



Office of
Local Government

SECTION 433 OF THE LOCAL GOVERNMENT ACT 1993

INVESTIGATION REPORT

**REPORT OF THE
SECTION 430 INVESTIGATION INTO
WARRUMBUNGLA SHIRE COUNCIL**

Strengthening local government



OCTOBER 2019

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ISBN 978-1-922001-80-1

Produced by the Office of Local Government

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EXECUTIVE SUMMARY

This report details the findings of an investigation into the way that Warrumbungle Shire Council has carried out various functions.

It followed from concerns that:

- certain councillors had not acted impartially in considering a tender for the provision of waste services;
- Council had failed to undertake capital works programs to ensure its water security;
- Council was failing to ensure that water supplied by it met appropriate health standards; and
- there were ongoing relationship issues between councillors and staff.

This report details significant failures and delays in undertaking works intended to ensure that Council is able to provide a reasonable supply of water to its towns.

While the report concludes that Council has failed to address water security issues, it is acknowledged that these findings are made in the face of a prolonged drought.

The conclusion that Council has failed to address water security issues should not be ignored or downplayed on the basis that Council is currently responding to an aberrant weather event. Similarly, this conclusion should not be ignored or downplayed on the basis that recent emergency works have addressed ongoing water security issues.

Despite major works having been undertaken in the last eighteen months, Council's water security is not assured. Council will need to look strategically to determine how best to provide water security in the longer term.

This report also details significant delays and failures in ensuring that Council's water treatment plants provide clean and safe water.

This report raises significant concerns that Council has failed to take the necessary actions to ensure that the water provided by it is safe and clean.

While Council has recently adopted an agreed improvement plan, the report nonetheless recommends that a Temporary Adviser be appointed to oversee and supervise Council's water function through a Performance Improvement Order.

Most importantly, Council needs to continue to work with NSW Health and DPIE Water to ensure that its water treatment plants are fit for purpose, operate correctly and that any capital improvement or rectification works are carried out promptly.

While this point is directed to Council's water supply, it applies equally to Council's waste water facilities, which need to meet the required environmental standards.

Given the concerns indicated in this report and the shared responsibility for waste water treatment, the Temporary Adviser also needs to oversee and supervise Council's waste water function.

Procurement processes must be open, transparent and able to withstand scrutiny. While no adverse findings have been made regarding the waste services contract, given Council's response to the draft report, it is vitally important that councillors fully understand their role in dealing with procurement issues. For that reason, the report recommends that training be provided to the councillors, that Council reviews its procurement processes to strengthen its probity processes and to provide greater transparency, particularly in relation to contracts that are subject to tendering.

The report also expresses concerns that there is a continuing divide between staff located in different parts of the Shire, despite the merger of Coolah and Coonabarabran Shire Councils having occurred some fifteen years ago. The report recommends that action be taken in order to overcome this issue.

It is apparent that there is an ongoing mistrust in staff, especially senior staff, by a number of councillors. This mistrust has the potential to destabilise Council. Much of the mistrust stems from a lack of understanding and, in turn, confidence in the manner in which the elected body and staff perform their respective roles. Councillors would benefit from a mentoring program should the councillors be open to such an approach.

During the investigation, it became apparent that Council had failed to make and retain proper records relating to some matters. This report recommends that councillors and staff be reminded of their obligations under the *State Records Act 1998*.

1 INTRODUCTION

1. This is a report on the results of an investigation under section 430 of the *Local Government Act 1993* ('the Act') into Warrumbungle Shire Council (Council).

1.1 Determination to conduct an investigation

2. On 5 February 2018, the then Chief Executive of the Office of Local Government (OLG) determined that an investigation under section 430 be undertaken into Council.

1.2 Terms of Reference

3. The *Notice of Decision to Conduct an Investigation* detailed the Terms of Reference, as follows:

To investigate and report on:

- 1) *Whether the councillors of Warrumbungle Shire Council are fulfilling their role and responsibilities under the Local Government Act 1993, the Local Government (General) Regulation 2005 and other relevant legislation and any relevant standards and, in particular, in relation to:*
 - a. *Council's consideration of its 2017 waste services tender for the supply and installation of skip bins.*
 - b. *Strategic, operational and management aspects of its water resources function.*
- 2) *Whether the Council officers of Warrumbungle Shire Council are fulfilling their role and responsibilities under the Local Government Act 1993, the Local Government (General) Regulation 2005 and other relevant legislation and any relevant standards and, in particular, in relation to:*
 - a. *Council's consideration of its 2017 waste services tender for the supply and installation of skip bins.*
 - b. *Strategic, operational and management aspects of its water resources function.*
- 3) *Whether the conduct of councillors (whether individually or collectively as the governing body of council), senior Council officers and Council staff, has hindered the provision of efficient, effective and appropriate standards of governance.*
- 4) *Any other matter that warrants mention, particularly where it may impact upon the effective administration of the area and/or the working relationship between the Council, councillors and its administration.*

1.3 Statutory requirements relating to this investigation report

4. Section 433 of the Act provides as follows:

- (1) *The Departmental Chief Executive must report to the Minister on the results of an investigation under this Division and must send a copy of the report to the council concerned.*
- (2) *The report may comment on any matter that, in the Departmental Chief Executive's opinion, warrants special mention and may contain such recommendations as the Departmental Chief Executive considers appropriate.*
- (3) *A report furnished to the council under this section must be presented at the next meeting of the council after the report is received.*
- (4) *Section 14B of the Royal Commissions Act 1923 applies in relation to any report that the Minister wishes to lay before both Houses of Parliament in the same way as it applies to a report made by a commission under that Act.*

5. Clause 235 of the Regulation provides as follows:

When a report of the Departmental Chief Executive or a person to whom the Departmental Chief Executive's functions under section 430 of the Act have been delegated or subdelegated under section 745 of the Act has been presented to a meeting of a council in accordance with section 433 of the Act, the council must ensure that the report:

- a) is laid on the table at that meeting, and*
- b) is subsequently available for the information of councillors and members of the public at all reasonable times.*

1.4 Background to this investigation

6. In the period leading up to the determination to instigate an investigation, the OLG had received:

- complaints of councillor misconduct/bullying of staff;
- advice that the General Manager's employment contract had been terminated;
- concerns regarding a tender for the provision of waste services;
- concerns that water supplied by the Council was not meeting requisite standards;
- concerns that Council had not planned for the water supply needs of its community;
- advice that there was conflict within the elected body and within the staff; that was affecting the proper functioning of Council.

7. The concerns suggested systemic and operational failures in Council.

1.5 The investigative process

8. A “*Notice of Direction for Production of Documents*” (the Notice), was served on the Council’s General Manager on 26 February 2018.
9. The investigators travelled to Coonabarabran in February 2018 to meet with staff, councillors and representatives of NSW Health and NSW Department of Planning, Industry and Environment – Water (DPIE Water).¹
10. A number of meetings were held with Council’s then acting General Manager, Leeanne Ryan and senior staff.
11. The investigators attended a meeting convened by representatives of DPIE Water and NSW Health with councillors and staff, to brief Council on matters affecting Council’s water supply and water security.
12. The investigators attended Council’s meeting on 15 February 2018 to observe its processes.
13. The investigators met with a representative of the United Services Union (USU), who provided information regarding staff issues.
14. The purpose of these meetings was to obtain a better insight into Council, the current issues affecting it and to indicate the nature of the investigation.
15. The investigators reviewed the documents supplied by Council in response to the Notice. Subsequently, Council was asked to provide further documents and information on a number of occasions. Council responded to these requests in a timely manner.
16. The investigators attended Council in July 2018, and interviewed all councillors with the exception of Cllr Brady (who was interstate at the time). The investigators also interviewed:
 - Roger Bailey, Council’s current General Manager, who commenced on 28 February 2018;
 - Leeanne Ryan, Council’s Director Development Services;
 - Louise Johnson, Council’s Acting Director Corporate and Community Services;

¹ Formerly known as Department of Primary Industry – Water (DPI – Water) and Department of Industry – Water (DOI – Water)

- Kevin Tighe, Council's Director Technical Services;
 - Cornelia Wiebels, Council's Manager Water;
 - Harold Sutton, Council's Water/Special Projects Manager; and
 - Russell Lloyd, Council's Acting Director Technical Services.
17. The investigators also interviewed Council's former General Manager, Steve Loane and Council's former Acting Director Corporate and Community Services, Michael Jones.
18. The investigators attended Council on 9 January 2019 to obtain updated information on matters pertinent to the Terms of Reference and to discuss possible recommendations.
19. Council was asked to provide a schedule containing a list of works to be carried out at each of its water treatment plants and the priority for undertaking this work. It was anticipated that this schedule would provide the basis for an agreement between Council and DPIE Water and NSW Health, the overseeing bodies for water infrastructure and water quality.²
20. A draft report was prepared after a comprehensive review of the information and documents gathered during the preliminary enquiries and the investigation as at that date.

1.6 Procedural fairness

21. All persons who were asked to assist the investigation agreed to do so on a voluntary basis.
22. All persons who were interviewed were informed of the Terms of Reference. All such persons had the opportunity to have an independent person, including a legal adviser present when interviewed.
23. The interviews with councillors and some staff (former and current) were recorded. Where this occurred, each was provided with a copy of the audio recording of the interview at its conclusion. A transcript of the interview was prepared and subsequently provided to them.
24. While this report contains material that may reflect poorly on some individuals who are referred to, it is ultimately a report of an investigation into the council

² It was agreed that there be a joint approach to respond to the water quality challenges faced by Council.

itself, and accordingly, it is the council that will be required to provide a response to the Minister in due course.

25. A copy of a draft version of this report was provided to Council for its comment.
26. A copy of the relevant parts of a draft version of this report and any other relevant material was provided to any persons or bodies perceived as adversely commented upon for their response.
27. The comments that were received have been considered in finalising this report.

2 FINDINGS

2.1 Waste services tender

28. Some councillors failed to fully understand their role when dealing with the waste services contract. Those failures extended to both the procurement process and the resolution of the issues that arose following the awarding of the contract.

2.2 Water Security

29. Council has demonstrated an inability to make necessary decisions to undertake required works to ensure its water security.
30. Council failed to adopt a drought management strategy to support the restrictions imposed pursuant to clause 137 of the *Local Government (General) Regulation 2005*.
31. While Council had obtained funding for some capital works, it has not been pro-active in addressing water security issues.
32. Council has failed to ensure that programmed works proceeded.

2.3 Water Quality

33. Council has demonstrated an inability to make necessary decisions to undertake required works to ensure its water meets appropriate health standards.
34. Council has failed to ensure the integrity of its water treatment facilities.
35. Council has failed to ensure that recommendations contained in various external reports were promptly and fully implemented.
36. Council has failed to ensure that capital works programs were carried out expeditiously.
37. Council's ongoing failure to have proper asset management plans in place for its water or sewer assets and a lack of a programmed ongoing maintenance program pose significant ongoing risks for the quality of water supplied by Council.
38. Councillors were not aware of the various external reports.

39. Councillors do not appear to have appreciated the significance of concerns about Council's water supply function, prior to the meeting with representatives of DPIE Water and NSW Health on 14 February 2018.
40. Councillors failed to ensure that Council met its responsibility to provide safe and clean water to its towns and villages.
41. Council has, either ceased to operate, or failed to commission plants providing fluoridated water to its towns and villages. Council failed, until recently, to inform the community that it was not providing fluoridated water.

2.4 Councillor and staff relationships

42. A lack of strategic focus, mistrust of staff and a lack of understanding of their role has meant that councillors are not performing their role in an appropriate manner.
43. Councillors have focused on operational and day-to-day issues rather than fulfilling their strategic role.

2.5 Other matters

44. Council has failed to keep full and accurate records of its activities as required by the *State Records Act 1998*.
45. There are ongoing cultural issues that have carried over from the merger of the former Coolah and Coonabarabran Shire Councils.
46. There are significant behavioural issues that need to be addressed with some members of staff.

3 RECOMMENDATIONS

- 3.1 The Minister considers issuing a Performance Improvement Order (PIO) under section 438A of the Act to improve Council's performance in:
- planning for and managing its water, waste water and other assets;
 - procurement and tendering processes.
- 3.2 The Minister appoints a Temporary Adviser under section 438G of the Act to provide advice and assistance to Council in relation to its water and waste water functions, to ensure that:
- all existing capital works programs relating to Council's water and waste water functions are undertaken within acceptable timeframes;
 - Council develops asset management plans for its water, waste water and other assets;
 - Council continues to work co-operatively with NSW Health and DPIE Water.
- 3.3 Council continues to work co-operatively with NSW Health and DPIE Water to re-introduce fluoridation.
- 3.4 Council offers councillors the opportunity to be mentored in undertaking their role.
- 3.5 Council examines its records keeping function and takes appropriate action to ensure that Council meets its responsibilities under the *State Records Act 1998*.
- 3.6 Council ensures that only authorised persons have access to its premises and facilities.
- 3.7 Council continues to address staff cultural and conduct issues.
- 3.8 Council undertake a further review of its procurement processes to strengthen its probity processes and to provide greater transparency, particularly in relation to contracts that are subject to tendering. In doing so, the limited role of councillors should be clearly defined.
- 3.9 Council amends the form of its tenders to ensure that the terms are clear and precise.

- 3.10 Further training be provided to councillors and relevant staff in how to undertake their respective roles in the revised procurement process.

4 ANALYSIS

47. This section of the report details the results of the investigation and where considered appropriate, provides further commentary and analysis:

- Section 4.1 deals with Council's consideration of its 2017 waste services tender for the supply and installation of skip bins.
- Section 4.2 deals Council's strategic, operational and management aspects of its water resources function.
- Section 4.3 deals with conduct matters and the relationship between the elected body and staff.
- Section 4.4 deals with other matters that arose directly from the principal investigation.

4.1 Waste services tender for the supply and installation of skip bins

48. The Terms of Reference required the investigation to review Council's consideration of its 2017 waste services tender for the supply and installation of skip bins.

4.1.1 The tender

49. On 15 June 2017 Council called tenders for the supply and installation of skip bins at waste collection sites in various towns and the transfer of waste to its landfill site at Coonabarabran.

4.1.2 Background to the tender

50. In 2012 Council had come under scrutiny from the EPA in relation to its landfill operations. In response, Council had developed a waste management strategy. It focussed on recycling and diversion of mixed waste from landfill. This had resulted in the closure of all but the Coonabarabran landfill. Waste transfer facilities were developed in other towns.

51. The removal of waste from the transfer stations was initially undertaken by Coona Waste Pty Ltd. The contract for this work expired in 2015 and upon expiry continued on a week to week basis pending the introduction of the regime outlined in the waste management strategy.

52. Council subsequently provided the service. In order to ensure that its waste business met applicable standards, the skip bins were fitted with lids.³
53. On 19 May 2016, Council resolved to conduct a full review and reappraisal of the Waste Management Strategy that had been adopted at Council's meeting on 19 March 2015.
54. A report to Council's meeting on 16 June 2016 indicated significant savings were being obtained by Council providing the services itself.
55. Mr Loane gave evidence that there had been savings of \$300,000 per year when Council provided the services. Conversely, in their evidence, many councillors disputed or questioned this view and expressed satisfaction with the way Coona Waste had carried out the service.
56. It was also alleged during the course of the investigation that some councillors' sought to inappropriately delay the purchase of a compactor truck and that this was done to ensure that Council could not provide the services that were to be the subject of a tender process. The subsequent tender assessment questioned whether Council had a suitable vehicle to carry out the works.

4.1.3 The decision to call for tenders

57. In the first part of 2017, some councillors were actively seeking to re-instate Coona Waste as the contractor. At Council's meeting on 20 April 2017, Clr Todd proposed a motion that all steel 3000 litre skip bins be returned to the Coolah, Dunedoo, Binnaway, Mendooran, Ulamambri and Baradine Waste Management sites immediately, on the basis that "*the former Contractor (sic. Coona Waste) should be approached to negotiate to reinstate these Skip Bins back into all of the facilities.*"
58. Rather than adopting this course, the meeting resolved that tenders or quotes be called for the provision of skip bins, and that Council submit a bid.
59. On 1 May 2017 Clr Clancy (on behalf of Clrs Todd and Lewis) sent an email to the Mayor and General Manager seeking that the resolution be rescinded, the bins returned to the various transfer stations and ... *A financial fee, agreed upon by both Warrumbungle Shire Council and Coona Waste for collection and transfer to Coonabarabran Waste Management Centre be implemented.*

³ These bins were acquired from J Richards.

60. While the rescission motion appears not have proceeded, it emphasises the feelings of three councillors at the time.
61. In accordance with the resolution at the meeting on 20 April 2017, Council proceeded to call for tenders.

4.1.4 The request for tender

62. The request for tender (RFT) required that the bins have lids and that the services commence on 1 September 2017.
63. Relevantly, the RFT provided that any approach by a tenderer canvassing support for the purposes of trying to influence the decision making process in the award of the tender, from any councillor, staff member or agent of Council would lead to the disqualification of the tender.
64. The RFT also required that the tenderer provide a warranty that it had the necessary resources to perform the services and was able to commence the services as required by Council.
65. The RFT also required that the tenderer provide a security deposit of \$40,750.
66. As Council proposed to lodge its own tender, steps were taken to separate the administrative process of developing the RFT and the processes of calling for tenders, from the provision of a tender by Council.

4.1.5 Assessment of the tenders

67. Arrangements were made for the tenders to be assessed externally, by staff of Narrabri Shire Council.
68. Ultimately, Council received eight tenders. Five were considered to be compliant, including tenders from Coona Waste and Council.
69. The tender assessment criteria included tendered price; suitability of personnel; plant and equipment; suitability of work methods; company documentation and WHS systems; local benefit; and business experience with Council.
70. Despite a failure to provide relevant information and the provision of incorrect information, the assessment panel considered the Coona Waste tender as being compliant.

71. The assessment does not appear to have formed the view that Coona Waste, a company that had gross earnings of less than \$25,000 in the previous year and net assets of less than \$33,000, may not have had the financial ability to provide the equipment and perform its obligations under the agreement.⁴ In the events that followed, this was to become a significant issue.
72. At this stage it is relevant to note that the assessment process would not have (and could not have) discerned that Coona Waste was unable to supply bins with lids. The RFT had required an express warranty by the tenderer that it would provide bins with lids.
73. The external assessment ranked Council's tender in first place and Coona Waste's tender in third place.

4.1.6 Awarding of the tender

74. At its meeting on 17 August 2017, Council resolved (by majority) to award the tender to Coona Waste.
75. When interviewed about their reasons for determining to award the contract to Coona Waste, those councillors who had voted to award the contract to Coona Waste variously indicated: a lack of faith in Council's ability to provide the services at the tendered rates; concerns that a former member of staff (now at Narrabri Shire Council), who had been responsible for assessing the tenders, was not sufficiently independent; and a preference to award the contract to a local business.
76. Additionally, there were concerns that Council did not have the equipment to provide the services. These included concerns that the existing skip bins, which were branded with the J Richards logo, were not owned by Council and that Council would have to hire a vehicle in order to perform the services.
77. It must be acknowledged that, in the exercise of their discretions, it was open to the councillors to have awarded the tender to a tenderer that had not been ranked first.
78. In the circumstances where Council did not accept the first ranked tender, it would have been preferable for the councillors to have recorded their reasons more fully.

⁴ Schedule 3 & tender assessment spreadsheet and report to Council

4.1.7 The contract with Coona Waste

79. Having been awarded the contract, Coona Waste was unable to commence the services. Despite its representations and warranties, Coona Waste could not provide bins with lids, nor could it provide the requisite financial bond.
80. This was to lead to a significant hiatus in the provision of the services and questions whether Council should have treated the breach as a repudiation of the contract by Coona Waste, and either, proceed with another tenderer, or call fresh tenders. Ultimately, Council determined to work with Coona Waste to resolve the issues. This took a further 6 months.
81. Issues relating to the contract came to the notice of OLG, including allegations that some councillors had been in contact with, or lobbied by representatives of Coona Waste, prior to the determination of the tender.⁵
82. The allegation that councillors had been lobbied by representatives of Coona Waste were taken up with councillors and current and former members of staff. The investigation did not obtain sufficient evidence to conclude that councillors had been lobbied in the period from the call for tenders to its determination by Council.
83. Notwithstanding the foregoing, the investigation is satisfied that in the period after the contract was awarded to Coona Waste and during the period when it was unable to commence services, there was interaction between representatives of Coona Waste and some councillors.^{6 7}
84. The foregoing is emphasised by Council's response to the draft report, councillors provided the following assessment:

While there may have been contact between a councillor(s) and the operator(s) of Coona Waste such contact was minor and likely to be difficult to avoid in small communities such as ours. Asides from the notes by two staff members from a discussion with a representative from Coona Waste there is no evidence whatsoever of any influence in the awarding of the contract or any subsequent decision making on the matter.

⁵ Allegations that a councillor had a conflict of interests had been reviewed by OLG. The matter did not proceed to investigation.

⁶ File note of Michael Jones re meeting with representative of Coona Waste on 22 August 2017

⁷ File Note of Robert Jehu re meeting with representative of Coona Waste on 22 August 2017

85. As is emphasised in Part 2.4 of the *Tendering Guidelines for NSW Local Government*, councillors must not contact or issue instructions to any of council's tenderers.
86. In the period when Coona Waste was unable to provide the services, it was, similarly, highly inappropriate for any councillor to have been in contact with any representative of Coona Waste. This is because any decision to repudiate the contract with Coona Waste and either proceed with another tenderer or call fresh tenders would have to be made by the councillors.
87. Absent evidence of collusive practices, the councillors' decision to award the tender to Coona Waste must stand.

4.1.8 Conclusions

88. The failure to recognise that the Coona Waste tender was a non-compliant tender and that the tenderer had insufficient financial resources was, in the light of the succeeding events, a significant oversight. These are matters that should have been identified and reported on, before a decision was made to award the contract.
89. This issue was referred to Narrabri Shire Council for comment. Council's General Manager advised that, through a lack of records, he was unable to comment.
90. In the absence of sufficient evidence to support a conclusion that councillors had been lobbied by Coona Waste in the lead up to Council's determination of the tender, this investigation makes no findings regarding these concerns.
91. It is considered that there is sufficient evidence to form the view that one or more councillors had been in contact with Coona Waste following the award of the contract.
92. In a time where the legal status of the contract was under scrutiny, it was inappropriate for any involvement by any of the councillors and suggests a significant lack of understanding of their role.
93. At a time when Coona Waste's ability to perform the contract was in doubt, the failure of councillors to understand that they may have to determine what action Council may be required to take in response, is indicative of a failure to understand their role and responsibilities.

94. Ultimately, the evidence supports the view that some councillors failed to fully understand their role when dealing with the waste services contract. Those failures extended to both the procurement process and the resolution of the issues that arose following the award of the contract.
95. Review of the RFT raises concerns that some clauses were equivocal in their nature (including clauses 4.4, 4.52 and 6.2). Council should consider reviewing the form of its tenders to ensure that the terms are clear and precise.

4.2 Strategic, Operational and Management Aspects of its Water Resources Function

96. The Terms of Reference required the investigation to consider whether councillors and staff are fulfilling their role and responsibilities in relation to the strategic, operational and management aspects of its water resources function.

4.2.1 Background

97. Council's "End of Term Report" for the period 2012/13-2015/16 contains the following statement:

Our towns benefit from the secure supply of potable water and our villages and rural areas have access to water from rainfall, rivers and artesian systems.

98. The matters outlined in this investigation report question the veracity of this statement.
99. Council operates eight facilities providing potable water to towns and villages within its area. Council services nearly 3,200 water connections across the Shire.
100. Water is drawn either from surface or sub-surface water sources. In some instances, including Binnaway, Coonabarabran and Mendooran, the water supply comes from both sources.
101. In order to ensure its quality, it is necessary to treat the raw water. This is done by plants operated by Council.
102. In recent years, Warrumbungle Shire has been facing a significant and prolonged drought.⁸

⁸ The Bureau of Meteorology classified the 2017 rainfall as "very much below average".

103. While not tied to the drought, Council has struggled to deal with water quality issues, particularly at Mendooran.
104. Local communities are entitled to expect that a reasonable quantity of potable water is provided to each of the towns and villages supplied by Council.
105. Collaterally, members of the local community are entitled to expect that Council would continue to provide fluoridated water supplies, unless advised otherwise (this will be dealt with later in this report).
106. As at September 2017, Council's water function (Warrumbungle Water) fell under the responsibility of the Director, Technical Services, Kevin Tighe. Ms Cornelia Wiebels was the Manager.
107. While Warrumbungle Water operated as a separate unit, only four staff reported directly to Ms Wiebels. Other staff responsible for operating water treatment plants did not report directly to her.
108. Water testing is conducted under a "separation of duties arrangement", with staff undertaking the testing reporting to a different manager, to ensure the integrity of the sample results. The investigation concurs with Council that this is the most appropriate course of action.
109. Separately, Mr Harold Sutton was employed as Manager, Warrumbungle Water Projects. His role existed parallel to Ms Wiebels and he reported directly to Mr Tighe. Mr Sutton did not have any staff reporting to him.
110. While Mr Loane has emphasised that the structure arose from extensive consultation, the effect of the foregoing is to separate the provision of infrastructure from the operational role of providing potable water.
111. In the period preceding the investigation concerns had been raised that Council:
 - lacked the requisite infrastructure to provide an adequate supply of water to many of its towns;
 - failed to provide water that met the requisite health standards.
112. It should be noted that OLG does not have a supervisory role in relation to water infrastructure, nor does it have a supervisory role in relation to water quality issues. Rather, DPIE Water and NSW Health are the responsible bodies for water supply and quality issues.

113. In preparing this report assistance was sought from each of these bodies to find a way forward for Council.

4.2.2 Water security

114. This part deals with Council's failure to provide water security within the Shire.

115. In its letter of 29 May 2018 to OLG, Council acknowledged that it had not adopted a long-term water security plan, noting that it had taken *actions to provide ongoing solutions to drought proof the Shire*.

116. Council resolved to exhibit the draft plan on 21 June 2018 and adopted the plan on 18 October 2018.

117. The towns of Baradine, Bugaldie, Coolah, Dunedoo and Kenebri draw water from bores. Binnaway and Mendooran draw water from the Castlereagh River. Mendooran's water supply is augmented by a bore.

118. Coonabarabran also draws its water from the Castlereagh River, at the Timor Dam. With the advent of the current drought, Coonabarabran's water supply has been augmented by bores.

119. The amount of surface water available is dependent on river flows and the level of water storages. Sub-surface water supply is affected by the depth of the water table and, possibly, from competition from other users.

120. At the time of writing this report, both Dunedoo and Mendooran were experiencing shortages in the amount of water available from their bores.

121. Historically, Coonabarabran has principally drawn its water from Timor Dam on the Castlereagh River. Timor Dam has a capacity of 1,140ML. Ordinarily, Timor Dam has the capacity to serve the needs of Coonabarabran.

122. Coonabarabran's average annual rainfall is slightly less than 750 mm pa, with higher rainfall being experienced during late spring and summer. Coonabarabran's population has fallen by about 10% in the period from 2001 to 2016, down from 2735 to 2537.

123. On 23 November 2017, the Coonabarabran Times reported that the current dam level was 40% capacity, noting:

Timor Dam was at full capacity earlier this year, but present-day levels haven't been experienced since December 2002.

124. To combat the supply issues, Council issued a notice to all residents in Coonabarabran that level three water restrictions would be in force effective Tuesday, 21 November 2017.
125. By 22 December 2017, Timor Dam was at 37% capacity and level 4 water restrictions were imposed.
126. By 6 March 2018, Timor Dam was at 28.1% capacity and level 6 water restrictions were imposed.
127. While capacity of 30% would not otherwise appear dire, Council would not be able to draw water by gravity feed below about 20%. At 15 March 2019, the water level had fallen to 17.8%.
128. Mr Tighe was asked about the then current circumstance concerning the possibility that Coonabarabran could run out of water. He responded:
- I guess I'd have to say, yes, looking with the benefit of hindsight, that the current situation, if we applied our minds to it, could be foreseeable. That's why we wrote the application in 2014. That's the other management plan, integrated water cycle management plan. That's the other thing that's been floating around for some time. That looks at all the available water supplies. So that's ...*
129. Mr Tighe went on to indicate, in effect, that Council did not have an integrated strategy to reduce water consumption.
- Dead water pump*
130. In the face of an ongoing drought it was necessary for Council to take steps to be able to draw on the “dead water” reserves in Timor Dam. While not a long-term solution, it would enable Council to continue to provide water into the near future.
131. In 2002/2003 Council experienced a severe drought and acquired a pump and associated equipment to access the dead water reserves. When Council could no longer draw water by gravity feed, issues arose in bringing the pump back online.
132. The pump became inoperable following a bushfire in 2013. While it had been repaired and returned, when it was needed, it could not initially be located. To make matters worse, the pipe and electrical cable, which had also been burnt,

had not been replaced, even though Council's insurer had paid out the claim for the wiring repairs.

133. When the dam levels were dropping rapidly in the latter part of 2017, Council did not have measures in place to draw the "dead water" from Timor Dam. It is understood that the pump is now on line.

Bore water

134. The severity of the drought prompted Council to seek emergency funding to sink a number of bores to alleviate the water shortage at Coonabarabran.
135. Emergency funding was provided and a number of bores have (at the time of writing) been brought online. As they have come online, Council has been able to ease water restrictions. While these restrictions remain rigorous, Council is currently able to meet the water needs of Coonabarabran.
136. Other towns within the Council area have also faced significant water restrictions. Mendooran is subject to level 6 water restrictions. Dunedoo and Binnaway are subject to level 3 water restrictions.
137. The effect of the restrictions may be demonstrated by reference to Mendooran, where residents have only been permitted to do two full loads of washing per week.
138. On Friday, 8 March 2019, Council reported:
- the river well level at Mendooran was 1.40 metres and the bore level was 7.61 metres
 - a constant minimum level of 1.00 metres in the well is required to maintain pumping.
 - as algal issues in the sedimentation pond had affected the bore water, Council had been unable to use this source of water.
 - Council had applied for \$220,000 of emergency funding from the NSW State Government for the installation of pipework from the old pumping station, replacement of the pump at the old pumping station and for installation of water carting infrastructure at the water treatment plant.⁹

⁹ On 13 Feb ABC had reported that Mendooran's emergency bore water supply had become contaminated

Delays in undertaking work

139. While there have been significant works in response to the current drought, a number of long-term projects had not progressed.
140. In 2014 Council received funding for the provision of backup bores at Binnaway, Coolah and Mendooran.
141. In late 2015 Council called tenders for the works. The report to Council's meeting on 16 July 2016 anticipated the works would be completed by 25 November 2016.
142. Council's "End of Term Report" for the period 2012/2013 to 2015/2016 records revotes for water related projects of over \$1.9m¹⁰. Of this amount over \$1.2m related to the provision of bores at Binnaway, Coolah and Mendooran.
143. Despite Council calling tenders for provision of bores at Binnaway, Coolah and Mendooran in late 2015, as at 31 March 2017, only:
- 9% of the available funds had been expended at Binnaway
 - 17% of the available funds had been expended at Coolah
 - 6% of the available funds had been expended at Mendooran.
144. Separately, Council had received further funding of \$200,000 and \$1.6m respectively, for a test bore and a production bore at Coonabarabran.
145. As at 31 March 2017 Council had only utilised 24% of the funding for the test bore and 2% of the funding for the production bore.
146. It might be noted however that, by July 2018, the works were reported as 70% complete.¹¹
147. In the face of a significant drought, Council's financial statements for the period ending 30 June 2017 noted:

Delay in Water projects (\$2.0m delay) mainly for new Bores¹²

148. When asked whether he saw water security and water quality issues as strategic issues, Mr Loane replied that they were not. He provided the following explanation for this view:

¹⁰ A revote occurs when budgeted funds are not expended during the budget period

¹¹ Report to meeting 17 July 2018

¹² Ref: Note 16 to the Financial Statements

A. *No, not for council. I mean, obviously it has become a real ugly mess at the moment but it is not the first time we have been through water restrictions. We have had the water restriction process go into play. And, as a matter of fact, people have often criticised Kevin Tighe for being too conservative for trying to preserve the water in the dam. I mean my biggest criticism of Kevin is that he never installed the dead water pump because I got him the money for it.*

...

A. *And I want to put my hand on my heart about that one because I did cop a bit of a spray, so they tell me, the people who have reported to me about Facebook stuff, I copped a bit of a spray about the fact that I allowed that not to happen. And, okay, ultimately the buck stops with me and I probably did allow it not to happen so.*

149. Mr Tighe has provided evidence that indicates, on its face, that he was not the Council officer who was given the responsibility for restoring the dead water pump.
150. While Mr Loane's statement may be seen as a desire to exculpate himself and to shift responsibility to Mr Tighe, it matters little. This report considers Council's performance more widely and refrains from placing blame on individuals. Most importantly, when Council's water security strategies were tested by the drought, they were shown to be significantly inadequate.
151. While Council had, and has subsequently received, significant funding to provide further bores and to explore raising the height of the Timor Dam wall, such funding does not immediately provide additional water. In discussing the provision of the bores at Binnaway, Coolah and Mendooran, Mr Tighe indicated that to his knowledge the work to realise these projects was still ongoing.^{13 14}
152. It is important to recognise that there are a number of matters to be attended to before a bore can be brought online.
153. Mr Tighe attributed delays to the complexity of the approval process as well as other factors. In the course of doing so, he made the following observation when asked about the time taken to bring the bores online:

¹³ Record of Interview 24 July 2017 p.14

¹⁴ It should be noted that Mr Tighe had been and was on leave at the time of the interview

It is a long time and it shouldn't take four years, but it's not going to be done in 12 months, either.

154. Only in July 2018 did Council resolve to accept a tender for the provision of installation of pumps and ancillary equipment for the bores at Binnaway, Coolah and Mendooran.

155. Mr Lloyd, who undertook the role of Director, Technical Services, while Mr Tighe was on leave, described the delay in the following terms:

This is indicative of a lack of requisite attention to project planning and management. The consequence of this will be a delay in the outcomes of this work being able to be achieved at a time where the water supply is at significant risk due to a protracted lack of rainfall.

156. Mr Sutton, Council's Manager, Warrumbungle Water Projects, attributed the reasons for the delays to licensing and other requirements, as follows:

Currently I am working on the construction of 7 bores and the supply of equipment to bring them on line. In the south of the Shire, the bores have been going in in the last 18 months. Their implementation has been delayed by licencing and other requirements. Additionally, in Mendooran, there has been the need to drill and analyse a number of exploratory bores to ensure that the water supplied was able to be used. There have also been some legal issues in obtaining easements to secure legal access for a power line to the bore at Coolah.

Licensing requirements have also added to the complexity of bringing the bores online and have delayed the process.

Council has let tenders for the supply of pumping equipment and head works. When completed these works will allow the Mendooran and Binnaway bores to be brought online. Council is currently obtaining the easement to provide legal access for the power to the remaining bore at Coolah.

157. Mr Sutton conceded that the time taken to commission the bores appeared to have been lengthy, indicating that the Senior Water Manager at DPIE Water Dubbo had recently advised him that it usually takes 2 years from the time money is made available for bores to be brought online.

158. It is worth noting that Council has been able to bring seven additional bores online to relieve the water shortage at Coonabarabran. In responding to the

draft report, Council emphasised that it had been exempted from certain requirements by DPIE Water.

159. While there can be no direct comparison between the time taken to bring the earlier bores online, the investigation concurs with Mr Lloyd's assessment that Council lacked requisite attention to project planning and management and an inability to make necessary decisions to undertake required works.¹⁵

Timor Dam

160. It was suggested that from as early as the 1970's,¹⁶ Council has been looking to raise the height of the wall of Timor Dam. Mr Tighe contended that this was not the case.
161. In 2014 Council lodged an expression of interest funding submission to Infrastructure NSW for a feasibility study into raising the wall of Timor Dam.¹⁷
162. As at 16 July 2015, Council anticipated that a study into raising the wall would be completed by 25 November 2016. Despite a budget allocation of just under \$600,000, no work had been undertaken at that stage. As at 30 June 2017, there had been little progress.
163. Ms Wiebels, Council's Manager Water, gave evidence regarding the delay in undertaking the feasibility study. She indicated that there were a number components, including geotechnical, structural hydraulic and environmental issues to be addressed in any study into raising the wall.
164. In July 2018 the feasibility report was provided to Council. Mr Lloyd advised that he had given instructions for the preparation of an immediate application for funding.
165. At the time of writing this report, consideration of raising the dam wall is ongoing. Given the complexity of the issues, it is not expected that a final resolution will be reached in the near future.

¹⁵ Statement of Russell Lloyd

¹⁶ Ref: Cornelia Wiebels interview

¹⁷ Ref: Kevin Tighe submission

4.2.3 Conclusions

166. There are inherent challenges faced by the Council in delivering its water resources function. These challenges in particular arise from the number of separate water supplies that it needs to maintain, at geographically dispersed locations and the relative remoteness of the area.
167. Mr Lloyd provided the following assessment of the issues facing Council:
- In my view, some of the current circumstances of the Council's water and sewerage infrastructure can be attributed to an apparent inability ... to make necessary decisions to undertake required works and an apparent reticence or inability to delegate responsibility to staff.*
- It is difficult not to reach the same conclusion.
168. While there may be delays in obtaining the necessary consents to undertake the work, as outlined by Mr Tighe and Mr Sutton, the delay in providing the bores falls well beyond the periods suggested by them. This has been a very serious failure.
169. It is also concerning that there may have been undue delays in obtaining the external consents.
170. Council failed to adopt a drought management strategy to support the restrictions that were imposed pursuant to clause 137 of the *Local Government (General) Regulation 2005*.
171. While Ms Wiebels expressed concern about delays in undertaking the studies into raising the wall of Timor Dam, given the complexity of the issues affecting the project, it is not considered appropriate to draw any conclusions regarding the failure to proceed with that project in a timely manner.
172. Notwithstanding the foregoing, Council needs to address the issue and determine whether raising the wall of Timor Dam is feasible and whether it will provide a strategic solution to Coonabarabran's water needs.
173. While it is pleasing to see that Council has been able to draw on emergency funding to provide additional water supplies for Coonabarabran and has brought bores online in other towns, the need to do so emphasises Council's earlier failures to address water security issues in its towns and villages.

174. Council should have been pro-active rather than reactive in addressing water security issues.
175. Council, in responding to the draft report submitted that it has been pro-active in making necessary decisions to ensure water security for the area.¹⁸
176. While it is acknowledged that Council has made some decisions, obtained grant funds and completed some works, particularly in more recent times, its submission, having regard to the evidence examined during the course of the investigation is not accepted.
177. While the additional bores at Coonabarabran may have relieved the current water shortage, they have not resolved the issue. It must also be noted that level 6 restrictions still apply to Mendooran.
178. Council needs to ensure that, under its recently adopted organisational structure, capital works programs are carried out expeditiously.
179. Council needs to pay requisite attention to project planning and management and needs to make the necessary decisions and, most importantly, to undertake required works.
180. At the time of the last Council election, Council had funding for additional bores at Binnaway, Coolah and Mendooran. Council had also set aside funds to undertake a study into raising the wall of Timor Dam. Each of these projects (as were the subsequent proposals for bores at Coonabarabran) had strategic significance to the towns benefitting from the proposals.
181. In the period following the election, it would have been apparent to councillors that little progress had been made to undertake the projects. In those circumstances, it is the inevitable conclusion that councillors failed to adopt processes designed to ensure that the projects were carried out. In circumstances where there were demonstrated failures by staff in proceeding with the works, it was incumbent on councillors to ensure that the works proceeded.
182. While the function of providing water to local communities is an operational function, the assurance of providing a sufficient supply of water to meet the reasonable needs of the community is both strategic and operational. It falls on

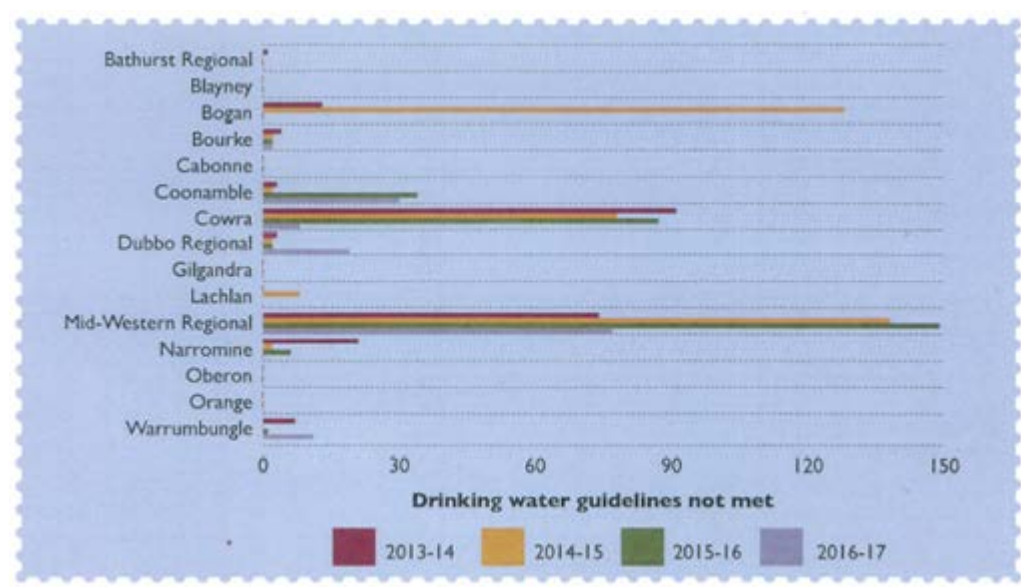
¹⁸ A similar submission was made by Mr Tighe, who cited a number of actions taken by Council.

both the councillors and staff to implement ways to resolve the issues facing each of the towns. Importantly, councillors must ensure that Council provides or secures appropriate funding and, in turn, carries out the work.

4.2.4 Water quality

Background

183. In July 2017 Council issued a “boil water” alert for Mendooran. It was not the first time Council had issued a “boil water” alert, nor has it been the last time.
184. In January 2019 Council issued a “boil water” alert for Coolah.
185. In responding to the draft report, Council emphasised that the “boil water” reports should not be an indicator of Council's overall performance. In doing so, Council referred to similar issues affecting other water supply authorities in the region.
186. The following table is drawn from the *Regional State of the Environment Report, 2016 – 2017*. It indicates the instances where councils failed to meet the drinking water guidelines.



187. While not the subject of a “boil water” alert, in February 2019, blue-green algae had contaminated the sedimentation pond affecting Mendooran’s emergency bore water supply, preventing its use.
188. While Council may have had fewer instances than other councils in the region, where the drinking water guidelines were not met, it must be emphasised that the number of non-compliance reports are not, in isolation, an appropriate

- litmus test of Council's performance, rather they are one of many indicators of Council's poor performance.
189. It must also be emphasised that this report considers the performance of Warrumbungle Shire Council. In doing so, it does not seek to compare that Council's performance with the performance of other councils in the region.
190. A water treatment plant was constructed at Mendooran in 2008-2009. In the period from 2009-2012 there were eleven positive reports for E. coli in water supplied by the Mendooran plant. It continues to have ongoing issues.
191. In December 2005 NSW Health introduced a drinking water monitoring program. In its updated version, it recommended that water utilities undertake an assessment of their supply systems.
192. The program recommended, inter-alia, *that a range of barriers to contamination be applied in a water supply system*. The barriers included protection from contamination from human and animal faecal material, pre-treatment, protection of water storages, treatment and disinfection. It also contained provisions relating to fluoride management.
193. On 1 September 2014 amendments to the *Public Health Act 2010* and *Public Health Regulation 2012* required that drinking water suppliers adhere to a quality assurance framework, referred to as a "drinking water management system".
194. The framework is based around critical control points (CCPs). A CCP is an activity, procedure or process that is critical to control a water quality hazard (for example chlorination and filtration/particle removal).
195. In preparing the framework, councils were required to undertake a number of steps, including the development of operational procedures for CCPs, prioritising improvements and actions, undertaking immediate improvements and actions and implementing a drinking water management system.
196. In 2014 Council adopted its *Drinking Water Quality Management Plan*.
197. NSW Health and the former DPI Water have provided a range of ongoing assistance to councils to implement the framework. The assistance provided to Council included review of its water treatment facilities to ensure that the water treatment plants met requisite health standards.

The reports

198. There have been a number of external reports provided to Council. The investigation considered four reports that had been provided in the period from September 2014 to June 2017.
199. On 4 May 2015 City Water Technology published the results of its audit of the Mendooran water treatment plant. The report noted:
- Filtered water is often not meeting turbidity requirements to ensure removal of chlorine resistant pathogens.*
200. The report detailed concerns, recommended modifications to the design and increased monitoring by plant operators.
201. A previous audit of the plant by Hunter Water Australia, published in September 2014, had raised both operational and design issues. The report made a number of recommendations, according each with “high” priority.
202. In February 2016, Bligh Tanner released the result of an audit of all of Council's water treatment plants. NSW Health had convened the audit in order to assist Council with the implementation of its Drinking Water Quality Management Plan.
203. During the interviews, councillors were shown copies of the reports and asked whether they had seen them before. They indicated that they had not seen them. Their evidence tends to support the view that councillors were not aware of the reports, nor did they appreciate the gravity of the concerns about Council's water supply function prior to the meeting with representatives of DPIE Water and NSW Health on 14 February 2018.

Measuring performance

204. The Bligh Tanner report has been a useful benchmark for this investigation, as it contains recommendations, on a plant by plant basis and prioritises the recommendations. The report has been central to assessing Council's response to water issues.
205. While some of the recommendations in the Bligh Tanner report involve significant expenditure and/or significant works, many of the recommendations were directed to ensuring the integrity of reservoirs and other plant, as well as the adoption of procedures to ensure that the operation of the plants met the

required standards. Importantly, in many instances, only minor works were identified as being required.

206. In January 2019, Council issued a “boil water” alert for Coolah. In investigating the cause, Council found that the contamination stemmed from wildlife access to a reservoir.
207. The integrity of the reservoirs and plant is a significant factor to prevent contamination of treated water.
208. This is an important issue. In 2016 Bligh Tanner had noted evidence of contamination in the reservoirs at Coolah and had recommended that action be taken to ensure that vermin etc. could not gain access.

The current situation

209. Despite requests of Council, the investigation has not been able to ascertain which of the Bligh Tanner recommendations remain outstanding.
210. Review of various reports (including quarterly budget review statements) indicates that there have been significant delays in undertaking work, ongoing operational issues and an apparent failure to recognise the significance of water quality issues. This latter point is emphasised by Council’s lethargic response to an earlier “boil water” alert for Mendooran in mid-2017.¹⁹
211. This view is strengthened by Council’s “End of Term” report, which records a significant number of revotes affecting Council’s water treatment facilities, including the provision of a clarifier at Baradine, repairs to other plants and the provision of fluoridation equipment to others.
212. It is relevant to note that some, including works to the Baradine and Mendooran plants, had their genesis in the 2012/13 financial year. Some, such as the provision of a clarifier at Baradine and improvements to the Mendooran plant, still remain outstanding.
213. In January 2019 the investigators wrote to Council seeking a schedule detailing a list of required works for each plant. The letter requested that the schedule prioritise the works over a period of five years and indicate those works that may be funded internally and those for which external funding would be sought.

¹⁹ Reports to Council’s meetings in November 2017, February 2018 and May 2018

214. The schedule was not provided.
215. It was intended that the schedule would form the basis of discussions with DPIE Water and NSW Health, with a view to obtaining their views on the proposed works and timetable. It was also intended to use the list to generate discussion on funding sources for the necessary works. This approach had arisen from discussions with DPIE Water and NSW Health.
216. A recent decision by NSW Health that it would provide funding for a further audit of Council's water treatment facilities may have rendered some parts of the Bligh Tanner report otiose. Notwithstanding this, it is significant that Council was unable to provide the requested schedule. It suggests that Council has not yet adopted a comprehensive asset management plan and ongoing maintenance program.²⁰
217. In an email responding to extracts of the draft report, Mr Lamont of DPIE Water advised that an Improvement Plan containing eighty nine actions had been agreed with Council. Further, that an independent review of the Improvement Plan has indicated that there are around two hundred actions to prioritise.
218. Most importantly, the Improvement Plan classifies the actions to be taken into four risk based categories.
219. Inevitably there will be a further time lag in addressing the audit's recommendations and providing any associated works.²¹
220. The proposed audit should not be seen as a reason for delaying works identified in the Bligh Tanner report or for delaying other works in response to the 2017 Mendooran "boil water" alert.
221. In indicating the failure to undertake works to the Baradine and Mendooran plants, it is important to acknowledge that Council is not solely responsible for the delay.
222. Mr Tighe outlined some of the issues confronted by Council in relation to the clarifier at Baradine:

Q. You mentioned the Baradine water treatment clarifier and you were going to provide an explanation about delays in respect of that.

²⁰ The investigation was advised that Council did not have an asset management plan for its water or sewer assets.

²¹ As at 24 June 2019 nineteen of the actions had been completed

A. *Mmm. Yeah, we had a strategy in place where we got, again, these consultants to provide an option, and we got so far as we developed - we got so far as to develop specifications for this project. It was going to cost about a million dollars. But then a certain individual in the New South Wales DPI, too late, poured - well, expressed his concern about the project, about the direction we were going, and more or less said to me, "You won't get section 60 approval."*

Q. *So it was scuttled?*

A. *It was scuttled, pretty much. So we're now back to the drawing board and looking at other options.*

Q. *Okay.*

A. *It's just annoying. That is annoying, because during the development of this project, the option that we were pursuing with the consultant, I'd written to the DPI and I never got a response. I said, "This is where we're up to. This is what we're doing." It was only 12 months later, when we got to the stage of preparing specifications, that the project - he more or less scuttled the project.*

223. In responding to the draft report, Council provided a chronology for the Baradine water treatment plant upgrade. The following table sets out the chronology:

Date	Action
January 2014	Ultrasonic Testing Report
October 2014	Multi Criteria Assessment Workshop held and Draft Baradine Water Treatment Plant (WTP) Clarification Options Assessment completed
January 2015	Council sends draft report to Office of Water
July 2015	Final Baradine Water Treatment Plant Clarification Options Assessment completed and Submitted to DPI-Water

Date	Action
December 2015	Final Baradine Water Treatment Plant Clarification Options Assessment re-submitted to DPI-Water
February 2016	Draft Baradine WTP Augmentation Concept Design Report and Technical specifications prepared. Discussions held with Department of Primary Industry
March 2016	Applied for funding through NSRF (National Stronger Regions Fund) – unsuccessful
March 2016	Final Baradine WTP Augmentation Concept Design Report prepared
April 2016	Final Baradine WTP Augmentation Technical specifications prepared
May 2016	Discussion about the Project held between Council (Tighe & Wiebels) and Office of Water (Bill Ho)
	(Wiebels on maternity leave Oct 2016-Oct 2017)
January 2018	Submitted Safe & Secure Water Program (SSWP) EOI
February 2018	Received invitation to submit detailed application
October 2018	Teleconference between WSC, DOI and HH2O re how to progress this project in light of submitted SSWP EOI. Glen George from Department of Industry-Water advised that Council can proceed in the preferred way as long as justification is provided why Bill's recommendation are not followed

Date	Action
January 2019	Comparison of clarification options prepared (providing the required justification)
February 2019	Comparison of sedimentation options sent to DOI
February 2019	Detailed SSWP application submitted
March 2019	SSWP funding granted
May 2019	Discussed part of comparison report with DOI, Mr Ho did not accept this as justification why his recommended option is not intended to be realised

224. In responding to the draft report DPIE Water provided the following comment on this matter:

Under Section 60 of the Local Government Act 1993, Council is required to seek the approval of the Department of Industry Water [sic] for water treatment works.

The Section 60 approval process is a high value activity that ensures Council's proposed water treatment works are fit for purpose, cost effective and affordable.

The options for replacing the clarifier of Baradine water treatment plant were discussed with Warrumbungle Council on a number of occasions. In the May 2016, following discussions, it was decided that further investigation was needed to justify the replacement option proposed by Council. This proposed option was not as previously planned, the most appropriate or the most cost-effective available.

Council's consultant carried out this further investigation. It was not until 13 February 2019 that Council sent a report of this investigation to Department of Industry Water [sic] for further consideration and discussion.

225. Unfortunately in a period exceeding five years, the provision of a clarifier has not been resolved.

226. Notwithstanding the foregoing concerns, Council does not appear to have given priority to giving effect to more minor works that were highlighted by Bligh Tanner. For example, Bligh Tanner, in February 2016, recommended cleaning the reservoir at Baradine to remove a significant layer of sediment as a short-term measure. Council did not secure divers to undertake this work until 2017.²²
227. Ms Wiebels advised that there was many metres of sediment built up in the reservoir. Its effect was to use up the chlorine that was intended to disinfect the water, decreasing its effectiveness.
228. While Council had set aside a budget of \$77,000, only 19% of the budget had been utilised by the end of March 2017 and works were not expected to be completed until June 2018. It is understood that this work has now been completed.
229. Similarly, while Council had budgeted \$80,000 for improvements to the Mendooran plant, none of the budget had been utilised by the end of March 2017 and no date for completion of the works had been set.²³
230. The Bligh Tanner report contains numerous photos showing that plants were being compromised by the entry of vermin and other pests and recommended that actions be taken to ensure the integrity of each plant.
231. The investigation was unable to ascertain whether Council has taken action to respond to the recommendations. It is concerning that the recent issues at Coolah may stem from Council's failure to undertake the works recommended by Bligh Tanner, or may not have been vigilant to ensure the ongoing integrity of each plant.
232. In an email dated 24 June 2019, Mr Bruce Lamont of DPIE Water provided the following commentary:
- As an example, given there have been multiple boil water alerts and E.coli detections over the past several years, sufficient priority has clearly not been given to securing reservoirs across the shire. This is raised in Council's Drinking Water Management System as a breach of a critical control point designated 'reservoir integrity' in nearly every reservoir for this entire period*

²² The attempt to use divers was unsuccessful and the work to clean the sediment was not completed until June 2018.

²³ As a result of the 2017 "boil water" alert the works may have changed.

which would define this therefore as a high risk. The Department of Industry – Water [sic] has issued Circular 18 (June 2014) which addresses Council’s responsibilities around Reservoir Security, Integrity and Inspections. Warrumbungle Shire have identified Working at Heights as a barrier to fulfilling their responsibilities under Circular 18 but no solutions have been developed like training for staff, engagement of qualified contractors, for example. It is fair to say that Council did arrange for inspections to be undertaken on all their reservoirs in 2014 as required by the Circular but most of the highlighted improvements required have likewise not been attended to.

233. Perhaps the most useful insight came from Ms Wiebels:

- well, you know, they – they probably also wonder what we are doing, because they provide money to engage consultants to help us and we pretty much ignore - ignore that. And then they get these reports back and they ask us afterwards, what have you done on it, and years later we still haven't done anything, so that's - it's not only embarrassing, but it's also showing them that we're not really on the forefoot of implementing or improving our water supply or the issues that we have with it.

Operational issues

234. Council's failure to undertake capital works is not the sole source of concern. It is apparent that there are ongoing operational issues.²⁴
235. While the proposed audit may address infrastructure issues, it will not directly address operational and structural issues.
236. There appear to be significant operational and structural issues that need to be addressed.
237. This may be seen from Council's failure to provide ongoing fluoridated water supplies.
238. Council had installed fluoridation equipment at various plants, however, only the Baradine, Binnaway and Coonabarabran plants have operated. The plants in Coolah and Mendooran have not been commissioned and the equipment at Coonabarabran has not been operational for a protracted period.

²⁴ Evidence of Ms Wiebels.

239. In responding to the draft report, Council expressed concern that it was not the sole council with issues relating to the provision of fluoridated water. While this report acknowledges that other councils may be in the same or a similar position as Council, this does not mitigate Council's need to address the issue.
240. The *Fluoridation of Public Water Supplies Act 1957* (the Fluoridation Act) imposes sanctions where fluoridated water supply is discontinued.
241. Ms Wiebels attributed this to a lack of sufficient trained staff to operate the equipment.
242. This view was endorsed by Mr Lloyd, who expressed the view that Council lacked sufficient qualified staff to operate its water and sewerage plants at the standard required.
243. In responding to the draft report, Mr Loane emphasised that staff had received intensive fluoridation training.
244. In responding to the draft report, Mr Tighe advised:
The primary reason the fluoride dosing system is not working is not due to lack of training, it is both technical and environmental in nature. The operation of fluoride dosing involves mixing sodium fluoride powder with water in a batch tank. The batch tank mixing process failed when the sodium fluoride formed an impermeable barrier within the tank. The failure of the mixing process is a technical issue because the barrier should not be allowed to form. Emptying the batch tank is an environmental issue because a Contractor could not be secured. The fluoride by product is highly toxic and specialist toxic waste removalists could not be found.
245. The foregoing emphasises that the current water quality issues cannot be simply attributed to infrastructure issues. Bligh Tanner reported a significant number of minor works that needed to be undertaken to ensure the security of water supplied by the various treatment plants. Many, such as the security of reservoirs, required ongoing inspection. Others required monitoring of the plant.²⁵

²⁵ As indicated previously, the investigation has been able to ascertain what recommendations have been implemented.

Structural matters

246. Mr Sutton expressed the view that Council's structure had not assisted the management of Council's water and sewerage functions. He attributed this to operators outside the towns of Coonabarabran, Dunedoo and Coolah, not having a direct reporting role to the Manager Water. He expressed the view that the former reporting structure divided their reporting role and their priorities and brought with it the potential to give rise to conflict.
247. The former organisational structure did not provide dedicated staff to undertake the water function and did not provide a flat hierarchy.
248. Ms Wiebels described how the former structure had operated:

That was one thing when I started, I looked at the structure, and I looked at the staff and I looked at what they were responsible for, and then I found that there was a water treatment plant in Mendooran, a water treatment plant in Baradine, a water treatment plant in Binnaway, and a sewerage treatment plant in Baradine, but there was no staff looking after it, so I was wondering, who's the staff that's looking after that?

And then I realised that there were staff in Urban Services reporting to the manager of Urban Services that were looking after those areas and they were, in Mendooran for example, truck operators or tractor operators that were also water treatment plant operators, so I found that quite confusing and I tried to get my head around it, how that would work and up and --

Q. And, how does it work?

A. It doesn't.

Q. So, on one hand you have (indistinct) responsibility for the operation of those water treatment plants, but the staff who undertake services related to those plants don't report directly to you?

A. Yes.

Q. Or even indirectly?

A. Or indirectly, yes. That's correct, yes. So they would report directly to their Supervisor Urban Services, who then reports to the Manager Urban Services. So, I'm told, if I want something from that staff, I'd have to go through the Manager Urban Services, then to their supervisor, then to the staff. And I was

told, "Oh, it's never been a problem", you know, "Why do you want to change it, it's always worked, and there has been a verbal agreement between the Manager Water and the Manager Urban Services that it works that way."

249. Council's current organisational structure provides a direct reporting structure to Ms Wiebels, however some staff still divide their time between their role with Warrumbungle Water and other functions within Council.
250. When implemented, Council's water function will comprise separate supervisors for the north and south of the Shire, the Water Projects Engineer, the Water Technical Officer and a dedicated water meter reader/relief treatment plant operator. Each supervisor will have staff responsible for the operation of the various water treatment plants, although some positions will be split between other roles.
251. The adoption of the new structure will not directly address skill shortages nor will it, in isolation, address cultural issues.
252. In relation to the latter issue, the investigators were advised that some staff had refused to allow staff living in other parts of the Shire to operate plant. Mr Loane described it in the following terms:

But there was always a north verses south in the outdoor staff because there - not only being two different councils but there was differences of opinions between supervisors about how things should be done, roadworks, water, sewer, they had different work practices.

And the water management at the Mendooran Water Treatment Plant was one of those things because I believe that the main issue there was the fact that one of those particular characters there was a fairly strong willed character who is no longer with council and he just refused to do what he was supposed to do. Whereas, when I brought the plumbers that we called them, the water operators together and they all had a united input into how are you supposed to do things, things started to improve because they had buy into it. And the grader driver is the same, I pulled the grader drivers together on a rainy time we had when they couldn't be out there working and they all had a fairly robust discussion. There is a lot of bravado and a lot of ego in the room amongst grader drivers - I don't know whether you have had much to do with grader drivers in your final but they all think they are the top dog, and, in some cases, they are. By default they are a team leader anyway as a grader driver.

Q. Is whether it, in your view, affected council's ability to provide services and whether you saw it as being dysfunctional?

A. The short answer to that is, yes. Yes, to both issues. The ability to be able to provide staff or to provide services, because of the distance - distances is - and this is a figure that I was always shocked about – in the last 18 months it became more apparent that on any one day there are 30 per cent of the outdoor staff absent. Now, when you have got that sort of absenteeism and some of them are self-conducted leave without pay, people who just don't want to come, they have run out of holiday and run out of sick leave and whatever. Some of them are sick leave, some of them are unapproved leave and some of them, of course, are RDOs, but 30 per cent. I would be interested to see what the figure is now. But what that means is the knock on effect of that is, if you have got people in Coolah that are supposed - a grading crew is a grader driver, a roller driver and a water truck operator. Your grader driver doesn't turn up, you have to stand the crew down or bring someone else in. We didn't have enough depth in the organisation for relief plant operators to step into that role. So the grading crew stands down, what happens, you don't get the roads graded on that day. Then you have got to re-deploy those two, the water truck driver and the roller driver have got to be redeployed out doing something else. And they are not normally as productive as what they should be. So the complaints about road issues in Warrumbungle Shire is largely because of the 30 per cent absenteeism.

253. In responding to the draft report, Council advised that steps had been taken to address the matters raised by Mr Loane.

4.2.5 Conclusions

254. The current circumstances of the Council can be attributed to a significant degree on Council's ongoing failures to implement works, such as those in the Bligh Tanner Report and the Hunter h2O Mendooran Water Treatment Plant Report.
255. Weight should be given to Mr Lamont's assessment that attributed Council's position to:
- A lack of understanding or an appreciation of the risks highlighted in the Improvement Plan by Council and senior management;

- A lack of leadership being provided to address the risks; and
 - A lack of support to water and sewer management and operational staff which has developed a culture of acceptance of poor performance.
256. The foregoing supports the inevitable conclusion that the operation of Council's water treatment plants has been hindered by:
- A lack of management plans and an ongoing maintenance program.
 - A failure to ensure the integrity of the reservoirs and plant.
 - Significant delays in undertaking work.
 - A lack of trained staff to operate the equipment.
 - Insufficient importance being placed on the need to provide safe and clean water.
257. Councillors were not aware of the various reports, nor do they appear to have been cognisant of the need for strategic action to ensure the integrity of Council's water supply function prior to the meeting with representatives of DPIE Water and NSW Health on 14 February 2018.
258. While Council's current organisational structure may facilitate greater accountability for its water and waste water functions and reduce the potential for conflicting priorities and directions, it will not directly address an apparent lethargy in carrying out important work nor will it address staff skill shortages and territorial issues.
259. Similarly, it is difficult to see how part-time staff can be expected to provide the assurance required.
260. Most fundamentally, Council must ensure that it recognises the importance of providing safe clean drinking water and prioritise the implementation of the recommendations provided in this report and the recommendations contained in the specialist reports cited in this report.
261. Council will need to ensure that staff having responsibility for such equipment are suitably trained and recognise the importance of their role.
262. Council needs to ensure that staff are qualified to operate its fluoridation plant.
263. Councillors have a strategic role in ensuring that these outcomes are achieved.

264. Separately, NSW Health and DPIE Water have taken significant steps to address issues relating to water quality issues.
265. Ultimately, the responsibility for the proper delivery of Council's water resources function must rest with Council itself.
266. The importance of addressing the Improvement Plan cannot be understated.

4.3 Conduct Matters

267. The Terms of Reference required the investigation to review whether the conduct of councillors, senior officers and other staff, has hindered the provision of efficient, effective and appropriate standards of governance.
268. In the lead up to the investigation, there had been a number of conduct complaints by staff. These principally related to the conduct of one councillor. Insofar as that councillor was concerned, one of those complaints gave rise to a finding of misconduct and the suspension of that councillor.

4.3.1 The former General Manager, Mr Loane

269. Mr Loane was appointed as Council's General Manager in May 2011. On 14 August 2017, Council (by majority) resolved to terminate his contract.
270. The termination, on its face, did not reflect a 2.5% pay increase awarded to Mr Loane a month earlier (following a favourable performance review). Rather, it is likely to have been a reflection of an underlying mistrust of Mr Loane on the part of some of the councillors who voted for this termination and a recognition by others that such a circumstance was a hindrance to Council being able to fulfil its functions.
271. While some councillors respected and defended Mr Loane, some of the recently elected councillors indicated that they had lost confidence in Mr Loane and wanted to end his tenure. There is little doubt that his stance on the waste bins contract became the tipping point.
272. The lack of trust was not simply directed to Mr Loane, it was also directed to senior members of staff, perceived as aligned to Mr Loane and to the former Mayor.
273. For example, at least one councillor had stood on a platform of removing both Mr Loane and the Mayor from their roles. Further, the Mayor was required to provide details of the meetings he had attended in his official capacity and a

logbook of the kilometres travelled, in a circumstance where this had not previously been required.

274. The lack of trust is evidenced by a motion to impose significant limitations on the delegations given to Mr Loane in October 2016. While the motion was not carried, it indicated a lack of trust in Mr Loane and a desire to weaken his role.

4.3.2 Confidence in the General Manager and senior staff

275. The *Councillor Handbook* emphasises that the importance of trust and mutual respect within the council team and between council and senior management cannot be underestimated. It is a foundation to good governance.

276. Despite Mr Loane's departure, the legacy of mistrust remains.

277. In the less confrontational period that has followed, the mistrust may have subsided, but it remains very evident.

278. It extends to the current General Manager, Mr Bailey and to some senior staff.

279. During discussions in January 2019, it was apparent that Mr Bailey's tenure was very much dependent upon the choices he will make regarding the roles of two directors.

280. Council has engaged the services of a new provider to assist it in the ongoing review of the current General Manager's performance and advised that it has confidence in this provider.

4.3.3 Conclusions

281. Most fundamentally, the lack of trust derives from the failure of some councillors to fully understand their role and from a sense that they are not being given all relevant information to undertake their role.

282. In the second sense, it is understandable that they may feel disenfranchised in circumstances where Council has been performing poorly and where significant issues appear not to have been drawn to their attention.

283. Despite the foregoing, it is important to note that there have been no recent conduct complaints involving the behaviour of councillors. For that reason, no conclusions are made that relate to the current conduct of councillors towards staff.

284. Notwithstanding the foregoing, it is important to emphasise that the behaviour reflected in the previous conduct complaints was and remains wholly inappropriate and should never have been used to pursue the agenda of the nature outlined in part 4.3.1.
285. The tensions within the governing body and mistrust of certain members of staff have combined to divert the attention of councillors away from their strategic role. Instead, their focus has been on operational and day-to-day issues.
286. While there can be no doubt that all of the councillors wish to perform their civic role to the best of their ability, the lack of strategic focus, mistrust of staff and a lack of understanding of their role has meant that they are generally not performing their role in an appropriate manner.
287. While there are divisions between the councillors over some issues, it is important to emphasise that their relationship is not broken, nor are they dysfunctional.
288. In order to address the issue, councillors would benefit from a mentoring program. However, for such a program to be effective, it must be willingly accepted by the councillors.
289. It is important that councillors make effective use of the expertise of the consultant they have engaged to assist in the ongoing review of the General Manager's performance.

4.4 Other matters that arise directly from the principal investigation of the Council's work and activities set out in the Terms of Reference

290. The Terms of Reference allowed the investigation to examine and report on other matters that arise directly from the principal investigation of the Council's work and activities set out in the Terms of Reference. A number of such matters were identified.

4.4.1 Waste water services

291. In interviewing Mr Lloyd, the investigators were informed that from approximately late 2016 each of the sewage treatment plants at Coolah, Coonabarabran and Dunedoo exceeded the permitted concentration of

pollutants. He also expressed concerns about compliance with external reporting obligations.

292. Mr Lloyd advised that the only work that had been undertaken to address the exceedances had been to assess options to upgrade the plants.

293. Council refuted these comments and provided a table detailing the dates annual reports were submitted.

294. While Council's response addressed the provision of annual reporting, it remains a concern that exceedances may have occurred and may not have been reported.

4.4.2 Record-keeping

295. In the period leading up to the investigation, Council was asked to provide a range of information.

296. Council was unable to provide all of the information that was sought. In particular, Council was unable to provide information relating to some procurement processes, including matters relating to certain tenders called by Council and building work supervised by Council. These are matters where thorough records should have been made and retained.

297. In this regard, OLG was informed that a former member of staff had returned IT equipment with the memory erased and that records of the work performed by the person had not been otherwise recorded and retained.²⁶

298. This is a significant issue, particularly as significant amounts of money appear to have been involved.²⁷ It is understood that these concerns have been referred to the ICAC for its consideration.

299. While the matter was not separately investigated, it is important to draw to Council's attention that the *State Records Act 1998* provides that every council must make and keep full and accurate records of its activities.

4.4.3 Access to Council facilities

300. It was alleged that a councillor had a key that was being used to obtain personal access to a waste facility operated by Council after hours.

²⁶ The person is no longer employed by Council.

²⁷ Both in the value of work and payments authorised.

301. This issue was raised with the councillor, who denied it. Accordingly no conclusion has been reached regarding the allegation.
302. It is relevant to remind Council that it has responsibility for managing significant assets and that it must be vigilant in securing those assets.
303. Council should regularly review which persons are given access to its facilities and in what circumstances they may do so.
304. Where appropriate, Council should either ensure that any keys giving access are returned and/or locks are changed to ensure unauthorised persons do not have access.

4.4.4 Council's culture

305. Amongst the matters considered in this report are conduct issues affecting councillors and staff.
306. In part they related to a "campaign" being run against the then General Manager, Mr Loane and Council's Director Technical Services, Mr Tighe and other staff on a social media site.
307. While it is not relevant to consider the content of the social media posts *per se*, it is useful to note that an investigation into the source of the content, provided the following commentary about Council's culture:

It was noted from (Sic. from) the investigation that the culture at WSC needs to be addressed and improved. Currently, there is a lack of communication between all departments in Council, as well as an absence of team culture. There is a view from the employees that it is an "us vs them" situation, between Coonabarabran and Coolah workers, as well as between those who work at Council offices and those out working on Council projects or at depots.

308. Mr Loane gave evidence of the issues that he had faced as a result of this divide, indicating a request for separate Christmas events, differences of opinions being expressed between supervisors about how things should be done and different work practices. Relevantly, he gave an example of an issue that had arisen at the Mendooran water treatment plant. Ultimately, despite the time that had elapsed from the amalgamation²⁸, he conceded that it was unfinished work.

²⁸ Council was established on 25 August 2004

309. Of concern, Council's organisational structure still divides staff along the lines of the former Coonabarabran and Coolah Shire Councils.
310. It is almost fifteen years since the merger and action needs to be taken to address ongoing staff issues, particularly where they impinge on the proper provision of services.
311. Council has advised that it is taking steps to address cultural issues. These include conducting an employee opinion survey and new and improved communication processes.

4.4.5 Staff conduct issues

312. Evidence obtained prior to and during the investigation indicates that there are significant staff issues.
313. Evidence provided by the USU detailed staff bullying and misuse of Council resources.
314. Material obtained from Council detailed significant bullying by one particular member of staff who exercised a supervisory role. Such was the extent of the bullying that it gave rise to significant health issues affecting his manager and a range of complaints by staff who he supervised.²⁹
315. Other issues related to the conduct of staff at social gatherings, including Council's Christmas function.
316. While these matters do not fall within the Terms of Reference, it is concerning that the conduct occurs. More concerning is that a number of complaints relate to some staff who have responsibility for Council's water supply and water treatment functions.
317. While no recommendation is made in this report, Council needs to identify and address the issues giving rise to such conduct and to respond to them.

²⁹ It is understood that the person was the subject of disciplinary action.

4.4.6 Three Rivers Retirement Village

318. Council received funding of \$7.45m to assist the construction of a retirement complex at Dunedoo. On 20 July 2017, Council resolved to accept a tender for \$6,872,415.³⁰
319. Acceptance of the tender gave rise to a shortfall of slightly less than \$420,000, which was funded through an internal loan.³¹
320. The accepted tender was significantly below the three other tenders that had been received. These ranged between \$9.7m and \$11.3m.³² The successful tenderer's price was over 30% lower than the average price of the three other tenders.
321. In early August 2018, Council announced that it had terminated the contract with the successful tenderer.
322. Council has advised that it will be necessary to rectify a significant amount of defective work.
323. It is understood that Council and the successful tenderer are engaged in Court proceedings.
324. As Council's management of the project is the subject of a separate review by OLG, the matter was not further investigated.

4.4.7 Council's response to the draft report

325. As noted earlier, a draft version of this report was provided to the Council with an invitation to make a submission on its content. Council provided a submission. Some parts of this report have been modified to address matters raised by Council. Where considered particularly relevant, Council's submission has been cited in the body of the report.
326. There are a number of further matters detailed in Council's submission which warrant mention.
327. The Mayor, in a covering letter forwarding Council's submission on the draft report made a number of relevant comments that indicate:

³⁰ GST exclusive

³¹ Approximately \$900,000 had been spent on site acquisition design and other costs.

³² GST exclusive

- All councillors along with relevant senior staff of the Council were involved in considering the response to the draft report and that the workshop process used to facilitate this was “collegial and harmonious”.
- Council acknowledges it can do better.
- Councillors felt they had not been adequately informed “on many issues in the past” but this is not the case now.

These comments, on their face, are positive for the future of the Council and bode well for the successful implementation of the recommendations in this report.

328. Council’s submission rejected the proposition that there was significant conflict within the elected body but acknowledged that there were differences of opinion.
329. Council submitted that the circumstance of the Council should not be portrayed in a way that suggested that the day to day operations of the Council were not occurring. While this is accepted, the findings in this report, particularly those related to the strategic, operational and management aspects of its water resources function, indicate that there is significant scope for improvement. This improvement must be realised if the Council is to claim it is performing satisfactorily.
330. Council cited the adverse impacts of the “Sir Ivan” fire and the continuing drought as having a significant and continuing impact on its operations. This is acknowledged.
331. Council’s submission, while acknowledging the need for staff to be appropriately skilled, drew attention to the challenge in sourcing suitable training providers.

5 SUBMISSION OF THE REPORT TO THE MINISTER

I hereby make this report to the Minister for Local Government, the Hon Shelley Hancock MP, pursuant to my obligation to report on the results of the investigation.



Tim Hurst
Deputy Secretary
Local Government, Planning and Policy

Dated this *2nd* day of *October* 2019

SCHEDULE 1 - RELEVANT LEGISLATIVE REQUIREMENTS

This schedule refers to some of the statutory requirements which were considered applicable to the Terms of Reference. It should be noted that the report does not purport to provide a compendium of all of the applicable statutory requirements.

5.1 Principles for local government

The Act details a set of principles that provide guidance to enable councils to carry out their functions in a way that facilitates local communities that are strong healthy and prosperous (section 8 of the Act).

Sections 21 and 22 of the Act provide that a council has the functions conferred or imposed on it by or under the Act or under any other Act or law.

Relevantly, the functions may include the provision of water and waste water services.

5.2 Role of councillors

Section 222 of the Act provides that elected representatives, called "councillors", comprise the governing body of Council.

Section 223 of the Act provides that the role of the governing body is as follows:

- (a) to direct and control the affairs of the council in accordance with this Act,*
- (b) to provide effective civic leadership to the local community,*
- (c) to ensure as far as possible the financial sustainability of the council,*
- (d) to ensure as far as possible that the council acts in accordance with the principles set out in Chapter 3 and the plans, programs, strategies and policies of the council,*
- (e) to develop and endorse the community strategic plan, delivery program and other strategic plans, programs, strategies and policies of the council,*
- (f) to determine and adopt a rating and revenue policy and operational plans that support the optimal allocation of the council's resources to implement the strategic plans (including the community strategic plan) of the council and for the benefit of the local area,*
- (g) to keep under review the performance of the council, including service delivery,*
- (h) to make decisions necessary for the proper exercise of the council's regulatory functions,*

- (i) to determine the process for appointment of the general manager by the council and to monitor the general manager's performance,*
 - (j) to determine the senior staff positions within the organisation structure of the council,*
 - (k) to consult regularly with community organisations and other key stakeholders and keep them informed of the council's decisions and activities,*
 - (l) to be responsible for ensuring that the council acts honestly, efficiently and appropriately.*
- (2) The governing body is to consult with the general manager in directing and controlling the affairs of the council.*

5.3 Functions of the General Manager

Section 335 of the Act provides that the general manager of a council has the following functions:

- (a) to conduct the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council,*
- (b) to implement, without undue delay, lawful decisions of the council,*
- (c) to advise the mayor and the governing body on the development and implementation of the strategic plans, programs, strategies and policies of the council,*
- (d) to advise the mayor and the governing body on the appropriate form of community consultation on the strategic plans, programs, strategies and policies of the council and other matters related to the council,*
- (e) to prepare, in consultation with the mayor and the governing body, the council's community strategic plan, community engagement strategy, resourcing strategy, delivery program, operational plan and annual report,*
- (f) to ensure that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their functions,*
- (g) to exercise any of the functions of the council that are delegated by the council to the general manager,*

- (h) *to appoint staff in accordance with the organisation structure determined under this Chapter and the resources approved by the council,*
- (i) *to direct and dismiss staff,*
- (j) *to implement the council's workforce management strategy,*
- (k) *any other functions that are conferred or imposed on the general manager by or under this or any other Act.*

5.4 Conduct of councillors and staff

Section 439 of the Act provides, in part, that:

- (1) *Every councillor, member of staff of a council and delegate of a council must act honestly and exercise a reasonable degree of care and diligence in carrying out his or her functions under this or any other Act.*

The conduct of all council officials (councillors and staff) is subject to the provision of the Council's adopted Code of Conduct, which in turn is required to be consistent with the *Model Code of Conduct for Local Councils in NSW*.³³

The conduct of council staff is also subject to any applicable contract of employment and/or industrial instrument and their common law duties as an employee.

5.5 Provisions relating to procurement

Councils' procurement and disposal activities are governed by strict considerations of probity, transparency and accountability, as they involve expenditure of public funds for public purposes.³⁴

Section 55 of the Act relevantly stipulates that councils must invite tenders before entering into certain types of contracts including "*a contract for the provision of services to the council*".³⁵

The tender process is further prescribed by the provisions of Part 7 of the Regulation which sets out the procedures to be adopted.

Councils are also required, pursuant to section 23A of the Act, to have regard to the OLG's Tendering Guidelines prior to undertaking tendering.

³³ Section 440(3) of the Act provides that the adopted code may include provisions that supplement the model code.

³⁴ Department of Local Government Circular No. 09-39, 26 October 2009

³⁵ Section 55(1)(f). Note that Section 55(3) details some exemption for certain types of contracts that would otherwise be subject to tendering.