

7.1 Administrator Minute

April 2023

The March elections saw a change in Government in NSW with Wendy Tuckerman MP being re-elected representing the Goulburn Electorate and Judy Hannan MP the successful candidate for Wollondilly.

The General Manager and I have written to both members offering congratulations and initiating meetings to ensure that the best interests of the Shire are put forward, particularly the Council's Election Priorities.

We have also written to the former Member for Wollondilly, Nathaniel Smith, acknowledging and thanking him for the work that he has done for the Shire over the past four years.

Recently the General Manager and I met with the Federal Member for Whitlam, the Hon. Stephen Jones MP, in relation to our Election Priorities and recent work of the Canberra Region Joint Organisation in preparing a submission highlighting the damage to Shire Infrastructure from Natural Disasters and next week, we are meeting with the Member for Hume Angus Taylor MP in relation to the same matters.

A particular concern is the future of the Mittagong Playhouse. Council is undertaking a project to restore the Mittagong Memorial Hall's structural integrity which includes design and construction works required to make safe, meet compliance and renew the facility for future generations whilst retaining the heritage values of this historic building.

In adopting the 2021/22 budget, Council allocated \$2 million towards the restoration project for the Mittagong Playhouse to be funded by external loans. Approximately \$375,000 has been expended via application fees, resource costs and design costs funded from reserves. It is now estimated that the works to the Mittagong Playhouse will be approximately \$7.1M and staff are recommending the project be deferred under Council's Long Term Financial Plan until additional funding has been identified. In 2022, Council applied for two grants being the NSW Regional Tourism Activation Fund Round 2 for the shortfall in funding and under the State Government's Creative Capital Stage 2 Medium to Large Projects Round. Both were unsuccessful. This leaves the project with an estimated shortfall of \$5,475,000.

The scope of the works originally planned are beyond the financial capacity of Council at this time.

There is considerable disquiet in the community about the temporary measures Council put in in 2020 to hold the failing wall possibly collapsing into the carpark. I have asked the General Manager to review the necessity for these measures or any other option that may assist this unsightly intrusion in the centre of Mittagong and also if there are any temporary options that would allow an earlier reopening of the facility.

Minister Jones has agreed to visit the site and the problems associated with the Playhouse and its heritage listings will of course also be discussed with the incoming member for Wollondilly.

In February 2022, Council made an application for a Grant of \$132,000 under the Saluting Their Service Commemorative Grants Program on behalf of the Vietnam Veterans Peace Makers and

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Peace Makers Association of Australia Southern Highlands Sub-Branch and was successful in obtaining \$61,000 for works to the Bowral Vietnam War Memorial.

The Grant was linked and justified by the 50th Anniversary of the end of the Vietnam War and commemoration services that are planned in August 2023. Works were to include paving, adjusting the inner and outer rings and addressing granite failures. Unfortunately, the Grant received does not allow the major work associated with the granite and other opportunities in that regard are being explored.

While the successful grant has the support of all ex-service organisations across the Shire, several persons associated with the original construction are unhappy and having regard to the sensitivities I have met on site with all parties separately on at least three (3) occasions, in an endeavour to negotiate an outcome. This has been unsuccessful. I have now agreed, with a recommendation from the staff, that as a minimalist outcome and in order to ensure the site is presentable for August that the outer ring only be re-aligned and missing cherry trees planted and all other works be deferred until a conservation plan has been prepared.

While not satisfying all parties, the Sub-Branches are happy to proceed on this basis and I have undertaken to ensure that there is ample public notice given of the conservation process to ensure participation. The works proposed will realign the outer ring to a consistent height and offset from the inner ring generally by 2.3 metres with the existing pavers being reused and backfill being used to realign the levels to ensure that a potential 0.4m concrete wall is not visible. A copy of a briefing note from the General Manager in relation to the matter and plan are attached to the Minute.

Section 438(V) of the Local Government Act 1993 provides that the Chief Executive Officer, Office of Local Government on behalf of the State, may recover the reasonable expenses incurred in holding a public inquiry if the inquiry relates to a recurring problem with the administration of a Council. The Chief Executive may make a determination on the amount of the expenses and serve a notice on Council requiring the amount so determined to be paid in recovery of the expenses.

Council has now been served with a draft Notice under the Act by the Deputy Secretary Office of Local Government that seeks reimbursement of reasonable expenses incurred in relation to the Wingecarribee Public Inquiry of \$420,782.30 and a copy of the Notice is attached to this Minute.

Council is invited to make a submission in respect of the Notice to allow the Deputy Secretary to consider whether to formally issue the notice and, if so, in what amount. Council has been advised that the total cost of the Inquiry to the State was \$559,575.88.

In my view, this is an unreasonable impost on the ratepayers of the Shire and I am seeking to negotiate a substantial reduction.

In a Minute to Council in September 2021, I foreshadowed that the Act did provide that the Office of Local Government may recover reasonable expenses having regard to previous Ministerial intervention through the issue of a Performance Order that residents are well-aware failed. I previously reported that prior to its suspension, the Council spent of \$202,000 on Code of Conduct complaints between Councillors and another \$65,000 trying to comply with the State Government Performance Improvement Order in an attempt to stay in office. The Public Inquiry put an enormous strain on the organisation and over 26,000 pages were provided in hard and soft copy of files subpoenaed by the Commissioner and these costs were absorbed and taken to account in the 2021/2022 financial year as were additional staffing costs associated with the online web cast.

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One of the issues that led to the dysfunction in the Council was its response to, and post, the 2019/2020 Black Summer Fires. Residents will recall that a report was commissioned and undertaken by former Deputy Police Commissioner Dave Owens. Mr Owens made 44 recommendations and there have been a number of reports to Council (including this agenda) on progress including the establishment of an Emergency Operations Centre at Council. The cost of the Centre is estimated at \$490,000 with the fit out being approximately \$250,000 and I am endeavouring to negotiate with the Office of Local Government to have this amount deducted from the amount sought in the draft Notice.

Negotiations are proceeding with NSW Reconstruction Authority for the provision of equipment totalling approximately \$240,000 but, in any event, it is important that Council has facilities available.

In my view, forgoing \$250,000 on the above basis would be positive recognition by the OLG that Council is responding to many legacy issues that were identified not only at the Public Inquiry, but during the Administration period and left unresolved by the failed Council.

It should be noted that while the decisions taken in relation to the Performance Order, Suspension, Inquiry and the ultimate decision to place the Council in Administration until September 2024 were taken at a Ministerial level, the decision to recover expenses is a matter for the Deputy Secretary (Chief Executive) Office of Local Government.

I will continue to ensure that residents are advised of the outcome of the negotiations.

It is recommended that the Minute be received and noted.



BRIEFING NOTE

Date: 18 April 2023

Subject: Bowral Vietnam War Memorial

Action For Information

Purpose

The purpose of this report is to seek direction from the Executive Team in relation to the Bowral Vietnam Veterans War Memorial.

Recommendations and actions:

That the Bowral Vietnam Veterans War Memorial Project scope be revised as follows:

- Repairs to the round edgings as per the original design drawings, including making the inner and outer edges align horizontally. This will include a raised “garden bed edge” on the lower side towards the river;
- Replanting of the living wreath and new cherry trees according to the original design; and
- No paving in the wreath ring.

Background

REPORT

2022 Community War Memorial Fund

Southern Highlands Vietnam Veterans Peacekeepers & Peacemakers Association (SHVVPPA) approached Council in November 2021, to request Council make a submission to the annual Community War Memorials Fund* for the refurbishment of the surrounds of the Vietnam War Memorial in Bowral.

Council made a submission to the program in February 2022 for the works suggested by the SHVVPPA – namely to reconstruct the garden beds at a consistent height, place pavers around the cherry trees in the garden beds, and replace the interior grass circle with a concrete path. The SHVVPPA proposed scope was for the purpose of protecting the memorial when Mittagong Rivulet floods and to also improve the aesthetic of the memorial due to the garden beds not being regularly maintained.

Council was informed that the grant application was successful in April 2022 for \$61,190 however it could not be publicly announced until May 2022.

In late May 2022, Council was made aware that some members of the community did not believe Council had the authority to complete works on the monument. This information was conveyed to Council by the SHVVPPA who stated that an anonymous resident was looking to raise community support to stop the project. Subsequent conversations in January/February 2023 have identified these residents' interest in the works being that they assisted in the volunteer construction of the memorial.

Council conducted an onsite inspection and identified that the interpretative signage at the memorial clearly states that Council is responsible for maintenance – and therefore, with the support of SHVVPPA, Council continued to proceed with the scoping of the project.

**error – the submission was made to the Saluting Their Service grant from the Department of Veterans' Affairs*

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The project was included within the 2022/23 Program and the scoping & internal approvals process was underway.

In late August 2022, Council was contacted by Australian War Widows Inc who raised concerns with the proposed works with their interest in the works being that they were involved with the development of the design of the memorial by Mr Kevin Gallagher and Ms Effie Kerr.

After discussion with the Australian War Widows Inc, concerns were sent to Council in writing in late September 2022 – the crux of which is that the garden beds which were proposed to be replaced with pavers were intentionally designed to be a ‘living wreath’ as opposed to standard garden beds.

Reviewing this additional information around the original design intent – the scope was adjusted to just be the renewal of the raised garden bed structures, replacing two dead cherry trees and renewal of the plantings in the garden beds. This revised proposal was then discussed with Australian War Widows Inc, whom advised that they wished to seek comments from the rest of the association.

Meeting with Stakeholders

In order to move the project forward, a meeting was held 23 January 2023 to discuss the proposed scope of works and identify a pathway forward.

Attendees at the meeting were representatives from Council, SHVVPPA, Australian War Widows, Australian Institute of Landscape architects and the community members who were objecting to the works.

The meeting was unfortunately quite heated with many differing opinions, concerns and frustrations being shared. A revised scope of works was proposed at the meeting:

- Repairs to the round edgings as per the original design drawings, including making the inner and outer edges align horizontally this will include a raised “garden bed edge” on the lower side towards the river;
- Replanting of the living wreath and new cherry trees according to the original design;
- and
- No paving in the wreath ring.

The revised scope of works was received by the groups with the following response:

- SHVVPPA provided full support for the revised scope of works;
- Australian War Widows & Australian Institute of Landscape architects provided support for the revised scope on the condition that a Conservation Management Plan (CMP) was first prepared for the Memorial and the works then completed in accordance with the CMP; and
- Two members of the community were strongly against any changes being made to the Memorial.

A member of the community also submitted a formal letter of objection to the works and a petition of purportedly 1,000 signatures stating opposition to the project.

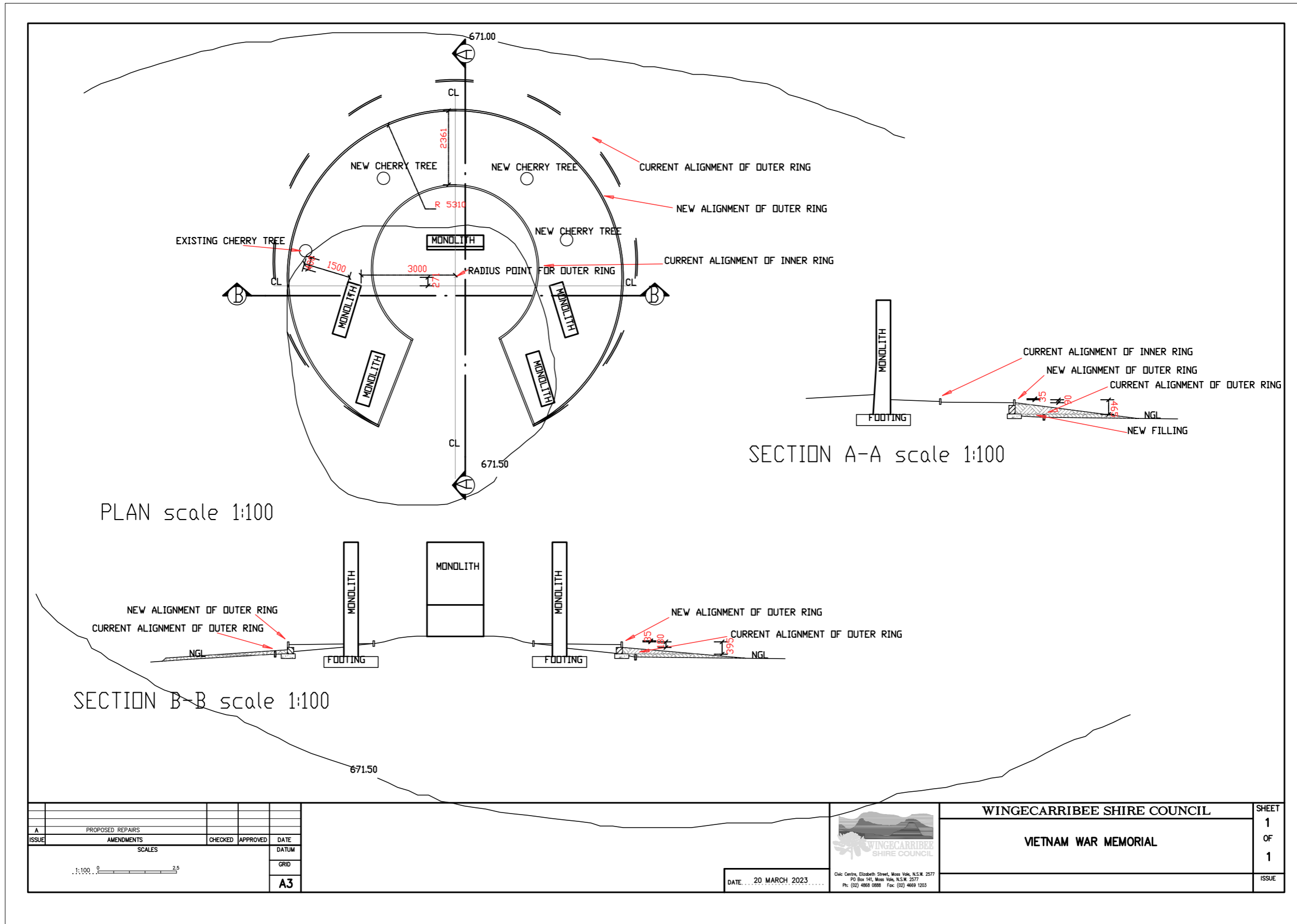
Next Steps

Commemoration services are planned across the country from 18 – 20 August 2023 for the 50th anniversary of the end of the Vietnam War. The project, in whatever form, therefore needs to be completed by early August 2023.

The Bowral Vietnam Veterans War Memorial is not listed as being of state or local heritage significance, and therefore although the preparation of conservation management plan would assist in providing guidance for future management

& maintenance of the site, it is understood that there is no legislative requirement for a conservation management plan to be prepared.

It is also unclear how well the community understood the initial scope of works when collecting the signatures of the petition. However, the scope has since been significantly reduced through the elimination of any concrete or paved areas.



A	PROPOSED REPAIRS			
ISSUE	AMENDMENTS	CHECKED	APPROVED	DATE
SCALES				
1:100 0 2.5				
GRID				
A3				

DATE 20 MARCH 2023



Civic Centre, Elizabeth Street, Moss Vale, N.S.W. 2577
PO Box 141, Moss Vale, N.S.W. 2577
Ph: (02) 4668 0888 Fax: (02) 4669 1203

WINGECARRIBEE SHIRE COUNCIL

VIETNAM WAR MEMORIAL

SHEET
1
OF
1
ISSUE

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**Local Government Act 1993
Notice issued under section 438V**

I, the Deputy Secretary, Local Government, under delegation, issue this Notice to the council specified in Schedule 1, for the reasons specified in Schedule 2, to recover the reasonable expenses incurred relating to the conduct of the Wingecarribee Shire Council (Council) Public Inquiry (Inquiry) as specified in Schedule 3.

This Notice takes effect upon service on the Council.

Dated:

Brett Whitworth
Deputy Secretary, Office of Local Government

**SCHEDULE 1
WINGECARRIBEE SHIRE COUNCIL**

**SCHEDULE 2
REASONS FOR NOTICE**

1. A Performance Improvement Order was issued to Council on 8 September 2020 to address reputational and work, health and safety risks facing Council due to the behaviour of some councillors.
2. There was evidence at that time to indicate hostility and acrimony that was considered likely to lead to dysfunction if not addressed. There was also evidence that councillors may not have properly understood their role or their obligations under the Code of Conduct when dealing with each other.
3. As part of the Performance Improvement Order, the Minister appointed temporary advisers to mediate and assist with the orderly conduct of Council meetings.
4. The Performance Improvement Order is a Ministerial Intervention for the purposes of section 438V of the Act.
5. The Performance Improvement Order was unsuccessful in achieving the necessary cultural and behavioural change to address the identified

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reputational and work, health and safety issues. There was evidence of a further deterioration and breakdown of relationships between the elected members and disrespectful conduct toward Council staff. The former Minister then temporarily suspended Council and appointed an interim administrator to restore the proper and effective functioning of Council.

6. The temporary suspension of Council is a Ministerial Intervention for the purposes of section 438V of the Act.
7. The period of suspension was extended as the former Minister had formed the view that it was necessary to allow the Interim Administrator more time to continue his work to restore the proper and effective functioning of Council.
8. Following the extension of the suspension period, the former Minister called the Public Inquiry against a background of concern about the impact upon Council of the return of the elected body. The Interim Administrator provided advice to the former Minister at this time that the behaviour of councillors had been dysfunctional and that the community had lost faith, confidence, trust and respect in Council.
9. For the purposes of section 438V(9) of the Act, I hereby certify that the Public Inquiry related to a recurring problem with the administration of Council.
10. The Public Inquiry confirmed the recurring problems arising from the conflict between, and the behaviour of, councillors.
11. At the conclusion of the Public Inquiry, the Commissioner recommended, amongst other things, that the Minister recommend to the Governor that all civic offices be declared vacant forthwith.
12. Subsequently, the Governor, on the recommendation of the Minister, declared all civic offices vacant on 13 July 2022.

SCHEDULE 3

REASONABLE EXPENSES INCURRED

Section 438V(8)(a)

Remuneration paid to Commissioner (ex GST): \$247,400.50

Section 438V(8)(b)

Remuneration paid to Counsel Assisting (ex GST) \$94,148.88

Salary of 1 of 2 Officers Assisting:
\$79,233,00

Total: \$420,782.38