

The Senate

Finance and Public Administration
References Committee

A funding matter under
the Dairy Regional
Assistance Program

June 2003

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ISBN 0 642 71273 5

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Terms of Reference

On 27 March 2003, the Senate referred to the Committee for inquiry and report by 30 June 2003 the following:

The circumstances surrounding the application, approval and expenditure of funding under the Dairy Regional Assistance Program (DRAP) for the construction of a new building and the installation of additional machinery at the Moruya Steel Profiling Plant in New South Wales in 2001-2002.

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EXECUTIVE SUMMARY

This report examines the circumstances surrounding the approval of Dairy Regional Assistance Program (Dairy RAP) funds for a project in Moruya on the New South Wales south coast. Investigation of the assessment and approval of this particular grant has highlighted a number of weaknesses in the administration of this Commonwealth funded program.

Key Issues

The key issues examined in this report are:

- The sequence of events leading to the approval of Mordek's Dairy RAP funding application;
- The role of key stakeholders involved in the development, assessment and approval of Mordek's application;
- Whether the grant to Mordek was appropriate according to the published Dairy RAP guidelines; and
- Whether this case highlights broader problems with the administration of this program.

Background: Chapter 1

In July 2002, a story entitled 'Dairy RAP Dilemma' was published in the *Coastal Sun* newspaper, suggesting irregularities in a Dairy RAP grant of \$339,000 to Moruya Decking and Cladding Pty Ltd, trading as Mordek. The principal issues raised in relation to the Mordek grant are that:

- Dairy RAP funding was approved for the construction and fit out of the Mordek's new steel profiling plant at North Moruya well after construction of the building was underway, in breach of a guideline proscribing retrospective funding.
- The Dairy RAP funds granted to Mordek for the steel profiling plant were in fact diverted to the Eurobodalla Shire Council to partially cover the cost of sewerage the North Moruya Industrial Estate.

The issue was pursued in the Senate by Senator Kerry O'Brien, whose inquiries to the department responsible for administering Dairy RAP produced unsatisfactory answers which did not allay suspicion that this grant may have breached a number of Dairy RAP guidelines. The Senate referred the matter to the Committee for inquiry and report by 30 June 2003.

Context – Dairy RAP Policy and Practice: Chapter 2

The Dairy Regional Assistance Program was introduced as part of the Commonwealth Government's response to the deregulation of the dairy industry which occurred in

July 2000. The aim of Dairy RAP was to assist regions adversely impacted by dairy deregulation by supplementing business investment to generate employment. It was a submission-based funding program, whereby interested parties could make an application for funds which were then assessed against published guidelines. The assessment process involved reviews by Area Consultative Committees (ACCs) and in some cases external assessors as well as the responsible Commonwealth government department. The Department of Employment, Workplace Relations and Small Business (DEWRSB) was initially responsible for Dairy RAP, but responsibility was transferred to the Department of Transport and Regional Services (DoTARS) in January 2002.

The Mordek application process: Chapter 3

Mordek lodged an application for Dairy RAP funds with the NSW South East Area Consultative Committee on 12 June 2001. Over six months later, on 17 December 2001, a revised application received funding approval from the departmental Dairy RAP delegate. This was announced on 31 January 2002.

Between the application being lodged and funding approved, two key changes occurred. First, the content of the application was substantially altered. The initial application explicitly sought Dairy RAP funding to make a contribution to the Eurobodalla Shire Council for sewerage headworks. Later versions of the application excluded the sewer contribution from the project budget and sought funding only for the construction and fit out of a new steel profiling plant. This was done at the request of departmental officials, who at different points of the assessment process identified funding duplication and competitive advantage issues as making the sewer headworks ineligible for Dairy RAP funding.

Second, prior to receiving notification of funding approval, Mordek began constructing the new steel profiling plant. Excavation work was underway by at least September 2001, work on the foundations was done in November, the frame went up in December and the cladding was done in January 2002. This should have affected the project's eligibility for Dairy RAP funding due to a guideline proscribing retrospective funding. However, it was not identified as an issue by departmental officers, despite information available to them that at least some work had been undertaken on the project.

The Role of Stakeholders: Chapter 4

The role of stakeholders involved in the assessment and approval of the Mordek grant was a key area of interest for this inquiry. In particular, the committee examined the role of the proponent Mordek, the South East NSW Area Consultative Committee (Seacc) and the Eurobodalla Shire Council.

Mordek applied for Dairy RAP funds at the suggestion of an officer of the Eurobodalla Shire Council, with the intention of using them as a contribution to the cost of sewerage for the North Moruya Industrial Estate. This intention was made clear to the funding department in the initial Dairy RAP application, which stated that Mordek

was able to finance the whole cost of the steel profiling plant itself. Due to commercial pressures Mordek began construction of the new steel profiling plant before receiving notification of approval. Although understandable, this was contrary to the funding contract which specified 1 March to 31 August 2002 as the funding period. There is no evidence to suggest that Mordek intentionally misled the department, although the low level of understanding of the Dairy RAP guidelines demonstrated through the process is of concern.

In June 2001, Seacc endorsed an application that should have been ineligible for Dairy RAP funds. This was to some extent due to Seacc's ambiguous role in administering Dairy RAP, whereby it was expected both to encourage proposals that met the objectives of the program, and vet these same proposals against the funding criteria. Seacc's approach in this case suggests a willingness to disregard the criteria in favour of encouraging positive outcomes. The Committee found it unusual that Seacc was not consulted during the later stages of the application process or given formal feedback as to why the initial application was ineligible.

South East Area Consultative Committee

The Committee is not satisfied Seacc understood the Dairy RAP guidelines or its role in the application of the guidelines to project proposals. It is a matter of significant concern to the Committee that Seacc endorsed an ineligible project proposal for the provision of sewerage infrastructure for the North Moruya Industrial Estate. The Committee regrets Seacc, including the Chair, did not feel greater responsibility to ensure Dairy RAP was implemented in accordance with Commonwealth policy.

A related concern is the reliance upon Seacc's initial endorsement of the ineligible sewerage proposal through all stages of Mordek's application assessment.

Recommendation 1

The Committee recommends that DoTARS define the role of Area Consultative Committees (ACCs) in the implementation of Commonwealth funding programs and undertake a review of the performance of individual ACCs in relation to these responsibilities.

Eurobodalla Shire Council has a strong interest in sewerage the North Moruya Industrial Estate to stimulate economic development in the area. It had previously sought to obtain both Commonwealth and New South Wales state government funds for this purpose without success. Council records show that when Dairy RAP commenced, council officers encouraged Mordek to apply to this program for funds which could then be used as a contribution to the cost of the sewer works. Full meetings of the Council endorsed and supported the application on several occasions. The Committee notes with some concern that Council's evidence to it is not consistent with Council's own documentary record.

Eurobodalla Shire Council

The Committee concludes Eurobodalla Shire Council had a formative role in the original Mordek application and a continuing interest in the progress of the application.

The evidence by Eurobodalla Shire Council that it never expected the Mordek Dairy RAP grant to fund sewerage works at the North Moruya Industrial Estate cannot be reconciled with the minutes of Council's Business Development Board, the original Mordek application, the 2001-02 Eurobodalla Shire Council Annual Report and a succession of Eurobodalla Shire Council minutes.

In particular, the Committee notes the former Mayor's report to the Works and Facilities Committee on 11 September 2001, noting that federal funds for the sewerage project at the industrial estate were being 'sourced through the Dairy Regional Assistance Program and being channeled through the owner of the North Moruya Industrial Estate, Mr John Nader'.

The Committee is concerned that the General Manager and Mayor provided no reasonable explanation for the inconsistency between Eurobodalla Shire Council's evidence to the Committee and Council's own documentary record.

The Department's Administration of the Grant: Chapter 5

The Committee found a number of deficiencies in the department's assessment and approval of the Mordek grant. Issues which should have precluded the application from being approved were not picked up by departmental officers until relatively late stages of the assessment process. Even once these issues were identified, the changes made to the project described in the application were insufficient to remove grounds for rejecting it. Ultimately, a grant which did not meet certain criteria was approved even though departmental officials knew, or should have known, that the project in question was already underway, and that the grant funds would indirectly be used to fund a sewer project that was not eligible for funding under the program.

Some of the weaknesses in the department's administration of Dairy RAP that this case highlights are:

- Lack of clarity in the guidelines and criteria against which applications are assessed, leading to;
- A low level of understanding of the guidelines and policy rationale of the program among departmental officers and stakeholders;
- Insufficient investigation and monitoring of proposed and approved projects; and
- Inadequate record keeping.

Assessment and approval of the grant

The Committee is not satisfied the Mordek application was assessed and approved by the funding department in accordance with Dairy RAP guidelines.

The Committee is not satisfied that Dairy RAP funds were not used, albeit indirectly, to enable the proponent to make a contribution to sewerage the North Moruya Industrial Estate, an objective proscribed by the program guidelines.

Due to the considerable irregularities and inconsistencies in relation to the Mordek grant, the Committee cannot be confident that other Dairy RAP grants were not subject to similar deficient administration.

Recommendation 2

The Committee recommends that the Australian National Audit Office (ANAO) undertake an audit of the administration of Dairy RAP, including the assessment and approval of the Mordek grant.

The Committee recommends the ANAO audit address each component of program administration, including the determination of regional need, the application process, the community information process, the role and responsibility of the Area Consultative Committees and the role and responsibility of DEWRSB and DoTARS.

Regional funding distribution

The Committee is not satisfied on the basis of the evidence it received that the Australian Bureau of Agricultural and Resource Economics (ABARE) assessment of regional impact of dairy deregulation was accorded sufficient weight in the project funding allocated to the Eurobodalla region and possibly other regions eligible for Dairy RAP funding.

Recommendation 3

The Committee recommends that Commonwealth funding to address regional disadvantage be distributed on the basis of objective funding considerations and that mechanisms be put in place to support intended policy outcomes.

Program guidelines

The Committee is concerned that the Dairy RAP guidelines lacked sufficient clarity to assist the proponent, the South East NSW Area Consultative Committee (Seacc), Eurobodalla Shire Council, the former Department of Workplace Relations and Small Business and the Department of Transport and Regional Services to understand the program principles. The Committee is particularly concerned that the guidelines were ambiguous or silent on matters related to funding duplication and retrospectivity and the application of competition principles.

Recommendation 4

The Committee recommends that Commonwealth grant program guidelines clearly outline all criteria relevant to assessment.

Assessment of the Mordek application

The Committee is concerned that DEWRSB/DoTARS failed to understand, explain and apply program principles in relation to the Mordek application.

The proponent had little understanding of the Dairy RAP guidelines at the time of application, and the Committee largely assigns responsibility for this lack of understanding to Seacc and DEWRSB/DoTARS.

The Committee is concerned that the flaws in the Mordek application were not addressed during the proponent's preliminary discussion with Seacc and DEWRSB in mid-2001.

The Committee is also concerned that departmental officers responsible for the assessment of the application appeared to identify with its success at the expense of proper assessment against program guidelines.

The Committee does not accept the delay between application and final approval as a basis on which to excuse DoTARS' lack of knowledge about the state of the building project. It is regretted DoTARS failed to undertake a site visit, or request advice from Seacc, during the six months between the initiation and conclusion of the Mordek grant assessment.

The frequency and extent of amendments to the original application, including amendments by departmental officers, suggests unacceptable weakness in the rigour of the program's administrative arrangements.

A worrying feature of the assessment is the paucity of assessment documentation and advice on decision-making made available to the Committee. The Committee notes the apparent absence of documentation demonstrating the relative importance of criteria and other considerations taken into account in assessing the Mordek application.

The Committee notes with concern the related failure of DoTARS to address a number of the Committee's questions on the grounds relevant decision makers were unable to provide evidence because they were working for departments other than DoTARS or had left the service of the Commonwealth. The Committee's capacity to scrutinise public expenditure would be much reduced if the Committee accepted this explanation as a basis on which to diminish Executive responsibility to the Parliament.

A related consequence of the inferior documentary record maintained by DoTARS is the department's evidence to the Committee that the answers to three parliamentary questions on notice from Senator O'Brien contained false information.

The assessment of the Mordek grant was neither transparent nor systematic, undermining the Committee's confidence in its integrity.

Recommendation 5

The Committee recommends DoTARS adopt transparent and systematic assessment procedures for regional program grants, incorporating an improved documentary record of assessment procedures.

Value for money

The Committee accepts the proponent's evidence that the steel profiling project would have proceeded to completion without the Dairy RAP grant. The Committee also notes the finding of the external assessor that finance for the steel profiling plant was secured by the proponent prior to grant approval.

Accordingly, the Committee is not satisfied the Mordek grant facilitated net employment gain for the Eurobodalla region.

The Committee notes that the Dairy RAP guidelines did not prohibit the funding in the absence of genuine need.

Recommendation 6

The Committee recommends that the Commonwealth seek to maximise the benefit of public expenditure on regional program grants by incorporating a 'best value' principle into program guidelines.

Project funded retrospectively

The Committee concludes the Dairy RAP grant funded the construction of the steel rolling plant at the North Moruya Industrial Estate retrospectively.

It is clear the project commenced before the grant was approved. Accordingly, the grant approval was inconsistent with the rule prohibiting retrospective funding.

The Committee does not accept DoTARS evidence that the project construction would need to have been concluded before approval to contravene the retrospective funding rule.

Chapter 1

Introduction

Background

1.1 This inquiry has its origins in concerns raised in the media during the middle of 2002 about the use of funds from the Dairy Regional Assistance Program (Dairy RAP) for a project in Moruya on the New South Wales coast.

1.2 On July 11 2002, the *Coastal Sun* newspaper carried a story entitled ‘Dairy RAP dilemma’. It reported alleged breaches of Dairy RAP guidelines in the grant of \$339,000 to the Mordek steel profiling plant at Moruya. The article suggested that the Commonwealth money given to Mordek was not used to fund the steel profiling plant that was the subject of Mordek’s application. It claimed that the money was, instead, paid to the Eurobodalla Shire Council to partly cover the cost of sewerage for the North Moruya Industrial Estate, where the Mordek plant is located. The article also claimed that Eurobodalla Shire Council staff, ‘Dairy RAP members’ and representatives of the federal government had met to discuss how to obtain Commonwealth funds for the sewerage project.

1.3 Shortly after the article was published, Senator Kerry O’Brien, the Shadow Minister for Primary Industries and Resources, raised the Mordek case in the Senate. On 6 August 2002, Senator O’Brien placed on notice a series of questions to the Minister for Transport and Regional Services relating to projects approved for Dairy RAP funding, including Mordek.¹ Senator O’Brien placed further questions on notice on 4 October,² 8 October² and 6 November 2002.³

1.4 Senator O’Brien’s questions addressed, among other things, the history and nature of the Mordek application, the process by which the application was approved and whether the funding had been granted for construction of the plant or sewerage for the industrial estate.

1.5 The Minister responded to these questions on 24 September,⁴ 19 November⁵ and 9 December 2002.⁶

1 Questions on notice 503-514, Senate *Notice Paper*, No.21, Monday 19 August 2002, pp.94-101.

2 Questions on notice 735-741; and 752-757, Senate *Notice Paper*, No.37, Monday 14 October 2002, pp.102-104 and pp.109-110 respectively.

3 Questions on notice 853-863, Senate *Notice Paper*, No.45, Monday 11 November 2002, pp.132-134.

4 Questions on notice: 503-514 received 24 September 2002, Senate *Hansard*, pp.4931-41.

1.6 Senator O'Brien's inquiries also led him to request some information from the Eurobodalla Shire Council regarding the timing of the construction of the Mordek steel profiling plant and plans to sewer the North Moruya Industrial Estate.

1.7 Senator O'Brien pursued the matter further during an additional estimates hearing on 11 February 2003. At that hearing, Senator Ian Macdonald, representing the Minister for Transport and Regional Services, agreed that the department would review the Mordek grant, and provide an answer to Senator O'Brien's questions within a week.

1.8 In the event, the Minister did not provide a copy of the outcome of the departmental review until 23 April 2003.

1.9 In the interim, on 26 March 2003 Senator O'Brien gave notice of a motion to establish a Senate inquiry into the circumstances surrounding the application, approval and expenditure of Dairy RAP funding for the construction of a new building and installation of additional machinery at the Moruya Steel Profiling Plant. In setting out his reasons for an inquiry into the matter, Senator O'Brien pointed to several concerns about the Mordek case, namely:

- That Dairy RAP funding for the Moruya steel profiling plant had been approved after construction of the new building was well under way;
- That, on the basis of the above, the Mordek grant had breached the Dairy RAP guideline that projects are not to be funded retrospectively; and
- That funding had not been used to finance construction of the plant but rather diverted as part-payment to the Eurobodalla Shire Council for the cost of sewerage the North Moruya Industrial Estate.

1.10 In sum, Senator O'Brien stated that the Mordek case raised issues about the effective administration of a Commonwealth government program.⁷

1.11 This report explores whether the Mordek matter does in fact raise concerns about not only that case in particular but also the overall administration of Dairy RAP.

Reference to the Committee and conduct of the inquiry

1.12 On 27 March 2003, the Senate referred to the Committee for inquiry and report by 30 June 2003 the following:

5 Questions on notice: 735-741 received 19 November 2002, *Senate Hansard*, pp.6956-61; Questions on notice: 752-757 received 19 November 2002, *Senate Hansard*, pp.6961-65.

6 Questions on notice: 858-863 received 9 December 2002, *Senate Hansard*, pp.7523-26.

7 *Senate Hansard*, 26 March 2003, pp.9804-9805.

The circumstances surrounding the application, approval and expenditure of funding under the Dairy Regional Assistance Program (DRAP) for the construction of a new building and the installation of additional machinery at the Moruya Steel Profiling Plant in New South Wales in 2001-2002.

1.13 The Committee advertised the inquiry in the *Australian* on 9 April 2003 and on its homepage. The Committee also wrote to the relevant parties involved in the matter drawing attention to the inquiry and inviting submissions.

1.14 The Committee received four submissions and one supplementary submission, all of which were published. A list of submissions is contained in Appendix 1. The Committee also received a voluminous amount of additional information, most of which was published except for a handful of documents that were treated as *in camera*. Some of these documents were subsequently published.

1.15 A public hearing was held in Canberra on 8 May 2003. Details of the witnesses who appeared at the hearing are contained at Appendix 2. The *Hansard* transcript of evidence taken at the hearing is available on the Committee's homepage at http://aph.gov.au/senate/committee/fapa_cttee.

Key issues and report outline

1.16 The key issues examined in this report include:

- The sequence of events leading to approval of Mordek's application for Dairy RAP funding;
- The role of the various stakeholders involved in the development, assessment and approval of Mordek's Dairy RAP application;
- Whether the administration of the Dairy RAP guidelines by the department was appropriate in this case; and
- Whether this case highlights broader problems with the administration of this program.

1.17 To place these issues in context, Chapter 2 sets out the policy rationale for Dairy RAP and describes how it is administered, particularly the application process and guidelines used to determine funding eligibility.

1.18 In Chapter 3, the Committee discusses the history of Mordek's application for Dairy RAP funding. It details each stage of what was a lengthy process of consultation between Mordek, the funding department and several external bodies. It traces how Mordek's application changed from originally seeking funding for sewerage works, to seeking and receiving funding only for the building and equipping of a new steel profiling plant. In this chapter the Committee identifies a number of concerns with the way in which the application was handled, including questions about when work on the project started and the adequacy of the vetting process of the application at several stages.

1.19 Chapter 4 examines the role of the various stakeholders involved in the Mordek application. It specifically examines whether the role played by any of the stakeholders was unusual according to the normal application and approval process for Dairy RAP funds.

1.20 Chapter 5 addresses the funding department's administration of the assessment, approval and audit process of the Dairy RAP grant to Mordek. In this chapter the Committee considers the following questions: Did departmental officials follow all proper processes in assessing and approving the Mordek application? Was the level of feedback and assistance given to the applicants appropriate in the circumstances? Does this case reveal a need for the Dairy RAP guidelines to be reviewed and clarified? And was it appropriate to approve the grant to Mordek in light of relevant information available to the department and the funding guidelines? In addressing these questions, the Committee also considers whether any apparent lapses in this case reflect broader problems with the department's administration of Dairy RAP.

1.21 The Committee's findings and conclusions are found at the end of Chapters 4 and 5.

Acknowledgements

1.22 The Committee wishes to express its appreciation to everyone who contributed to the inquiry by making submissions, providing other information or appearing before the Committee at the public hearing.

Chapter 2

The Dairy Regional Assistance Program

2.1 This chapter sets out the policy background and aims of the Dairy Regional Assistance Program. It explains the program's organisational framework and how it is administered.

2.2 The chapter also describes two key areas of interest for the inquiry: first, the stages and bodies involved in the application process for grants under this program; and second, the guidelines that are used to determine eligibility for program funding. With regard to the latter, the chapter highlights those guidelines that are particularly relevant to the Mordek case.

Background

2.3 The Dairy Regional Assistance Program (Dairy RAP) was announced in March 2000 as part of the Commonwealth Government's Dairy Industry Adjustment Package (DIAP). Taken as a whole, DIAP was designed to assist dairy farmers and dairying communities during the transition to a deregulated milk market which occurred on 1 July 2000. DIAP had three elements, funded by a levy on sales of drinking milk:

- The Dairy Structural Adjustment Program, which provided payments to eligible dairy farmers based on deliveries of manufacturing and market milk in the year 1998-99;
- The Dairy Exit Program, which provided an alternative payment to eligible dairy farmers who chose to exit agriculture of up to \$45,000; and
- The Dairy Regional Assistance Program.¹

2.4 Unlike the other two elements of the DIAP, Dairy RAP was never intended to go directly to dairy farmers, but rather to 'assist *communities* that have been impacted upon by the deregulation of the dairy industry'.² [Emphasis added]

2.5 According to the official brochure, Dairy RAP:

[Facilitates] long term employment by supplementing business investment and provides support for services that will lead to on-going economic and social benefits for regions affected by dairy deregulation.³

1 DoTARS, Dairy Regional Assistance Programme Guidelines, August 2002, p.7.

2 DoTARS, Dairy Regional Assistance Programme Guidelines, August 2002, p.7.

3 DoTARS, Dairy Regional Assistance Programme Guidelines, August 2002, p.7.

2.6 Dairy RAP was established in legislation by the *Dairy Industry Adjustment Act 2000*, passed in March 2000, which amended the *Dairy Produce Act 1986* to include the government's dairy industry adjustment package.

2.7 Implementation of Dairy RAP commenced on 1 July 2000. Initially, \$45 million was allocated, and this was increased by \$20 million in June 2001 to a total of \$65 million.

Responsibility for Dairy RAP

2.8 When Dairy RAP was first introduced, it was administered by the then Department of Employment, Workplace Relations and Small Business (DEWRSB) as part of the existing Regional Assistance Program. The relevant legislation explicitly provides that:

...the Department of Employment, Workplace Relations and Small business is responsible for administering the Dairy Regional Assistance Programme. This includes (but is not limited to) responsibility for determining:

- (a) the recipients of payments; and
- (b) the amounts of payments; and
- (c) the timing of payments; and
- (d) the terms and conditions of payments.⁴

2.9 In an unusual arrangement, however, the Minister responsible was not that portfolio's Minister, but instead the Minister for Agriculture, Fisheries and Forestry, Mr Warren Truss MP. DEWRSB reported directly to Mr Truss on Dairy RAP matters.

2.10 The machinery of government changes which occurred in November 2001 saw departmental responsibility for the Dairy RAP program transferred to the Department of Transport and Regional Services (DoTARS). The Committee has heard that DoTARS assumed responsibility for the Dairy RAP in January 2002, and files and staff relevant to the Dairy RAP program were transferred around that time.⁵ Despite the machinery of government changes, however, ministerial responsibility for the program was retained by the Minister for Agriculture, Fisheries and Forestry.

2.11 The case under consideration in this inquiry crosses over the period when departmental responsibility was transferred from DEWRSB to DoTARS. When the Mordek application was initially lodged, DEWRSB was administering the program, but the actual funding agreement was signed after DoTARS had assumed responsibility. However, this does not appear to have substantially affected the

4 *Dairy Produce Act 1986* as amended, s86(2).

5 Committee, *Hansard*, 8 May 2003, p.8.

administration of the program, as relevant staff and files were simply transferred from the jurisdiction of one department to the other.

Administration of the program

2.12 The Dairy RAP program relies on interested parties developing project proposals which are then assessed by the department to determine whether they meet the funding criteria for the program. Proposals are assessed in funding rounds which are staggered throughout the year. The usual assessment process involves several stages, as follows:

- The proponent develops a project proposal, in consultation with a support officer from the local Area Consultative Committee (ACC).
- The ACC considers project proposals brought to it and endorses 'suitable' proposals as being consistent with regional priorities.
- Projects which have received ACC endorsement are sent to the department's regional office, which conducts an initial assessment of the application, and may liaise with the ACC and proponent as necessary.
- National office staff review the regional office's assessment and where necessary consult with other relevant government agencies.
- An independent consultant may be engaged to conduct an external assessment of a proposed project, in particular the financial details.
- Once satisfied that a project meets the funding criteria, national office staff make a recommendation to the program delegate, who has the authority to approve funding.
- The Minister for Agriculture, Fisheries and Forestry is informed of successful projects for each round of Dairy RAP funding.

2.13 Actual decision making power for funding under Dairy RAP rests with the departmental program delegate. This has generally speaking been an Assistant Secretary in the responsible department.

Dairy RAP guidelines

2.14 The main information available to prospective applicants for Dairy RAP funds was set out in a booklet produced by DEWRSB in July 2000.⁶ This booklet sets out the background and objectives of the program, stating that its primary objectives are to:

Supplement investment by businesses in dairy affected regions to create long-term employment in these regions; and

6 DEWRSB, Dairy Regional Assistance Programme Guidelines, July 2000.

Support the provision of community infrastructure and community access to training and counselling services that facilitate economic and social adjustment leading to ongoing regional benefits in the affected regions.⁷

2.15 The eligibility criteria for Dairy RAP (as opposed to other regional assistance programs) are that the region be:

- a dairy-dependent community economically; and
- significantly impacted upon by the deregulation of the Dairy Industry.⁸

2.16 The guidelines also set out conditions for receiving funding, and the criteria against which Dairy RAP applications should be assessed.

2.17 A revised version of these guidelines was produced by DoTARS in August 2002, after responsibility for Dairy RAP transferred to that department. This revised version did not change the wording of guidance to proponents, however, and is of marginal interest to this inquiry as it was published after the time in question. The major change is that an Australian Bureau of Agricultural and Resource Economics (ABARE) report on *The Australian Dairy Industry- Impact of an Open Market in Fluid Milk Supply*⁹ is used as the basis to determine regional eligibility for Dairy RAP.

2.18 A few points from these guidelines are of particular relevance to this inquiry, namely:

Project proposals must demonstrate: capacity to create sustainable regional employment opportunities; and/or services that lead to ongoing regional benefits.¹⁰

Proposals, if assessed as viable and sustainable, could include:...business investment supplementation to create new long term employment opportunities (ie supplementation to private investment in new enterprises); [and] projects that **support** infrastructure development in local communities (ie, as a minor contributor to general infrastructure that will employ local people in the construction and result in identifiable community benefit).¹¹

Proposals from proponents operating as commercial enterprises should include a commitment of at least 50 per cent of the total project costs to be

7 DEWRSB, Dairy Regional Assistance Programme Guidelines, July 2000, p.3.

8 DEWRSB, Dairy Regional Assistance Programme Guidelines, July 2000, p.3.

9 Australian Bureau of Agricultural and Resource Economics (ABARE), *The Australian Dairy Industry – Impact of an Open Market in Fluid Milk Supply*, January 2001.

10 DEWRSB, Dairy Regional Assistance Programme Guidelines, July 2000, p.3.

11 DEWRSB, Dairy Regional Assistance Programme Guidelines, July 2000, p.4.

met by the proponents...in the case of supplementary business investment projects, the applicant's financial contribution must be in new investment.¹²

Proposals must be consistent with current Government policy and ideally, complement existing programmes.¹³

Project proposals will not be approved in areas where Commonwealth funding through Dairy RAP is, or could be perceived as, substituting or duplicating funding from the responsible Commonwealth, State/Territory or local government agency.¹⁴

Funding is not available retrospectively. Proponents should not plan to begin a project dependent on Dairy RAP funding before receiving formal notification of approval.¹⁵

2.19 The wording of these guidelines and structure of the program booklet has become an issue of concern for the Committee during this inquiry. As will be discussed in the following chapters, the Committee doubts whether information available to proponents and departmental officers alike on their relative importance and interpretation is sufficiently clear to serve as a sound basis for the administration of a Commonwealth grants program.

2.20 The Committee notes that Dairy RAP is now in its final stages. The ninth and final round of Dairy RAP projects was announced on 5 May 2003, and there is no intention to call for further applications at this stage. However, there may be lessons from this program for other similar Commonwealth funding programs.

12 DEWRSB, Dairy Regional Assistance Programme Guidelines, July 2000, p.5.

13 DEWRSB, Dairy Regional Assistance Programme Guidelines, July 2000, p.5.

14 DEWRSB, Dairy Regional Assistance Programme Guidelines, July 2000, p.6.

15 DEWRSB, Dairy Regional Assistance Programme Guidelines, July 2000, p.8.

Chapter 3

The chronology of the Mordek application

3.1 On 17 December 2001, the Dairy RAP delegate in the Department of Employment, Workplace Relations and Small Business (DEWRSB) approved a grant of \$339,000 to Moruya Decking and Cladding Pty Ltd, trading as Mordek. The grant was to support the building of a new steel profiling plant and installation of machinery at Mordek's new premises at the North Moruya Industrial Estate.

3.2 This decision came at the end of a lengthy application process dating back to at least June 2001. During the assessment process, Mordek's application went through a number of versions in consultation with DEWRSB officers. Essentially, whereas early versions of the application sought funding for construction of sewerage headworks, later versions of the application excluded the sewerage headworks from the proposed project.

3.3 It appears that, at some stage during the application process, Mordek commenced construction of the new building which formed part of the project for which funding was sought.

3.4 This chapter examines the history of Mordek's application for Dairy RAP funding as it went through each iteration in a process of consultation between the applicant and the funding department. As will be seen, a number of external bodies, including the South East NSW Area Consultative Committee (Seacc), PricewaterhouseCoopers and the Eurobodalla Shire Council (ESC) contributed to this process. Their roles will be examined more closely in the next two chapters.

The application process

3.5 The Department of Transport and Regional Services (DoTARS) has provided substantial documentation to the Committee on the Mordek application process.¹ Among the 48 documents provided by DoTARS on 6 May 2003 are no less than six different versions of Mordek's Dairy RAP application, dated between June 2001 and December 2001,² along with copies of written advice given to the proponent and notes from meetings at which this application was considered. Additional copies of the application were tabled at the hearing by Seacc and the ESC.³

1 DoTARS, Additional material provided on 6 May 2003.

2 The six versions of the application are Documents 1, 6, 10, 17, 25 and 29 of DoTARS, additional material provided on 6 May 2003.

3 Seacc tabled draft applications identical to DoTARS Documents 1 and 6. ESC tabled a draft identical to DoTARS Document 29.

3.6 Below is a brief outline of what changes were made to the application as the assessment process progressed, and the advice given to the proponent by DEWRSB.

First application – 25 June 2001

3.7 The earliest version of the application available to the Committee is that forwarded by Seacc on 25 June 2001 and received by the DEWRSB Regional Office on 2 July 2001.⁴ This application was developed in consultation with the Seacc Dairy RAP officer, Mr Braddon Pym, and endorsed by Seacc on 12 June 2001. It sought \$330,000 (GST inclusive) explicitly as a contribution to the Eurobodalla Shire Council for the provision of sewerage to the North Moruya factory site.

3.8 The key sections of the application setting this out are:

- Section 1.6 (the project overview), which states:

The company wishes to expand its Moruya operations by constructing a new building, installing additional machinery including machinery of a type not yet used at Moruya, and increasing both the quantity and variety of products.

The suggested site at North Moruya is not yet sewered. The grant applied for will be paid as a contribution to the Eurobodalla Shire Council who have undertaken to install the sewer as soon as possible. Without the sewer in place, the company will almost certainly have to locate the new equipment in Canberra.

- Section 2.4, which gives a detailed breakdown of the proposed project budget. This shows the cost of factory construction (\$330,000) and plant (\$124,000) as being funded entirely by Mordek. The column showing intended use of Dairy RAP funds contains one entry of \$300,000 (GST exclusive) marked 'Contribution to ESC'.
- Section 2.5, which states:

The grant funds will be paid to ESC. This will be a full and final contribution to the provision of sewer to the site. The whole cost of the steel project is to be borne by Mordek.

3.9 Of note in this application is that Mordek shows the whole cost of factory construction, installation of machinery, and sewer connection as one integrated project, with the sewer connection component accounting for roughly one third of the total project cost. This version of the application gives August 2001 as the expected commencement date. Construction of the new factory does not appear to have commenced at the time it was submitted.

3.10 Having been endorsed by Seacc, this application was considered by the DEWRSB regional office. Mr Dallas Burnes of the DEWRSB Regional Office

4 DoTARS, Additional material provided on 6 May 2003, Document 1.

provided detailed feedback to the Seacc Dairy RAP officer on 3 July 2001.⁵ There was no suggestion at this stage that Dairy RAP funds would not be available to support the cost of sewerage infrastructure. Mr Burnes in fact requested that a letter from ESC reflecting expected costs of sewerage headworks be provided, as well as a letter of support for the project from the Council. Among various changes to the form of the application, Mr Burnes suggested that the proposed start date in August was unrealistic, and should be put back until mid-September.

Second application – 12 July 2001

3.11 The second version of the application available to the Committee is that forwarded by Seacc to the DEWRSB regional office on 12 July 2001.⁶ This version had been revised to take into account some of the feedback provided by DEWRSB on the earlier version. For example, the proposed commencement date for the project had been pushed back to ‘on or before’ 30 September 2001. However, no substantive change was made to the project described in the application, which still states that Dairy RAP funds would be paid to the ESC as a contribution for sewer installation. A new paragraph (section 1.13) states that:

Mordek is of the view that sewer is necessary for the proposed new mill. Unfortunately, Mordek is not in a position to finance the new investment AND the sewer works as well.

3.12 It goes on to say that, without the Dairy RAP funds, Mordek would have to either delay the project until the Council could build sewer as part of its normal works program or relocate to the Australian Capital Territory.

3.13 A draft assessment of this application was filed by Mr Dallas Burnes of DEWRSB’s regional office on 17 July 2001.⁷ This report assessed Mordek’s application on the basis that Dairy RAP funds would be used ‘to pay for the sewerage headworks costs associated with the expansion of Mordek’s operations in Moruya’, while Mordek’s contribution would be \$454,000, of which \$424,000 would be for the estimated factory construction and plant cost. The assessment supported the project, given the number of jobs expected to be generated both by the factory and possible future expansion of the industrial estate once sewerage. An external assessment was thought unnecessary at this point. Funding duplication with the local council was not considered an impediment, as the report noted that: ‘Eurobodalla Shire Council are unable to provide sewerage services without contribution from the land owners’.

3.14 On 21 August 2001, a roundtable meeting between the DEWRSB regional manager and national office staff reviewed this initial assessment.⁸ That meeting

5 DoTARS, Additional material provided on 6 May 2003, Document 3.

6 DoTARS, Additional material provided on 6 May 2003, Document 6.

7 DoTARS, Additional material provided on 6 May 2003, Document 8.

8 Notes from the meeting are found in DoTARS, Additional material provided on 6 May 2003, Document 9.

identified possible duplication of council responsibilities by funding a sewerage project as an issue. The suggestion emerged, apparently from national office staff at that meeting, that Mordek should revise the application budget to cover only the cost of building construction, and not include sewerage costs. The regional office manager noted an action item to ‘discuss revised activity with proponent and submit new application’. The meeting also decided that an external assessment of the project would be required.

Third application – 27 August 2001

3.15 The next changes to the Mordek application appear to have been made by DEWRSB officers. An email from DEWRSB regional manager, Mr Burnes, on 3 September 2001 sought the Naders’ agreement to ‘proceed with the application as I have amended’.⁹ The Naders evidently gave their agreement, as later that afternoon Mr Burnes wrote in an email to national office:

The proponent has accepted the National Office suggestion that they pay for the sewerage headwork costs and DRAP funds will to be used to supplement the building costs associated with the factory relocation and expansion. The overall amount requested from DRAP remains unchanged.¹⁰

3.16 Mr Burnes also noted in that email that: ‘The NSW assessment of this project found that the project met all other criteria for funding under DRAP’.

3.17 These emails appear to refer to the third version of Mordek’s application, which is dated 27 August 2001.¹¹ It appears that the date of the application pre-dates the Naders giving their consent, presumably because it had actually been completed by DEWRSB officers.

3.18 This revised draft contained a number of alterations to the proposed project budget. Key changes included:

- The new budget showed all of the \$300,000 (GST exclusive) of Dairy RAP funds as going towards the cost of factory construction, which totals \$330,000.
- The proponent’s total contribution to the project of \$454,000 included \$300,000 earmarked as a contribution to ESC for the provision of sewer.
- The paragraph (formerly at 2.5) stating that Dairy RAP grant funds would be paid to ESC for the sewer, while the whole cost of the steel project was being borne by Mordek, was deleted.

3.19 Despite these changes, the substance of the project described in the application was largely unaltered. The overall project budget still contained an amount to be paid as a contribution to the Eurobodalla Shire Council for sewerage the

9 DoTARS, Additional material provided on 6 May 2003, Document 12.

10 DoTARS, Additional material provided on 6 May 2003, Document 13.

11 DoTARS, Additional material provided on 6 May 2003, Document 10.

estate. A minor rearrangement of budget items moved the sewer contribution to the proponent-funded side of the project and the factory cost to the Dairy RAP-funded side. This shift seems to suggest that Dairy RAP funds would not contribute to the sewer, although the sewer remained a major cost of the overall project.

3.20 While this version of the application was under consideration, DEWRSB received two letters signed by the then mayor of Eurobodalla Shire Council, Councillor C. P. Vardon. The first, dated 7 September 2001, advised that the Council supported the sewerage of the North Moruya Industrial Estate and would determine a timetable for the work after confirmation that the owner had been granted funds under the Dairy RAP program.¹² The second letter, dated 12 September 2001, advised that the Works and Facilities Committee of Council had passed a recommendation that:

Council commits itself to the sewerage of the North Moruya Industrial Estate on the basis that adequate funding arrangements are secured from the estate owner, the Commonwealth Dairy Regional Assistance Program and the NSW government.¹³

3.21 These letters were apparently written in response to DEWRSB's feedback on the original application, which requested a letter from ESC in support of the project, as well as confirmation of the expected cost of the sewerage headworks. As can be seen, at the time these letters were written, DEWRSB had not ruled out funding the Mordek project while it included a contribution to sewerage connection.

3.22 Another development at this point was that Mordek revised the quote for the new factory up to \$494,000 (GST exclusive). Documentation in support of this revised quote was provided to DEWRSB on 18 September 2001, although the quote itself is dated 17 August 2001.¹⁴

Independent assessment – 20 September 2001

3.23 The next major step in the review process was an independent assessment by PricewaterhouseCoopers, dated 20 September 2001.¹⁵ This was the first of three PricewaterhouseCoopers reports on different versions of the Mordek application.¹⁶

3.24 The 20 September 2001 PricewaterhouseCoopers report found that the Mordek proposal was not eligible for Dairy RAP funding, mainly due to questions about the financial strength of Mordek as a stand alone entity. While the report found

12 DoTARS, Additional material provided on 6 May 2003, Document 15.

13 DoTARS, Additional material provided on 6 May 2003, Document 16.

14 DoTARS, Additional material provided on 6 May 2003, Document 18.

15 PricewaterhouseCoopers, *The Department of Employment, Workplace Relations and Small Business – Moruya Decking & Cladding Pty Ltd Commonwealth Dairy Regional Assistance Programme*, 20 September 2001, (DoTARS, Additional material provided on 6 May 2003, Document 19).

16 The other two are Documents 22 and 30.

that the proposed development of the North Moruya site was in accord with the primary objectives of the Dairy RAP, it mentioned competition issues as a possible hindrance to the application.¹⁷

3.25 In relation to Mordek's claim that the factory would be located in the ACT should funding for the sewer not be forthcoming, the PricewaterhouseCoopers report commented:

We note that through discussions held with the applicant's accountant, Mordek have begun to excavate the foundations on the site, which may indicate that their only option is to proceed with the project at the proposed site in North Moruya.¹⁸

3.26 This is the first reference in material provided to the Committee by DoTARS to work on the new factory taking place. The Committee returns to this matter in later chapters when considering the question of retrospectivity.

The seeking of additional information – October 2001

3.27 During October 2001, DEWRSB sought further material from the proponent in support of the Dairy RAP application, and received some 30 pages of documents, along with a letter from the Naders' accountant Mr Greg Jesson dated 18 October 2001. The letter provided further information about the 'Mordek Group' of companies owned and operated by their shareholders, John and Annette Nader. This group includes Moruya Industrial Estate Pty Ltd, the company which owns the land on which the Mordek factory is situated. In reference to MIE's involvement in the Mordek project, Mr Jesson noted that:

The Naders have also committed to pay 25% of the sewerage project which is to be repaid to the Council from future land sales, in addition to the \$300,000 contribution from the grant, if approved.¹⁹

3.28 He also states in the letter that:

With the sewerage connected, the industrial land will become more attractive to businesses & to quote the Business Development Board 'will stimulate several million dollars of industrial development opportunities for this Shire, together with the creation of hundreds of real jobs for local people.'²⁰

3.29 He also projects that, with the sewerage connected, around 40 blocks of land would be available for sale, which could generate significant revenue over three to five years.

17 DoTARS, Additional material provided on 6 May 2003, Document 19, p.9.

18 DoTARS, Additional material provided on 6 May 2003, Document 19, p.10.

19 DoTARS, Additional material provided on 6 May 2003, Document 21.

20 DoTARS, Additional material provided on 6 May 2003, Document 21.

Second independent assessment – 27 November 2001

3.30 PricewaterhouseCoopers reassessed Mordek's application in light of the additional information provided in October. The second PricewaterhouseCoopers report, dated 27 November 2001, recommended that Mordek was now eligible for Dairy RAP funding. However, it also commented that:

We believe there may be competition issues should funding be provided for the sewerage works on the industrial site. Moruya Industrial Estate Pty Ltd, a related party of Mordek, currently own the industrial site near Batemans Bay. The applicant advises that once this site is seweraged, it is estimated that MIE could generate [deleted] over the next 3 to 5 years from land sales. We believe that the provision of funding to facilitate the development and sale of land by MIE may be outside the scope of DEWRSB funding and may result in competition issues.²¹

3.31 In view of these issues, the report recommended that DEWRSB provide funding for the factory construction *only*, and that the project budget be *revised* to remove all reference to funding for the sewer connection.

3.32 The department appears to have followed PricewaterhouseCoopers' recommendation. On 28 November 2001, Mr Burnes contacted Mr Jesson with the advice that the sewer headworks component of Mordek's proposal was not fundable under Dairy RAP guidelines as this could represent a competitive advantage to the owner of the land. He suggested that the project budget should be revised to exclude the sewer cost component, and volunteered that DEWRSB officers could make the changes to Mordek's application 'to save time'.²² Two days later Mrs Nader gave written agreement to the changes proposed by DEWRSB, and the application proceeded.²³

Fourth application – 3 December 2001

3.33 The fourth version of the application is dated 3 December 2001 and contains the revised budget as suggested by PricewaterhouseCoopers.²⁴ It is worth noting that, although reference to the sewer construction has been removed from the budget of the new application, explicit reference is made to it throughout. For example, section 1.9 states:

ESC has obtained a detailed estimate of the cost of sewerage works. It is understood that this forms the basis of their confidence that the contribution applied for will be sufficient to ensure that the project can be completed.

21 DoTARS, Additional material provided on 6 May 2003, Document 22, p.9.

22 DoTARS, Additional material provided on 6 May 2003, Document 23.

23 DoTARS, Additional material provided on 6 May 2003, Document 24.

24 DoTARS, Additional material provided on 6 May 2003, Document 25.

3.34 Section 1.10 goes on to say:

Although it has always been ESC's intention to provide sewer to the estate, there is an urgent need to first sewer smaller towns and villages throughout the region. This has meant that the industrial [estate] will not, aside from this application, be sewered within 10 years at least.

3.35 In an email to Mr Jesson of 3 December 2001, the DEWRSB regional manager wrote that:

In my assessment I will make a comment of the fact that MORDEK is also contributing to the provision of sewerage services to the industrial estate and that this will lead to further job creation. As discussed though the Department would not want to be seen as paying for the sewerage provision through DRAP assistance.²⁵

3.36 This assessment completed by Mr Burnes came to form the basis of the delegate's decision, as discussed below.

Final application – 12 December 2001

3.37 Between 3 December and 12 December, an exchange of email correspondence occurred between the DEWRSB national and regional offices. It appears that the national office was seeking clarification of a number of issues in relation to the Mordek application, including requiring a slightly more detailed breakdown of the projected budget.

3.38 The outcome of this correspondence was the final version of the Mordek application, dated 12 December 2003.²⁶ The major change from the previous version was that specific items to be purchased for the new factory were listed in the project budget where previously there had been a single entry of 'plant cost'. In all other respects this application is the same as the one dated 3 December 2001.

Departmental approval process – 12 to 17 December 2001

3.39 Evidence provided to the Committee indicates that DEWRSB received the final Mordek application on 12 December 2001 and that the program delegate approved it on 17 December 2001.²⁷

3.40 The Committee notes a distinct lack of documentation of the decision making process at national office leading to the delegate's approval. DoTARS advised the Committee that a delegate's decision on Dairy RAP projects is usually based on verbal briefing by the relevant case manager. In advising the delegate, the case manager would refer to the final assessment report prepared by regional office staff

25 DoTARS, Additional material provided on 6 May 2003, Document 25.

26 DoTARS, Additional material provided on 6 May 2003, Document 29.

27 Committee, *Hansard*, 8 May 2003, p.18.

and any external assessment reports carried out during the assessment period.²⁸ In other words, while the Committee can refer to the documentation on which the decision is based, it is not possible for the Committee to identify the principal factors taken into account by the delegate in reaching the decision to approve the Mordek application.

3.41 The final assessment report for Mordek is the one apparently prepared by Mr Dallas Burnes in the regional office. As with the application itself, this report refers throughout to the connection between the proposed development of the new Mordek factory and the sewerage of the North Moruya Industrial Estate. It notes that:

In addition to this project (as described in the DRAP application) the proponent will be paying for the local council to provide sewerage headworks to the estate. This will have an added benefit of providing the necessary infrastructure to allow for [...] economic development within the Eurobodalla. DRAP funds **will not** be contributing directly toward the provision of sewerage headworks, as this was deemed to be providing a competitive advantage to the property owner/developer. The project as described in the application does not include the provision of sewerage headworks which is viewed as being separate from the activities which are the subject of the DRAP funding submission. No spending by the proponent on the sewerage headworks has been counted toward their contribution for this project.²⁹

3.42 Surprisingly, in light of the original Mordek application which stated that ‘the whole cost of the steel Project is to be borne by Mordek’, the DoTARS assessment of the final application quotes the external assessment report as saying that:

The report noted that the proponent did not have the resources to undertake the project without DRAP assistance.³⁰ [Bold in original]

3.43 The Committee received no documentation on how this decision was conveyed to the Minister for Agriculture, Fisheries and Forestry, despite a specific request from the Committee to DoTARS to do so. According to the current Dairy RAP Manager, Mr David Prestipino, the usual notification process was that the Minister would be briefed and provided with the delegate’s decisions, on the basis of which he would then make a public announcement at a time of his choosing.

3.44 The complete list of successful projects for Round 6 was released on 7 February 2002 by the Minister for Agriculture, Fisheries and Forestry, the Hon Warren Truss MP. Prior to this announcement, all federal members with

28 DoTARS, Additional material provided on 30 May 2003, Attachment B.

29 DoTARS, Dairy Regional Assistance Programme – Project Profile, Moruya Steel Profiling Plant, Additional Material provided on 30 May 2003.

30 DoTARS, Dairy Regional Assistance Programme – Project Profile, Moruya Steel Profiling Plant, Additional Material provided on 30 May 2003.

approved projects in their electorate were notified on 17 January 2002, as were the relevant ACCs.³¹

3.45 In the case of Mordek, the public announcement was made by the federal member for Eden-Monaro, Mr Gary Nairn MP on 31 January 2002.

3.46 The timing of this announcement is an issue for this inquiry, as it goes to the question of whether or not the Mordek grant was made retrospectively. Ms Riggs told the inquiry that, according to the normal process, the proponents would not have found out about their project's approval until the public announcement on 30 January 2002.³² Yet Mr Jesson told the hearing that someone from the DoTARS regional office had informed him in December 2001 that the project had been approved.³³ In answer to a question on notice, Mr Jesson said he thought it was Mr Dallas Burnes from DoTARS who advised him, but could not give a date that this occurred, and did not have a written record of a conversation around that time.³⁴ The department said it has no record of written notification going to the Naders before the public announcement was made, or indeed at any time prior to the funding contract being signed.³⁵

3.47 The questions surrounding the issue of retrospectivity are further underscored by evidence that work on the new Mordek factory had commenced before the proponents had received any notification that their Dairy RAP application was successful. According to Mrs Nader, work on the foundations started in November 2001 and the slab was completed before December. The frame went up in December 2001, and the cladding was done in January 2002.³⁶ In the next chapter the Committee explores in more detail the issue of when construction work on the plant started, before considering in Chapter 5 whether the Mordek case constituted 'retrospective funding' which is proscribed by Dairy RAP guidelines.

The DRAP-Mordek contract – 5 March 2002

3.48 The funding contract for Mordek's Dairy RAP grant was signed by Mr Nader on 5 March 2002 and by Mr Steven Dreezer, the Acting Dairy RAP Manager in the National Office on 13 March 2002.³⁷ Attached as a schedule to the funding contract was the final version of Mordek's application, but with the project commencement date put back by two months from January to March 2002. As noted earlier, this

31 DoTARS, Answers to questions on notice 11 and 12, Additional material provided on 30 May 2003.

32 Committee, *Hansard*, 8 May 2003, p.24.

33 Committee, *Hansard*, 8 May 2003, p.109.

34 Mordek, Answer to question on notice by Mr Greg Jesson, 28 May 2003.

35 DoTARS, Additional material provided on 30 May 2003, Attachment B.

36 Committee, *Hansard*, 8 May 2003, p.112.

37 DoTARS, Additional material provided on 6 May 2003, Document 35.

application excluded funding for sewerage from the project budget, but still contained reference to Mordek providing a contribution to the sewer scheme (section 1.13).

3.49 The contract stipulated that the recipient must conduct the project at the time and manner specified in the schedule (clause 2.2). In this case, the schedule specified 1 March 2002 to 31 August 2002 as the funding period and the manner in which the project was to be carried out was as detailed in the approved application.

3.50 However, as noted above, the Committee received evidence to indicate that work on the new Mordek factory had already started as early as November 2001, well before the funding period specified in the contract. This discrepancy raises further doubts over the Mordek case and the issue of retrospectivity under the Dairy RAP guidelines. The Committee takes up this matter in the following chapters of the report.

Project Audit and Evaluation – August 2002 to January 2003

3.51 Ms Riggs told the Committee hearing that, once funding had been approved, the Mordek project was monitored consistent with the arrangements that were used for monitoring projects under this program.³⁸ There are three elements to this review process: reports submitted by the proponents themselves, an independent audit report prepared by an accountant contracted by the proponent, and a departmental evaluation.

3.52 The funding agreement signed by Mordek stipulated that Mordek should provide bimonthly progress reports, and also an audited statement of receipts and expenditures within 30 days of completion of the funding period. The contract also requires the proponent to provide a certified, audited statement from an accountant who is not an officer or employee of the recipient.³⁹

3.53 The Committee has seen two progress reports from Mordek dated 30 April 2002 and 28 June 2002. Both reports state that objective 1, namely construction of a metal clad building at North Moruya, had been completed, although some work on guttering, drainage and landscaping evidently occurred between May and June. Against objective 2, the installation of equipment and connection to sewer, some additional equipment is reported to have been installed between the first and second reporting periods. A number of additional jobs were created over the reporting period.

3.54 The Committee has also seen a number of documents provided by Mordek detailing factory costs and assets. While the register of factory costs gives no indication of the date of payment for specific items, in the asset register provided on 29 April 2002 there is one item valued at \$36,018.40 which gives 7 November 2001 as the date of purchase. This is before funding was given for the project.

38 Committee, *Hansard*, 8 May 2003, p.34.

39 DoTARS, Additional material provided on 6 May 2003, Document 35, pp.23-25.

3.55 While the Committee has not seen a copy of the final independent audit report, Ms Riggs told the hearing that an audit of Mordek's use of Dairy RAP funds was carried out at the department's request.⁴⁰ The proponents commissioned the company Greg Jesson and Associates to carry out the audit, which was completed and sent to the department on 29 October 2002.⁴¹ The Committee notes that, while not technically speaking an 'officer or employee' of Mordek, Mr Greg Jesson is the Naders' regular commercial accountant.

3.56 The final step in the audit process was an evaluation carried out by the DoTARS regional office. Prior to undertaking the formal audit, a departmental officer conducted a site visit to the new Mordek plant on 15 August 2002. During that visit the officer noted the quantity of new work and employment allowed by the expansion of Mordek's operations. He was told during that visit that work on the erection of the building began on 24 December 2001 and the external cladding was complete by 2 January 2002.⁴²

3.57 The Committee notes that there is no sign in the evaluation report of any concern about work on the project commencing before the start date (31 March 2002) of the funding period specified in the project contract.

3.58 The report from the departmental evaluation is dated 10 December 2002.⁴³ In relation to the specific objectives of the project, it stated that building construction began in late December 2001 and was substantially complete by April 2002, and that equipment installation was completed and operational by 30 April 2002. The employment outcomes resulting from the expansion were 11 new jobs as of the assessment date, with another five staff members expected to commence in January 2003.

3.59 Overall, DEWRSB's evaluation found that the Mordek project had exceeded expectations in terms of jobs created, and had encouraged growth in the region by stimulating development of the new industrial estate.

DoTARS Internal Review – February 2003

3.60 In response to questions asked during a Senate estimates hearing on 11 February 2003, DoTARS undertook to conduct a detailed review of the circumstances surrounding the Mordek grant.⁴⁴ As part of that review, Mr David Prestipino and Mr Andrew Foster of DoTARS visited Moruya to meet with

40 Committee, *Hansard*, 8 May 2003, p.35.

41 DoTARS, Answer to question on notice Q(13), Additional material provided on 30 May 2003.

42 DoTARS, Additional material provided on 6 May 2003, Document 43.

43 DoTARS, Additional material provided on 6 May 2003, Document 47.

44 Senate Rural and Regional Affairs and Transport Legislation Committee, *Hansard*, 14 February 2003, p.203.

Eurobodalla Shire Council staff and visit the Mordek factory site on 27 February 2003.⁴⁵

3.61 The outcome of the review was the one and a half page document which forms Attachment A of DoTARS' submission to this inquiry. Although acknowledging that some expenditure had occurred prior funding being approved, this report found that the Commonwealth funds had been fully acquitted against project expenditure nominated in Mordek's application for Dairy RAP funding.⁴⁶ It went on to state:

In addition, the project has been completed in accordance with the funding agreement, and has already exceeded its contractual employment creation target by one direct ongoing job.⁴⁷

3.62 The review stated expressly that program funds had not been spent on sewerage infrastructure at the industrial estate. Nor, according to the review, had the proponent at that stage made any payment to the Eurobodalla Shire Council for sewerage works.

3.63 The review did note, however, that Dairy RAP funding had 'allowed Mordek to bring forward expansion plans and job creation and allowed freed up capital to be used for other job creation investment, including a contribution to the sewerage of the north Moruya industrial estate'.⁴⁸

3.64 In the chapters that follow, the Committee examines a number of these issues, particularly the claim that the project had been completed in accordance with the funding agreement.

45 DoTARS, Additional material provided on 6 May 2003, Document 48.

46 DoTARS, Submission No. 1, Attachment A.

47 DoTARS, Submission No. 1, Attachment A.

48 DoTARS, Submission No. 1, Attachment A.

Chapter 4

The role of stakeholders

Introduction

4.1 A key area of interest in this inquiry is the role of the various stakeholders involved in the application and approval process for Mordek's Dairy RAP grant.

4.2 As shown in the previous chapter, the proponents, Mordek, and the government department responsible for Dairy RAP (first DEWRSB and later DoTARS) were the main players in this process. A number of other organisations and individuals also had input, including in particular the Eurobodalla Shire Council and the South East NSW Area Consultative Committee (Seacc).

4.3 This chapter considers the role of these various stakeholders in light of the issues raised about the Mordek grant. Specifically, it will examine whether the role played by any of these stakeholders was unusual according to the normal application and approval process for Dairy RAP funds outlined in Chapter 2.

4.4 The Committee examines the role of the two Commonwealth departments in Chapter 5.

The proponent - Mordek

4.5 Mordek's role in the application and approval process for the Dairy RAP grant has been in part dealt with in the previous chapter. There are, however, a number of issues that warrant brief discussion here, namely:

- Who initiated Mordek's application for Dairy RAP funding;
- The relationship between Mordek and Moruya Industrial Estate;
- Why construction of the Mordek steel plant commenced before Dairy RAP funding was approved;
- Whether Mordek provided misleading information to DoTARS in the course of the application process; and
- Whether Dairy RAP funds were used in a manner contrary to the funding agreement.

The initiation of the Mordek Dairy RAP application

4.6 The usual practice for initiating Dairy RAP projects was that a proponent would develop an application for funding in consultation with their local Area Consultative Committee (ACC). Presumably, as with the Regional Assistance

Program, ACCs were expected to network within their local communities, encouraging citizens to develop and submit project applications.¹

4.7 In the case of the Mordek grant, a third player was involved in initiating the Dairy RAP application, namely the Eurobodalla Shire Council. The Council's interest in sewerage for the North Moruya Industrial Estate is well documented, as discussed below. It is clear that the proponents in this case, Mr and Mrs Nader, had been in negotiations with the council over funding the sewerage of the North Moruya Industrial Estate for some time prior to submitting an application for Dairy RAP funding.

4.8 A report to Council of 26 June 2001 states that: 'Council has initiated and is supporting' an application for Dairy RAP funds for the sewerage of the industrial estate, with the owner being 'an active participant in the process'.² Eurobodalla Shire Council General Manager, Mr Jim Levy, explained at the hearing that it was common practice for council to encourage local businesses such as Mordek to apply for government grants and to refer them to relevant government officers, and saw nothing irregular in this.³

4.9 In evidence before the Committee, Mr Nader said that it was Council's Business Development Officer, Mr Phil Herrick, and his real estate agent who advised him to apply for Dairy RAP funds. His real estate agent had an interest in sewerage of the estate so that the land would sell, and Mr Herrick suggested that Mr Nader could perhaps get some money through Dairy RAP by making an application to build the new factory in Moruya.⁴

4.10 The *Coastal Sun* article 'Dairy RAP dilemma' claimed that Mr Herrick met with Dairy RAP members and 'representatives of the federal government' to discuss how to obtain funds for sewerage of the North Moruya Industrial Estate.⁵ While the Committee has seen no evidence supporting the suggestion that Commonwealth officers were involved in such a meeting, Mr Herrick and Mr Greg Bowman from the Council did meet with Seacc's Dairy RAP project officer, Mr Braddon Pym, on 5 June 2001 to discuss the possibility of obtaining Dairy RAP funds for the North Moruya sewerage project.⁶ This was before the Naders lodged their Dairy RAP application with Seacc on 12 June, and may have been before Mr Herrick raised the matter with Mr Nader. It appears somewhat unusual to the Committee that this meeting was held

1 Australian National Audit Office, *Regional Assistance Program*, Audit Report No. 48 of 2001-02, p.35.

2 Eurobodalla Shire Council, Administration Report to Ordinary Meeting of Council, 26 June 2001, pp.24-25.

3 Committee, *Hansard*, 8 May 2003, p.53.

4 Committee, *Hansard*, 8 May 2003, p.104.

5 'Dairy RAP Dilemma', *Coastal Sun*, 11 July 2002.

6 Eurobodalla Shire Council, Answer to question on notice ESC 6. Committee, *Hansard*, 8 May 2003, p.93.

independently of the Naders, even though they were formally speaking the proponents of the project in question.

4.11 While the role of the Council will be discussed in more detail below, the Committee notes at this point that the Naders' Dairy RAP application was initiated only after council officers had suggested they apply for Dairy RAP funds to sewer the North Moruya Industrial Estate.

Structure of the Mordek group

4.12 The structure of the proponent's financial entities has been one point of interest to this inquiry. The Dairy RAP application in question was made in the name of Moruya Decking Cladding Pty Ltd, trading as Mordek. Mr and Mrs Nader are the sole directors and shareholders of Mordek. They are also the sole directors and shareholders of Moruya Industrial Estate Pty Ltd (MIE), the entity that owns the land on which the new Mordek factory is situated.

4.13 The nature of the financial relationship between the two companies was important to the assessment of the application for Dairy RAP funds. As noted in Chapter 3, PricewaterhouseCoopers (PWC) initially found Mordek ineligible for Dairy RAP funds due to questions about its financial viability as a stand-alone entity. PricewaterhouseCoopers' revised assessment was based on the financial strength of the 'Mordek Group'.⁷ In information provided to DEWRSB, the Naders' accountant Mr Jesson set out the close relationship between the three companies making up the Mordek Group, stating that:

[Mordek's expansion] is only part of the overall project, which involves the development of land owned by Moruya Industrial Estate Pty Ltd (MIE). This company and Meolo Holdings Pty Ltd (MEOLO) are part of the MORDEK Group of companies owned and operated by their shareholders, John and Annette Nader.⁸

4.14 The Committee is concerned that the viability of the Mordek Group, and not the proponent, was subject to the second and third external assessments. It remains unclear whether the subject of the assessment was altered at the instigation of the proponent, the department or the assessor. It is clear the external assessor lacked confidence in the proponent company's capacity to successfully undertake the project.

4.15 Eurobodalla Shire Council contends that the distinction between Mordek and MIE is important, as the Dairy RAP funds were granted to Mordek, while the Memorandum of Understanding about sewerage the industrial estate was entered into

7 DoTARS stated in answer to question on notice 10 provided on 30 May 2003 that: "The external assessment was carried out on Moruya Decking and Cladding Pty Limited, trading as Mordek and did not encompass Moruya Industrial Estate Pty Ltd as they were not considered to be the proponent." However, while this may be true for the initial PricewaterhouseCoopers assessment, it is not correct in relation to the later assessments.

8 DoTARS, Additional material provided on 6 May 2003, Document 21.

by MIE.⁹ Yet this tenuous distinction calls into question the council's claim that a grant to one company, Mordek, 'freed up capital' for the Naders' contribution to the sewerage scheme, as this was to be made by another company, MIE.¹⁰

4.16 The Committee revisits this point below in discussing Council's evidence to the inquiry.

Timing of construction of the new Mordek plant

4.17 As was noted in the chronology outlined in Chapter 3, the Naders began construction work on Mordek's new factory before their Dairy RAP application had been approved by the Dairy RAP delegate. In light of the suggestion that funding was given retrospectively, in breach of the Dairy RAP guidelines, there are two relevant questions: when the building actually occurred, and why construction commenced prior to notification of funding approval.

4.18 The Committee notes some discrepancies in the evidence available to it on when the new Mordek plant was actually built. In their submission, the Naders acknowledge that:

The preliminary work for the factory commenced well before the date that the project should have commenced. Between this date and the end of the funding period steel framing for the construction of the new factory commenced on the 3rd December 2001.¹¹

4.19 DoTARS officials visiting the new factory to investigate the issue of retrospective funding reported that:

It would appear that prior to the delegate[']s decision that the slab had been poured, the gantry crane commissioned and some (if not all) of the framework was constructed. It would appear that the cladding, insulation, machinery purchase and/or refurbishment and installation and additional fitout occurred after the Delegate's decision. The proponents were however unable to provide us with primary documents that would allow us to confirm there [sic] statements.¹²

4.20 As noted in the previous chapter, the Naders gave evidence to the hearing that they started work on the foundations of the building in November 2001, constructed the steel frame in December and installed machinery progressively from January 2002.¹³

9 Eurobodalla Shire Council, Submission No. 3, pp.4-5.

10 Committee, *Hansard*, 8 May 2003, p.71.

11 Mordek, Submission No. 4.

12 DoTARS, Record of National Office visit to Mordek and Eurobodalla Shire Council, 27 Feb 2003, Additional material provided on 6 May 2003, Document 48.

13 Committee, *Hansard*, 8 May 2003, pp.108-111.

4.21 This appears inconsistent with Eurobodalla Shire Council's information that inspections at the building site commenced on 14 March 2001, and were carried out on several occasions in July, September and October of that year.¹⁴ Regular inspections were also carried out in January, February, July and December of 2002, when an occupation certificate was issued. It is also inconsistent with the PricewaterhouseCoopers report of 20 September 2001 that noted that excavation work at the site had commenced.¹⁵

4.22 It also appears somewhat unusual that the Naders were not able to provide DoTARS with documentary evidence of the actual timing of construction. The timeline given for construction by the Naders at the hearing and to DoTARS does not seem to sit comfortably with the fact that construction of the building itself was almost complete by the time the public announcement of funding was made in late January 2002.

4.23 Without conclusive proof of the actual timing of each stage of the construction work, the Committee simply notes at this point that factory construction had clearly commenced prior to the Dairy RAP funding being approved, and well before the proponent and the Commonwealth had entered into a formal funding contract.

4.24 On the question of why the Naders began construction of the new plant before receiving approval for Dairy RAP funds, there are a number of points worth noting. First, the whole application and approval process took over six months. At the time they submitted the original application, it appears that the Naders had not commenced construction of the new building. The sewer headworks which were the subject of that funding application were certainly not under construction at that time.

4.25 DoTARS suggests that spending on the plant prior to approval was due to a combination of commercial pressures and the opportunity provided by the building industry shutdown over the December/January period.¹⁶ Officials investigating the issue of retrospectivity in relation to this grant noted that:

[Mr Nader] advised that as he was uncertain of his applications chances of success he had to proceed with out delay with at least the new building. As he was prepared, if need be, to fund at least that part of the project it was important that the building and transfer of existing equipment be undertaken over the December/January period. He was not aware that such activity could be contrary to the Programme Guidelines and he gained no financial advantage by undertaking such activity.¹⁷

14 Eurobodalla Shire Council, answer to question on notice ESC9, received on 28 May 2003.

15 DoTARS, Additional material provided on 6 May 2003, Document 19, p.10.

16 DoTARS, Submission No. 1, Attachment A, p.2.

17 DoTARS, Record of National Office visit to Mordek and Eurobodalla Shire Council, 27 Feb 2003, Additional material provided on 6 May 2003, Document 48.

4.26 In evidence to the Committee, Mr Nader said that he undertook stages of the construction as finance became available, and that:

The business was growing to the extent that we just had to push it on and finish it whether we got a grant or not.¹⁸

4.27 He also said that he carried out some of the construction work over the Christmas holidays because some of his staff are Jehovah's Witnesses and do not accept the Christmas break.¹⁹

4.28 Mr Jesson told the Committee he was advised by DoTARS that, provided the funding was expended between 12 December and another date, it was not in breach of the Dairy RAP guidelines. He said that Mordek spent \$722,000 after 12 December, which was 'well in excess of the actual grant'.²⁰

4.29 The Committee notes that, as business people, the Naders were driven by imperatives other than the Dairy RAP application in determining the construction timetable for their new factory. They were seeking to expand their business to meet existing and anticipated demand for their product, and they could not be expected to hold off on construction because of delays in approval for a government grant they had applied for. Provided they did not willfully mislead the funding department as to the progress of construction, their actions are to some extent understandable.

4.30 However, while it was principally the department's responsibility to interpret and apply the guideline on retrospectivity, it is unfortunate that the proponents in this case should demonstrate a lack of understanding or regard for the guidelines of a program from which they derived substantial financial benefit. The Committee hopes that the department will take steps to improve the level of understanding of program rules among applicants for its funding programs, particularly when large sums of Commonwealth money are involved.

4.31 The Committee also notes that the fact that the Naders were prepared to go ahead and build the factory irrespective of whether or not the Dairy RAP funds were forthcoming implies that they were willing to bear the entire cost of factory construction themselves. Whether or not this should have precluded them from applying for or receiving Dairy RAP funds is again primarily a question for the relevant department.

Provision of information to DEWRSB/DoTARS

4.32 As can be seen from the previous chapter, at all times during the application process, the Naders were very upfront with DEWRSB in detailing their intended use of Dairy RAP funds. The initial application advised that the grant would be paid to

18 Committee, *Hansard*, 8 May 2003, p.108.

19 Committee, *Hansard*, 8 May 2003, p.110.

20 Committee, *Hansard*, 8 May 2003, p.108.

Eurobodalla Shire Council as a contribution to the cost of installing sewer at the new Mordek plant, and that Mordek was able to bear the entire cost of factory construction.²¹

4.33 Subsequent revisions to this application were made at the request of, and in some cases, by DEWRSB officials. These include the changes which excluded funding for the sewer project from the project budget once the external review had identified competitive advantage as an issue that could preclude this element of the project from being eligible for Commonwealth funding.

4.34 Even once reference to the sewer project had been removed from the project budget in the application, officials at both regional and national office levels were aware that the Naders intended to pay a similar sum to the local council for the provision of sewerage. This was explicitly set out in the Regional Office's final assessment of the application, which would normally form the basis of the delegate's decision to approve funding.²² The officials involved in the preparation of that assessment were satisfied that the proponent's contribution for sewerage had not been counted as part of their contribution to the project, and that Dairy RAP funds would not be contributing directly for the sewerage headworks.²³

4.35 On the basis of the documentation available to it, the Committee has found no evidence that the Naders at any stage deliberately misled the funding department about their intended use of Dairy RAP funds.

4.36 Likewise, it does not appear that the Naders actively sought to conceal the true state of affairs of factory construction from DEWRSB during the application process. In assessing the application, DEWRSB asked for significant quantities of detailed financial information from Mordek, including quotes for building work and plant costs. At each stage of the process Mordek appears to have complied fully with these requests.

4.37 The Naders' accountant, Mr Jesson, told PricewaterhouseCoopers in September that excavations at the factory site had begun, and DEWRSB was made aware of this in Pricewaterhouse Coopers' report to them of 20 September 2001.²⁴ What use was made of this information by DEWRSB officers, and whether it should have influenced the outcome of the funding application in any way, is a matter for the department.

21 DoTARS, Mordek Dairy RAP application version 1, 2 July 2001, Additional material provided on 6 May 2001, Document 1.

22 DoTARS, Dairy Regional Assistance Programme – Project Profile for Moruya Steel Profiling Plant, Additional material provided on 30 May 2003.

23 DoTARS, Dairy Regional Assistance Programme – Project Profile for Moruya Steel Profiling Plant, Additional material provided on 30 May 2003.

24 PricewaterhouseCoopers, *Moruya Decking & Cladding Pty Ltd Commonwealth Dairy Regional Assistance Program*, version of 20 September 2001, DoTARS additional material provided on 6 May 2003, Document 19, p.10.

4.38 The point in question is how DoTARS came to understand that construction of the factory commenced on 24 December, as stated in an answer to a question on notice from Senator O'Brien.²⁵ As the Committee has heard, this answer was incorrect: construction had in fact commenced before September 2001, although the exact date has not been established. Ms Riggs told the Committee that that answer was prepared by the department based on the best available information at the time.²⁶

4.39 Whether the department's incorrect answer resulted from misleading documents provided to the department or from a lack of thorough investigation on the part of departmental officials is a matter of conjecture. Again, this raises the question of why the Naders were not able to provide DoTARS with documentary evidence of the timing of building construction.

Use of Dairy RAP funds according to the funding agreement

4.40 The chief allegation contained in the *Coastal Sun* article of 11 July 2002 in relation to the grant to Mordek is that funds were channeled away from the steel processing plant, which was already fully financed by the proponent, to the Eurobodalla Shire Council for a sewerage project that did not meet Dairy RAP guidelines. Ms Riggs told the Committee that if a party did deliberately contrive to gain Dairy RAP money for one purpose and intended to spend it on another, this would constitute prima facie a fraud against the Commonwealth.²⁷

4.41 The quickest way to address this allegation is to ask whether the Naders breached the funding agreement signed with DoTARS. As noted in Chapter 3, this funding agreement set out the nature of the project, the specific items to be funded with the Dairy RAP grant and the timeframe in which the project must be completed.

4.42 The Committee has heard that the Dairy RAP money granted to Mordek has all been acquitted as set out in the funding agreement, and that this was checked in an audit of project expenditure. According to its submission, DoTARS is satisfied that:

Programme funds have not been spent on sewerage infrastructure for the Moruya Industrial Estate. All Dairy RAP funds for this project have been spent, and acquitted, for the purposes of the project: the construction of a building and the installation of machinery. The final report and auditor's statement were received from the proponent in November 2002.

4.43 The Committee noted in Chapter 3 that the audit was in this case carried out by the proponent's own accountant, Mr Greg Jesson. In evidence before the Committee, Ms Riggs of DoTARS said that she did not think it inappropriate for the Naders to use their own accountant, and that:

25 Question on notice 511, Senate *Hansard*, p.4937.

26 Committee, *Hansard*, 8 May 2003, p.31.

27 Committee, *Hansard*, 8 May 2003, p.31.

It is not uncommon for the audit statement that the department accepts to have been prepared by an accountant of the company's own choosing.²⁸

4.44 The one point at which the use of funds diverged from the conditions set out in the funding agreement is in the timing: the project time-frame in the contract is from 1 March 2002 to 31 August 2002, whereas it is clear that a significant portion of the project had in fact been completed well before the commencement of that period.

4.45 According to DoTARS, \$157,100 (GST exclusive) was committed by the proponent prior to the project's approval by the program delegate on 17 December 2001. Presumably, more than that was committed and/or spent before both the official announcement of the grant in January 2002, and before the funding contract was signed.

4.46 As noted above, the Naders' willingness to progress the project prior to receiving the Dairy RAP grant suggests that they already had enough funds to finance the whole cost of the project, and arguably should not therefore have received the grant.

4.47 Mr Nader acknowledged at the hearing that Mordek had finance to construct the building at all times.²⁹ He told the Committee that:

...I thought [the Dairy RAP grant] was going to be an extra sum that I would have after my construction. I thought, 'Well, if someone's going to give me sixpence, I've got sixpence extra to give someone else'.³⁰

4.48 Clearly, the use Mr Nader had in mind for the 'extra sum' was making a contribution to Eurobodalla Shire Council for the cost of sewerage for the estate.

4.49 In relation to expenditure of the grant, Mrs Nader said in her closing statement to the Committee:

I felt that the money that was given to Mordek was to build this new building and to bring work to people who were unemployed in the shire. We really have done that. We have put people on. We are still putting people on. Looking at some of the people we have put on who were unemployed, I feel that we have done, in a little way, a great benefit to the community, to the shire, not just to Moruya. If that little grant did that, I think it did what it was supposed to do.³¹

4.50 Without evidence of a deliberate intention to defraud the Commonwealth on the part of the proponent, the questions raised about the appropriateness of this grant

28 Committee, *Hansard*, 8 May 2003, p.36.

29 Committee, *Hansard*, 8 May 2003, p.104.

30 Committee, *Hansard*, 8 May 2003, p.107.

31 Committee, *Hansard*, 8 May 2003, p.112.

should be directed to the public officials charged with administering Dairy RAP according to the guidelines.

South East NSW Area Consultative Committee (Seacc)

4.51 Dairy RAP guidelines state that:

The programme is supported by the Commonwealth Government's network of Area Consultative Committees (ACCs) which work in partnership with government, business and the community to identify and foster opportunities for jobs growth, skills development and regional growth and service delivery through community-based initiatives.³²

4.52 The guidelines provide that all Dairy RAP funding applications are to be vetted by the relevant ACC, which will endorse suitable project proposals as consistent with regional priorities and forward these to the department.

4.53 According to the DoTARS website, ACCs are non-profit, community based organisations funded by the Commonwealth government. ACC members are volunteers drawn from community, business and local government. The Chair, whose role is to 'provide leadership to the community in the area of regional development' is appointed by the Secretary of DoTARS. ACCs also have a number of staff paid from operational funding provided by the Commonwealth government.³³

4.54 The relevant ACC in this case is the South East NSW Area Consultative Committee chaired by Mr Greg Malavey. At the time in question, Seacc employed a Dairy RAP project officer, Mr Braddon Pym.

4.55 Seacc's submission suggests that Seacc was only involved in the early stages of the Mordek application process. According to this submission, Seacc's Dairy RAP officer was involved with the early development of the Mordek proposal, which gained Seacc support on 12 June 2001. The submission states that Seacc forwarded a draft application to DEWRSB on 25 June 2001, and a revised draft on 12 July 2001, and that from there the application was handled by DEWRSB. The submission further states that 'Seacc is unaware of any problems regarding guidelines etc'.³⁴

4.56 At the hearing, Ms Riggs confirmed that DoTARS' documentary record supports the information provided by Seacc on the extent of its involvement.³⁵

4.57 According to evidence at the hearing, Seacc's involvement commenced with the Dairy RAP project officer, Mr Pym, meeting with Eurobodalla Shire Council

32 DEWRSB, Dairy Regional Assistance Programme Guidelines, July 2000, p.2.

33 DoTARS, 'National Network of Area Consultative Committees', available at: http://www.acc.gov.au/about_the_network/index.htm.

34 Seacc, Submission No. 2.

35 Committee, *Hansard*, 8 May 2003, p.21.

officers on 5 June 2001.³⁶ At this meeting, as noted above, council officers raised the prospect of obtaining Dairy RAP funds for the North Moruya sewer project with Mr Pym. According to Mr Malavey, this was simply a regular meeting between the Dairy RAP officer and the council staff who might be involved in Dairy RAP applications.³⁷

4.58 There is little documentation available to the Committee on the subsequent actions of Mr Pym. As the Dairy RAP project officer, he would be expected to assist potential applicants, in this case the Naders, to develop a written application for funding under the program. Mr Malavey informed the Committee that he met with the Naders twice in June, and all other contact was by phone.³⁸ Whether Mr Pym talked to the Naders before or after the meeting with council officers is not clear. In his dealings with the Naders, Mr Pym does not appear to have visited the site of the proposed new factory, and was unaware of the state of construction at the time the original application was made.³⁹

4.59 Seacc endorsed the Mordek project proposal on 12 June 2001, in a teleconference which involved the Seacc Chair and Deputy Chair, Seacc employees, and representatives of the DEWRSB regional office.⁴⁰ As noted previously, the application endorsed by Seacc at that meeting explicitly sought Dairy RAP funds as a contribution to Eurobodalla Shire Council for the cost of sewerage for the North Moruya Industrial Estate.

4.60 After this early application was forwarded to DEWRSB, Mr Pym acted as a point of contact for departmental officials reviewing the application until 13 July 2001, when he emailed a revised application to the DEWRSB regional office.

4.61 This appears to be Seacc's final formal involvement with this matter, although Mr Malavey told the Committee that he would be very surprised if Mr Pym had not had ongoing verbal communication with the department. Seacc was not asked to endorse the amended application which excluded the sewer connection component from the revised project budget – the earlier endorsement for the original application being taken as sufficient.

4.62 In the Committee's view, there are a number of points worth noting about Seacc's involvement in the Mordek application. The main point to note is the department's expectation of Seacc that it would both support proponents develop projects that could be funded, and then vet these same applications to ensure they meet Dairy RAP guidelines. The Committee notes that the overall role for ACCs, as

36 Committee, *Hansard*, 8 May 2003, p.90.

37 Committee, *Hansard*, 8 May 2003, pp.90-92.

38 Committee, *Hansard*, 8 May 2003, p.91. Seacc, Answer to question on notice received on 4 June 2003.

39 Committee, *Hansard*, 8 May 2003, p.92.

40 Committee, *Hansard*, 8 May 2003, p.91.

set out by DoTARS, involves working for ‘growth at the local level through building business, creating jobs and fostering sustainable economic development’.⁴¹ It appears to the Committee that, faced with a dual role in Dairy RAP of both encouraging proposals and then vetting them, the former may well take precedence.

4.63 The Committee was concerned to understand how Seacc had come to the position of vetting and endorsing an application that failed to meet the Dairy RAP guidelines. When challenged at the hearing to justify why Seacc had endorsed a project that may not have met the funding criteria, Mr Malavey told the Committee that Seacc was primarily interested in outcomes. In relation to Mordek’s first application for the contribution to sewerage the estate, he said:

The whole role of the Dairy RAP funding was to create employment and to stimulate economic activity. I believe that funding activity in the first application met all of those guidelines.⁴²

4.64 As far as Mr Malavey was concerned:

It was all about employment, not sewerage...it was about employment and employment opportunities; whether that funding was going to create economic stimulus that would create employment.⁴³

4.65 Mr Malavey agreed that the application he gave his support to appeared to contravene a Dairy RAP guideline. Namely, that funding through this program could not be approved in cases where Commonwealth funding is or could be perceived as substituting or duplicating funding through the responsible Commonwealth, state, territory or local government agency.⁴⁴ Yet, despite acknowledging that Seacc should understand program guidelines in considering project applications,⁴⁵ he did not seem concerned that he had given his support to a project that was in breach of this guideline.

4.66 In his eagerness to encourage projects that would stimulate economic growth, Mr Malavey appears to have taken the attitude that Seacc should err on the side of supporting projects which do not entirely meet the *guidelines* rather than turn down a proposal which could achieve the overall *aims* of the program.

4.67 Mr Malavey’s disregard for the finer details of the funding criteria can be largely attributed to his perception of Seacc’s role in the implementation of Dairy RAP. Before the Committee, he appeared to see Seacc’s primary role as encouraging businesses in any project that will at the end of the day provide employment, rather

41 DoTARS, ACC brochure, op. cit.

42 Committee, *Hansard*, 8 May 2003, p.89.

43 Committee, *Hansard*, 8 May 2003, p.89.

44 Committee, *Hansard*, 8 May 2003, p.97.

45 Committee, *Hansard*, 8 May 2003, p.96

than acting as a gatekeeper with a responsibility to ensure that Commonwealth policy objectives are fully met by strictly applying funding criteria.

4.68 Given the important role given to ACCs in implementing this and other Commonwealth funding programs, it is unfortunate that the ACC, a Commonwealth funded body with staff paid from Commonwealth funds, would not feel more responsibility to ensure that programs are implemented in line with the Commonwealth policy as expressed in program guidelines and criteria.

4.69 The fact that Seacc was not consulted on later revisions of the Naders' draft application is also of some concern to the Committee, for two reasons. First, it appears that Seacc was not given any formal feedback as to why a particular element of a project it had endorsed was ultimately deemed not to meet the funding criteria. Given Seacc's ongoing role in implementing this and other Commonwealth funded programs, it seems unfortunate that Seacc should not be kept up to date with the department's interpretation of the relevant guidelines to inform future decision making.

4.70 Second, one of the potential benefits of ACC involvement in Commonwealth government funding programs is the local knowledge that ACC members and staff can provide. In the case of this grant, it could be expected that the Seacc Dairy RAP officer (Mr Pym) would have been well placed to know the true state of affairs concerning construction of the new Mordek factory. Yet it appears that, even after the department received a report from PricewaterhouseCoopers noting that work at the factory site had commenced, Mr Pym was not consulted or asked to verify where things were up to.

4.71 This point, combined with the apparent failure to keep Seacc in the loop after its initial involvement with the Mordek application, suggests that the lines of communication between Seacc and the department were not as sound as might have been expected.

Eurobodalla Shire Council

4.72 A complicating factor in examining Mordek's Dairy RAP funding application and grant is the questionable role played by staff and councillors of the Eurobodalla Shire Council.

4.73 In their submission and evidence at the hearing, Council representatives displayed a commendable commitment to reducing unemployment in the shire by encouraging local business and stimulating development that would provide jobs. This commitment has resulted in Council and council officers actively encouraging and supporting local businesses to apply for government grants. Mr Levy told the Committee that:

...we go out of our way to take advantage of any government funded program that has job creation possibilities at the end of it, whether it be an Aboriginal employment program or a landcare program or any other program. We are very active in trying to do something about the

unemployment in Eurobodalla, which is more than double the national average.⁴⁶

4.74 In line with Council's emphasis on jobs creation, sewerage for the North Moruya Industrial Estate had long been identified as important to the future economic growth of the shire.⁴⁷

4.75 Even before the Dairy RAP program was instituted, the Council was considering ways to fund the sewerage of the North Moruya Industrial Estate. In July 2000, Council passed a motion in support of sewerage for the estate, on the basis that funding could be obtained from the estate owner and the NSW government.⁴⁸ Council minutes from February 2001 note that the Council had applied to the Commonwealth Regional Solutions Program and the NSW Government Regional Economic Transition Scheme for funds to sewer the industrial estate.⁴⁹

4.76 The Regional Solutions Program application, signed by Mr Levy on 14 November 2000, was turned down by DoTARS on the grounds that the development would eventually assist private enterprise, principally the owner of the land.⁵⁰ The Regional Economic Transition scheme application, lodged in October 2000, was also ultimately unsuccessful.⁵¹

4.77 Lack of success in obtaining funds from these Commonwealth and State government programs did not diminish Council's interest in finding alternative sources of funding for the North Moruya sewerage scheme. When the Dairy RAP program started up, Council saw a new opportunity to get the scheme going. On 21 May 2001, the Council's Business Development Board carried a motion that:

1. An application be made to the Dairy Regional Assistance Program for funds for the scheme.
2. Discussions be held between the Board Chairman and the Mayor and the General Manager on this issue.⁵²

4.78 Presumably as a result of that motion, Councillor Laugher held discussions with the then Mayor, Councillor Vardon, and the General Manager on 8 June 2001 regarding the North Moruya Industrial Estate and Dairy RAP. At this meeting, the General Manager:

46 Committee, *Hansard*, 8 May 2003, p.53.

47 Committee, *Hansard*, 8 May 2003, p.46.

48 Eurobodalla Shire Council, Minutes of Ordinary Meeting of Council, 26 July 2000, p.15.

49 Eurobodalla Shire Council, Delegates Report to Ordinary Meeting of Council, 27 February 2001.

50 Eurobodalla Shire Council, Minutes of Ordinary Meeting of Council, 27 February 2001, p.8.

51 Committee, *Hansard*, 8 May 2003, pp.49-50.

52 Eurobodalla Shire Council, Minutes of the Business Development Board Meeting, 21 May 2001.

Undertook to check the present position regarding applications for Dairy RAP funding and to check the Council's positing regarding applications for Grants, funds for sewerage the NMIE and who was to be the proponent of the application.⁵³

4.79 Notwithstanding the assertion in Council's submission that Council merely referred the Naders to the relevant funding department,⁵⁴ this note suggests that the idea of applying for Dairy RAP funds for the sewer scheme in fact came from the Council.

4.80 As noted above, at some point in June, the Council's Business Development Manager, Mr Phil Herrick, and Council's Light Manufacturing Industry Development Officer, Mr Greg Bowman, met with Mr Pym, the Dairy RAP project officer employed by Seacc.⁵⁵ This appears to be the meeting referred to in the *Coastal Sun* article 'Dairy RAP Dilemma', which says that a meeting was held between council officers, Dairy RAP officers and 'representatives of the federal government' to discuss funding for the sewerage scheme.

4.81 In late June, the full Council considered the possibility of obtaining Dairy RAP funds to finance the sewerage of the North Moruya Industrial Estate. On 26 June 2001, Council noted a report that included, under the heading 'North Moruya Sewerage Scheme – Dairy RAP', the following:

As an area affected by dairy deregulation the Eurobodalla Shire can access adjustment funds through the Dairy Regional Assistance Program.

Council has initiated and is supporting an application for \$333,000 as one third the cost of sewerage the North Moruya Industrial Area.

The owner of the estate is an active participant in this process.⁵⁶

4.82 Later, this report notes that:

By using funds from other governments council has been able to undertake significant work to promote economic development in the shire with minimal financial impact on ratepayers.⁵⁷

4.83 As the Mordek Dairy RAP application progressed, Council continued to take an interest. On 11 September 2001, the Works and Facilities Committee considered a report signed by the Mayor, Councillor Vardon. This report notes that on 7 September

53 Eurobodalla Shire Council, Answer to question on notice ESC5 received on 28 May 2003.

54 Eurobodalla Shire Council, Submission No. 3, p.3.

55 Eurobodalla Shire Council, Answer to question on notice ESC6 received on 28 May 2003.

56 Eurobodalla Shire Council, Administration Report to Ordinary Meeting of Council held on 26 June 2001, pp.24-25.

57 Eurobodalla Shire Council, Administration Report to Ordinary Meeting of Council held on 26 June 2001, p.25.

2001 Councillor Vardon had written to the Manager of Regional Services, DEWRSB, advising that Council had passed a motion in support of sewerage for the North Moruya Industrial Estate. The report indicates that the Manager of Regional Services had rung Mr Herrick to request proof of a commitment from Council to fund the sewer scheme should Dairy RAP funding be provided to the owner of the industrial estate. In discussing the financial issues for Council of sewerage for the estate, it anticipates that both State and Federal governments will contribute \$300,000 to the scheme, noting that:

The Federal funds are being sourced through the Dairy Regional Assistance Program and being **channelled** through the owner of the North Moruya Industrial Estate, Mr John Nader. [Emphasis added]

There is strong indication that the Federal funds will be made available and Mr Nader will pass these to Council at the appropriate time.⁵⁸

4.84 At the meeting on 11 September 2001, the Works and Facilities Committee carried a motion that:

Council commits itself to the sewerage of the North Moruya Industrial Estate on the basis that adequate funding arrangements are secured from the estate owner, the Commonwealth Dairy Regional Assistance Program and the NSW Government.⁵⁹

4.85 A full council meeting of 25 September 2001 endorsed this position.

4.86 The next record of Council discussion on the issue is dated 26 February 2002, after the grant to Mordek had been approved and announced. An administration report submitted to Council on that date states:

A grant of \$339,900 has been made available to assist in sewerage for the North Moruya Industrial Estate.

And later that:

In late January the federal MP Gary Nairn announced a grant of \$339,900 to Mordek with those funds earmarked for a contribution from the federal government to the cost of sewerage for the estate.⁶⁰

4.87 On the strength of this money being available, and with hopes of obtaining a similar sum from the NSW government, Council decided at that meeting to fund a detailed cost estimate for construction of the sewerage system.⁶¹

58 Eurobodalla Shire Council, Confidential Report to Works and Facilities Committee Meeting, 11 September 2001, p.2.

59 Eurobodalla Shire Council, Minutes of the Works and Facilities Committee Meeting, 11 September 2001, p.15.

60 Eurobodalla Shire Council, Administration Report to Ordinary Meeting of Council, 26 February 2002, p.21.

4.88 By August 2002, the detailed cost estimate had been obtained, and the matter went to council again. Notably, this meeting occurred after the *Coastal Sun* article 'Dairy RAP Dilemma' had been published, raising questions of possible irregularities in the grant of Dairy RAP funds to Mordek. A more carefully worded report to Council of 27 August 2002 notes that:

In January this year the federal Dairy Regional Assistance Program granted \$339,000 (incl GST) to Mordek to assist in the development of a steel profiling plant which created a number of new jobs...Those funds freed up capital of the owners of the estate, who also own Mordek, allowing them to make a contribution to the sewerage of the estate.⁶²

In setting out the proposed budget for the sewer, the report notes that:

Based on these figures, Council will contribute 47% of project cost, the estate owner will contribute 53%. Note that the initial payment of \$309,000 is federal Dairy RAP money (ex GST) granted to Mordek for the expansion of Mordek steel rolling operations and new jobs growth.⁶³

4.89 On this basis, Council resolved at the meeting of 27 August that the General Manager should sign a letter of understanding with MIE confirming the commitment of both Council and the company to the sewerage of the North Moruya industrial area.⁶⁴

4.90 Council and Mr Nader signed a letter of understanding over sewerage of the North Moruya Industrial Estate on 29 August 2002. This letter of understanding provides that:

MIE agrees to pay to Council the sum of \$309,000 within 60 days of Council issuing an invoice upon the commencement of works OR 1st April 2003 whichever is the later.⁶⁵

4.91 Eurobodalla Shire Council's 2001-2002 annual report, tabled on 26 November 2002,⁶⁶ contains the statement that:

Council is allocating approximately 47% of the cost of providing sewer to Nth Moruya Industrial Estate with 53% to come from the federal Dairy Regional Assistance Program Grants and owner[']s contributions.⁶⁷

61 Eurobodalla Shire Council, Minutes of Ordinary Meeting of Council, 26 February 2002.

62 Eurobodalla Shire Council, Administration Report to Ordinary Meeting of Council, 27 August 2002, p.3.

63 Eurobodalla Shire Council, Administration Report to Ordinary Meeting of Council, 27 August 2002, p.4.

64 Eurobodalla Shire Council, Minutes of Ordinary Meeting of Council, 27 August 2002.

65 Eurobodalla Shire Council, Letter of Understanding – Sewerage of the North Moruya Industrial Estate, Attachment to Submission No. 3.

66 Eurobodalla Shire Council, Answer to question on notice ESC14 received on 28 May 2003.

4.92 Council General Manager, Mr Levy, told the Committee hearing that to date neither Mordek nor MIE had made a capital contribution to sewerage of the estate, and that there was no contractual obligation for them to do so.⁶⁸

4.93 The Committee notes, however, that Mr Levy has since provided Council documents dated 27 May 2003 showing that the tender process for the sewer scheme is now complete, and contract documentation with MIE has been prepared. The contract provides that MIE will pay Council \$291,500 (plus GST) within 60 days of Council issuing an invoice upon the commencement of works, and a further \$291,500 after council issues an invoice at the commissioning of works.⁶⁹

Council's evidence to the Committee

4.94 Eurobodalla Shire Council took a curiously defensive position in giving evidence to this inquiry, with the result that Council representatives' stance both in the submission and at the hearing does not sit comfortably with the documentary record outlined above. For reasons not clear to the Committee, Council representatives chose to follow an awkward line of argument not backed up by their own documents in several respects: first, claiming that Council was not involved in seeking Dairy RAP money for the sewer project, and second, maintaining that there is a clear and relevant distinction between Mordek and Moruya Industrial Estate.

4.95 Council's submission to the inquiry states that:

There has never been an attempt by the Council to fund the sewerage system by any application by the Council to DRAP.

4.96 While it is technically true to say that the Council itself did not apply for Dairy RAP funds, Council's own records show that council officers were active in initiating a Dairy RAP application, albeit with Mordek as the proponent, with the intention of obtaining Dairy RAP funds for the sewerage system.

4.97 Council General Manager Mr Jim Levy maintained throughout the hearing that Council did not see the Dairy RAP funds granted to Mordek as being a contribution for the sewer scheme. Mr Levy told the Committee that:

We understood all the time that if Mordek was successful with its Dairy RAP funding, the money would go towards the expansion of the steel rolling plant. It certainly would not come to council. However, we were hopeful that that would free up funds from the estate owner or Mordek so

67 Eurobodalla Shire Council, Annual Report 2001-02, p.53.

68 Committee, *Hansard*, 8 May 2003, p.56.

69 Eurobodalla Shire Council, Administration Report to Ordinary Meeting of Council, 27 May 2003.

that they could then make a contribution towards the sewerage of the estate...⁷⁰

4.98 When challenged to justify this stance against the Council report of 11 September 2001, which stated that funds for the sewerage project were being sourced through the Dairy RAP program and channeled through Mr John Nader, Mr Levy said:

I believe that some of the words used in that report were unfortunate and that they did not reflect the true situation of what was occurring.⁷¹

4.99 Later, acknowledging that there was ‘a connection’ between the Dairy RAP grant to Mordek and the sewerage of the industrial estate, Mr Levy still maintained that:

...it is not the case that we are going to get one cent of Dairy RAP funding. The Dairy RAP funding has been acquitted against expansion of the steel profiling plant, and it is other funds that we are seeking as a contribution to the sewerage scheme. That is our view. That is our position. We have always known this to be the case.⁷²

4.100 Yet, unless every report to Council discussed above can be dismissed as ‘unfortunately’ worded, it is clear from Council documents that Council had not ‘always’ seen the Dairy RAP funding as going to the steel profiling plant only. Indeed, this position is not tenable in light of the initial application submitted to DEWRSB by Mordek, which explicitly sought funding for the sewerage project. As seen above, it was a Council officer, Mr Phil Herrick, who encouraged Mr Nader to submit this application, and letters signed by then Mayor, Councillor Vardon, in September 2001 express Council’s support for Mordek’s application on the basis that the Dairy RAP funds will be used as a contribution to sewer the industrial estate.⁷³

4.101 Council’s submission also attempts to draw a clear distinction between Mordek and the North Moruya Industrial Estate, stating that Mordek is not the owner of the industrial estate. The submission then suggests that the Dairy RAP funds received by Mordek had no bearing on Council’s memorandum of understanding with North Moruya Industrial Estate, which was signed at a later date.

4.102 The Committee finds this an extraordinary line of reasoning, given that Council was fully aware, as was the funding department, that both Mordek and Moruya Industrial Estates (the company that owns the North Moruya Industrial Estate) are wholly owned and operated by Mr and Mrs Nader. Indeed, the two companies are referred to interchangeably in council’s own documents. On

70 Committee, *Hansard*, 8 May 2003, p.53.

71 Committee, *Hansard*, 8 May 2003, p.55.

72 Committee, *Hansard*, 8 May 2003, p.57.

73 DoTARS, Additional material provided on 6 May 2003, Documents 15 and 16.

questioning by the Committee, Mr Levy acknowledged that the two companies do indeed share common interests. Exactly what Council hoped to gain by drawing this tenuous distinction in the first place is open to question.

4.103 It is clear to the Committee that the Eurobodalla Shire Council played a key role in initiating and supporting Mordek's application for Dairy RAP funds with the objective of securing these funds as a contribution to the cost of sewerage for the North Moruya Industrial Estate. It finds that Council representatives were unable to adequately explain the manifest inconsistencies between their evidence and the Council's own documentary record.

The dissenting councillors

4.104 At the public hearing, the Committee heard from three councillors of the Eurobodalla Shire Council who wished to appear independently to voice their concerns about the Mordek grant.

4.105 The Committee notes that most of the concerns of these three councillors appear to have been based, to some extent, on a misunderstanding of the aims of Dairy RAP. Councillor Cairney, for instance, told the Committee:

What I knew about Dairy RAP was that it was formed to help battlers and people who were out of work, lost privileges and money because of dairy deregulation.⁷⁴

4.106 Councillor Brown felt that Dairy RAP money should more properly be given to 'real' rural areas:

...where the people are doing it really tough, where they could – during this drought – use some of that money to survive on in the short term. I think the process and the rules that apply to it and the regions that it applies to are wrong.⁷⁵

4.107 In fact, as noted in Chapter 2, Dairy RAP was a specific program intended to create jobs in areas affected by dairy deregulation. Its purpose was not to directly assist farmers affected by dairy deregulation, and it was never intended to provide short-term drought relief to farmers.

4.108 Another of Councillor Cairney's complaints was that the grant to Mordek 'did not feel right' because:

My personal opinion was that the bloke was not broke; he was not doing it tough.⁷⁶

74 Committee, *Hansard*, 8 May 2003, p.76.

75 Committee, *Hansard*, 8 May 2003, p.85.

76 Committee, *Hansard*, 8 May 2003, p.76.

4.109 This was echoed by Councillors Brown and Smellin, whose primary concerns seem to arise from an opinion that government money should not be going to support a successful business.

4.110 While most of the issues raised by these Councillors are generally outside the scope of this inquiry, they do touch on the question of whether Eurobodalla should have been a target area for Dairy RAP funding. This concerns the broader question of whether there are adequate mechanisms in place to ensure that Dairy RAP funding goes to the areas most impacted by dairy deregulation, an issue that has been previously raised in Senate estimates.⁷⁷

FINDINGS AND RECOMMENDATIONS

South East Area Consultative Committee

4.111 The Committee is not satisfied Seacc understood the Dairy RAP guidelines or its role in the application of the guidelines to project proposals. It is a matter of significant concern to the Committee that Seacc endorsed an ineligible project proposal for the provision of sewerage infrastructure for the North Moruya Industrial Estate. The Committee regrets Seacc, including the chair, did not feel greater responsibility to ensure Dairy RAP was implemented in accordance with Commonwealth policy.

4.112 A related concern is the reliance upon Seacc's initial endorsement of the ineligible sewerage proposal through all stages of Mordek's application assessment.

Recommendation 1

The Committee recommends that DoTARS define the role of Area Consultative Committees (ACCs) in the implementation of Commonwealth funding programs and undertake a review of the performance of individual ACCs in relation to these responsibilities.

Eurobodalla Shire Council

4.113 The Committee concludes Eurobodalla Shire Council had a formative role in the original Mordek application and a continuing interest in the progress of the application.

4.114 The evidence by Eurobodalla Shire Council that it never expected the Mordek Dairy RAP grant to fund sewerage works at the North Moruya Industrial Estate cannot

77 Senate Rural and Regional Affairs and Transport Legislation Committee, *Hansard*, 11 February 2003, pp.174-177.

be reconciled with the minutes of Council's Business Development Board, the original Mordek application, the 2001-02 Eurobodalla Shire Council Annual Report and a succession of Eurobodalla Shire Council minutes.

4.115 In particular, the Committee notes the former Mayor's report to the Works and Facilities Committee on 11 September 2001 noting that Federal funds for the sewerage project at the industrial estate were being "sourced through the Dairy Regional Assistance Program and being channeled through the owner of the North Moruya Industrial Estate, Mr John Nader."

4.116 The Committee is concerned that the General Manager and Mayor provided no reasonable explanation for the inconsistency between Eurobodalla Shire Council's evidence to the Committee and Council's own documentary record.

Chapter 5

The department's administration of the Mordek grant

5.1 As the government agency charged with administering the Dairy RAP program, the funding department – first DEWRSB and then DoTARS – had a key responsibility to administer applications and grants according to the guidelines for funding produced in July 2000.

5.2 This chapter examines the funding department's administration of the assessment, approval and audit process of the Dairy RAP grant to Mordek. In particular, it considers:

- Whether departmental officials followed all proper processes in assessing and approving the Mordek application;
- Whether the level of feedback and assistance given to the Naders to rework their application was appropriate in the circumstances;
- The interpretation and application of Dairy RAP guidelines in the case of the Mordek project;
- The appropriateness of approving the grant to Mordek in light of relevant information available to the department and the funding guidelines; and
- The adequacy of DoTARS' internal review of this grant and evidence to the Committee.

5.3 In addressing these questions, the Committee has considered whether any apparent lapses in this case reflect broader problems with the department's administration of Dairy RAP and accountability arrangements for this program.

The role of departmental officials in assessing the Mordek grant

5.4 In a government grants program such as Dairy RAP, the administering department has a responsibility to conduct thorough checks on applicants to ensure that any funding decision takes account of all relevant information.

5.5 Ms Riggs, First Assistant Secretary, Regional Programs Division, DoTARS, told the Committee that she felt the departmental officials assessing this application had followed the established processes. She said at the hearing that:

My examination of what is on the department's records in relation to this program leads me to the conclusion that the processes that led to this project being approved were duly carried out, were consistent with the then department's operations of the program, and, based on what was known to

the department through the application and so on, that it was a proper approval.¹

5.6 She did acknowledge, however, that there may have been gaps in the knowledge of those same officials, noting that:

With the best will in the world, even excellent public servants cannot know everything. At the time approvals were given for this project, it was not known that some of the work associated with the application had been undertaken. It was not known that there might have been an element of retrospectivity.²

And later that:

We now know that the department may not have known some things that may have led it to either approve something different by way, for example, of budget or to have continued to negotiate with the proponents in order to frame a project which would have met the guidelines.³

5.7 As previously noted, the department did carry out a lengthy process of assessment during which it requested and received from the proponent extensive amounts of documentation in relation to their company's financial viability. It had quantities of information on which to make its decision.

5.8 Among the information available to it was the PricewaterhouseCoopers report of September 2001, which noted that excavations at the site had commenced. Yet, according to Ms Riggs' testimony, even with this report available to them, the officials charged with assessing Mordek's application remained unaware that construction of that building had commenced before the project was formally approved. Just how, having 'duly carried out' all processes to assess this application, the department should have remained in the dark about the fundamental question of whether the building had been constructed or not is a serious question. It relates to the question noted previously of how DoTARS was misled into thinking that construction of the Mordek plant commenced on 24 December 2001, when clearly it had commenced at an earlier date.

5.9 If departmental officials were seeking to apply Dairy RAP guidelines strictly, the PricewaterhouseCoopers report should have been of some concern given the guideline prohibiting retrospective funding of projects. It would seem that, in light of this information, at least some further investigation of the state of construction of this building was warranted. Even if a site visit by a departmental official was not practicable, at the very least the department could have asked the Seacc Dairy RAP project officer, who could be expected to have local contacts and knowledge, to investigate further. There is no record that this occurred.

1 Committee, *Hansard*, 8 May 2003, p.33.

2 Committee, *Hansard*, 8 May 2003, p.22.

3 Committee, *Hansard*, 8 May 2003, p.33.

5.10 Another question mark around the role of departmental officials involved in assessing this grant is the extent to which they assisted the proponents rework and modify their application in order to make the proposal meet Dairy RAP guidelines.

5.11 As can be seen from the chronology in Chapter 3, Mordek's application was revised time and again after feedback from the department. In some instances, the application was actually revised by departmental officials, albeit in consultation with the proponent.

5.12 Ms Riggs told the Committee that it was common practice for the department to assist proponents develop their submission to meet the funding criteria, stating that:

This program has been run very much in terms of providing the best possible assistance to proponents to produce projects which are likely to be funded for the benefit of their communities.⁴

5.13 Documents available to the committee show that departmental officials at the regional level were eager to progress this project. DEWRSB manager Mr Burnes wrote in an email to national office on December 10:

This is a project our office is most keen to progress. It was originally submitted in round 1, due to a number of factors it has been bumped back a number of times.⁵

5.14 It could be argued that the eagerness of departmental officials to assist the proponent in this way is a positive feature of the administration of this program, in the sense that it could assist proponents whose project meets the aims and criteria of the program, but who lack experience in writing funding submissions to government.

5.15 Notwithstanding this point, the Committee considers that the practice of having departmental officials redraft proponents' applications risks undermining the integrity of the program. In a competitive submission process such as this one, an over-willingness to assist one applicant may be detrimental to the overriding policy aims of the program. It allows for the possibility that departmental officials, albeit with the intention of assisting projects which will be of benefit to the community, could unduly assist an application which strictly speaking does not meet all the criteria. This is unfair to other applications in concurrent funding rounds which are rejected on the basis that they do not fit the guidelines.

Interpretation of the Dairy RAP guidelines

5.16 The length of time it took for departmental officials to identify possible incompatibilities with the Dairy RAP guidelines in this case highlights weaknesses both in the guidelines themselves and the level of understanding of the officers charged with interpreting them.

4 Committee, *Hansard*, 8 May 2003, p.14.

5 DoTARS, Additional information provided on 6 May 2003, Document 28.

5.17 As noted in Chapter 3, the guideline regarding duplication of funding was not immediately identified as an impediment to approving Mordek's original application by the DEWRSB regional officers. The issue of 'competitive advantage' was not raised until comparatively late in the piece, when the project was assessed by an external agent. Nor was retrospectivity considered an issue by those approving the final version of the application.

5.18 The section below discusses key questions raised about the application of the guidelines on duplication of funding, competitive advantage, retrospectivity and value for money in relation to the Mordek grant. In examining the application of the guidelines here, the Committee has sought to understand both the rationale for the guideline and its usual interpretation, and whether there was anything unusual in the understanding of the officers charged with assessing the Mordek application against those guidelines.

5.19 The Committee also considers whether the guidelines themselves provide adequate information and guidance to proponents and departmental officers.

Duplication of funding

5.20 The Dairy RAP guidelines state as a general principle that:

Project proposals will not be approved in areas where Commonwealth funding through Dairy RAP is, or could be perceived as, substituting or duplicating funding from the responsible Commonwealth, State/Territory or local government agency.⁶

5.21 Without having specifically questioned DoTARS witnesses on the rationale for this guideline, it is presumably a standard one designed to prevent cost shifting by local and state governments seeking to obtain Commonwealth funds for projects which they could be expected to finance themselves. Ms Riggs told the committee that this guideline is common across the regional assistance programs.⁷

5.22 The funding duplication identified in the Mordek case is that provision of sewer infrastructure is generally understood to be the responsibility of local government. This principle would appear simple enough. Without knowing the details of the Eurobodalla Shire Council's application to DoTARS for funding under the Regional Solutions Program for the sewer works at North Moruya, Ms Riggs was able to state with confidence that:

[That] application would have been rejected under the guidelines for [the Regional Solutions Program] on the same basis that, under the guidelines for Dairy RAP, anything that sought funding for what was regarded as a local

6 DEWRSB, Dairy Regional Assistance Programme Guidelines, July 2000, p.6.

7 Committee, *Hansard*, 8 May 2003, p.17.

government or state government function would not have met the guidelines for a Regional Solutions program.⁸

5.23 If this guideline is so clear, it raises the question of why DEWRSB regional officers assessing the original Mordek application did not identify the issue of funding duplication in the first instance. As noted in Chapter 3, it was not until a meeting with national office representatives in August, two months after the application was originally submitted, that this was identified.

5.24 When regional officers considered possible funding duplication, as the project assessment pro forma required them to do, they decided that this was not an issue in this case, as:

Eurobodalla Shire Council are unable to provide sewerage services to the land without contribution by land owners.⁹

5.25 Some element of confusion in this case may be attributed to the Dairy RAP guidelines themselves, which state elsewhere that projects fundable under Dairy RAP could include:

Projects that **support** infrastructure development in local communities (ie, as a minor contributor to general infrastructure that will employ local people in the construction and resulting identifiable community benefit).¹⁰

And also that:

Preference will be given to proposals that contain financial and other support from State/Territory or local government, the private sector, the community or other sources.¹¹

5.26 Whatever their rationale, these guidelines could be taken to contradict or at least modify the intent of the guideline prohibiting duplication of funding.

5.27 Overall, though, the fact that regional office officials did not identify funding duplication as a problem, while national office staff took a stricter view leading to the conclusion that the issue of funding duplication was relevant in this case, suggests a degree of discrepancy in how this guideline was interpreted and applied. This is the first of several instances in the Mordek case where different levels of the assessment process interpreted and applied the guidelines inconsistently.

8 Committee, *Hansard*, 8 May 2003, p.17.

9 DoTARS, Additional material provided on 6 May 2003, Document 8.

10 DEWRSB, Dairy Regional Assistance Programme Guidelines, July 2000, p.4.

11 DEWRSB, Dairy Regional Assistance Programme Guidelines, July 2000, p.7.

Competitive advantage

5.28 There is no published guideline specifically relating to ‘competitive neutrality’ in the official Dairy RAP booklet. Nevertheless, the issue is mentioned in a document giving guidance to proponents developing projects,¹² and the external assessor of the Mordek grant was asked to provide an opinion on: ‘whether the proponent will or is likely to gain competitive commercial advantage if the project is approved’.¹³ The pro forma project assessment sheet used by departmental officials also includes a section on ‘competitive neutrality’.¹⁴

5.29 This element of the assessment may relate to the broad, umbrella guideline in the official booklet that: ‘Proposals must be consistent with current Government policy...’.¹⁵ Presumably, consideration of ‘competitive neutrality’ is included in the assessment of applications to ensure that government funding under Dairy RAP does not undermine overall Commonwealth policy in this area by unfairly advantaging a particular enterprise. The guidance to project proponents states that:

In providing Commonwealth funds to projects, the Department must ensure that these projects will not impact adversely upon other businesses and that the funding process is transparent and publicly defensible.¹⁶

5.30 The Committee considers it highly unusual that this guideline should not be included in the official program booklet, when it will be used as a criterion for assessing applications.

5.31 Material available to the Committee in the Mordek case suggests a lack of clarity about this concept in the administration of Dairy RAP.

5.32 ‘Competitive advantage’ was not identified as an issue by departmental officials. Possible ‘competition issues’ were first identified by the independent assessor PricewaterhouseCoopers. In its first assessment of the Mordek application, PricewaterhouseCoopers found that:

From the facts provided, it is not clear whether competition issues will hinder Mordek’s application. Upon consideration of competition issues,

12 DoTARS, ‘Guidance for Consideration in Developing Dairy Regional Assistance Programme (Dairy RAP) Project Proposals’. This document was produced by DEWRSB and is available at: http://www.dotars.gov.au/regional/drap/PDFs_Docs/DRAP_Proposal_Guidance.doc. DoTARS was not able to tell the Committee exactly when it was published, however it appears to have been current at the time in question.

13 DoTARS, Additional material provided on 6 May 2003, Document 19, p.4.

14 DoTARS, Additional material provided on 6 May 2003, Document 8. Additional material provided on 30 May 2003.

15 DEWRSB, Dairy Regional Assistance Programme Guidelines, July 2000, p.5.

16 DoTARS, ‘Guidance for Consideration in Developing Dairy Regional Assistance Programme (Dairy RAP) Project Proposals’, op cit.

DEWRSB may wish to consider the expected benefits of the development of a new sewered industrial site to enterprises other than Mordek.¹⁷

5.33 In its next report, having obtained additional information from the proponent's accountant, PricewaterhouseCoopers found that:

...there may be competition issues should funding be provided for the sewerage works on the industrial site. Moruya Industrial Estate Pty Ltd (MIE), a related party of Mordek, currently own the industrial site near Batemans Bay. The applicant advises that once this site is sewered, it is estimated that MIE could generate [deleted] over the next 3 to 5 years from land sales. We believe that the provision of funding to facilitate the development and sale of land by MIE may be outside the scope of DEWRSB funding and may result in competition issues.¹⁸

5.34 Although the report does not spell out what is meant by 'competition issues' in this case, and PricewaterhouseCoopers' understanding of the problem is far from clear to the Committee on the basis of the report alone, DEWRSB officials took on this comment in full, without seeking clarification. This provided the grounds for seeking the changes to the project budget which removed all reference to funding for sewerage headworks.

5.35 Feedback on this issue was provided to the proponent's accountant in an email of 28 November 2001, which said:

The Department's findings are that not all aspects of the project are fundable under the DRAP guidelines. It was determined that if the DRAP funding, or contracted project operations, were to assist with the provision of sewerage headworks that this would represent a competitive advantage to the owner of the land (competitive advantage is prohibited under the DRAP guidelines). Therefore the Department requests that references to the provision of sewerage headworks as part of the DRAP project be removed from the funding submission.¹⁹

5.36 This email suggests that the regional officer responsible had only a vague understanding of the issues involved. For one thing, DRAP guidelines do not specifically prohibit 'competitive advantage' – this appears to be a general understanding in the program administration, but is not clearly set out in the official guidelines. The Committee is concerned that the program guidelines' silence on the issue of competitive advantage may have led to some confusion in the interpretation and application of this rule on the part of individual officials.

5.37 However, having accepted the assessment that there were 'competition issues' should funding be provided to the sewer project, the regional officer went on to

17 DoTARS, Additional material provided on 6 May 2003, Document 19, p.9.

18 DoTARS, Additional material provided on 6 May 2003, Document 22, p.9.

19 DoTARS, Additional material provided on 6 May 2003, Document 23.

recommend approval of an amended application to fund the factory but not the sewer, which was eventually approved by the program delegate. This was done despite the knowledge that Mordek was fully able to fund the new factory itself, and that the Dairy RAP grant would in essence be used to fund the sewer project, albeit indirectly.

5.38 The fact that departmental officials went ahead with approving a grant to a commercial entity while knowing that the money would ultimately enable a related entity to profit from improved land values through installing a sewer system is questionable. In the Committee's view, once this was identified as an issue that could preclude eligibility for funding, the superficial revision of the project budget was clearly not enough to eliminate cause for concern on this front.

5.39 If giving a commercial entity a competitive advantage is regarded by the department as grounds for rejecting a Dairy RAP application, this should be spelt out in the published guidelines, and those administering the program should have clear guidance on what is meant and how it is to be interpreted. In this case, lack of clarity on this issue may have caused a grant to be approved that is problematic in this respect.

Retrospective funding

5.40 One of the conditions of assistance set out in the Dairy RAP booklet is that:

Funding is not available retrospectively. Proponents should not plan to begin a project dependent on Dairy RAP funding before receiving formal notification of approval.²⁰

5.41 There has been some disagreement as to exactly how this guideline should be interpreted. When asked to explain the public policy rationale behind it, Ms Riggs told the Committee that:

I believe that this guideline exists in order to prevent a situation where something has been completely undertaken – particularly in a case where we are dealing with private enterprise – and been funded through other sources and, in effect, then the government is asked to reimburse the proponent. I do not believe that it exists to stop businesses from taking normal commercial risks.²¹

5.42 She later said that:

This is to prevent anyone from having a recourse to the Commonwealth saying, 'But I expected to get funding from you and I didn't get it.'²²

20 DEWRSB, Dairy Regional Assistance Programme Guidelines, July 2000, p.8.

21 Committee, *Hansard*, 8 May 2003, p.22.

22 Committee, *Hansard*, 8 May 2003, p.23.

5.43 With regard to how this guideline should be interpreted, Ms Riggs said that it is important to read it in full, suggesting that the warning to proponents not to commence projects before receiving formal notification of funding approval applies only to projects *dependent* on Dairy RAP funding.²³ Her comments imply that the department would consider it acceptable practice to fund projects which are not dependent on Dairy RAP funding to proceed. This raises the question alluded to in Chapter 4 of whether the Commonwealth should be involved in funding projects which already have finance available from other sources, which is discussed below.

5.44 There are indications that regional officers had their own views on what the guideline on retrospectivity meant. While the guideline states that proponents should not begin their project until receiving notification of funding approval, the proponent's accountant Mr Jesson was apparently led to believe by departmental staff that commencing work on the factory prior to notification of funding approval was permitted, provided that the funds were expended after 12 December (which was the date the final application was lodged with the department).²⁴ It is not clear who told him this, or on what basis this advice was given. If such advice was given to the proponent by a departmental official, it suggests that this guideline was also either not clearly understood or not strictly applied at the regional office level.

5.45 Turning to how the guideline on retrospectivity applies to the Mordek grant, there are several relevant points noted in previous chapters worth repeating. First, construction work at the new factory site does not appear to have commenced prior to Mordek lodging its initial Dairy RAP application, which was for a contribution to fund the sewer headworks. Second, while the exact timetable for construction of the Mordek plant remains uncertain, it is clear that work on the foundations was largely complete by the time the grant was formally approved on 17 December 2001, and the building itself was almost complete at the time the relevant ACC was formally notified of the grant on 17 January 2002. Third, in assessing the Mordek application, the department had available to it a report indicating that excavations at the factory site had commenced in September 2001, almost two months before the grant was approved, but did not appear to think this information important enough investigate further.

5.46 When Mordek lodged its initial application, questions of retrospectivity could not have arisen as the project for which funds were sought, including both factory construction and sewer installation, had not commenced. It was only as the assessment process dragged on, with new issues being raised by national office and PricewaterhouseCoopers along the way, that factory construction commenced. Importantly, it was during this process that the content of the project described in the application changed at the department's request to include only the factory construction, which commenced during the assessment process, and not the sewer headworks, which did not commence.

23 Committee, *Hansard*, 8 May 2003, p.23.

24 Committee, *Hansard*, 8 May 2003, p.108.

5.47 The Committee is mindful that departmental officers, having invested a substantial amount of time in progressing the application and built up a relationship with the proponent may have been reluctant to turn around at a late stage and refuse the grant. However, the fact that the application had reached a relatively late stage of the assessment process by the time retrospectivity became an issue, is not in itself an adequate justification for approving a grant that breached this guideline.

5.48 As noted in Chapter 4, the proponent's decision to go ahead and build the factory prior to receiving formal notification of funding approval was justified on the grounds of mounting commercial pressures to build the factory and commence production at the new site. The advice of regional officers that funding could legitimately be spent prior to formal notification of approval, while misguided, may have been a contributing factor.

5.49 The bureaucratic delays which caused the retrospectivity question to arise can largely be attributed to a lack of clarity in the guidelines overall, which resulted in issues not being picked up until relatively late stages of the assessment process. However, the fact that the guideline was not applied strictly once it became an issue is a cause of some concern. It suggests a weakness in the administrative structures of the program, which should be designed to ensure a nationally consistent approach to funding that fully implements the policy objectives of the program and protects the integrity of the program against local interests.

Value for money

5.50 Related to the retrospectivity issue in this case is the question of whether a project that already has funding available from other sources can be funded under Dairy RAP. Dairy RAP guidelines state that:

Dairy RAP projects must demonstrate value for money.²⁵

5.51 The Committee is concerned that the public money granted to Mordek did not constitute value for money for the Commonwealth, as the project would have been undertaken anyway, and so the grant to Mordek did not lead to a net gain in employment.

5.52 The Committee wanted to know whether the department thought it appropriate to fund a project that would be commercially viable without public funding, thus potentially denying funding to other projects that needed it to get off the ground.²⁶

5.53 Ms Riggs responded to questioning along these lines by saying that:

In the guidelines that operated at the time there is not actually a statement that says that you can only come to the Commonwealth if you are desperate

25 DEWRSB, Dairy Regional Assistance Programme Guidelines, July 2000, p.6.

26 Committee, *Hansard*, 8 May 2003, p.27.

and need the money, but I think it is fair to characterise the Commonwealth's support under Dairy RAP as often having created opportunities whereby investment could be brought forward to the benefit of the local community.²⁷

5.54 It seems obvious in this case that Mordek had finance available to it for the plant from the outset. The original application said as much, as noted in Chapter 3. The first PricewaterhouseCoopers assessment in September 2001 said that:

...the applicant has confirmed funding for the building and plant, however it is unclear how they would fund the sewerage system should funding not be provided by the Commonwealth. Given that the applicant has commenced the project, it is unclear what the effect will be on the project should funding not be provided by the Commonwealth. The company has advised that they would not be able to finance both the sewerage works and the new building due to the significant capital required.²⁸

5.55 If the guidelines on retrospectivity and value for money are designed to prevent projects which already have finance from other sources from obtaining Commonwealth funds through Dairy RAP, then Mordek should not have received a grant. With the information available to it, the department should have been aware that the proponents were prepared to go ahead and build their new factory whether or not the grant was made to them. While Mordek may not have had sufficient funds to cover the sewer headworks as well as the factory, this was not fundable under the Dairy RAP guidelines, and therefore should not have been taken into account in making the grant.

5.56 If, on the other hand, the program guidelines allow for a grant to be made even though a project is fully financed and is in fact already well underway, this raises questions about the guidelines themselves. It touches on the broader question of what public policy objective Dairy RAP will achieve if it has the potential to be used simply to substitute public funding for private investment. This is a question which warrants further consideration by the department in the future administration of funding programs.

5.57 In this context, the Committee notes the recommendations made by the Auditor-General's report on the Regional Assistance Program (RAP), which suggested that the procedure for providing feedback to RAP project proponents be formalised and minimum standards adopted.²⁹ The report found that:

...the ANAO considers that, as RAP is a competitive submission-based programme, it is better practice to clarify the relative importance of any

27 Committee, *Hansard*, 8 May 2003, p.27.

28 DoTARS, Additional material provided on 30 May 2002, p.10.

29 ANAO, *Regional Assistance Programme*, Audit Report No. 48 of 2001-02, p.42.

criteria or considerations in assessing applications, and to communicate this to key stakeholders.³⁰

5.58 In response to that recommendation, DoTARS said that it had introduced new standards for providing feedback on projects not approved, ensuring that proponents of projects which are not approved receive advice in writing of each of the assessment criteria that the application did not satisfy.

5.59 Evidence to the Committee in the Mordek case would suggest that the process of providing feedback is not so formal or consistent as DoTARS suggests is now the case for the Regional Assistance Program. In this case, the interpretation of Dairy RAP guidelines and relative weight given to each of the selection criteria were not consistent at each stage of the process, with the result that issues that should arguably have been identified in the first instance were not identified until further down the track. As a consequence, while the lines of communication between regional office staff and the project proponents were in this case relatively strong, the nature and content of feedback given to proponents was somewhat haphazard. This may reflect problems with Dairy RAP administration that go beyond this particular case.

Regional funding distribution

5.60 As noted in Chapter 2, Dairy RAP funding was intended to benefit regions which were both dairy dependent economically and significantly affected by dairy deregulation. This has been raised in relation to the Mordek grant because of a question mark over whether Eurobodalla was genuinely an area of high dependence on the dairy industry for employment.

5.61 As mentioned in Chapter 4, it remains unclear whether adequate mechanisms are in place to target Dairy RAP funds to regions most affected by deregulation. The ABARE report (referred to in Chapter 2) on the regional impacts of deregulation and dependence on dairy related employment is supposed to be a key point of reference for allocating funds regionally. That study assessed Eurobodalla as 'high' in terms of deregulation's impact on local farms but 'low' in terms of its regional dependence on dairy sector employment.³¹ Against the latter criterion, an ABARE witness confirmed that Eurobodalla ranked 109th out of 157 affected regions.³²

5.62 The low ranking for employment dependence is of particular interest to the Committee, as the key justification for the Mordek grant was the employment outcomes it would generate.³³ The Committee considers it a matter of concern that the *high* degree of emphasis placed by the Department on the project's ability to create

30 ANAO, *Regional Assistance Programme*, Audit Report No. 48 of 2001-02, pp.12-13.

31 ABARE, *The Australian Dairy Industry – Impact of an Open Market in Fluid Milk Supply*, 2001, p.31.

32 Committee, *Hansard*, 8 May 2003, p.7.

33 See DoTARS' final review of the project, Additional material provided on 6 May 2003, Document 47.

jobs is at odds with the Eurobodalla region's *low* dependence on dairy related employment.

5.63 In the Committee's view, this disparity raises some doubt about the weight given to the ABARE study in the decision making process for the regional distribution of Dairy RAP funds.

DoTARS' Internal Investigation and Evidence to the Committee

5.64 The department's response to the controversy surrounding grant to Mordek has in itself revealed a number of inadequacies in the administration of Dairy RAP.

5.65 When this issue was first raised through questions placed on notice in the Senate in 2002, the Minister for Transport and Regional Services gave a number of inaccurate or inadequate answers.³⁴ Inaccurate information provided by the Minister included the date at which construction of the plant commenced.³⁵ In one answer there is an incorrect reference to officials of the Department of Transport and Regional Services being involved with the grant, when at the time DEWRSB was responsible.³⁶ The Minister's only response to a question on whether the terms of the application had required any retrospective approval of funds was a blunt: "No."³⁷ Acknowledging some deficiencies in the answers provided by DoTARS, Ms Riggs told the hearing that they were based on the best available information to the department at the time.³⁸

5.66 It seems extraordinary that the department's best available information was not accurate on the commencement date of a project it had funded, and suggests a lack of thorough investigation and monitoring of the project both before and after funding approval. The off-hand response to the question of retrospectivity when raised through the questions on notice in the Senate is disturbing in light of Ms Riggs' later admission to the Committee that there might have been an element of retrospectivity.³⁹ A formal Senate inquiry should not be necessary to trigger a departmental review of inadequacies in procedures which could lead to grants being made that should not be made.

34 Questions on notice: 507, 509 and 511 received 24 September 2002, Senate *Hansard*, pp.4935-4937.

35 Answer to QON 511 gave 24 December as the date on which building construction commenced.

36 Answer to QON 507 gave 27 August as the date on which the original Mordek application was lodged with DEWRSB.

37 Answer to QON 509.

38 Committee, *Hansard*, 8 May 2003, p.31.

39 Committee, *Hansard*, 8 May 2003, pp.22, 29.

5.67 Another point of concern is that, even in the two months it took to complete its internal review of the Mordek grant, the department failed to make a serious effort to gather all relevant information and address the questions raised at Senate estimates.

5.68 The one and a half page document resulting from that review is uninformative and sidesteps the crucial issue of retrospectivity altogether. Although it notes that funds were spent by the proponent prior to the project's approval by the program delegate on 17 December 2001, it then goes on to baldly state that the Commonwealth funds were acquitted against agreed project expenditure and in accordance with the funding agreement.⁴⁰ Although offering reasons why the proponent undertook the expenditure prior to receiving funding approval, the report does not comment on why the grant was approved even though the project had commenced.

5.69 The department's failure to produce accurate and thorough responses to questions on notice and at estimates is of concern. It could suggest a lax attitude in the administration and recordkeeping processes of the program, which resulted in the provision of inaccurate information to Parliament. It could also suggest a reluctance to provide the Parliament with sufficient information to enable effective scrutiny of the department's administration of the program. Such a defensive attitude is not conducive to early identification and rectification of broader problems with a program that individual cases such as this one can highlight.

Responsibility and accountability arrangements

5.70 At a number of points during the hearing, Ms Riggs told the Committee that she could not answer for the actions of the officers who actually made the decisions on the Mordek grant, as she had not been with the department at the time, and the relevant officers were no longer with the department.

5.71 In response to questioning about what account was taken of the PricewaterhouseCoopers report in assessing Mordek's application, she said:

...as none of us were involved at the time, I cannot explain to you how that paragraph was considered in the assessment process.⁴¹

5.72 She later said:

I cannot respond to you about what account the officers then responsible for the assessment of this project took of these assessment reports in formulating their recommendations to the delegate.⁴²

5.73 The Committee finds it unacceptable that DoTARS should seek to avoid corporate responsibility for apparent lapses in the investigation and assessment process of a grants program because of administrative and personnel changes. Record

40 DoTARS, Submission No. 1, Attachment A, p.2.

41 Committee, *Hansard*, 8 May 2003, p.25.

42 Committee, *Hansard*, 8 May 2003, p.26.

keeping practices should be robust enough to ensure that appropriate documentation of the decision making process is maintained. Staff changes do not diminish a Commonwealth agency's accountability to Parliament for the expenditure of public funds.

5.74 The provision of inaccurate answers to questions on notice by the Minister for Transport and Regional Services and his representative in the Senate is interesting in that, as noted in Chapter 2, technically he is not the Minister responsible for Dairy RAP. Senators at the hearing noted the confusion this 'quirky' arrangement has caused when trying to figure out where questions about Dairy RAP should be directed.⁴³

5.75 It seems to the Committee that the cross-portfolio administration of this program has not aided its effective administration, and is likely to lead to confusion about responsibility.

Concluding remarks

5.76 In identifying lapses in the application of particular Dairy RAP guidelines in the assessment of the Mordek grant, the Committee notes that this was probably not due to ill intent on the part of individual officials, but results from two features of the administration of Dairy RAP itself.

5.77 First, there is a lack of clarity in the guidelines themselves and of clear direction in how they should be interpreted. In this case, there were a number of discrepancies in the interpretation and application of individual guidelines between the department's regional and national offices. The regional office appears to have felt less bound by the letter of the booklet in several instances, resulting in issues not being picked up until the national office considered the application. While the Committee has not sought or received any information from DoTARS regarding what guidance is given to regional officers implementing this program, this case suggests there may be insufficient direction given to them in how to assess applications against the criteria.

5.78 A degree of confusion may be due to the structure of the program booklet itself, where information relevant to the criteria for assessment and approval of applications is scattered throughout the booklet and set out under a number of headings not immediately distinguishable from each other. The booklet does not provide any guidance as to the relative weight to be attached to each guideline/criterion. As noted above, at least one criterion used to assess projects – competitive neutrality – is not set out in this booklet.

5.79 As a general comment on the administration of this and possibly other regional assistance programs, the Committee suggests that the grounds for assessing projects should be set out in full, with clear direction on what the guidelines mean.

43 Committee, *Hansard*, 8 May 2003, p.15.

5.80 Second, the emphasis placed on providing the ‘best possible assistance’ to proponents to produce projects which will ‘benefit their communities’ has two sides. Its positive aspect is that it may encourage regional officers to be proactive in administering the program, encouraging eligible projects from all quarters and limiting bias towards proponents experienced in making funding submissions. The other side, though, is that departmental officials can become attached to a particular project whose outcomes they see as ultimately beneficial, to the extent that their desire to see the project succeed sways their judgment when it comes to assessing the application against the criteria.

5.81 Taken together with the lack of clarity and consistency in the funding criteria, the risk of this is that, once departmental officials identify too closely with particular local interests, the national policy intentions of the program could be undermined by officials eager to progress particular projects in their local area. The Mordek case reflects a weakness in the structures put in place to ensure that the Dairy RAP program was administered according to national guidelines and standards.

FINDINGS AND RECOMMENDATIONS

5.82 The Committee is not satisfied the Mordek application was assessed and approved by the funding department in accordance with Dairy RAP guidelines.

5.83 The Committee is not satisfied that Dairy RAP funds were not used, albeit indirectly, to enable the proponent to make a contribution to sewerage the North Moruya Industrial Estate, an objective proscribed by the program guidelines.

5.84 Due to the considerable irregularities and inconsistencies in relation to the Mordek grant, the Committee cannot be confident that other Dairy RAP grants were not subject to similar deficient administration.

Recommendation 2

The Committee recommends that the Australian National Audit Office (ANAO) undertake an audit of the administration of Dairy RAP, including the assessment and approval of the Mordek grant.

The Committee recommends the ANAO audit address each component of program administration, including the determination of regional need, the application process, the community information process, the role and responsibility of the Area Consultative Committees and the role and responsibility of DEWRSB and DoTARS.

Regional funding distribution

5.85 The Committee is not satisfied on the basis of the evidence it received that the ABARE assessment of regional impact of dairy deregulation was accorded sufficient weight in the project funding allocated to the Eurobodalla region and possibly other regions eligible for Dairy RAP funding.

Recommendation 3

The Committee recommends that Commonwealth funding to address regional disadvantage be distributed on the basis of objective funding considerations and that mechanisms be put in place to support intended policy outcomes.

Program guidelines

5.86 The Committee is concerned that the Dairy RAP guidelines lacked sufficient clarity to assist the proponent, the South East NSW Area Consultative Committee (Seacc), Eurobodalla Shire Council, the former Department of Workplace Relations and Small Business (DEWRSB) and the Department of Transport and Regional Services (DoTARS) to understand the program principles. The Committee is particularly concerned that the guidelines were ambiguous or silent on matters related to funding duplication and retrospectivity and the application of competition principles.

Recommendation 4

The Committee recommends that Commonwealth grant program guidelines clearly outline all criteria relevant to assessment.

Assessment of Mordek application

5.87 The Committee is concerned that DEWRSB/DoTARS failed to understand, explain and apply program principles in relation to the Mordek application.

5.88 The proponent had little understanding of the Dairy RAP guidelines at the time of application, and the Committee largely assigns responsibility for this lack of understanding to Seacc and DEWRSB/DoTARS.

5.89 The Committee is concerned that the flaws in the Mordek application were not addressed during the proponent's preliminary discussion with Seacc and DEWRSB in mid-2001.

5.90 The Committee is also concerned that departmental officers responsible for the assessment of the application appeared to identify with its success at the expense of proper assessment against program guidelines.

5.91 The Committee does not accept the delay between application and final approval as a basis on which to excuse DoTARS' lack of knowledge about the state of the building project. It is regretted DoTARS failed to undertake a site visit, or request advice from Seacc, during the six months between the initiation and conclusion of the Mordek grant assessment.

5.92 The frequency and extent of amendments to the original application, including amendments by departmental officers, suggests unacceptable weakness in the rigour of the program's administrative arrangements.

5.93 A worrying feature of the assessment is the paucity of assessment documentation and advice on decision-making made available to the Committee. The Committee notes the apparent absence of documentation demonstrating the relative importance of criteria and other considerations taken into account in assessing the Mordek application.

5.94 The Committee notes with concern the related failure of DoTARS to address a number of the Committee's questions on the grounds relevant decision makers were unable to provide evidence because they were working for departments other than DoTARS or had left the service of the Commonwealth. The Committee's capacity to scrutinise public expenditure would be much reduced if the Committee accepted this explanation as a basis on which to diminish Executive responsibility to the Parliament.

5.95 A related consequence of the inferior documentary record maintained by DoTARS is the department's evidence to the Committee that the answers to three parliamentary questions on notice from Senator O'Brien contained false information.

5.96 The assessment of the Mordek grant was neither transparent nor systematic, undermining the Committee's confidence in its integrity.

Recommendation 5

The Committee recommends DoTARS adopt transparent and systematic assessment procedures for regional program grants, incorporating an improved documentary record of assessment procedures.

Value for money

5.97 The Committee accepts the proponent's evidence that the steel profiling project would have proceeded to completion without the Dairy RAP grant. The Committee also notes the finding of the external assessor that finance for the steel profiling plant was secured by the proponent prior to grant approval.

5.98 Accordingly, the Committee is not satisfied the Mordek grant facilitated net employment gain for the Eurobodalla region.

5.99 The Committee notes that the Dairy RAP guidelines did not prohibit the funding in the absence of genuine need.

Recommendation 6

The Committee recommends that the Commonwealth seek to maximise the benefit of public expenditure on regional program grants by incorporating a ‘best value’ principle into program guidelines.

Project funded retrospectively

5.100 The Committee concludes the Dairy RAP grant funded the construction of the steel rolling plant at the North Moruya Industrial Estate retrospectively.

5.101 It is clear the project commenced before the grant was approved. Accordingly, the grant approval was inconsistent with the rule prohibiting retrospective funding.

5.102 The Committee does not accept DoTARS evidence that the project construction would need to have been concluded before approval to contravene the retrospective funding rule.

Senator Michael Forshaw

Chair

ADDITIONAL COMMENTS AND POINTS OF DISSENT

SENATOR HEFFERNAN AND SENATOR WATSON

1.1 The government Senators are concerned that this report reflects a predetermined agenda in terms of its findings and conclusions. This does not enhance the Senate Committee system of open minded investigation and inquiry leading to balanced recommendations and findings. Time constraints were an inhibiting factor preventing government Senators from suggesting changes or modifications to the majority report. We believe it is necessary not to allow the high standing of Senate Committee outcomes to be stage managed in this way.

1.2 On the whole, the government Senators welcome this report as an opportunity to identify areas for improvement in the department's administration of future funding programs. Government Senators agree that this case has demonstrated certain weaknesses in the interpretation and application of relevant funding guidelines which should be examined by the department. However, several conclusions **reached by the majority report are overstated, or not backed up by sufficient evidence to be justified.** We therefore wish to place some additional comments on record.

1.3 One key point implicitly acknowledged in the majority report but not elucidated is this: **there is no indication of actual malfeasance or misconduct by any of the parties involved in this case.** Government Senators stress that this report should not be taken as evidence of wrongdoing by any of the non-government stakeholders, especially the proponents, who all indications suggest were honest in their dealings with the government department concerned.

1.4 With regard to the department's administration, although certain procedural flaws have been detected, **this should not reflect on individual officers, who appear to have acted with the aims and objectives of the Dairy RAP program in mind.** No-one disputes that the construction of Mordek's new steel profiling plant has generated employment, and that the related development of the North Moruya Industrial Estate will eventually lead to the creation of several hundred jobs when fully utilised.

1.5 The fact that the grant may not have met certain criteria is of concern. However, this is easy to say with the benefit of hindsight and distance from the events in question. The **majority report makes it clear that departmental officials went to considerable lengths to see that the proponent's application complied with program guidelines.** This included three assessments by an independent consultant (PriceWaterhouse Coopers) that, while noting some concerns, ultimately recommended that Mordek was eligible for program funding.

1.6 It should be acknowledged that departmental officials had to make judgements based on the information available to them at the time. It also needs to be remembered that officials would have been conscious that as the application process dragged on the proponent would have been under growing business pressure to see work commence on the factory. On **balance**, it seems reasonable to conclude that **under these circumstances departmental staff pressed ahead with approving the application, armed with the knowledge that it had been vetted several times and recommended** as eligible by an external assessor.

These factors probably militated against any action being taken, so late in the piece, to check if construction work had started on the industrial estate.

1.7 The majority report appears to take little account of these factors and the reality, which the administrators of most funding programs face, that judgements need to be made on the best information to hand under time pressures. Nor does the majority report acknowledge that a significant amount of work on the Mordek project was done *after* the grant was approved and announced. Much of the installation of equipment and plant occurred after this time.

1.8 When **all these factors are taken** into account, the answer to the question of whether the Mordek grant breached the guideline prohibiting retrospective funding is **somewhat hazier than the majority report suggests**.

1.9 There are two other areas in the majority report that we find particularly questionable, namely, recommendation two which calls for the ANAO to investigate the Dairy RAP program and recommendation three relating to the regional distribution of program funds. In both instances, the **majority report** attempts to use the limited evidence of technical difficulties with the Mordek case **to make wider criticism of the administration of Dairy RAP**. We consider this to be tenuous at best.

1.10 Government Senators consider that an ANAO investigation of this program would be **a waste of taxpayers' money**. This inquiry has already achieved what it set out to do in highlighting certain flaws in the administration of the Dairy RAP which the department would be well advised to take into account. However, as there is no evidence of wrongdoing in this case, and the program itself is winding up, it is doubtful what exactly a further audit of its administration would achieve.

1.11 Recommendation three in the majority report is based on the suggestion that the Mordek case demonstrates a flaw in the mechanisms put in place to target Dairy RAP funds to the regions most adversely affected by dairy deregulation. Government Senators consider that the majority report has failed to establish a case on this issue. Based as it is on a **sample size of one grant in one locality**, there is simply not enough **evidence to extrapolate from this case that there is a fundamental problem with the use of the ABARE report to determine** Dairy RAP eligible regions. It defies credulity to suggest that a single \$339,000 grant to one region out of a total budget of \$65 million indicates systemic deficiencies in the decision making over how program funding should be distributed.

1.12 In sum, the above shortcomings in the majority report prevent us from agreeing with it. The lack of balance exhibited in these instances is disappointing, as the inquiry has served its purpose in highlighting lessons in the program's administration that the department should take heed of with future funding programs. The inquiry has not, however, revealed that there are any grounds for a further investigation into the Mordek matter.

Senator the Hon. William Heffernan

Senator John Watson

Appendix 1

List of Submissions

- 1 Department of Transport and Regional Services
- 2 South East NSW Area Consultative Committee
- 3 Eurobodalla Shire Council
- 3A Eurobodalla Shire Council (Supplementary Submission)
- 4 Moruya Decking and Cladding Pty Ltd (Mordek)

Appendix 2

Witnesses at public hearing

Thursday, 8 May 2003, Canberra

Department of Transport and Regional Services

Ms Leslie Riggs, First Assistant Secretary, Regional Programs Division

Mr David Prestipino, Manager, Dairy Regional Assistance Program

Mr Greg Oehm, Programs Manager, Southern NSW Regional Office

Department of Agriculture, Fisheries and Forestry

Mr Gregory John Williamson, General Manager, Meat, Wool and Dairy

Australian Bureau of Agricultural and Resource Economics

Mr Arthur Vernon Topp, Senior Economist

Eurobodalla Shire Council

Ms Pamela Green, Mayor

Mr James Levy, General Manager

Mr Allan James Brown, Councillor

Mr Peter Cairney, Councillor

Mr John Charles Smellin, Councillor

Moruya Decking and Cladding Pty Ltd

Mr John Nader, Director

Mrs Annette Nader, Director

Mr Gregory John Jesson, External Accountant

South East NSW Area Consultative Committee

Mr Greg Malavey, Chair