

Our ref: VM  
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10 August 2021

The Hon. Shelley Hancock MP  
Minister for Local Government  
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Dear Minister Hancock

In accordance with the provisions of s.438N of the Local Government Act 1993 (LGA) this report is submitted in relation to Wingecarribee Shire Council.

The report needs to be read in conjunction with my earlier report of 10 May 2021, your Order postponing the elections to 4 December and advice from the Office of Local Government (OLG) on 27 July 2021 that the position of the suspended Council from 10 September has not been finalised as you are awaiting this report.

It is clear from Council's files that its performance had been under review since early 2020 and on 19 August 2020 you served Notice of your intention to issue a Performance Improvement Order (PIO) and subsequently issued same on 8 September 2020.

Despite the best efforts both yourself, the OLG and the investment of considerable resources (both financial and professional) the POI dated 8 September 2020 failed.

In giving notice of your intention to issue a Suspension Order on 2 March 2021 you also noted that the PIO was unsuccessful and had "formed the preliminary view that there are significant reputational and work and safety risks facing Council that must be addressed".

The meeting of Council that was called to consider your Notice, can at best be described as a debacle resulting in the Council being placed in independent Administration on 10 March 2021 for 3 months.

Even though predating the PIO, a good example of how out of touch Councillors were with their constituency, was when a resident made their views known to a Councillor about the Station Street matter. The reply stated, inter alia... "and I am the one with the VOTE so u don't count". This is indicative of the manner in which the Council considered the views of its community.

*Working with you*

The recent comments attributed to the suspended Mayor in relation to my tenure and the return of the suspended Councillors does nothing for the Council's reputation nor provides residents confidence that lessons have been learnt or that there is any acknowledgement of past failings and a desire for improvement.

My initial Report to you of 10 May 2021, that led to my further appointment noted...

*"Wingecarribee Shire Council in my view has failed its community and needs a fresh start at the September 2021 elections that focuses on the fundamentals of sound local government, not perceived entitlement, ego and personality. This will ensure that Wingecarribee Shire Council will be an effective and well-respected Council into the future".*

In the letter dated 27 May 2021 you outlined the reasons why you extended the suspension. These being...

- To provide additional time for a new General Manager to embed improvements to the organisation.
- Work on the restructure of the organisation under a new General Manager to assist residents in communicating with the Council.
- Work that needs to be undertaken to improve the work, health and safety conditions of Council's workforce.
- To continue the work being undertaken to restore the community's confidence in the Council.
- Improve Council's exercise of statutory functions.

Community outreach visits have allowed me to see first hand and obtain a better appreciation of the unique environment of the Wingecarribee Shire. I have held over 230 individual meetings and met with 37 community groups some on several occasions.

The following independent Reviews/ Audits have been commissioned by me and tabled at meetings:

- Review of Council Finances (Finch Consulting)
- Governance, Human Resources and Statutory Reporting at Wingecarribee Shire Council (Samantha Charlton)
- Interim Report on the Planning, Development and Regulatory area (Earnest Consulting)
- Righting the Wrongs – Second Report on Planning, Development and Regulatory Services (Earnest Consulting)
- Wingecarribee Shire Council Bushfire Response and Recovery Review 2021 (Dave Owens, Risk-e Business Consultants)
- Wingecarribee Shire Council Animal Shelter Review (David Ackroyd in conjunction with Malcolm Ryan, Earnest Consulting)

- Tourism and Economic Development Branch Expenditure Review (Finch Consulting)
- Wombeyan Caves Road Expenditure Review (Finch Consulting)
- Purchase Card Review (Finch Consulting)
- Report on the Economic Development Roundtable (Warwick Shanks, KPMG)

In addition, the Small Business Commissioner also undertook a review and subsequently provided a report containing 20 recommendations.

I understand all reports have been provided to the OLG.

These reports are but the 'tip of the iceberg' and provide clear evidence that validate your earlier decisions and the reason why the community lost faith, confidence, trust and respect in the Council.

Some major matters that have been addressed during Administration include:

- Appointment of a new General Manager
- Adoption of the Housing Strategy
- Adoption of a new Structure
- Formation and subsequent gazettal of the Wingecarribee Independent Planning Panel by Minister for Planning and Public Spaces
- Appointment of refreshed Audit, Improvement and Risk Committee under OLG Draft Charter Guidelines
- Introduction of an Internal Ombudsman through a shared arrangement with Wollongong City Council
- Commencement of actions to address some of the 187 recommendations from the above mentioned independent reviews/audits
- Facilitation of a roundtable with key stakeholders, by KPMG, to address economic development/tourism
- Tabling of reports that were dealt with in closed session, workshops or briefings have now been made publicly available. In some cases, it was my view that the reports may have been shown to favoured Councillors or simply kept secret by the Executive.
- Provision of certainty for the community on major politically destabilising issues such as Station Street, Bowral, Mittagong Pool and Bowral Memorial Hall
- Provision of clear community information via Council reports on matters such as water supply to villages, tendering, Community Research Results and updating a number of policies.

The complexity of the issues that confront Wingecarribee Shire Council is a challenge and while I again acknowledge that the law is the law, my view a return of the suspended Council is untenable.

The Local Government Act requires that my report include any recommendations in relation to improving or restoring the proper and effective functioning of the Council.

Accordingly, I recommend that you consider the conduct of a Public Inquiry under s438U of the Act into Wingecarribee Shire Council and that it have concise terms of reference and be required to report within 6 months, with the view to hopefully facilitating the return of local democracy to the Shire.

The commissioned independent audits/ reviews provide the evidence that the suspended Councillors and former staff had scant regard to statutory obligations or the community they were elected or appointed to serve.

The most poignant examples are set out below:

- **Wingecarribee Shire Council Bushfire Response and Recovery Review 2021**

The scope of this report was limited to the Council's response only and had a concise brief having regard to the importance of reporting back to Council. The original reporting timeline was 9 July however having regard to COVID19 an extension was sought until 28 July to enable community consultation and other feedback.

The report contains 44 recommendations and is highly critical not only of the Council's response but preparedness. The General Manager is moving swiftly in consultation with Mr Owens to engage an appropriately qualified professional to ensure all recommendations are actioned in a timely, professional and compassionate way and in my view some aspects of the report are worthy of further investigation.

24% of the Shire was subject to Burnscar, 68 residences were destroyed and 18 damaged. 197 outbuildings destroyed and 69 damaged.

A total of 72 community submissions were made. The report notes a number of submissions were also made confidentially. 48 community members registered to attend online meetings in Penrose and Balmoral. 17 submissions were received from Council employees. Of concern is the fact that Mr Owens has advised that 15 were confidential as some employees were in fear of possible retribution.

It is extremely disappointing that no former member of the executive or former or suspended councillor made a submission to Mr Owens. One Councillor attended the online meetings and was subsequently interviewed by Mr Owens.

A Public Inquiry would present that opportunity and allow the community to judge and for themselves the appropriateness of their actions or lack thereof.

- **Righting the Wrongs – Second report on Planning, Development and Regulatory Services**

Where do you start with this report of Earnest Consulting.

At this stage I declare that under s337 of the LGA the General Manager consulted with me in relation to Mr Ryan's interim appointment as an Acting Deputy General Manager. It also must be acknowledged that I have no entitlement to access the operational report that Mr Ryan is to deliver unless it is reported to Council and given the exposure to possible legal, financial and reputation implications, I am comfortable in that regard.

I have seen evidence from residents and staff that confirm Mr Ryan's 'Themes' and 'Observations'. The sheer number of residents coming forward speaks for itself and the failure on the part of the suspended Council and former staff to respect roles and responsibilities is overwhelming.

In a short time much has been done to address many matters, but much, much more is needed.

In addition to Mr Ryan's report intervention by the State Government through the referral by the Minister for Finance and Small Business to the Small Business Commissioner and his scathing assessment also highlights why the community lost its trust and confidence.

Consideration by Council of the Housing Strategy and information now held by the General Manager and I, in relation to interference and 'political games' in a matter of such strategic importance is also of concern.

It would not be possible for a Public Inquiry to delve into every matter raised and meet a reasonable timeline for reporting, however, roles and responsibilities need to be addressed together with the alleged influence of suspended and former Councillors and staff in outcomes and recommendations.

- **Compliance with the law**

The Governance, Human Resources and Statutory Reporting, Animal Shelter Review and several audits undertaken by Finch Consulting detail a disregard to the Councils statutory obligations in some areas of the organisation. This appears to be a result of either a disregard and / or lack of knowledge of legislation or delegated authority.

The organisation structure in my view did not respect the importance of Council's Community Strategic Planning Obligations.

To ensure that the General Manager can address these governance weaknesses (and failings) the opportunity for the suspended Councillors to again meddle must not be allowed.

While any Public Inquiry could canvas the above issues, I am confident that given sufficient time the General Manager will address the myriad of challenges that confront the organisation – particularly in the development of clear, consistent and understandable policies.

- **Defacto Council Meetings**

It is clear that Councillor briefings, workshops and advisory committees have, on some occasions, taken informal decisions that have been acted on by staff. Staff have also approached me on a confidential basis to advise that Councillors influenced recommendations through so called briefing sessions. The use of such, is of course totally unacceptable and unlawful.

Residents and ratepayers are rightly concerned that a return of the suspended Councillors could impact on the work to date to make Council more professional and in touch with its community. I join the chorus of resident view that there still remains no recognition on the part of suspended Councillors that their behaviour (not only in the Council Chamber) was not acceptable.

- **Civic Centre Refurbishment Project**

Finch Consulting undertook a review of the expenditure on the Civic Centre and confirmed that while reporting of funding may not have been open and transparent it was apparent that the elected body approved the total expenditure via adoption of Operating Plans and approved revotes. The report also noted that whilst Council accepted a tender for the works on 11 December 2019 the necessary Capital Expenditure Review document was only submitted to the OLG on 4 December and that acknowledgement was not received until 21 April 2020. The contract for the building works was signed on 6 February 2020.

The Capital Expenditure Review document is a requirement of the OLG for projects over \$1m or greater than 10% of a Council's Annual Rate Revenue and is to include merits of the project, relevant costings and funding sources.

Unfortunately, in Wingecarribee Shire Council's case, the document was not tabled at a Council meeting nor was Council asked to approve it before lodgement with the OLG. The Finch report notes that "we understand that whilst staff believe that it would have been appropriate for the Council to

consider this document in conjunction with the Tender recommendation, the former Council Executive took a contrary position.”

Whether the community has received value for the expenditure of over \$10m is another question and Council’s apparent disregard to its legal obligations even extends to the DA approval processes – works were actually completed before modifications were approved – hardly setting an oversight example!

Capital Expenditure Review advises Council allocated \$9.26m and in November 2019 had spent \$570,000 on consultancies associated with the project. The accepted tender was for \$6.799m and the Finch report notes that \$10.11m was allocated.

The review notes that “The refurbishment project will allow Council to continue to provide high quality customer service centre and functional staff accommodation as the Shire continues to grow. It will also allow Council to bring the building up to modern, safe and accessible standard.”

The project is still not completed and while the objective of providing high quality customer service centre appears to have been achieved public areas appear excessive and the newly constructed meeting rooms and executive area for Mayor and General Manager can in my view only be described as extravagant. The library ‘reconfiguration’ delivers an outcome that does not meet State Library population / size benchmarks, which limits Council’s ability to attract capital funding from the State Library NSW.

While I have asked the General Manager for a detailed report in relation to this project it is not possible to interview former or suspended Councillors or former staff and reference to a Public Inquiry may be the only way to the truth.

- **Ombudsman Report**

How the suspended Council and its Executive worked is also well exemplified in its dealings in March 2021 in relation to an Ombudsman Report in response to its investigation of a complaint relating to Development Servicing Plan (DSP) charges.

In short, the Ombudsman found that Council acted unreasonably in relation to a fee that was applied to the complainant’s development. The Ombudsman also found that Council had acted unreasonably in treating all developers who had received consents before 1 January 2007 in the same way.

There were also some additional findings in relation to a specific Council Meeting. This led to the intervention of the Attorney General on behalf of the complainant through the OLG leading me to rescind the Council decision prior to

adopting all recommendations of the Ombudsman final report. The matter was not handled well either administratively or politically and I was unable to get to the bottom of why Council Officers did not make a recommendation and gave Councillors three options. My reading of the report is that the Council did not adhere to undertakings given and it may have even misled the Ombudsman.

- **Temporary Staff**

The use of contractors and consultants to undertake substantive roles within the organisation has resulted in significant expenditure over a long period of time. This has, in my view, resulted in false economies leading to a high level of expenditure as well as community concern around perceptions of consultants working for Council as well as providing advice and professional services for applicants dealing with Council. Whilst I have no evidence of impropriety, the matter of perception and subsequent destabilizing of the community's confidence in the Council is of great concern.

Over the past 4 years the Council has recorded expenditure of just under \$4m in payments to an external consultancy for temporary staff, with an average of approximately \$800k per annum in the development and planning assessment area. I have requested that the General Manager as part of her organisational structure review consider actions to address this in terms of staffing practices as well as other policy measures in relation to the use of external consultancies to ensure open and competitive processes.

- **Staffing matters other than Senior Staff**

A toxic workplace with substantiated allegations of bullying, preferential treatment and an organisation structure built on personality not community is what confronted the Acting General Manager in March when he arrived.

It is appropriate to acknowledge the work of Mr McMahon, Ms Racomelara and Ms Miscamble since in addressing the endemic and systematic issues that still confront the organisation. In view of the confidential nature of a number of matters in relation to staff and the recent need to urgently put in place an interim organisational structure Ms Miscamble has advised me she will make a submission to the OLG under separate cover.

- **'Loans' to community and sporting organisations**

Finally, it has recently been brought to my attention that Council has had a practice of providing 'loans' to organisations for the purposes of providing building infrastructure.



Initial legal advice has been received in relation to this. The merit of the individual projects is not questioned, however the mechanism through which Council provided support to these projects is.

Initial legal advice has been received today which indicates that under subsection 356(1) of the LG Act a “council may, in accordance with a resolution of the council, contribute money or otherwise grant financial assistance to persons for the purpose of exercising its functions”. However, there is no provision in the LG Act or the Regulation that allows a council to loan money to community organisations or to other entities.

Funds provided as a ‘loan’ to external groups total approximately \$900,000. Given the initial legal advice and the substantial community funds involved, Council will be seeking further detailed advice on this matter.


In my view Wingecarribee Shire Council took the position that it was above the law and the resulting interventions of the Minister for Finance and Small Business to review the experiences of small businesses in the Shire and the Attorney General to get action on behalf of a resident as clear evidence. Add to this Council’s disregard of statutory requirements of the OLG in relation to the Civic Centre Refurbishment, and its handling of the PIO, one can only come to the conclusion that a Public Inquiry is warranted.

Based on the above evidence, I have formed a view that the suspended Council has failed the community in the exercise of its functions, provision of core services, decision making, community participation, financial management and its responsibilities in relation to integrated planning and reporting.

As such I formally recommend that:

1. A Public Inquiry under s438U of the Local Government Act into Wingecarribee Shire Council be held.
2. The Inquiry have concise Terms of Reference.
3. The Inquiry report within 6 months, with the view to facilitating the return of local democracy to the Shire.

Yours faithfully



Viv May PSM  
**Interim Administrator**

