittering prize. Residents have poured well over a billion dollars into the local poker machine industry over the last 12 years, putting them at the top of the list of big losers. The municipality is distinguished by having the highest number of gaming machines per head of population, which ensures that problem gambling will remain a major social issue.

Politically, Brimbank has become a byword for corruption. The Victorian Ombudsman's *Investigation into the alleged improper conduct of councillors at Brimbank City Council* (2009)¹ presented the most compelling evidence so far of state government interference in the running of a local council. A number of serving MPs and Ministers were named as influencing council decisions against the best interests of the community. The investigation found that the council was "generally dysfunctional" and "unable to govern as a whole", due in large part to factionalism and the flow-on effects of political interference.

The sphere of outside influence extended to unelected Party figures, some with criminal backgrounds including violence and fraud, who took to commandeering council assets for political gain.

The Ombudsman made 30 recommendations, including changes to the law, to address the network of corruption leading from the council to the upper reaches of the state Labor government. MPs George Seitz (Keilor), Andre Haermeyer (Kororoit, former Minister for Police), Telmo Languiller (Derrimut) and Theo Theophanous (Northern Metropolitan, former Major Projects Minister) were adversely named for their part in the council's ruin².

So entrenched is the political network subjecting this council to interference, that the Ombudsman recommended new laws to

2. ...disqualify persons employed as electorate officers, ministerial advisers and parliamentary advisers, or employed by Federal or State Members of Parliament, from becoming or continuing to be a councillor or nominating as a candidate.

The Victorian public service copped its share of flak from the Ombudsman for not dealing properly with an avalanche of complaints about the rogue council. These included conflict of interest allegations, complaints of rorting and breaches of the Local Government Act. The failure of LGV to address the complaints - and its attempts at "cover-up" - led to more recommendations from the Ombudsman, namely that:

Community LABOR

Look who's supporting...

Ken Capar



GEORGE SEITZ



CHARLIE APAP

"In football for a team to win & stay on top, team members need to perform."

Community needs Councillors who can perform."

JUSTIN MADDEN



NATALIE SULEYMAN



TELMO LANGUILLER

**VOTE 1
KEN CAPAR
on 26th Nov
For a Better
Council**



ANDRE HAERMEYER



BRENDAN O'CONNOR



ST ALBANS
FOOTBALL
CLUB



DEER PARK
FOOTBALL
CLUB



Brimbank Cr. "Kenny" Capar with a rogues' gallery of supporters. After 18 months LGI investigators have yet to report on the "toilet enterprise."

28. Measures be taken to ensure Local Government Victoria is sufficiently resourced to [investigate] breaches of the Local Government Act, and that

30. Local Government Victoria document the formal assessment of each complaint

The department's improper handling of complaints under Ministers Candy Broad, and then Richard Wynne effectively gave the green light to corruption at Brimbank Council. This continues to the present day thanks to politically-

compromised bodies like the Local Government Inspectorate (LGI), hastily set up in 2009 to neutralise the fallout from the Ombudsman's report.

Taken together these factors reveal a substantial attack on democracy in local government, and every Victorian should be duly concerned. Here, elected councillors are influenced to maladministration by their political "minders" - elected members of parliament and Party officials. Meanwhile the public service departments charged with holding them to account will not act. It is a classic *Catch-22* scenario that potentially holds every Victorian to ransom.

It's fair to say that the Ombudsman's report only scratched the surface of the goings-on at Brimbank but even so, it was enough to describe a deep-seated and extensive culture of political corruption in Victoria. It also helps to explain the appalling health, crime, and unemployment statistics found in the worst-affected municipalities in the state including Brimbank.

So how does it work? How does ingrained corruption of the kind described by the Ombudsman deprive Victorians of basic facilities and services? How does it lead to areas of entrenched disadvantage, to financial misappropriation and the destruction of public assets?

A look into the operation of Brimbank's Community Centres can provide an important clue to these questions. Using information gained from the Ombudsman's report, from local press accounts and documents obtained under Freedom of

Information we can now piece together a "nuts and bolts" view of how Victorian taxpayers are deprived of much-needed services and facilities through state-sponsored corruption.

Background

Many councils own social assets like community centres which are normally run on a non-profit basis. To varying degrees councils and the state government also fund programs at those centres that are designed to have some public benefit.

Under section 86 of the Local Govt Act 1989 Councils have powers to delegate, or install committees of management to run their community assets. The delegation means the council is once removed from the running of a centre. It also means that sitting councillors can be employed to manage them, a situation that would normally create a conflict of interest.

At its worst, it allows a council to wash its hands of any issues in the running of those centres, while still being able to channel public funds to them "no questions asked". In the case of delegation to Labor-dominated committees by Labor-dominated councils, this potentially forms a conduit for party political patronage and slush funding.

A range of possibilities may now further the factional power plays within ALP branches. Consider the strange case of the Westvale Community Centre in St Albans, embroiled in a

pointless legal battle between warring factions of the ALP at a cost to Brimbank ratepayers of around a quarter of a million dollars.

Westvale Community Centre

The Westvale Community Centre is located at 45 Kings Rd, St Albans. The only information about it is via Brimbank Council's website which lists the address and phone number along with a neat, five-word description: "Various community activities and programs."³

Comparing the information other councils provide about their community centres, one could be forgiven for wondering what goes on there.

The controversy began when a new committee of management was installed at the centre in 2004 chaired by a well-known local member of the ALP's socialist left faction. A regular candidate at Brimbank Council elections, he is the father of a former mayor of Melton shire.

Early in 2005 pornographic images were found on one of the Centre's computers and rightfully, the committee of management acted quickly and called in the police to investigate. However, the "Suleyman" ALP faction, which held power within the Brimbank Council at the time, mounted an attack on the "enemy faction" at Westvale. This set in train a sequence of events that ended up costing ratepayers nearly a quarter of a million dollars.

12. URGENT BUSINESS

Motion

Moved Cr Douglas

That the report regarding the Westvale Community Centre be received and dealt with as an Item of Urgent Business.

Seconded Cr Costa

CARRIED

Resolution

Moved Cr Douglas

1. That the Council notes with the utmost concern the reports of the existence of pornographic material on one of the computers at the Westvale Community Centre premises under the control and supervision of Westvale Community Centre Inc, and also notes that there are concerns about the operation of the Westvale Community Centre.
2. That the Council recognises its obligations to take all steps possible to protect users of the Centre, and in particular children, from all aspects associated with pornography.
3. That the CEO finalises the current investigation into all issues relating to the operation and management of the Westvale Community Centre Inc.
4. That the CEO be authorised to take all steps to seek to obtain possession of the premises at Kings Road, Kings Park and that such action be taken with the utmost expedition and with the protection of the public as the foremost consideration.
5. That the CEO liaises with all other Authorities and stakeholders that may be involved, of the action being proposed by Council in the issues referred to above.
6. That the Council execute all documents required to give effect to the above resolutions.

Seconded Cr Costa

UNANIMOUSLY CARRIED

Urgent business: A coup attempt on the Westvale Community Centre.

According to contemporary political accounts⁴ the council was not pleased with the police involvement, and believed the committee should have reported directly to it instead. The source of the pornography was never revealed.

Shortly afterwards at its ordinary meeting on May 10, 2005 the council voted in favour of an "urgent business" motion raised by councillor Ian Douglas. It proposed that council should take over management of the centre, citing pornography and non-compliance issues such as failure to present a membership list, failure to provide a health and safety policy, mismanagement, breach of lease and unspecified financial irregularities.

The Westvale committee however refused to go. It referred the council's motion to the Victorian Civil Appeals Tribunal (VCAT) and in July obtained an injunction until the matter could be heard. At a preliminary hearing, VCAT ruled that it had jurisdiction to handle the case. However, desperate to sidestep VCAT for whatever reason, Brimbank CEO Marilyn Duncan appealed to the Supreme Court.

The Supreme Court ruled in March 2006 that it was a VCAT matter after all. While the CEO would not reveal the costs of the Supreme Court action, it was estimated that ratepayers had lost \$150,000 up to that point. The VCAT case was yet to be heard. Another casualty was the Westvale centre's child care facility which had lost state government funding as a result of the row, and was closed.

In June the Brimbank CEO resigned, reportedly as the highest-paid council CEO in Victoria. She left without giving a reason and with only months to go before her 5-year contract expired. Details of her severance package which included six months' pay and a free car were withheld from ratepayers, and were only revealed in the Ombudsman's report in 2009.⁵

Meanwhile back at VCAT, the council's motion was overturned and the exercise exposed as a long-running and very expensive political maladministration paid for by the ratepayers. How else to explain such a legal adventure?

Biggs Street Community Centre

The Biggs Street Community Centre situated in St Albans has been used exclusively as a Labor Party headquarters for more than eight years, paid for by Brimbank ratepayers. It originally operated as a child care centre. In 2001 it was taken over - rent free and without a lease - by ALP power broker Mr Hakki Suleyman.

The Ombudsman's report⁶ gives a fascinating account of how the building was used over that time. Uses included ALP branch meetings and at one stage a person appears to have been living there, certainly without paying rent to the council.

From evidence given under oath the Ombudsman concluded

543. Cr Suleyman's father was able to use council-owned premises situated at 76-78 Biggs Street, St Albans, rent-free, owing to Cr Suleyman's role as mayor in 2001.

Residents first found out about Biggs St. in early 2006. Following information received from a whistleblower, SunRRA members raised questions about it at a council meeting held on May 9. In what was now typical of Brimbank Council's antics, councillors promised to answer the questions but refused to read them out!

-
2. How was the impact of the High Rise towers on Sunshine's stormwater and sewer, roads, power and community services infrastructure (libraries, pools, recreation, performing arts, etc) been assessed by Council?

P. Collins

Answer

Mr Peter Collina, through the Chair, advised that the initial plans were preliminary drawings that weren't properly thought through and they need a lot of work to them. The sorts of issues that were raised at that stage were urban design, car parking, the address to the streets, that's the address of the developments streets, and how would it tie in with the adjoining Market Place shopping centre. So, they were pretty basic fundamental issues.

Question 7 (P219/2006)

D. Reilly

Question 8 (P220/2006)

C. McDonald

Question 9 (P221/2006)

G. Collins

Question 10 (P222/2006)

S. Tisdale

Note: Questions 7 to 10 were not read but were taken on notice and a written reply will be sent in 14 days.

Ask no questions, tell no lies: extract from Brimbank Council minutes documenting the Biggs St questions.

"By coincidence" the council sealed a lease with Mr Suleyman at its very next meeting on May 23. Rent was fixed at \$100 per month.

Again council refused to accept any questions about it. Two days later SunRRA issued a press release titled *Mayor's Father Enjoys Rent Free Council Building* which succeeded in drawing public attention to the issue.⁷

A bizarre chain of events followed. In a desperate attempt at damage control, Mayor Natalie Suleyman tried to ban SunRRA members from attending council meetings by declaring them "prohibited persons".

This, even though the Local Government Act especially allows for the public to attend. The episode provides a telling glimpse into the undemocratic "mind set" of Brimbank Council in the entrenched grip of Labor politics.

Once again complaints to the state government fell on deaf ears and even after the release of the Ombudsman's report in May 2009, Mr Suleyman continued his exclusive use of the centre until the lease expired in April 2010.

To some extent this situation was allowed to continue through a culture of bullying and lack of will by council staff. In 2001 council assessed the annual rent value of the Biggs St property at \$15,125 (inc GST). This represents a loss to ratepayers of around \$100,000 over the eight years, on top of losing use of the premises over that time.

26 May 2006

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Ms Darlene Rilly

SUNSHINE 3020

Dear Madam

MISCONDUCT AT COUNCIL MEETINGS

I refer to your attendance at recent Council meetings.

As the chairperson, your frequent interjections so as to cause disruption to the meetings is considered to be unacceptable behaviour for the purposes of Council's Meeting Procedure Local Law.

Given the previous warnings issued to you at the meetings and your failure to comply, it is now proposed that you be declared a prohibited person, the effect of which will prevent you from attending further Council meetings.

Prior to making the declaration, you are invited to show cause in writing why the declaration should not be made.

Your response should be received by Council within the next 10 days from the date of this letter.

Yours faithfully,



CR NATALIE SULEYMAN
MAYOR

*Received mail
TUESDAY 30/5/06*

Damage control: more strange behaviour from a council in the stranglehold of Party politics.

Sassella Park Community Centre

The Sassella Park Community Centre included the Deer Park swimming pool, a scout hall, tennis courts and sports grounds among other facilities. All have been left to ruin over the years through mismanagement and neglect. Brimbank Council's "hands off" policy on its community assets is a large factor in this.

Administrators appointed to run the council in the wake of the council sackings voted to take over the day to day running of the SPCC at their first meeting in November 2009.

A "liaison" with council officers revealed that the SPCC committee were no longer able to manage the centre, having "experienced difficulty in operating and maintaining (it) to a suitable standard for community use".⁸ The management "committee" was formed in 1991, but had in fact only one active member. It was operating without any proper booking system, and was not providing for ongoing cleaning or maintenance.

Nineteen years later it took the appointment of administrators to revoke the deed of delegation for the centre. They still found the grace to "formally acknowledge the contribution of the management committee" but according to SunRRA, there is no evidence to support council's view that the SPCC management committee was ever legally constituted.

It is unknown what costs will be involved in bringing the centre back to a standard suitable for public use.

Background summary

A number of factors emerge from this brief overview which are worth bearing in mind as we come to consider the Sydenham Community Centre bankruptcy. These are

- a failure at the centres to keep proper records or provide statutory reporting;
- council premises being associated with Party factional groups;
- facilities being underused, neglected and quickly deteriorating;
- financial irregularities and chronic mismanagement;
- irregularities that have tacit approval from council and state government;
- child care centres become "collateral damage" as state government funding is withdrawn; and
- the critical importance of whistleblowers in exposing the schemes.

The overview gives an indication of how Party activities can be funded by misappropriating ratepayer funds and facilities to advance political objectives. Nepotism remains a chief factor in allowing this to occur.

The practice appears widespread and ongoing, so there may be implications for other organisations run by committees that are dominated by local Labor personnel. Of particular concern to SunRRA is the North West Region Migrant Resource Centre (NWRMRC), currently chaired by Mr Hakki Suleyman, and managed by former Brimbank councillor (and

“Suleyman” faction member) Mr Anthony Abate. The centre has been mentioned in parliamentary questions in recent times.⁹

Also of concern is the Keilor Cemetery Trust which is currently chaired by an administrator appointed to replace Brimbank Council. Illustrious former members include Brimbank Councillors Ken Capar, Kathryn Eriksson and Marilyn Zukalski.

Case study: the Sydenham Community Centre

The Sydenham Community Centre (SCC) is located in the Community Hub in Sydenham. It contains child care facilities for 44 children and community rooms, employing 26 staff who are paid between \$13.81 and \$29.00 an hour. The centre was declared bankrupt in 2006 under circumstances that were never properly explained.


At the time of the insolvency a Brimbank councillor, Marilyn Zukalski was the centre manager.

Ms Zukalski contested the 2005 Brimbank Council elections presenting herself as the SCC's Community Development Officer, and a North West Region Migrant Resource Centre board member. Ironically her election pledges included a commitment to “Lobby the state and federal governments to provide more local child care places”.

Shy of the election quota by more than 3500 votes, she was successful on the back of Natalie Suleyman's preferences.

RE-ELECT

Taylor's Ward
Brimbank City Council



Natalie Suleyman

*For your vote to count -
Number every Box*

1

4 MASSANG, Lydia

5 GIUDICE, Margaret

6 ESPOSITO, Adrian

1 **SULEYMAN, Natalie**

7 CHOLOSZNECKI, Gail

8 CELEBIOGLU, Gary

9 JACOMB, William

2 **ZUKALSKI, Marilyn**

3 CARBONARI, John

Listening... Delivering for our Future.

Member of the Australian Labor Party
Authorised by R D'Oca, 15 Eagle Terrace, Taylors Lakes, 3038.
 Registered by the Returning Officer for Taylor's Ward, Brimbank City Council.

To boldly go: a vote for Natalie Suleyman is a vote for Marilyn Zukalski

(Suleyman received the highest number of votes of any candidate in Victorian local government elections that year.¹⁰)

The Ombudsman paints a telling picture of their relationship:

515. One witness described Cr Zukalski as Cr Suleyman's 'acolyte'. It was evident during my investigation that Cr Suleyman used Cr Zukalski to further her own agenda and to avoid scrutiny.¹¹

while for her part, Zukalski portrayed herself as a victim in the relationship:

520. I've been groomed for quite a long time by her [Suleyman], thinking I was a very important person and whenever - but I wasn't a part of their higher plan if you like. I was a mushroom. I think I was kept in the dark and fed nothing but bullshit.¹²

The first suggestion that something was wrong at the Sydenham centre came with a question raised in State Parliament on June 6, 2007 by upper house MP Bernie Finn. Here it is in full:

-- I wish to raise a matter for the attention of the Minister for Local Government in the other place. It concerns the Sydenham community centre, which is owned by Brimbank City Council. A state-registered child-care facility operates at the centre, and the committee of management is chaired by a Brimbank councillor. The issue of possible conflict of interest pales into insignificance compared with some of the

allegations that have been brought to my attention about conduct with regard to the centre. At the very least these allegations imply gross mismanagement, and on the surface it appears that there may be cases of fraud and misappropriation of funds.

One former employee has provided evidence that no employer contributions were paid into her superannuation fund -- moneys were taken from her wages for the purposes of superannuation but were not deposited in the fund. Funds for long service leave and holiday pay are also missing. I am informed that at least 12 other people -- both former and current employees -- are also in this situation. There is also a question hanging over some \$50 000 which is missing and which apparently was written off as bad debt. An investigation into the conduct of the management of the centre is desperately needed. I am asking for a full ministerial investigation into the role played by the Brimbank City Council in the activities of the Sydenham community centre. I ask the minister to report to police any criminal activity that is found.¹³

An independent audit identified a wages blowout as the chief factor in the insolvency. Pay discrepancies have since been reported within the ALP organisation.¹⁴

While Brimbank councillor Zukalski managed the centre on a day to day basis, Mr Finn had said that *the committee of management is chaired by a Brimbank councillor*. This implies there were two councillors involved at the SCC. He did not name the chair, as names of the relevant committee



Labor network: candidate Marilyn Zukalski, Federal MP Brendan O'Connor and Natalie Suleyman (source - the O'Connor Report).

members appear not to have been recorded in any statutory documentation.

Apparently only one person was prepared to put a name to the chair. Andrew Landeryou, self-styled Labor propagandist revealed it was Brimbank mayor Natalie Suleyman.

This was neither confirmed nor denied by her, and it must be said that information from Landeryou is generally speaking unreliable. What makes it noteworthy is just how close the source is to the relevant Party camp.

The story of how the Sydenham issue was managed unfolded in the local press over the months that followed.

A new centre manager confirmed there were debts of \$45,000 for superannuation and \$30,000 in tax. She also stated that the executive committee had changed since the debts were incurred and that she was “not at liberty to discuss what happened to the people” on the committee at that time.¹⁵

Indeed there were early reports of a staff exodus as well as a committee exodus. *The Advocate* quoted a trade union source saying that qualified staff at the centre had left due to problems with management, and that there had been six different directors over the previous six months.¹⁶

One former staff member gave reasons for her resignation as “unprofessional behaviour by committee management and a lack of understanding of the child care industry by the management”, adding “a line needed to be drawn between Marilyn Zukalski’s duties as a Brimbank councillor and her role at the centre.”¹⁷ Council CEO Nick Foa commissioned an audit which showed that \$61,000 was needed before June 30 (only days away) to keep it afloat.

High drama followed at the next council meeting. Cr Abate raised a motion to divert \$61,000 of council funds to prop up the centre. “This is not a gift, this is not charity, no this is their money - six years worth of Neighbourhood House grant funding in advance”.¹⁸ Both Crs Suleyman and Zukalski absented themselves from the vote due to conflict of interest.

*Note: Cr Sulayman declared an Interest in the Urgent Business item and left the Chamber.
Cr Zukalski declared a Pecuniary Interest in the Urgent Business item also left the Chamber.*

12. URGENT BUSINESS

Procedural Motion

Moved Cr Abate

That the report be received and dealt with, as listed below, as an item of Urgent Business.

Seconded Cr Capar

CARRIED

Sydenham Community Centre

Resolution

Moved Cr Abate

- That Council approve a cash advance of \$61,000 to the Sydenham Community Centre prior to 30 June 2007.
- That this funding be provided as an advance on the annual \$12,000 Neighbourhood House grant that Council provides to the Centre. This advance is equivalent to approximately 5 years of grant funding.
- That Council approve the advance of \$61,000 on the condition that the Committee enters into an agreement with Council to provide monthly financial reporting and work collaboratively with Council to review the management models of the Centre to ensure the Centre's ongoing financial viability.

Seconded Cr Capar

Alternative Resolution

Moved Cr Dymott

- That the Urgent Business motion not be supported in view of the fact that the information currently available is not complete
- That the CEO, therefore, provide more information on the full financial status of the Sydenham Community Centre
- That the CEO provide a report on the costs and implications involved in bringing the Centre "in-house".

Seconded Cr Socratous

Note: The Mayor, Cr Margaret Giudice gave a first warning to Cr Abate.

CARRIED

Note: Cr Abate and Cr Capar wished to be noted as voting against the Alternative motion.

Note: Cr Sulayman and Cr Zukalski returned to the Chamber.

Free for all - excerpt from council minutes 24.6.2007

(Cr Suleyman did not disclose the nature of her interest although a press report revealed that her sister was also employed at the centre.¹⁹)

In debate that lasted over an hour, councillors threw accusations at each other in the kind of free-for-all that had already made Brimbank Council infamous. Wanting to clarify the conflicts of interest, Cr Socratous wondered “We have a councillor working there (at the centre) – we don't know if we are bailing the councillor out, or are we helping the community?”²⁰

Cr Abate responded: “That was a statement meant to discredit a councillor. You are insinuating...” before himself being cut off and warned by the mayor for interjecting. Abate had earlier been rebuked for accusing another councillor of “doing what he does best – undertaking a political power play” by proposing to establish the centre's finances before handing over any more money.

At its climax the drama caused Cr Zukalski to collapse so that an ambulance was called. A centre spokesperson suggested “the council's decision not to advance the committee money was more about 'personal politics' than discussing the real issue”.²¹

According to his interim report, the council's independent auditor could not determine the finances of the centre due to missing documentation. He did however indicate that the centre had been keeping two sets of books.

His report concluded “in my opinion, the ability to enter into [fraudulent] activities does exist”.²²

Concerns included the handling of cash payments - “Although hard copy receipts are issued when money is received, the number of the receipt is not included in the data input into the computer which does not provide an audit trail” - and the child care fee lodgement box that is “opened and counted by one person which leaves that person open to accusations of malpractice.”²³ Neither council nor state government have reported on these issues.

The auditor added “I have established that Child Care debts of \$38,203.32 are not included in the MYOB Balance sheet” adding cryptically “it appears that a significant number of debts in the 14 days category relate to children who have not attended the Centre during the last 28 days.”

An update to the audit confirmed what we now knew - “based on the information received, the centre is not financially viable.”²⁴

The updated report refers to the SCC committee members. One “is currently believed to be a general member but has not attended any meetings since resigning as treasurer” while another “has not attended three consecutive meetings and has been removed from the committee in accordance with the model rules”.²⁵

The State government commissioned its own interim report through the Department for Victorian Communities. The

announcement did not mention an enquiry at all. Instead, a spokeswoman said “The department will work with representatives of the centre to review and improve governance and financial management processes and procedures.” This effectively sidelined the council's audit.

It was clear there would be no enquiry. The Department for Victorian Communities was abolished only days later, to be transformed into the Department of Planning and Community Development which would “take over the responsibilities of the old department”.²⁶

This change had the effect of shifting responsibility for the Sydenham issue from Local Government Minister Richard Wynne, to Planning Minister Justin Madden. Mr Madden's office was already closely linked to Brimbank Council through his electoral staffer, Mr Hakki Suleyman.

The Department's audit was just as scathing as the council's. The interim report confirmed the SCC was insolvent and should cease trading. It found financial reporting to be “poor, inadequate and disorganised”, and “poor management and accounting practices at both the committee level and day to day management level”.²⁷

It also found there was “ample opportunity for [fraudulent activity] to occur”. Worrying from the public point of view are the recommendations on signing cheques -

“where a committee member or a directly-associated party of the member is to be the recipient of payments from the

entity, that cheque signatories must be from 2 non-associated committee members.”²⁸

Are we to conclude that committee members had been co-signing cheques made out to themselves? No further details are given and the payments have not been explained.

The council's independent audit gives a good overall account of the centre's finances. According to the documents received, the state government's “interim” report is less detailed and of great concern is that the staff cost sheets have been withheld.

What makes this worrying is that we cannot compare the two audits, especially in regard to staff wages. Exploding wages costs were identified as a major factor in the SCC insolvency, accounting for 87% of the total income in 2006/7.

Attachment “G” to the state government report is a budget prepared by SCC as part of its business plan dated July 10 2007. Apparently this was used in the department's investigation.

From this it appears there are major differences in the way the council's independent auditor and the SCC viewed their situation in 2006/7. In the council's report, the centre had an estimated income of \$767,063 including \$359,000 in government subsidy.²⁹

9) The following table provides a summary the Centres financial performance over the last three years as recorded in the audited Annual Reports together the estimated year end figures for 2006/2007, compiled from information supplied to and reviewed by me.

	2003/04	2004/05	2005/06	2006/07 (est)
PROFIT & LOSS	\$	\$	\$	\$
INCOME				
Fees	352,349	381,205	383,023	373,293
Child Care Assistance	215,461	234,807	242,677	209,599
Funding	46,283	41,922	48,049	59,122
Subsidies	31,188	28,095	40,825	87,601
Capital Grant			17,375	
Operating	38,729	41,424	50,877	37,448
TOTAL INCOME	684,010	727,453	783,326	767,063
EXPENDITURE				
Staff costs	528,928	579,583	632,626	671,125
Telephone	5,393	5,940	7,595	6,976
Workers Comp	17,076	8,382	16,440	11,512
Repairs & maintenance	2,133	1,686	15,008	3,252
Operating	126,124	135,765	142,807	144,811
TOTAL EXPENDITURE	679,654	731,356	814,476	837,676
PROFIT / (LOSS)	4,356	(3,903)	(31,140)	(70,613)
BALANCE SHEET				
ASSETS				
Current Assets	71,876	116,325	114,377	46,640
Non Current Assets	40,171	31,457	16,974	11,656
Total Assets	112,047	147,782	131,351	58,295
LIABILITIES				
Current liabilities	72,491	108,441	113,862	153,408
Non Current Liabilities	14,203	17,891	27,179	Inc in current
Total Liabilities	86,694	126,332	141,041	153,408
NET ASSETS	25,353	21,450	(9,690)	(95,113)

The following comments are made taking due cognisance of the information contained in the above table:

- The significant increase in subsidies received in 2006/07 has been offset by losses recorded in Child Care Assistance, fees obtained from clients and other operating income resulting in an overall reduction of \$16,263 in total income received.
- There has been a steady increase in staff cost incurred over the last four years which more than offsets any increase (or reduction) in fee increases over the period.

Council audit: years of trading while insolvent with significant increases in state government funding..

The centre's own budget for 2006/7 does not mention \$209,599 in childcare funding or its own childcare fee income of \$247,463 as per the council audit. Staff costs of over \$671,000 do not appear.

The issue of staff costs brings us neatly back to the problem that first surfaced at the centre – the \$50,000 superannuation debt. The council audit's figures show that around a million dollars of government subsidy passed through the centre over the previous three years.

The discrepancies remain unexplained and when pressed to answer why the department's auditor submitted only an "interim" report, an internal review officer replied "I have been advised that this report was considered adequate to meet the needs of the department and provided all the required information."³⁰

The SCC was declared insolvent and council took over management on August 13, 2006 with state government child care funding also withdrawn due to "serious issues about the accounting and management practices of the centre."³¹ It appeared that ratepayers would carry the burden of bailing the centre out.

The following week Brimbank CEO Mr Nick Foa confirmed the centre would be taken over by council, saying "the council's first priority would be to ensure day-long child care was maintained, *followed by other issues involving unpaid entitlements to staff.*"³² These priorities represented a further loss to ratepayers of tens of thousands of dollars.



Department of Planning and Community Development

Ref:

1 Spring Street
Melbourne Victoria 3000
GPO 2392
Melbourne Victoria 3001
Telephone: (03) 9208 2333
Facsimile: (03) 9208 3580

Our Ref:

REVIEW OF FREEDOM OF INFORMATION DECISION –

I refer to your request dated 14 July 2008, received in this office on 17 July 2008, for internal review under the *Freedom of Information Act 1982* (the Act) of the decision of the Manager, Cabinet and Parliamentary Services relating to access to "the independent audit commissioned by the then Department of Victorian Communities in relation to the Sydenham Community Centre".

I am authorised by the Secretary to conduct internal reviews under Section 51 of the Act. In that capacity I have identified the relevant documents (30 pages) provided to you and have decided to affirm the primary decision dated 25 June 200 to:

- Grant access in part to 10 pages; and
- Grant access in full to 20 pages.

I have also sought advice in relation to your comment requesting a copy of the "complete report" and not an interim report, as my investigations found no evidence of any other reports beyond the interim report.

I have been advised that the Department commissioned an independent report of the Sydenham Community Centre by Britac Consultants. The report provided to the Department was entitled "Interim Report" by Britac Consultants. I have been advised that this report was considered adequate to meet the needs of the Department and provided all the required information. Accordingly no further report was requested by the Department or provided by the Consultant.

If you are not satisfied with this decision, you are entitled under Section 50 (2) of the Act to apply for its review by the Victorian Civil and Administrative Tribunal (VCAT). Please note that your application must be made within 60 days of receiving this decision.

VCAT application forms and information can be obtained from the Registrar, General List, VCAT telephone 9628 9755 or online at www.vcat.vic.gov.au

Yours sincerely

DR PETER HERTAN
Internal Review Officer

30/7/2008



Not my problem – department happy with an interim report.

Summing up the press accounts, the *Brimbank Leader* reported on September 4 2007 that the centre had for three years been trading while insolvent with the full knowledge of the council. As well, it had failed to lodge audit reports with Consumer Affairs Victoria for the previous four years.³³

Even so “the councillors had voted to cover unpaid staff entitlements for childcare staff during an in-camera meeting.”³⁴

Conclusion

This then, is how it's done. In many parts of Australia, trading while insolvent is considered to be a criminal offence attracting heavy fines or even prison terms. In Brimbank however, a government department is called to “review and improve governance and financial management processes.”³⁶ Important information is not assessed, or kept from public view by the department's handling of Freedom of Information laws.

	07/06 Budget	EEOY 06/07	Variance	Comment
KindaR				
<u>Income</u>				
KindaR Fees	\$ 14,800.00	\$ 15,417.00	-\$ 617.00	20 children @ \$184 x 4 terms
<u>Expenses</u>				
Children's Materials - consumabil	\$ 600.00	\$ 72.10	\$ 527.90	\$50 per month
Equipment/Toys	\$ 600.00	\$ 600.00	\$ 600.00	\$50 per month
Wages & Salaries	\$ 10,583.13	\$ 600.00	\$ 9,983.13	see Staff costs sheet (3:1 for occ. Care/kindaroos)
Super	\$ 952.48	\$ 75.74	\$ 876.74	
Total Expenses	\$ 12,735.61	\$ 747.84	\$ 11,987.77	
Net Profit/Loss On operations	\$ 2,064.39	\$ 14,669.16	-\$ 12,604.77	

Where's the money? Government audit documents explaining wage anomalies have been withheld.

With hindsight we can infer that corruption at the local government level in Victoria is given the nod by a politicised public service, ruled by “interested” government members who are not above shifting the blame among themselves in order to obscure what is going on. Victorian laws - including the Local Government Act and the Electoral Act - are framed in such a way as to allow the continued rorting and misuse of taxpayer resources by those “in the know”. In the absence of a Crime and Corruption Commission, no legal accountability can be brought to bear against the perpetrators.

Another, related reason why crime is able to flourish in Brimbank is that police resources in the region have been depleted by one third under the current Labor administration. Criminal lawyer Rob Stary has recently accused Premier John Brumby of “allowing corruption to flourish in Victoria”, describing him as “someone who through their stewardship has seen this level of corruption flourish”.³⁵

Where residents have concerns about how their councils are run, they should expect little help from Victoria's public service or its anti-corruption bodies such as they are constituted in 2010. For all we know, they could well be involved. To those residents, the best advice is that the price of democracy is eternal vigilance. This is particularly the case where State Labor maintains a stranglehold over an area through ethnic branch stacking and other forms of electoral rorts.

The rorting of community assets is a particularly despicable act because of the direct effect it has on local residents, such

as the disappearance of child care places. Members of the public should be aware of warning signs that their community assets are being abused and can ask themselves these questions where they have concerns:

- What level of service is being delivered at the centre?
Is it being used effectively as a public asset?
- Is the building and its surrounds maintained properly?
- Are there signs of political involvement at the centre?
- Is the centre run in a transparent way, are budgets and finances open to public view?
- Does the centre comply with its statutory reporting obligations? Who are the members of the executive committee?
- What level of public funding does the centre attract?

Answers to these questions can be found in many places - on the web, through government departments and Freedom of Information, and by asking questions directly at council meetings. When a more complete picture is established, it may be necessary to go public.

In the end, the absence of an independent crime and corruption commission in Victoria will continue to see politically-sponsored corruption flourish. The perpetrators will continue to avoid responsibility and are free to resume once a controversy has died down, ready to start the whole process over again. For these reasons it is everyone's duty to call for a properly-constituted ICAC, with teeth to hold our wayward elected representatives fully to account.

End notes

1. Ombudsman Victoria, *Investigation into the alleged improper conduct of councillors at Brimbank City Council* report tabled in Parliament on May 7, 2009

http://www.ombudsman.vic.gov.au/resources/documents/Investigation_into_the_alleged_improper_conduct_of_councillors_at_Brimbank_City_Council_P1-P1991.pdf (accessed 2.2.2010)

2. Two of them, Andre Haermeyer and Theo Theophanous have now resigned, bringing to six the number of Labor MPs who have left during the current electoral term. They include Lynne Kosky (Altona, Transport Minister), Evan Thornley (Southern Metro) Steve Bracks (Williamstown, former Premier) and John Thwaites (Albert Park, former Deputy). George Seitz retires at the 2010 elections while Justin Madden recently lost a historic no-confidence vote against him. Only Telmo Languiller appears to have escaped without repercussions.

3. see http://www.brimbank.vic.gov.au/Directory/S2_Item.asp?Mkey=878&S3Key=87 (accessed 12.2.2010)

4. For contemporary discussion on the SunRRA forum, see http://www.sunshine.asn.au/component/option.com_fireboard/Itemid,0/function.view/id.2666/catid.8/#2663

http://www.sunshine.asn.au/component/option.com_fireboard/Itemid,0/function.view/id.1118525/catid.2/

http://www.sunshine.asn.au/component/option.com_fireboard/Itemid,0/function.view/id.1123863/catid.2/#1123863 (accessed 12.2.2010)

5. SunRRA's complaint to the Auditor General brought no action. He recommended that residents take legal action against the council if they wanted details of the package revealed.

6. Ombudsman Victoria, see above.

7. SunRRA, *Mayor's Father Enjoys Rent Free Council Building*
<http://www.sunshine.asn.au/content/view/95/46/> (accessed 14.12.2009)

8. see Brimbank Council meeting agenda no. 284, November 2009

9. Victorian Legislative Council **Hansard**, March 9 2010 p.657
"Rumours persist that the MRCNW involves itself in the internal politics and machinations of the ALP, which is not surprising when you consider that the chair of the MRC is Hakki Suleyman, who is well known to us and the Minister for Planning."

10. Taylors Ward results from the 2005 Brimbank Council elections:

Candidate	First preference votes
MASSANG, Lydia	1226
GIUDICE, Margaret	4628
ESPOSITO, Adrian	458
SULEYMAN, Natalie	10367
CHOLOSZNECKI, Gail	540
CELEBIOGLU, Gary	2362
JACOMB, William	1160
ZUKALSKI, Marilyn	2426
CARBONARI, John	894

Quota: 6016

Elected: SULEYMAN, Natalie (1st elected)

Elected: GIUDICE, Margaret (2nd elected)

Elected: ZUKALSKI, Marilyn (3rd elected)

source <http://www.vec.vic.gov.au/BrimbankResult2005.html> (accessed 10.01.2010).

11. Ombudsman p.108.

12. Ombudsman p.109.

13. Victorian Legislative Council **Hansard**, June 6, 2007.

14. *ALP secretary to face charge on pay* **the Age** February 7, 2008. "Mr

Andrew Giles writes: 'One matter that has troubled me this financial year is the discrepancy between salary payments made, which are consistently approximately \$10,000 over a budget that has only recently been set.' "

15. *Desperation Star* June 26, 2007. <http://www.starnewsgroup.com.au/story/44352> (accessed 27.2.10).

16. *Staff exodus at centre* **The Advocate** June 26, 2007 p3-4.

17. **The Advocate**, see 16 above.

18. From a contemporary account. See http://www.sunshine.asn.au/component/option.com_fireboard/Itemid.71/func.view/id.16813/catid.2/#16813 (accessed 14.4.2010)

Marilyn Zukalski

Your Community Taylors Ward Candidate

Why I am standing for Council

I am committed to working for all Brimbank residents.

My priorities for our local area are:

- Improving the landscape of our community
- Increasing community facilities for our youth
- Establish a local Neighbourhood Watch to improve safety

Why I need your support

I have lived in Sydenham with my family for the past 20 years. I am currently the Community Development Coordinator for the **Sydenham Community Centre**.

My achievements for our community include:

- Assisted with the creation of Emmaus Catholic School in 1997
- Preservation of local landmarks through my work as President of the Sydenham Historical Society
- Receiving a Centenary Medal Award from the Victorian Government for Volunteer Work in 2004
- Supporting our community through my work as a Board Member of the Migrant Resource Centre
- Actively supported the raising of \$10 000 to purchase a special walker for a child with cerebral palsy



19. *Stress boils over on Centre row* **Brimbank Leader** July 3, 2007.
20. *Councillor warned by mayor over debate* **The Advocate** July 3, 2007.
21. *Stress boils over on centre row* **Brimbank Leader** July 3, 2007.
22. Stuart N. Newey. *Audit Assignment: Review of Sydenham Community Centre's Financial Position* report provided to Brimbank Council on June 24 2007 obtained under FOI.
23. see Newey, above.
24. Stuart N. Newey. *Audit Assignment: Update review of Sydenham Community Centre's Financial Position* report provided to BCC on August 5, 2007 obtained under FOI.
25. see Newey, *Update* above.
26. *New hero same villain* **the Age** August 23, 2007 see <http://theage.com.au/news/opinion/new-hero-same-villain/2007/08/22/1187462351244.html> (accessed Jan 12 2010).
"He has scrapped one department (the Department for Victorian Communities, set up by Bracks and championed by his deputy premier, John Thwaites, as co-ordinator of the Government's social justice policies) and created another (the Department of Planning and Community Development, which we are told will take over the responsibilities of the old department but which will clearly have a greater focus on issues relating to urban planning and development). "
27. Britac Consultants *Interim report on the Sydenham Community Centre* report provided to the Department for Victorian Communities on July 29, 2007 obtained under FOI .
28. Britac, above.

29. see Newey, *Update* above. A breakdown of the government funding figure is provided:

Childcare benefits	209,599
Pre School subsidy	33,717
Neighbourhood House	64,673
ACFE funding	18,347
Council subsidy	12,000
Occasional childcare	4,581
Consultation grant	1,000
Other	2,007
Special needs subsidy	13,405
total funding	399,218

The child care facility caters to 44 children.

30. Correspondence from DPCD dated July 20, 2008 see illustration on page 26.

31. *City moves on centre after audit* **Brimbank Leader** Aug 14, 2007.

32. *Community centre gains a new life* **The Advocate** August 21, 2007.

33. *Council's part in crew's ruin* **Brimbank Leader** September 4, 2007.

34. *Council's part in crew's ruin* as above.

35. *Fury over Brumby's comment on Williams* **the Age** April 21, 2010. See <http://www.theage.com.au/national/fury-over-brumbys-comment-on-williams-20100421-szz7.html> (accessed 21.4.2010).

36. *Government intervenes in community centre crisis* **The Advocate** July 10, 2007.