



Office of the Mayor
Cr Denis Todd

18 December 2019

Ms Lyn Brown
Manager, Investigations
NSW Office of Local Government
Locked Bag 3015
Nowra NSW 2541

Dear Ms Brown

Section 430 Investigation Final Report

Thank you for providing a copy of the Section 430 Investigation Final Report conducted in relation to the Warrumbungle Shire Council.

The Report was been provided to all councillors along with the executive staff and recently a workshop was held to consider the Report. Once again I was extremely impressed with how the councillors and staff worked together to help prepare the response.

While Council acknowledges that it can do better in some areas the report is still considered to be harsh, containing inaccuracies along with statements that not only apply to this Council but many others, thus setting this Council in a poorer light than the situation actually is.

Attached is the Council submission on the Section 430 Investigation Final Report.

Yours sincerely

**CR DENIS TODD
MAYOR**

Attach: Warrumbungle Shire Council response on Section 430 Investigation Report

Submission on the Section 430 Investigation Final Report

Council acknowledges Recommendations 1 and 2. For the reasons articulated and the actions identified below, Council considers each is no longer necessary. Council however respects the Minister's decision and should either or both the Recommendations be adopted Council will work to ensure that pending actions and matters are implemented and finalised expeditiously.

Many of the matters raised by the Office and referred to in the Submissions below are of an operational nature.

As is evident from the Submissions below councillors at all times relied upon the advice and were guided by the then General Manager, Senior Management Team and Directors. This Inquiry and Terms of Reference arose from matters under the stewardship of the former General Manager. Issues identified in the Report are consistent with the decision of Council to terminate the employment of the former General Manager. Whilst it is acknowledged there were deficiencies on occasions, they were predominately operational matters and the absence of information and proper managerial briefing and reporting transparently to the councillors resulted in the issues identified in the OLG Report. These issues have and are now being proactively managed in conjunction with other actions introduced by the new General Manager.

In dealing with the various sections of the Report:

2.1 Waste Services Tender

28. Councillors believe that they were aware of their role when dealing with the waste services contract. Councillors further believe that they were not adequately informed by management of the situation at the time.

2.2 Water Security

29. Council considers that the comments in clause 29 are offensive, the Council has undertaken required works to ensure its water security. This has included implementing harsh water restrictions to making application for funding for emergency works to putting in place infrastructure providing for the continuation of water supply.

30. Council acknowledges that it failed to adopt a Drought Management Strategy as at the time of the Section 430 Investigation commencing however this has since been completed. Acknowledgement is made of the efforts of staff to deal with this. Council once again raises the concern that the original Drought Management Strategy was subject of a Council report to the November 2013 Council meeting and then submitted to the Office of Water on 5 December 2013. There was no response from the Department and follow up enquiries were made with the Office of Water throughout 2014 without any response.

31. Council rejects this finding. Council had previously installed backup bores for Coonabarabran and was in the process of installing backup bores for Coolah, Binnaway and Mendooran. In addition Council was undertaking studies for the increasing the capacity of Timor Dam, the main water source for Coonabarabran.

32. Programmed works had been proceeding, however these works have been protracted in some instances through delays with State Government agencies. The best example of this is the example of the works at the Baradine Water Treatment Plant where Council has been attempting to gain funding and approval for the replacement of the clarifier there. The predecessor to the Department of Planning, Industry and

Environment – Water has been well aware of the urgency to replace this important piece of equipment yet has held the project up at varying stages.

The Project History Timeline for Baradine WTP Upgrade includes:

- January 2014 – Ultrasonic Testing Report
- October 2014 – Multi Criteria Assessment Workshop held and Draft Baradine Water Treatment Plant 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.
- 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 and Wiebels) and Office of Water (Bill Ho). (Wiebels was on maternity leave Oct 2016-Oct 2017)
- January 2018 – submitted 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 successful SSWP EOI. Glenn 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
- 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 but far less than the amount applied for
- 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
- November 2019 – DPIE, including Mr Ho, again inspected the site

In this particular instance despite the funding being approved through DPIE-Water (or its predecessor) for the preferred option to replace the current clarifier with and inclined plate settler the DPIE-Water is continuing to hold Council up in the process and continues to demand that it use the sludge lagoons.

33. Council disputes this point and will deal with it later in the submission.
34. Council disagrees with this point but does accept that there has been issues with one of its reservoirs.
35. Council has been working diligently to implement the recommendations of the various reports prepared on this. An improvement plan was created in late 2014 with 198 items on it. This was reviewed in June 2019 and all recommendations from all reports/audits added. This amounted to 340 actions items, of which about half were completed/closed by the end of August 2019.

36. Council has been carrying out the programs as quickly as possible however the impact of the drought across NSW and the bureaucracy that is in place at State level has to also be acknowledged.
37. Asset Management Plans (AMP) have been in place for water and sewer assets however these need to be updated. Council has engaged a consultant to assist with the preparation of these programs. Council is currently working to complete the Integrated Water Cycle Management (IWCM) it is expected that an AMP will be an outcome of the IWCM.
38. It is acknowledged that Council was not aware of the various external reports. Changes to senior management have ensured that this issue is overcome.
39. Councillors were not informed of the significance of the issues that impacted on the various town water supplies. Changes to senior management have ensured that this issue is overcome.
40. Councillors accept that there were concerns about various town water supplies however this related to a lack of information flow from management. These issues have been overcome and the Council feels much more confident of the situation.
41. It would be wrong to attribute fault to Council for this matter. The NSW Department of Health acknowledged that there have been design failures in the fluoridation systems. Council played no role in the design of the system. NSW Health have also acknowledged that these failures have occurred in water treatment plants in other locations across NSW. Council has informed the community of this failure and has also reminded the affected communities.

2.4 Councillor and staff relationships

42. Councillors disagree and believe that they are performing their roles in an appropriate manner.
43. Councillors believe that they are fulfilling their strategic role.

2.5 Other matters

44. Arrangements are being made to review the Council requirements under the State Records Act.
45. Council acknowledges that there are ongoing cultural issues from the merger of the former councils.
46. A number of behavioural issues are being dealt with including the use of sick leave and certain performance issues by some staff.

3 RECOMMENDATIONS

Overall Council does question the need to implement a number of the recommendations in the report but does acknowledge that these would be seen as positive.

Given that the current term of the Council has only a matter of months remaining recommendation 3.4 and 3.10 would not carry any benefit for the current Council and perhaps the recommendation would serve a better purpose to be applied to the 2020-2024 Council term.

Council has already put in place a number of improvements suggested in the recommendations, including:

- An electronic keying system for a number of facilities
- Code of Conduct training has been undertaken for all staff
- Managing Performance and Productivity training has been undertaken for managers and senior supervisors
- Stepping into Supervising Training has been conducted for supervisory staff and team leaders
- An Employee Engagement Survey has been conducted across the organisation and an Action Plan is being put into place to deal with the issues raised
- Staff Sick Leave is being managed more effectively by management and excessive sick leave utilised by staff is being challenged
- Inappropriate conduct generally by staff is being dealt with
- The establishment of an Internal Audit Committee

4 ANALYSIS

In relation to a number of other items within the report Council will address these by clause:

55. Council disputes the actual savings made here. The tender that was accepted by Council from Coona Waste in August 2017 was for the sum of \$125,320.
56. Council continues to strenuously object to this assertion. The OLG was previously advised that:

The truck being replaced was not utilised for skip bins and did not have capabilities to empty skip bins. Its capabilities extended to emptying MGB's only. The old truck at the time was being utilised to provide Council's putrescible waste collection service from kerbside, as well as empty our MGB's at the transfer stations these being the 240l and 360l bins.

The matter was then further deferred when there was a referral to the ICAC and there was no investigation or action as a result of that referral.

Council remains disappointed with the assertion that is being made by the OLG on this matter. Further Council strongly recommends to the OLG that it follow up with this vexatious complaint.

71. Council considers this claim to be harsh, Coona Waste had earlier downsized its operations as a result of losing the Council contract. While it may not have presented the earnings in the previous year it had demonstrated prior capacity and it would not have been unreasonable to have taken this into consideration.
76. Council maintains that it did not have adequate equipment to provide the service. The existing bins were 1,000 litres and the OLG has misunderstood the terminology.
79. Coona Waste has provided bins with lids and also provided the appropriate bond.
80. While there was a delay in the provision of services Council continued to provide the existing services. One of the reasons why there was such a long delay in Coona Waste commencing the service was due to the OLG direction to cease any dealings with the company whilst it conducted an investigation.
102. WaterNSW has identified the current drought as a 'Natural Disaster' with extreme low inflows.

106. The OLG was previously advised that Ms Wiebels returned to work in October 2017.
116. Council resolved to exhibit the draft Drought Management Strategy on 21 June 2018 and then adopted it on 18 October 2018. Council reiterates that the original Drought Management Strategy was subject of a Council report to the November 2013 Council meeting and then submitted to the Office of Water on 5 December 2013. There was no response from the Department and follow up enquiries were made with the Office of Water throughout 2014, again with no response.
117. This comment should be corrected to state that “Binnaway and Mendooran draw water from Castlereagh River; these supplies are augmented by bores”.
118. It should be acknowledged that four bores were already in place for Coonabarabran from previous droughts. These bores were put in place to assist with the water supply for the town and had improved the sustainability of the supply.
120. It is acknowledged that Dunedoo and Mendooran were experiencing water shortages in the amounts available from bores. The primary impact on these bores was the use of other bores in close location that were being used for agricultural purposes. Council has no control over the allocation of water licences for these purposes.
132. The OLG was advised previously that the pump itself was not damaged but further that the pump was not sent away for repair and in fact was onsite the entire time. During the 2013 fire the power supply for the pump was damaged.
136. Mendooran “was” subject to level 6 water restrictions. This was for the period late January 2019 to late March 2019.
138. It would be more correct to state that *“As algal issues in the sedimentation lagoon had affected filtered water quality when bore water was in use Council had been unable to use the bore water source.”*
144. The funding was provided for multiple test and production not a single bore.
145. Council believes that the OLG is confusing the southern bores (Coolah, Binnaway and Mendooran) projects with the Coonabarabran emergency bores project. The first allocation of funding referred to in clause 144 was not allocated until December 2017 and further funding was made available at different stages throughout 2018.

Council received a total of \$1,717,500 in funding for the installation of production bores at Coonabarabran at a total project cost of \$2,042,500. A total of seven bores have now been brought into production. The first of this funding was announced on 22 December 2017 and this was followed by funding announcements on 2 February 2018, 11 April 2018 and 18 June 2018. See the Table below.

Date of Offer	Purpose	Funding	Council Contribution	Total Project Value
22 December 2017	Stage 1 Coonabarabran Drought Emergency Works	\$150,000	\$50,000	\$200,000
2 February 2018	Access to Dead Water Storage and water carting infrastructure	\$300,000	\$100,000	\$400,000
11 April 2018	Expanding the number of	\$525,000	\$175,000	\$700,000

	test bores to seven and fitout of at least two of these bores for production			
18 June 2018	Construction and commissioning of a bore supply system capable of supplying a sustainable emergency potable water supply	\$742,500	Nil	\$742,500
		\$1,717,500	\$325,000	\$2,042,500

Please note that the offer of 18 June 2018 was available until 30 June 2019, hence Council was operating within the condition of the funding.

160. Council does not believe that it is correct state that there were plans as early as the 1970's to raise the height of the wall of Timor Dam.
162. Council has been following the direction of the NSW Government for the process of the raising of the Timor Dam wall. A number of actions have been completed for the study into the raising of the wall of Timor Dam. These include:
- i. Site Survey, March 2016
 - ii. WHS, Security and Access Audit, June 2016
 - iii. Timor Dam Mechanical Equipment - Condition Assessment and Upgrade Recommendations, December 2016
 - iv. Yield Study Report August 2017; this was updated in February 2019 after the installation of new bores and as part of the IWCM (Integrated Water Cycle Management) process
 - v. Dambreak and Consequence Assessment, November 2017 (final)
172. An engineering study has verified that it is feasible to raise the wall of the Timor Dam, further studies are however required to determine if this work should be undertaken.
177. This should read that level 6 restrictions "applied" to Mendooran. As previously stated These restrictions were for the period late January 2019 to late March 2019 only.
181. New councillors were not aware of the status of this project. Better induction arrangements are needed in this area.
182. Council has been working to develop an Integrated Water Cycle Management Plan (IWCM) however this is being held up by the Department of Planning, Industry and Environment – Water. This is indicative of the experiences of other councils across the State.
187. Council has been working with DPIE-Water to identify a means of overcoming this issue. The Water Treatment Plant was not designed to treat the algae and the actions recommended thus far by DPIE have not been successful. Council is continuing to work with DPIE-Water to overcome the problem.
188. While the OLG may believe that the number of non-compliances against the Australian Drinking Water Guidelines is not, in isolation, an appropriate litmus test of Council's performance it was one that was identified by the OLG and these results show that

Council has had far fewer negative results than a number of other councils in the region.

201. The concerns raised here were prior to the current Council who were not informed of the report.
202. The concerns raised here were prior to the current Council who were not informed of the report.
208. Work has been undertaken to improve the integrity of facilities. By mid May 2019, through the engagement of WEARS, the restoration of the integrity of 12 reservoirs and 2 bore heads were completed. These works cost approximately \$135,000, as summarised in the quarterly report to Council on the Mendooran boil water incident report.
209. It should be noted that as at 27 September 2019 25 of the 35 actions from the Bligh Tanner Report have been completed and a further 9 are in progress with one item not yet commenced.
210. Council has undergone a significant amount of change, principally as a result of the dismissal of the then General Manager in August 2017. A new General Manager commenced with Council on 26 February 2018. Under the previous management councillors felt that they had not been adequately informed on many issues but feel that the situation is vastly different now.
211. Council cannot state enough that the project referred to in this clause, the Baradine Clarifier project, has been held up through the Section 60 approval process by DPIE-Water. Expert advice has been to replace the current clarifier with an inclined plate settler. As a result of this advice funding has been provided by the NSW State Government to complete this project yet DPIE have refused to give the approval for this work.

See the earlier timeline for this project.

212. See 211.
214. Council has been working to develop an Integrated Water Cycle Management Plan (IWCM). This Plan is expected to identify priorities.
216. Council is not aware of the funding referred to in this paragraph.
217. The statement here is incorrect. The improvement plan was created in late 2014 with 198 items on it. This was reviewed in June 2019 and all recommendations from all reports/audits added. This amounted to 340 actions items, of which about half were completed/closed by the end of August 2019.
219. See the response to 217.
221. Council is of the view that this paragraph is significantly understated. The concerns that have been raised here have been very similar concerns for many councils across NSW with the process within DPIE-Water. See the earlier comments about the Baradine Clarifier project.

Footnote 21 – it should be noted that as at 27 September 2019 25 of the 35 actions have been completed and a further 9 are in progress.

229. This clause is incorrect, especially timeline, the boil water alert was in June 2017. The funding referred to was not allocated until a number of months later.
232. In January 2019 Council engaged qualified contractors to address the reservoir integrity issue. The same contractor was engaged to develop site specific reservoir inspection checklists and to perform an audit of all reservoirs and provided a report as to what is required to bring them up to standard with regard to being able to safely access them with relevant training, including the cost for these works. Working at heights training was undertaken in Coonabarabran and Dunedoo on 14 and 15 May 2019.
238. This issue was raised by councillors. Council is awaiting NSW Health to resolve the issue. The fault lies with the design of the system and this has been confirmed by NSW Health and is not limited to equipment in the Warrumbungle Shire.
241. The comments by Ms Wiebels would be more correct to state *“attributed the failure to commission the Coolah and Mendooran fluoridation plants to lack of sufficiently trained staff.”* Additionally by this stage the plants in Coonabarabran, Binnaway and Mendooran had failed.
250. Council has appointed supervisors to oversee areas of water and sewer operations.
256. Council acknowledges these issues as being correct however it has been working to:
- Develop maintenance schedules with the assistance of Hunter H2O for four WTPs as part of the NSW Health support project that also addresses the fluoridation issue;
 - Address the integrity issues at the reservoirs and plants (high priority ones were addressed in the May 2019 Upgrades, received quote from WEARS to address remaining reservoirs; limited amount of contractors available);
 - Develop a staff training plan including a number of staff receiving training to improve their capabilities in the water function of Council
258. Council rejects that there has been lethargy in decision making and carrying out important work. During the time leading up to and including the period of concern Council made many important decisions. This time has been a difficult period for the industry generally and has had to deal with many challenges, not the least has been the Fit for the Future (FFTF) process. Also during this time Council obtained funding for water infrastructure for several towns in the LGA, including Binnaway, Coolah and Mendooran along with funding for studies into the raising of the Timor Dam wall at Coonabarabran.

Council also made difficult decisions that were necessary but have adversely affected the residents including implementing severe water restrictions. These were to the detriment of the aesthetics of the towns affected. Added to this Council has more recently made decisions to significantly increase water and sewer charges.

Undoubtedly this Council has also struggled with the merger of the Coonabarabran and Coolah councils in 2004. While those councils that have been involved in the more recent mergers have been fortunate to have received funding to assist with the merger this Council has not and has been disadvantaged by the process.

To help ensure that the towns had adequate water supplies Council has in the past undertaken a number of activities to help ensure water security to its communities, such as:

- Putting down several bores in Coonabarabran in the 2002-2003 period which have proven to be strategic and very beneficial
- Joined the Lower Macquarie Water Utilities Alliance
- Several upgrades to the Baradine Water Treatment
- Constructed the Mendooran Water Treatment plant
- Constructed a second bore at Dunedoo and replace the roof on one of the reservoirs
- Replacement of filter media at Binnaway Water Treatment Plant
- Implemented demand management strategies such as user pay pricing not only for water but also sewerage.
- Liquid Trade Waste charges

Council acknowledges that there has been a lack of adequate action in some areas however the current drought has caused difficulties for many other councils across New South Wales and beyond. Many councils have implemented similarly severe water restrictions and some towns are under real threat of running out of water.

261. Council has had great difficulty in attracting suitably qualified staff and obtaining training for its staff in the water functions. As an example of this has been the impacts of the restructuring of TAFE. During late 2018 the decision was made to take on a number of school based traineeships, including in the water functions. At the time Water Industry Training was available through the Western Institute of TAFE at Dubbo however following the restructure it was only available through Wollongong. More recently it is our understanding that the course can be provided through Lismore.
262. Fluoridation training will be part of the NSW Health support project.
264. Council is unaware of what steps are being referred to in the Report. This does not appear to have been communicated with Council.
- 4.3.1. (Paragraphs 269-274) Council questions the relevance of this section. In particular paragraph 273 is considered to be baseless.
276. Council strongly refutes this point and believes that there is no basis for the accusation.
277. Council believes that there is no evidence to support the comment that “the mistrust may have subsided, but it remains evident.”
278. Council strongly disagrees with this paragraph.
285. Council strongly disagrees with this comment, the organisation has not been diverted from its strategic role and nor has it been focussed on operational day-to-day issues.
286. Council asserts that the councillors have been performing their role in an appropriate manner.
287. Council does not disagree with the comment that there are divisions between councillors on some issues, after all it is a political environment and differing views will

occur. The role of a council is to represent differing views. Council agrees that the relationships are not broken and nor are they dysfunctional.

294. Council is greatly offended at the comment in the report that *"it remains a concern that exceedance may have occurred and may not have been reported."* This is a completely baseless claim, it is evident that Council has reported exceedances. Council not only conducts the required testing but also carries additional testing. The Report should have been based upon fact and not guesses and innuendo. Additionally evidence is that there are other councils that have a far worse history than this Council.

296. Council is not aware of the procurement processes referred to in this paragraph.

Section 4.4.4 (paragraphs 305-311) and Section 4.4.5 (paragraphs 312-317) dealing with Council culture and staff conduct issues. Council has already put in place a number of improvements suggested in the recommendations, including:

- Code of Conduct training has been undertaken for all staff
- Managing Performance and Productivity training has been undertaken for managers and senior supervisors
- Stepping into Supervising Training has been conducted for supervisory staff and team leaders
- An Employee Engagement Survey has been conducted across the organisation and an Action Plan is being put into place to deal with the issues raised
- Staff Sick Leave is being managed more effectively by management and excessive sick leave utilised by staff is being challenged
- Inappropriate conduct generally by staff is being dealt with
- The services of the employee referred to at paragraph 314 have been terminated
- The establishment of an Internal Audit Committee
- Communication is being improved throughout the organisation by the introduction of staff newsletters, improved consultation processes with the WH&S Committee
- Directions for senior management and managers to be in the field more with staff