

OFFICE OF THE INTERIM ADMINISTRATOR



28 October 2021

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Commissioner
Office of the Commissioner
Wingecarribee Shire Council Public Inquiry
Via email: Wingecarribee.publicinquiry@olg.nsw.gov.au

Dear Commissioner

Thank you for the opportunity to make a submission to the Wingecarribee Shire Council Public Inquiry.

Independent Reviews: Key Themes and Issues

I have previously forwarded letters to the Minister for Local Government dated 10 May and 10 August 2021 and all independent audits and reviews available.

The outcomes of these reviews, together with discussions with Councillors past and suspended, staff (both former and present) and residents, led me to request an extension of my appointment and to ultimately recommend a Public Inquiry.

Of the Reviews undertaken I believe the most pertinent to the *Terms of Reference* are the following:

- i) Earnest Consulting / Malcom Ryan Report. The final report was not available at the time of writing and if necessary I will lodge an addendum to this submission. When it is received it will be forwarded to you and I intend to table it at the next available Council meeting.
- ii) Civic Centre Refurbishment Project. The letter of 10 August 2021 to the Minister noted that the General Manager was requested to prepare a detailed report in relation to this project. The General Manager subsequently engaged Mr Norm Smith, an independent auditor with extensive experience in such matters, to review the project including the project plan, scope, budget (including variations) and the procurement and approval processes associated with the entire project. COVID-19 travel restrictions to the region have delayed receipt of this report, complicated by the fact that the services of the builder were terminated on 21 October 2021. When received, the report will be forwarded to you and publicly released by the General Manager or myself.
- iii) *Wingecarribee Shire Council Bushfire Response and Recovery Review 2021.* The Owens Report into the Council's response and recovery following the 2019/20 bushfires is a sobering read. In tabling this report at a meeting of Council on 28 July I

Working with you

took the view that the report should be subject to a formal response by the General Manager as soon as possible and that an external person should have carriage as some aspects may be worthy of further interrogation.

The General Manager subsequently appointed Ms Leanne Barnes, the former General Manager of Bega Valley Shire Council, to coordinate the implementation of all 44 recommendations. Ms Barnes has had considerable exposure to such matters and is considered in the industry to be at the forefront of such emergency related work with considerable knowledge of relevant law and processes. I am advised that Ms Barnes will present her final report to the December Council meeting. In view of the agreed priority of establishing a Wingecarribee Emergency Operations Centre I have attended meetings and hopefully there will be an interim report to the November meeting in this regard. These reports will of course be made available to you as soon as they are received.

After discussing the contents of the Owens report with many residents, volunteers, professional respondents, Council staff and Ms Barnes, it appears to me that Council's attitude was "not our problem – move on". I stated in my submission to the Minister that it was extremely disappointing that no former member of the Executive or former or suspended Councillor made a submission to Mr Owens and on behalf of the above respectfully suggest some relevant questions that need answers.

- The different and confusing messages from Mayor and Councillors through the emergency response and recovery, there does not appear to have been a consistent commitment to the Council's role, position and actions being presented by the elected representatives. I have anecdotally heard that if the Mayor said something other Councillors would present a different position. In emergencies, clear, consistent messaging is critical.
- The Mayoral Fund was announced and receiving funds prior to being formally established and caused issues with it not having correct status except following considerable work by staff and support from the ATO. Its allocation was not consistent. Substantial rework is required to amend the terms of the fund and re-register it appropriately. The staff were in effect playing 'catch up' with the Mayor.
- For staff there appears to have been a confused approval structure for works and other response and recovery items seen as critical by staff and community. Reluctant approval would be given to commence works (clean up access works etc) and work could commence and then a stop order would be given leading to community and staff concern.
- The Council and senior staff have been seen as wanting to get back to "business as usual" and focus on other matters and whilst I am sure this is not across the board there were resulting delays in commencing recovery work compared to other councils in the region.

In my role as Interim Administrator I do not have access to staff however my extensive experience in Local Government led me to form the view that the Wingecarribee Shire Council culture was toxic and driven by personalities, not community. My fear is that staff will not accept your invitation to make submissions to the Public Inquiry. While a

rebuilding exercise is well underway it is only human nature not to want to be seen as causing waves. Rightly or wrongly many valued and professional staff will just want to keep their heads down. This is a most unfortunate reality.

I was amazed and very disappointed when Mr Owens told me that of the 17 staff approached, he had 15 request anonymity in fear of retribution. I hope that my assumption is wrong.

I would respectfully suggest that you subpoena the Owens report staff submissions on the basis that they will remain confidential and personally encourage staff to come forward on a confidential basis in the knowledge of the fact the Public Interest Disclosure Act 1994 does not apply in respect of disclosure to the Commissioner.

Roles and Responsibilities

While I have not stated publicly, when the Minister announced the Public Inquiry *Terms of Reference*, I asked the General Manager to prepare a document of all Councillor induction and training since the 2016 elections. Due to unsatisfactory record keeping this has been a monumental task and is still to be completed. What I cannot reconcile is who attended – Councillors and Staff – and the content. There appears to be no direct reference at induction sessions to roles and responsibilities of the Mayor, Councillors, governing body, General Manager or staff.

In my view, after speaking to many residents and staff, the heart of the issue at Wingecarribee Shire Council are roles and responsibilities and the importance of independent professional advice. Clearly the evidence presented to the Minister highlights the failings in these statutory and good governance matters. The training appears to have had a strong focus on behavioural issues and it confirms my observations that the Council was driven by self-interest, perceived entitlement and ego. There was a clear failure to learn or take on board the training provided.

S272 of the *Local Government Act 1993* details the role of a Councillor and S226 of the Act outlines the role of the Mayor. These roles must be read in conjunction with the role of the Governing Body under S223. The functions of the General Manager of the Council are outlined in S335 of the Act.

These are clearly stated statutory requirements, however have not been consistently applied at Wingecarribee Shire Council over the years through, in my opinion, a lack of leadership and managerial competence.

The matter is further blurred when read in conjunction with S352 – Independence of staff for certain purposes. It is clear that the former General Manager and Acting General Manager did not manage these expectations. While this section does not prevent the Council or the Mayor from directing the General Manager to provide advice or a recommendation, such direction from Council should only be at an Ordinary or Extraordinary Meetings. In the case of the Mayor, good governance demands such direction be in writing.

I only have hearsay knowledge of individual Councillors and Mayors interference in this regard in relation to the function of the General Manager, Senior Staff and staff, however it is apparent from information available to me that this did occur in Councillor briefings and workshops – even if it was

a 'numbers' indication. Unfortunately records of briefings and workshops are scant. It is hoped that staff feel sufficiently comfortable to come forward with their experiences of this.

The non-mandatory provisions of the Office of Local Government Model Code of Meeting Practice provide guidance for pre-meeting briefing sessions and Wingecarribee Shire Council's *Code of Meeting Practice* has been amended accordingly.

There is no provision in the *Model Code of Meeting Practice* for the holding of Council workshops – though it is common practice in NSW Local Government, and apparently regularly used at Wingecarribee Shire Council.

Since my appointment as Interim Administrator arrangements have been made to amend the Code of Meeting Practice to clarify that the above are not decision making forums and are to be open to the public unless the General Manager is satisfied that grounds exist to exclude members of the public. However, in my view, there is still a lack of clarity and from interviews with stakeholders this was a real issue and to some mystified the Council's operations.

In addition, at contention was also confidential information and disclosure. At Council and Committee meetings the law is clear, however, it is again less than clear under Clause 8.11(g) of the *Code of Conduct*

g) not disclose any confidential information discussed during a confidential session of a council or committee meeting or any other confidential forum (such as, but not limited to, workshops or briefing sessions).

Under the Code of Meeting Practice briefing sessions are held pre-meeting "to brief Councillors on business to be considered at the meeting." Wingecarribee Shire Council seem to have taken this provision further and not within the context or meaning of either Code. I am advised that in addition record keeping of such sessions/forums is sparse to say the least.

It is my submission that in the public interest and to ensure good governance such sessions/forums should be properly minuted as to content, attendance records maintained, open to the public unless they meet the relevant provisions of the Local Government Act and all of the above reported to the next available Ordinary Meeting. Both Model Codes should be mandated accordingly.

While not in the direct ambit of the *Terms of Reference*, there is understandable community confusion of the naming convention of the senior officer of the Council. The term CEO is being freely applied (from very small rural to very large urban councils) when there is no such legal status. I am asked why by residents (in all the communities that I have worked) why do some councils have General Managers and others have Chief Executive Officers?

The Local Government Act, regulations, directions under S23(a) of the Act and Model Codes do not refer to the title CEO. In fact, it could be argued that under S377 of the Act, delegations to a CEO are questionably lawful unless carefully worded. Under the 1919 Local Government Act, a Mayor or President was the CEO of the Council and all of this changed with the modernising of the Act in 1993. This was nearly 30 years ago and Local Government, community expectations and core responsibilities have substantially changed. Councils are no longer roads, rates and rubbish organisations.

The roles and responsibilities outlined earlier in this correspondence are clear. Outcomes should be defined by the governing body to reflect its community's aspirations as outlined in the Community Strategic Plan processes. In contrast, the operational matter of delivering outcomes should be guided to a large degree by the business acumen of the Council senior officer and it may be time, for the sake of consistency in the sector, that the role be named CEO.

I am happy to discuss any matters in my earlier letters to the Minister or this submission and unless advised to the contrary, intend to table this submission to the next ordinary meeting of Council to be held on 10 November, 2021.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Viv May', with a stylized flourish at the end.

Viv May PSM
Interim Administrator