



**CENTRAL DARLING SHIRE
COUNCIL
PUBLIC INQUIRY
REPORT**

22 October 2014

Richard Colley

CONTENTS OF REPORT

EXECUTIVE SUMMARY	3
INTRODUCTION	6
Terms of Reference	6
Assistance to the Commissioner	6
Procedural matters	6
Procedure at hearings.....	7
Procedural fairness	8
FINDINGS	9
RECOMMENDATIONS	10
ANALYSIS	11
Declining Financial Position	11
The cash crisis	20
Budgetary Control	48
Awareness of the financial issues	70
OTHER MATTERS	100

EXECUTIVE SUMMARY

On 19 June 2014, the Minister for Local Government, the Hon Paul Toole MP, appointed me as Commissioner to hold a Public Inquiry (the Inquiry) into the Central Darling Shire Council (the Council).

As Commissioner, I was appointed to inquire, report and provide recommendations as to whether all civic offices at the Council should be declared vacant. In doing so, I was to have particular regard to whether the Council has properly carried out its functions of financial management, asset management, legislative compliance and community leadership. Further, whether the elected Council has the capacity to resolve the outstanding issues, including establishing a sound foundation for the Council's future sustainability.

The terms of reference also allowed me to have regard to other matters that warrant mention, particularly where such matters may impact on the effective administration of the area.

As part of the Inquiry, extensive documentation was obtained from the Council and the Office of Local Government, public submissions were received, public hearings were held and persons affected by the Inquiry were offered the opportunity to make oral and written submissions in reply.

The Council was elected to office on 15 September 2012. Of the nine Councillors elected in 2012, six were members of the previous Council. The evidence indicates that the Council was experiencing chronic financial viability issues early in the term. The Council's financial position was characterised by budget blow-outs, the failure to make provision for employee entitlements and the failure to pay superannuation contributions. This situation was exacerbated by the absence of a long-term financial plan, as the Council had no tool or financial projections to guide its finance and related decision-making.

In 2010, the Council was subject to a Promoting Better Practice Review, which was finalised in January 2011. The final review report contained fifty six recommendations, highlighting significant concerns about the current

performance of the Council. The report also commented on the difficulties faced by the Council in the longer term. It is apparent that the Council has made limited progress in implementing the recommendations of the report and that the Council's position has deteriorated since that time.

In February 2013, the then Division of Local Government, Department of Premier and Cabinet conducted an on-site review of the Council. The review found that the Council's cash position had weakened significantly and that the provision of funding would not, of itself, overcome any of the issues facing the Council.

In November 2013, the Division wrote to the Council seeking information about its significant financial problems. The information subsequently provided by the Council indicated that its financial position would deteriorate further in the period up to June 2014. Further, that the Council had failed to comply with its legislative responsibilities relating to financial management.

In December 2013, the Minister for Local Government issued an order suspending the Council for a period of three months, and appointing an Administrator. The suspension was subsequently extended for a further three months until June 2014.

It is apparent that the interim Administrator has taken important steps toward addressing the financial and structural issues facing the Council, including the preparation of a "recovery plan". The plan provides a pathway for recovery and emphasises the need for strong, disciplined and strategic leadership. However, the Administrator has also indicated that there is still much to be done to return the Council to a secure financial footing.

Following consideration of the Administrator's report, coupled with ongoing concerns about the Council's ability to maintain its planned budget, the Office of Local Government recommended to the Minister that a Public Inquiry be held.

The findings section of this report details my formal findings in regard to the terms of reference. The analysis section of the report discusses the relevant evidence.

I have recommended that all civic offices at Central Darling Shire Council be declared vacant and that an Administrator be appointed until the Council elections in 2020.

In making this recommendation, I have been mindful that there is a real risk that the momentum gained during the period of interim administration will be lost if a new Council is elected. Fundamental to this, is the view that a lack of commitment to the recovery plan and failure to address the range of problems requiring action, is not desirable or sustainable.

INTRODUCTION

This is my report as Commissioner concerning the Inquiry held under section 438U of the *Local Government Act 1993* (the Act) into the Council and is presented to the Minister for Local Government.

TERMS OF REFERENCE

The Terms of Reference authorised for the Inquiry are:

“The Inquiry will have particular regard to:

- 1. Whether the Council has properly carried out its functions of financial management, asset management, legislative compliance and community leadership.*
- 2. In view of the range and complexity of management issues, whether the elected Council has the capacity to resolve the outstanding issues and establish a sound foundation for the future sustainability of the Council.*
- 3. Any other matters that warrant mention, particularly where they may impact on the effective administration of the Council area.*

The Commissioner may make such other recommendations as the Commissioner sees fit.”

ASSISTANCE TO THE COMMISSIONER

I authorised Mr Angus Broad, Ms Penny McKay and Ms Leonie Myers to assist in the conduct of the Inquiry under the provisions of section 12 (2) of the *Royal Commissions Act 1923*.

PROCEDURAL MATTERS

Public notice of the Inquiry was published in the Broken Hill Barrier Truth and Southern Weekly Magazine on 30 June 2014. The notice included the terms of reference. The notice invited submissions relevant to the terms of reference. A Notice of Hearings was subsequently advertised in the Broken Hill Barrier Truth on 5 August and 11 August 2014, the Southern Weekly Magazine on 4 August and 11 August 2014 and the Wilcannia News on 4 August and 11 August 2014.

Information relating to the Inquiry was published on a dedicated website. The information included the Inquiry's terms of reference, a copy of the Notice of Hearings, a detailed information paper outlining the Inquiry's procedures and the publicly available submissions.

The Mayor and the Acting General Manager were notified in writing of the Inquiry. Letters were also issued to each of the Councillors with a copy of the Notice of Inquiry. Councillors were invited to make a submission relevant to the terms of reference of the Inquiry.

The Inquiry received two written submissions from Councillors. Only one Councillor addressed the terms of reference.

Submissions were required to be lodged by 18 July 2014. However, some submissions received after this date containing information relevant to the terms of reference of the Inquiry were accepted.

Procedure at hearings

The hearings were held at Wilcannia on 12 and 13 August 2014 and at Menindee on 14 August 2014.

During the hearings, Mr Broad and myself asked questions of witnesses in relation to matters relevant to the terms of reference.

Evidence during the hearings was given under oath or affirmation. Evidence had to be relevant to the terms of reference of the Inquiry. I retained discretion to refuse evidence that was not relevant.

During the hearings, the Inquiry heard from the Mayor and five of the other Councillors. The Inquiry also heard from Councillor Keith Rhoades from Local Government NSW, the peak body for councils in NSW and from Mr Mark Hely from the Office of Local Government. The Inquiry also heard from a number of members of the community who had lodged submissions and that I considered had information that may be relevant to the terms of reference.

Procedural fairness

In my opening speech, I indicated that I would allow an opportunity for written submissions in reply to evidence heard during the course of the hearings.

There were no applications from Councillors or Council staff to make an oral submission in reply.

I received one written submission in reply from a member of the public. I have not canvassed the nature and content of this submission in the report, as I do not intend making any adverse finding in relation to the individual conduct of the person who made the submission. Nor have I referred or relied upon it in any way, and in particular I have not considered it in making my findings in relation to the terms of reference.

FINDINGS

As Commissioner, I was appointed to inquire, report and provide a recommendation to the Minister for Local Government as to whether all civic offices at Central Darling Shire Council should be declared vacant.

Having now completed the Inquiry, I have found that:

- The Councillors, in the main, displayed a fatalistic attitude about the Council's financial viability.
- There was no attempt to resolve or arrest the Council's financial decline.
- There was a failure to recognise that the seemingly unfettered expenditure was coming from restricted reserves, without approval and contrary to legislative requirements.
- At no stage did the Councillors appear to consult with individual townships or the community generally, with a view to gaining community support to remedy the financial situation.
- The Councillors blamed, and continue to blame the Federal and State governments, including various government agencies for a failure to provide funding to bail the Council out of the financial crisis.
- Despite being presented with a monthly cash balance report, and being aware of the rapid absorption of investment and grant funding, the Councillors failed to demand quarterly budget reviews.

RECOMMENDATIONS

Having regard to my findings, I recommend that:

- 1 All civic offices at Central Darling Shire Council be declared vacant, effective immediately.
- 2 An Administrator/s be appointed until the ordinary Council elections scheduled for 2020.
- 3 The Administrator/s addresses the financial and structural issues facing the Council and ensures completion of the recovery plan.
- 4 The Council reviews and make necessary changes to its service and delivery levels in order to ensure that it returns to a sustainable recurrent financial position.
- 5 The Council, in consultation with the Office of Local Government, continue to explore and participate in the development of a new governance model in Far Western NSW, as proposed by the Independent Local Government Review Panel.

ANALYSIS

This section of the report provides the analysis on which my findings are based.

DECLINING FINANCIAL POSITION

The budget

In the face of a declining financial position in 2012/13 it was necessary for the Council to adopt a financial budget that would improve its financial position.

In April 2013, the then Division of Local Government had appointed Mr Geoff Wise to mentor the Council.

In early May 2013, the Council considered a draft budget that anticipated a \$1.7m deficit, supported by increased borrowings of \$5m.

This budget was subsequently discarded and a 'balanced' budget was developed. This budget was presented to the Council's meeting on 27 May 2013.

The report to the meeting set out its essential elements, as being:

- *Operating Surplus of \$590,000*
- *Operating Deficit, excluding Capital Income, of \$3,493,000*
- *Net cash outflow of \$850,000*
- *Net funding Result of \$0*
- *Capital Works program of \$4,083,000 wholly funded by grants.
No new loan borrowings*

This outcome was dependent on the following assumptions:

Income

- *Rates increase of 3.4% (maximum allowed under rate peg)*
- *Domestic Waste Charges increase of \$50 per service*
- *Annual water charge increase of 6.8%*
- *Water usage charges increased by 15%*
- *Total operating income of \$15.1m a reduction of \$2.5m due to finalisation of flood works*

Expenses

- *Employee costs increase of 7.8% (2012/13, 9.7%) due to award increases and increase in superannuation contribution rate*
- *Energy cost increased by 5%*
- *Reduction in contractor costs of \$680,000*
- *Reduction in raw materials and consumables of \$250,000*
- *Total operating expenses of \$14.5m held at 2012/13 level*

Important to these strategies was the acceptance that there were significant uncertainties in how a deficit budget would be funded.

In accordance with sound and financially responsible principles, and in the absence of any reasonable certainty as to how to fund a deficit budget, significant cuts have had to be made in capital works and a number of new initiatives deferred.

After some considerable debate, the Council resolved to exhibit the draft operational plan and budget.

On 27 June 2013, the Council adopted the operational plan and budget. The minutes recorded the process of adoption in the following terms:

Considerable discussion was held on the Draft Operational Plan and Budget particularly in regards to waste management charges. Councillor Astill queried the amount to be charged for the rubbish collection particularly in Menindee and Ivanhoe stating their charges should increase by \$30 and Wilcannia by \$75 as this was discussed at the Extraordinary Meeting of Council.

Councillor Page requested the number of bins collected. A report on this matter is to be prepared and brought back to Council.

Councillor Looney raised the matter of the Menindee Waste Depot and stated it was a mess for months and everyone complained. She

stated the amount charged cannot be justified and no service was received.

Councillors held differing views as to whether the Council could live within the budget.

The Mayor expressed the following view.

MR BROAD

Q. As at 27 June when Council was adopting that budget, did you personally believe that Council could live within its budget?

A. I had no reason to think otherwise, to be quite frank. No reason. I mean you don't draft a budget just for the sake of drafting a budget. It's what you can live within your means to do.

Councillor Sullivan expressed concerns about the quality of the Council's budget processes.

MR BROAD

Q. Did you believe at the time that Council could achieve what it was planning with the budget?

A. The Council could have achieved what it was planning but I've always believed, and have been since I've been on the Council, that the Council's budgets have not been done - I don't believe - correctly.

Q. In what way?

A. The Council budgets - when I first got into Council the Council had not done any budgetary things for three years. They had and at that particular stage Council was shy on the toe of the Minister's boot because they hadn't fulfilled their financial obligations. The Council then employed, through the Shire's Association I believe, a financial person to get the books in line

and I don't know what they did and I think they just drew a line in the sand and said, Well, what's happened before we'll forget and we'll start from here and go on. There was no consultation basically between the finance people, the Director of Finance as he was in those days, and the Council in the preparation of the budget. What was happening was that you would turn up at the May meeting, you would get a document that thick dropped onthe table in front of you when you sat down, that's your budget. It has to be passed today because it has to go on display for 28 days so Council didn't get time to adjust the budget, were not involved in budget discussions as in 2000 and, I think, 11 - I might be wrong on the exact date. When the Council went to the main meeting and the budget was dropped on the table, it was voted down and all hell broke loose because it had to be on display for 28 days. Well, if we don't pass the budget, the Council is basically voting itself out of existence. So the Council got in touch with the Department, I take it, and ran around and called an extraordinary meeting.....as to what we would do about the budget. Eventually, well, yes, the Council.....didn't have a lot of option. Either vote itself out or pass the budget, the draft budget to go out on display. The draft budget was passed and went out on display. Council was given the understanding that from the finance people that the budget would be more consultative the following year, where the Council would be more involved and the Department heads would be more involved. Some of the Department managers didn't have.....input into the Council budget. The Councillors hadn't seen the bloody thing, had no input into the Council budget. So the information the Council was putting out, they had - had no input into.....and I've read the last budget, financial operation and plan for 13/14 and in the operational plan for 13/14 it says we are going to have, if everything goes as it's nicely lined up, a

surplus budget of \$64,000 but we're not going to have a surplus budget of \$64,000 at all. It will look like that when you do the paperwork but when you go to the bank, you are going to find you are going to be short about 130 to 150,000 in real cash. What happens and it's quite proper to do it, I suppose, is that the Council levies \$1.5 million roughly in rates and service charges but it doesn't collect 1.5 million. It will.....but when the expenditure side is done and the budgetary goes out, it budgets to spend 1.5 and.....you've got to watch the cash, not the books and every year you're coming up \$200,000 short in the cash. So they've got to get the cash - because they've already spent the cash, it's budgeted to be spent - they've got to get the cash from somewhere. Well, you know, ten years at roughly 200,000 a year is \$2 million.

Conversely, the Menindee Councillors, Councillors Looney, Page and Astill had issues with the budget.

Councillor Looney was not satisfied that the outcome could be achieved and gave the following evidence.

MR BROAD

Q. What was being said to you about the budget?

A. Look, there's always a lack of money and to make things survive you've virtually got to agree to the budget otherwise what do you do, you just go down the gurgler and nothing gets done.

Q. There's no leeway to say that, "Look, we should have a program of works in this particular area", and I'm deliberately not saying a town. You basically say, "All we can do in our budget is spend money on core projects"?

A. Yeah, we rely on the information that we've been given by the staff for the budget. Most of them they will put forward their

requirements for the following 12 months and without that, I mean you have no services. You have no staff, you have nothing if you cut back any further. You don't always agree with it but you have no choice.

Q. When you had the workshop, did you go through the figures line by line and did you look at, you know, whether they're going to be savings on say works and contracts or materials and contracts and those sort of things?

A. Roughly we did, yes. We did ask questions and we were assured by staff that the figures were correct and that's what was necessary.

Q. What staff were saying to you is that's how big the pot is?

A. Yes.

Q. This is what is going to come out?

A. Yes.

Q. This is what we'll have left for the towns and villages?

A. Yeah, and virtually well there's nothing left anyway and if you brought the towns up to scratch the money's just not there.

Q. Did you understand the intention of the budget was to provide a surplus of funds?

A. Yes, and I found that it was absolutely impossible.

Q. Why was that?

A. Because there just was not enough money there in the budget.....

Q. To create the surplus?

A. *To create a surplus.*

Councillors Page and Astill expressed similar doubts.

In Councillor Page's view, the reason lay elsewhere.

MR BROAD

Q. *At the time that Council adopted the budget was it your view that Council could live within its budget?*

A. *No it's never been my view that this Shire would be financially viable from the day I joined the Shire because knowing the costings and I have always put a huge amount of effort in the costings, no matter what Shire I've been on and this Shire has never been financially viable from the day I joined the Shire due to the infrastructure, under the Local Government Act you should put away X amount of dollars to replace the infrastructure, it's never been done, not just our Shire, all inland Shires suffer the same financial burden that we do here, so it's not just us, it's all the outback Shires are not financially viable in the long-term under the current funding that they have to live with.*

Q. *Given that answer, what then became of the budget? If it was your belief that you couldn't live within the budget, what then became of the budget? Was it merely a document or was it something that you had to adhere to?*

A. *Not necessarily. On many occasions I put forward proposals to have savings put into the budget, but every Councillor when you are elected to serve the people you try to give the people everything they'd like to have in their communities, and in the budget it shows up. If you spend money you haven't got or can't afford, it puts the budget in a situation where it's not a surplus budget you end up with a deficit budget and our shire's always been on the border of being unfinancially viable.*

Councillor Astill was similarly concerned the reasons lay elsewhere.

MR BROAD

Q. You said that you didn't think the budget was achievable. Why not?

A. Because of the figures we'd been receiving for the previous eight or ten months where we'd go to a meeting and we'd be shown the monthly figures and then we'd get an explanation from the Finance Manager that, hold on, we've got 370,000 coming in off this, and we've got 700,000 coming in off this, and 100,000 coming in off this, so next month it will be - it'll show a better balance, and that was every month. You'd see those figures, and as Councillor Looney said, those figures were out of date by the time we got to them. By the time we got those figures, they had no value whatsoever because we were being told, no, we've got - RMS has got a 700 - cheque that's got to be deposited so that will cover us for another six months by paying this, and we weren't in any of this trouble until the RMS stopped paying us on time.

The concerns held by Councillors Looney, Page and Astill do not appear in the minutes. Rather, the minutes record concerns regarding the provision of funds for local projects or in reducing the costs of garbage services in Menindee.

In the circumstances the Council found itself in, it was necessary to adopt, implement and oversee a sound and achievable budget.

Councillor Sullivan recognised this need, in the following terms.

MR BROAD

Q. *More generally, in respect of budgets, how important is it, in your view, to adopt a budget and to ensure that that budget is carried through to effect?*

A. *If you're going to adopt a budget, you've got to be somewhere around the mark. Right, now, it's a starting figure. Now we all know, anyone that's in business that does budgets knows, I mean the normal thing is that five minutes after you bring in a budget it becomes obsolete anyway, because things can change but if you do your consultation correctly, unless there's any major concerns, or big shifts in the figures in your budget, during the year, which should come up when you're doing quarterly reviews, if you've done your budgetary properly, within, unless there's a major reason for, if you incur a major expense, that was unforeseen when you do your budget, then your budget figures should basically stay the same and one of the problems I had, and was having here was when the quarterly reviews came in you would find \$100,000 being the cost. Now, in actual fact, if you just start to move those sorts of figures around, every quarter, what you're doing, you're not reviewing your budget, you're writing a new budget.*

At the same meeting that the Council approved the Operational Plan and budget, the Council signed an agreement to increase its overdraft from \$1m to \$3m.

The report to the meeting indicated that the overdraft stood at \$2.2m as at the end of May 2013.

Conversely, twelve months earlier, the Council had \$435k in an investment account, paying 4.55%.

The cash crisis

In the period from April 2013 to November 2013, the Council's financial position generally declined.

Despite the realisation of its Collateralised Debt Obligation (CDO) investment and an early payment of a portion of the Financial Assistance Grant (FAG), the Council became more dependent on its overdraft facility.

The funds that would accrue from the CDO were anticipated to provide and repay its overdraft over the year ending 30 June 2013. The Council's cash and investments had decreased from \$2.9m to \$1m. Its borrowing costs had increased significantly and it had suffered a loss of \$982k. This latter amount represented a \$4m turnaround from its anticipated surplus of \$3.1m.

While the Chief Financial Officer's report indicated that the Council had \$606,872 as at 31 July 2013, it is necessary to note that:

- the Council had realised its CDO investment of approximately \$1.5m in June 2013, and
- it had been paid \$1.87m pre-payment of the FAG on 6 June 2013.

As at 31 August 2013, the Council's General Fund had declined by almost \$470k. Despite the \$3.37m that the Council had received, it only had \$137,568 in the general account.

Despite this reality, the Council provided a buoyant review to the Regional Cabinet Meeting at Broken Hill on 2 September 2013.

Under the heading "Council's Current Financial Position", the Council provided the following information.

COUNCIL'S CURRENT FINANCIAL POSITION

- *Current 2013/14 budget forecasting a break even operating result after deletion of \$505,000 for essential staff positions and*

deferral of \$1,078,000 of capital expenses including all plant replacements.

- *Opening cash balance of \$950,000 as at 1 July 2013 projected to be an overdraft of \$850,000 as at 30 June 2014.*
- *Insufficient fund at 30 June 2013 to meet internal and external restrictions.*

This was a significant misrepresentation of the true position.

The Mayor gave the following evidence in relation to the preparation of the submission and of its contents.

MR BROAD

Q. If I can go down to the statement about its current financial position, it says that the current budget was forecasting a break even operating result, after deletion of \$500,000 for essential staff?

A. Yes

Q. It then reported that the cash balance would result in a projected reduction of the overdraft?

A. Correct.

Q. It also said that there would be insufficient funds to meeting internal restrictions?

A. Yes, that is correct.

Q. Which was an acknowledgment, the later part, was an acknowledgment that it wasn't complying strictly with the Act?

A. I'd have to agree.

Q. *In the lead up to that meeting, had you met with staff, about that submission?*

A. *There's no doubt I would have discussed the matter with the Acting GM. The Acting, the GM or Acting GM, it's the only one that I, as Mayor, can direct, and or consult with, regarding those issues, unless in a normal meeting of Council.*

Q. *What I'm trying to get to is this, that as at 2 September, you went along to a meeting with the regional cabinet; other Councillors attended; the Acting General Manager attended?*

A. *Correct.*

Q. *I'm just wondering whether you had firstly read the submission before that meeting?*

A. *I probably didn't.*

Q. *Had you discussed what was to go into that submission?*

A. *Not in absolute detail.*

Q. *Were you aware that the Minister was being advised that Council appeared to be on track, implementing its budget?*

A. *I don't believe that was the reality, and a letter that I personally haven't got with me at this point, was from the Minister, acknowledging the predicament of Central Darling Shire Council and I'll be happy to supply that to the Commissioner if I can possibly get it.*

Councillor Looney, who attended the meeting, gave the following evidence in relation to the preparation of the submission.

MR BROAD

Q. *In September 2013 there was a regional cabinet meeting at Broken Hill?*

A. Yes.

Q. *Did you attend that meeting?*

A. *Yes, I did attend that one.*

Q. *Did you see the submission that went to the meeting beforehand?*

A. *I think I was handed it on the day of the meeting.*

Q. *I'll just show you the submission. That's the submission dated 2 September?*

A. Yes.

Q. *It deals with a number of matters?*

A. Yes.

Q. *Including the review panel?*

A. Yes.

Q. *The future of Central Darling. I don't want to deal with that. It has two parts on page 2 I want to ask you about?*

A. Yes.

Q. *The first is a statement here which refers to an earlier meeting in February with the Minister?*

A. Yes.

Q. *It refers to Council having a perilous financial situation and talks about the involvement of Geoff Wise. Was it your view that the situation was perilous?*

A. *I certainly know that we were in dire strait.*

Q. *I thought you'd answer that in a similar way. It talks about Council's current financial position as forecasting a break even operating result?*

A. *Yes, and I didn't think that was possible.*

Q. *It also talked about a reduction in overdraft?*

A. *Yes.*

Q. *Did you think that was possible?*

A. *No.*

Q. *Were you given a copy of that submission before it went to the Minister?*

A. *Yes, I think we did, yes.*

Q. *Did you put a view forward that you didn't think that that was a correct position?*

A. *I didn't believe it so but we had the staff at the Shire that was doing all the paperwork on that with all the projections of what was going to happen and we just had to go by what they put forward.*

Councillor Page also attended the Regional Cabinet Meeting at Broken Hill. He gave the following account in relation to the submission.

MR BROAD

Q. *You would have heard me ask Councillor Looney about the submission to the Regional Cabinet meeting on 2 September. Did you attend that meeting?*

A. *Yes.*

Q. *The submission to the Regional Cabinet meeting contained a submission in respect of the panel review. I don't want to deal with that, that's not within our terms of reference. Council wrote this statement. Had you seen that statement before the cabinet meeting?*

A. *I couldn't say yes. I don't know whether I did see it before or after.*

Q. *It talks about Council being in a perilous financial situation.*

A. *Yes.*

Q. *It talks about the involvement of Geoff Wise, but it makes a statement about a forecast of a break even operating result. It talks about a reduction in overdraft and it acknowledges there are insufficient funds to meet the internal and external restrictions. Given that Council's financial position was declining were you satisfied that that advice should go to the Minister?*

A. *I find it hard to answer that question in regard to, you know, I'm sure the Mayor and all the Councillors were very worried about the finances and it was their way of getting the message through that things need to be looked at and some changes need to be made.*

Q. *But it doesn't say that, it's optimistic?*

A. *Yeah.*

Q. *It basically says we look like we're online to meet our budget and we're wanting - our budget anticipates a surplus and it also says that we believe that we can cut back our overdraft?*

A. *Yeah, I know where you're coming from. I didn't draft the correspondence and I wouldn't like to comment on it, if you don't mind, because - I know where you're coming from but I don't want to be critical whoever drafted the--*

Q. *What I am getting to or what I'm trying to get to is this, that that came to your knowledge afterwards?*

A. *I'd say - I'm not quite sure. I've already said I'm not quite sure whether I was given a copy of the content before it was sent. I'm not sure whether I did receive a copy because we do receive a lot of correspondence.*

Q. *But I think you said that you did receive it afterwards?*

A. *I'm pretty well sure I did.*

Conversely, Councillor Astill gave evidence that he had never seen the submission prior to giving evidence, despite having attended the meeting. His evidence provides an interesting insight into the processes of the Council and of the apparent indifference demonstrated by Councillors.

MR BROAD

Q. *It sort of brings me to the next aspect, and that's this Council provided the briefing to the Minister at the Regional Cabinet meeting, and I'll show you the briefing?*

A. *The first time I've seen it.*

Q. *The first time you've seen that?*

A. *First time I've seen it.*

Q. *Not aware of it?*

A. *Not aware of it. I got a brief when we attended the Cabinet meeting in Broken Hill, we met out the front and I got a one-page thing of what times we were meeting different Ministers and what we were discussing. I've never seen that before in my life.*

Q. *You went to the briefing without that?*

A. *Without that.*

Q. *Would you regard that as a critical document?*

A. *Yes, but I didn't know it existed, otherwise I would have asked for it.*

Q. *I assume you had no part in its preparation?*

A. *None at all.*

Q. *You've not read it?*

A. *Not read it. That is the first time I've sighted it.*

The submission was significant as it failed to provide any real insight into the Council's financial position.

While the submission referred to the "Council's perilous financial position" it gave no insight into the extent of the "peril".

A little over two months later, Council wrote to the Hon John William MP, Member for Darling. The letter is set out in full below.

CENTRAL DARLING SHIRE COUNCIL

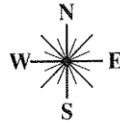
CONSTITUTED 1 MAY 1959

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COUNCIL CHAMBERS
21 REID STREET
WILCANNIA NSW 2836

**THE HON. JOHN WILLIAMS
MEMBER FOR MURRAY DARLING
1/142 ARGENT STREET
BROKEN HILL NSW 2880**

4 November 2013

Dear John,

A REAL AND PRESENT FINANCIAL CRISIS

I am writing to seek your assistance, advice and support with the most challenging financial crisis in the history of Central Darling Shire Council.

In the absence of any cash working funds or indeed the likelihood of receiving or accumulating any cash reserves, Council is wholly and **totally dependent upon an overdraft** facility with its bankers to meet daily, weekly and monthly payment obligations.

This situation has been developing for a number of years but was masked by the maintenance of a cash balance largely comprised of unspent grant funds and cash invested in a long term investment.

Over the past two financial years, the unspent grant funds have been spent and the long term investment, which has been redeemed, was effectively consumed into working capital.

Analysis by TCorp NSW supplemented by Council's own analysis and observations from auditors, regulators and other stakeholders, have all identified a number of factors contributing to the current situation including :-

- a chronic and endemic shortfall in funding,
- the erosion of what was at best a minimal level of working funds
- increasing costs in operating expenses particularly energy costs, compliance and governance costs, and,

- an inherent inability to increase its own sources of revenue.

The recent inquiry into Local Government by the Independent Local Government Review Panel has once again highlighted the critical state of Council's financial situation and whilst suggestions will be made on possible new governance structures, it is more than likely that should suggestions be made to alleviate Council's financial position, implementation will be a number of years away.

PROJECTED CASHFLOW POSITION

A detailed cash flow projection has been prepared for the financial year ending 30 June 2014 which, in summary, shows the following:

Opening Balance 1 July 2013	\$ 1,015,870 cash at bank
Balance as at 30 September 2013	(\$ 1,056,452) overdraft
Forecast balance 31 December 2013	(\$ 2,674,676) overdraft
Forecast balance 10 February 2014	(\$3,396,097) overdraft
Forecast balance 23 June 2014	(\$ 3,040,281) overdraft
Forecast balance 30 June 2014	(\$ 1,166,281) overdraft

The actual overdraft balance fluctuates on a weekly balance but on average throughout the year the balance will be \$ 2.2m and at the current interest rate of 8.98%, will result in an interest expense of \$188,500.

If the 2014/15 financial year commences with a projected overdraft of \$1.1m, it is likely the balance at 30 June 2015 will exceed \$2.4m and without any positive action, the overdraft will increase every year thereafter.

WHAT IS REQUIRED

On the underlying assumption and assurances given by the State Government that there are no plans to amalgamate or dissolve the Shire, it is recommended the following steps be taken:

Immediate (1-3 weeks)

1. An immediate cash injection of \$ 2.0m
2. Renegotiated overdraft limit of \$2.0m

Short Term (1-6 weeks)

3. A revision of the current years budget incorporating costs previously deleted but considered essential to sound and prudent management and delivery of reasonable service levels.

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4. Based on the revised budget, preparation of an updated cash flow to 30 June 2014.
 5. Presentation and discussion of the revised budget and updated cash flow with the Office of Local Government and the adoption of a funding plan for the remainder of the 2013/14 financial year.
 6. Update the documents in Council's Resourcing Strategy based on a projection of the revised 2013/14 budget for the next 10 years.

Medium Term (8-12 weeks)

7. Formulation of a Strategic Directions Plan (the Plan) expanding on the " built for purpose governance and services delivery model " as proposed in a submission to the Independent Local Government Review Panel.
8. Preparation of an updated set of Resourcing Strategy Documents
9. Meeting with relevant State Government executives and members of Parliament to present the Plan.

CONCLUDING COMMENTS

What has largely been a forecasting exercise has now progressed to a real time, 100% measurable financial crisis.

It has not arisen as the result of poor management, inappropriate levels of spending, rampant misspending or overruns on project costs.

Rather it is a reflection of a community who, for reasons largely beyond their ability to control or influence, is simply unable to generate sufficient funding to meet its basic needs.

This community has an expectation, and indeed an entitlement, to levels of service and a standard of living which is comparable with other areas of a modern, democratic society such as exists across Australia. To reject this notion ultimately erodes the foundations on which this society exists.

Much has been written, and even more said, about the partnership needed between the three tiers of government to ensure communities needs and goals are met.

The Strategic Directions Plan proposed elsewhere in this letter will incorporate the partnership concept with each tier of government contributing to funding the operations of a financially viable and sustainable local government/ community entity.

We are seeking your support to arrange a meeting or meetings with senior members of the State Government so we can brief them on the issues we are facing and offer a number of potential solutions for their consideration.

From a realistic and financially responsible viewpoint, without significant financial support from both the State and Commonwealth governments, Council will have to seriously consider its ability to continue operations.

Yours sincerely,

Ray Longfellow
Mayor



What had been an upbeat assessment in September 2013, was now a crisis.

It is difficult to under estimate the significance of the letter. For the first time, a NSW Council was facing insolvency.

On 15 November 2013, Westpac had agreed to provide an overdraft facility of \$2m. In providing this facility, Westpac had restricted the purposes for which the funds could be utilised.

It is interesting to contrast this position with the evidence provided by Councillor Keith Rhoades, the President of Local Government New South Wales (LG NSW).

In its submission, LG NSW had written:

“While councils and their communities are forced to accept that when there is systematic corruption, paralysing dysfunction or continuing incompetence within the elected council dismissal are needed, they believe such dismissal should be reserved for the most extreme cases.”

The question whether the current circumstances should be considered a “most extreme case” was taken up with Councillor Rhoades during the hearings.

MR BROAD

Q. On page 4 of the submission you indicate that effectively dismissal, which is obviously contemplated by the terms of

reference, is or should be reserved for the most extreme cases and you talk about issues like corruption and--

A. Dysfunctional.

Q. Other major issues and you talk about the most extreme case. Do you regard this as the most extreme case?

A. Personally I do not. I put this down in the category of the location of the Council, I put it down to a combination of both management and elected member expertise in respect to reports before elected members and elected members being in a position to understand the financial implications of where things were going. It delves back into a little bit of what we talked about probably 20 minutes ago in respect to there's no skills based requirement level of an elected member but from my personal point of view it is not totally - the positions is not totally the fault or the decision-making in its entirety of the elected members, it was a combination.

Q. I suppose from what you've said there isn't a line in the sand that you can draw, it's very much circumstantial?

A. We have the same position, as I said we want to see every 152 Councils in New South Wales with a body of elected members and so have the past two State Government Premiers. As you correctly outlined through dysfunctional - totally dysfunctional or through corruption, nobody has any hesitation with that, with a Council being dismissed but again reflecting back to the early intervention, we now have a process that can assist in lot greater time restoring a democratic process into a local community at the Local Government level than the procrastination of what we had previously with two, three, four years in some cases of Councils going and facing inquiry and then finally getting back to the community to elect their Council. We must never ever lose sight

of the fact. In particular in the areas like Central Darling and their neighbours and Councils in this western part of New South Wales that their communities rely very heavily on an elected Council. The geographical area of their state representatives do not allow them the face to face access with communities but their local Councillors do provide that access and it's a known statement that Local Government is the level of government closest to the people.

COMMISSIONER

- Q. *Councillor Rhoades, the question was asked a minute ago about the most extreme case. If there hadn't have been any intervention would this surely have been a fairly extreme case?*
- A. *Commissioner, it's hard to give a positive or a negative answer to that, you know, how extreme do you get. I think possibly there might have been a reliance on a bail out by government that was seen as was going to happen but the reality was that it didn't happen and maybe there should have been some contingencies put into place that if this does not happen what position are we in and what can we do if that request for assistance doesn't come in. To say extreme, I probably wouldn't use that word myself but there's probably a more definitive word that didn't - in that context that it was a serious matter.*

There is no playing down the seriousness of the matter.

The letter reported that over the Christmas period, the Council may not be able to pay its staff and creditors.

As at February 2014, its position would weaken further. While, the Council's financial position improved at 30 June 2014 (perhaps with the early payment of the FAG) its overall position would decline in the following financial year.

It was a watershed letter.

Given the importance of the letter, it was necessary to consider what involvement the Councillors had in its drafting and their knowledge of its contents.

Councillor Longfellow gave the following evidence of his involvement, awareness, as well as his communications with other Councillors.

MR BROAD

Q. Can you tell me about your involvement in the lead up to the letter of 4 November, to the local Member. What part did you play in that?

A. I did not compile the letter, myself, however I did read it, and I put my signature to it, yes.

Q. Did the letter come as a surprise to you, when you read it?

A. Well it certainly didn't bring me any joy, I can assure you.

Q. Sorry?

A. It certainly didn't bring me any joy.

Q. I'm not saying that, and please don't think I'm being rude. What I'm trying to ascertain is this, that the letter to the Local Member set out a very, very serious financial position for Council?

A. And that position was outlined by the financial people at that particular point of time.

Q. How long before the letter went to the Member, were you aware of the issue that was going to be raised in that letter?

A. I would have to say it wouldn't be a week, it would be a matter of days.

Q. Apart from signing that letter, what did you do? Did you notify your fellow Councillors of the issue?

A. *I don't believe that the fellow Councillors were advised about that until the meeting that followed that, like the monthly meeting. It was a situation that was brought to my attention rather urgently by the finance department and/or through the Acting GM and it was a matter of acting as quickly as possible to be able to make the arrangements to meet with the Minister.*

Q. *Did you sit down with the Acting GM and the Finance Manager and discuss it after it was brought to your attention?*

A. *Probably not line by line, no.*

Q. *Did you meet with them before the letter was sent out, did you--*

A. *I met with the Acting General Manager, yes.....*

Q. *Did the Finance Manager take you through the figures that he had done?*

A. *My recollection is no, not step by step.*

Q. *Did the figures that he was showing you come as a shock?*

A. *I would have to say yes. Yes. Whilst the predicament was - I understood the predicament to be quite serious, not as serious as what the indications were in that letter at that particular point in time and also the Deputy Mayor was also involved with that also in that deputation that went up to Broken Hill.*

Q. *The deputation to meet your local member went up to Broken Hill?*

A. *Yes.*

Q. *You met with the local member on what date?*

A. *I couldn't tell you to be quite honest.*

Q. *Within a matter of days?*

A. Well--

COMMISSIONER

Q. 4 November is the letter--

A. It was in November at any rate, yes. I haven't got the actual date.

Q. With regard to the last paragraph of that letter did you feel uncomfortable dispatching this letter or taking it up without the rest of the Council realising what was in the letter, can you recall--

A. No, I can't.

Q. "From a realistic and financially responsible viewpoint without significant financial support from both State and Commonwealth Governments, Council will have to seriously consider its ability to continue operations."

A. Yes. No, that wasn't discussed with the other Councillors at that stage.

Q. But did you feel uncomfortable?

A. I didn't feel real comfortable without everybody knowing about it, no, I didn't sir.

MR BROAD

Q. In respect of that last paragraph, did you have discussions with the Acting General Manager with the Finance Manager about what might happen if money wasn't going to come through?

A. No, not really, however I must admit that when meeting with the local member he said quite categorically, "Look, you've presented me with this letter at this point and I cannot tell you

where it's going to lead" and to be quite frank, it was a bit alarming to hear him say that, to be quite frank.

Q. Did you report the content of that meeting back to the Councillors?

A. I did, sir.

Q. When did you do that?

A. At the following Council meeting.

Q. It waited?

A. Sorry?

Q. It waited for that period, I think the meeting was--

A. Yeah, for the - until the Council meeting, yes which would have been in December.

Q. You didn't contact any of them beforehand and say, you know, "This is what's occurred, this has all blown up", you didn't ring them and say, "We've got a significant problem"?

A. I may have discussed it with some but not all, I must admit, no.

Q. The meeting wasn't until ten or so days after. The Council meeting wasn't for ten or so days after the meeting with the local member?

A. Correct.

Q. Are there other Councillors that you find you can talk to more freely than others?

A. I believe there are some Councillors who have a better understanding of finance than others, yes.

Q. *This was a really heavy burden to shoulder, this was you as the Mayor basically going to the local member saying, you know, "We have got to a very, very serious stage"?*

A. *Yes. Hindsight is great. If I had it over I would have done it differently, but because of the - what I believe was the great importance of raising it, I thought it was absolutely imperative that it be acted on ASAP.*

Other Councillors, including Councillor Looney appear to have had a limited understanding that the Council was having financial difficulties. At best, their understanding was generic and their involvement superficial.

Councillors gave the following evidence of their knowledge of the letter, financial situation and the request.

Councillor Looney

MR BROAD

Q. *In November 2013 the Council wrote to the local member?*

A. *Yes.*

Q. *Saying it had a cash crisis?*

A. *Yes, and asked for assistance.*

Q. *Have you seen the letter that was sent?*

A. *Yes, I have.*

Q. *Did you see that letter before it was sent out?*

A. *I'm sorry I'm not sure but we did - we did receive all the correspondence that went through. The original one from the Mayor to John Williams and then we had the responses that came back. That was all handed to every Councillor.*

Q. *I'll show you the letter, just to make sure we're talking about the same letter?*

A. *Yeah.*

Q. *This is a letter dated 4 November?*

A. *Yes, that's correct, yes I have - we have got a copy of that one.*

Q. *That was the one that forecast the cash flow problem?*

A. *Yes.*

Q. *That was the one that asked for the immediate injection of \$2 million?*

A. *Yes, that's correct.*

Q. *It renegotiated an overdraft?*

A. *Yes.*

Q. *Before that letter went out, were you contacted by any other Councillor to say that that approach would be made?*

A. *We were informed that we were in dire straits and they were asking for assistance.*

Q. *Were you told, for instance, that by 31 December 2013 the Council's overdraft was going to be substantially exceeded?*

A. *Yes, that's correct, we were told that.*

Q. *You knew about that?*

A. *Yes.*

Q. *At the time?*

A. *Yes.*

Councillor Linnett

MR BROAD

Q. *Can I ask you a couple of questions. Were you involved in any way in the preparation of that letter?*

A. *No.*

Q. *Were you aware of the concerns that are expressed in that letter at the time that letter was written?*

A. *Yes.*

Q. *Were you aware of the expectation that Council would exceed its overdraft limit by 31 December 2013?*

A. *Yes.*

Q. *What had you done in respect of those issues?*

A. *Well, as I say, our last meeting was in December and with a lot of these costs and that that came up we actually never found out until that December meeting what those financial advisers we'd brought in, how much they were being paid and I don't think the figures that they were providing were accurate.*

Q. *In December after that letter had been written you found out that there had been issues with the financial advisers. What I'm trying to ascertain is as at 4 November when that letter was written did you have knowledge of what was being said, that you had a very significant cash crisis?*

A. *Yes. I was aware of it then, yes.*

Q. *Did you know that letter was being sent to the local member?*

A. *I recall, I think I did, yes, I'm not sure what - there was a lot of paperwork going around at that stage.*

Q. *What was the paperwork in relation to, was it in relation to that cash crisis?*

A. *Yes, the Council's situation yes. Financial situation, yes.*

Q. *Did you have discussions with the Mayor or other Councillors in relation to it?*

A. *Yes, I did. Verbally, yes.*

Q. *What was the nature of those discussions?*

A. *Well, what was going to happen, what could be done and also as we said, that now perhaps the State Government should come forth with more money as to supply these services which - you know, we've got five towns, half a dozen swimming pools to handle and.....we felt that the State Government was not providing enough funds out here.....and it was hard to keep things going at that stage with this overdraft.*

Q. *The other Councillors you spoke to, were they as concerned as you?*

A. *For sure, yes.*

Q. *Did you discuss the matter at all with the Acting General Manager?*

A. *No.*

Q. *Were there any discussions with the Finance Manager, the Acting Finance Manager?*

A. *Well, they gave us a report at each meeting, what was happening but I don't think it was - well, I suppose, true and*

accurate on what was happening from day to day. We knew this was sort of coming on but - yes, it came in pretty quick, yes.

Q. Was there any alternatives given to you other than going to your local member?

A. Well, no I don't think so aside from tightening the purse strings. We did do another budget prior to that but apparently it was too late for it to come in. We sort of went through things to see what we could cut back on.

Councillor Sullivan

MR BROAD

Q. In November 2013 the Mayor wrote to the local member?

A. So I understand.

Q. I'll show you that letter. Have you seen that letter before?

A. I wouldn't say I'd seen the letter before. I would say that I was aware that it was written. The Mayor had reported on it at the next Council meeting. I would have spoken to the Mayor, Deputy Mayor, and I would suggest to you that the Mayor probably – him and I discussed the situation but as to the letter, no.

Councillor Page

MR BROAD

Q. What I'll do is I'll show you the letter to the Local Member now.

A. It's the projected cash flow position, overdraft 3.396.

Q. I'll give you an opportunity to read it, I won't rush you.

A. *No, you're right. So this is where they're saying they - about the interest rate and the \$2.2 million. I made comment at the Council meeting that I didn't agree. When you approach the Minister for Local Government asking for \$2 million it's the poorest Department in the government, they don't have \$2 to give you let alone 2 million. I made that comment at a Council meeting that it would be a waste of time asking for that amount of money from that Minister.*

Q. *What I was wanting to explore with you in respect of that letter is this, that letter says the Council has got.....a cash crisis.*

A. *Yes.*

Q. *Were you aware firstly that Council was facing a cash crisis?*

A. *Yes.*

Q. *When were you aware of that?*

A. *From the day I joined Council and for the six year timeframe. I knew it was only a matter of time before things - they were unfinancial and I know our financial people juggled things around and moved things from here to there and tried to, you know, keep things on a balanced keel but long-term the finance would end up in the situation we're in today.*

Q. *Did you know that letter was going to be written before it was in fact written?*

A. *Yes, and I disagreed with it. I said it was a waste of time asking - I'm repeating myself, but asking the Minister for \$2 million, he doesn't have that amount of money to give to anybody so that was my comment at the council meeting when they were passing the motion to send the correspondence.*

Q. *You recall that that was the subject of a motion to send that correspondence?*

A. *Yes, it was and from memory I think it was at White Cliffs.*

Q. *You'd seen the draft of that letter?*

A. *I didn't see the draft. It was debated, moved, the motion was moved at White Cliffs and from memory, I could be wrong, but I know that's where the debate took place and I don't even think to this day I've ever seen a copy of that.*

Councillor Astill

MR BROAD

Q. *You say that you are not aware of that submission. You went to the meeting, were you involved subsequently in the letter that was sent to the local member on 4 November in 2000--*

A. *No more than any other Councillor.*

Q. *What was the extent of your involvement in respect of that?*

A. *We were going to send a letter to our State Member, this is what it says, are you agreeable, yes. We needed money.*

In November 2013, the Council's position had gone past what might be said to be "perilous". It was, absent any financial or other assistance, insolvent. Put simply, it could not meet its debts.

To the extent that Councillor Longfellow regarded the letter as urgent, he did not provide an immediate briefing to the other Councillors. Instead, he left that until the next Council Meeting some 13 days later.

The minutes of the meeting record:

6th November 2013 – Mayor, Acting General Manager & Acting Manager Corporate and Community Services attended a meeting with local member John Williams; discussion was held regarding an update on the financial position of Council.

While Councillors displayed an understanding of the financial crisis facing the Council, there was little resolve to arrest or remedy the situation. This appears to be based on the following assumptions:

- That the Government would bail out the Council.
- That the crisis was inevitable.

Councillor Longfellow was convinced there would be a bail out and gave the following evidence.

MR BROAD

Q. Was there ever concern expressed by yourself that Council couldn't afford to repay an overdraft of \$3 million?

A. The issue was raised but the assurance was that, yes, it could be - not alleviated but it could be reduced considerably with the grants money that could be available and I think.....if you go back in that period of time there's the \$2 million that was asked from the Department was also - this was the perception that was being expressed from the finance people that look, we're in this predicament, they'll bail us out. I know in business - well you wouldn't even go there to start with to be quite frank, but the assurances that were coming from finance were very compelling.

Q. That was the Finance Manager?

A. Yes, Mr Cumming.

Q. Was anyone else giving you that sort of assurance?

A. *Not really. I think that the Acting General Manager was aware of that as well, but her comprehension of the finance side of things wasn't very well - she didn't understand it completely to the extent that probably she should have done.*

Q. *When you sought the meeting with the local member were you fairly convinced that you would be able to get that \$2 million from government?*

A. *That was more or less the insinuation that was being expressed to us from the finance people.*

Q. *That was coming from within Council?*

A. *Correct.*

Q. *Had you put out any feelers to find out whether that was likely to have occurred outside Council?*

A. *To be quite honest, no, I didn't. I was taking the word of an experienced financial person and I believe that's what the Acting General Manager was doing also.*

Councillor Astill, who indicated that he had limited involvement in the overall process, didn't think that a cash injection of \$2m and a re-negotiated overdraft of \$2m was "much to ask for".

Councillor Looney saw no alternative to the cash injection, believing it to be the only viable option.

Conversely, Councillor Page gave evidence that he neither assumed nor agreed with the approach.

The letter to Mr Williams MP sought to distance the Council from the problem, stating:

It has not arisen as the result of poor management, inappropriate levels of spending, rampant misspending or overruns on project costs.

Rather it is a reflection of a community who, for reasons largely beyond their ability to control or influence, is simply unable to generate sufficient funding to meet its basic needs.

The evidence of the Councillors echoes the view that the crisis was inevitable.

Councillor Page had been aware that the Council faced a cash crisis from the date of his election.

Councillor Linnett had seen the Council's positioning weakening, describing it in the following terms.

MR BROAD

Q. There are a number of issues that have come up in respect of the past and none I think probably more in everyone's face than the budget issues that arose last November. In respect of those budget issues, were you aware in the lead up to November last year that Council was facing a cash crisis?

A. Well, yes, it appeared that way because I'll go back on my old terms as a grazier, a sheep and cattle producer, some 18 months ago I said to Council, certain Councillors wanted to spend and I said, look, the old cow is dry virtually. That was my favourite saying because, you know, the money was being spent.....and, yes, I was aware and you could see things.....going downhill and I mean being on the land I also know what it's like, like most other Councillors.....in a bank manager's office. You go into your bank manager and, you know, you value that dollar, and we could see that the dollar was deteriorating somewhere or other and, yeah, so in answer to your

question, you could see the cash flow that was a problem accumulated.

Councillor Astill had expected the cash crisis, but didn't think it would be as bad as it was.

Perhaps the most concise assessment of the sense of inevitability was given by Councillor Sullivan.

MR BROAD

Q. What about some of the parts of the letter where it talked about the cash crisis that the overdraft would have been exceeded by 31 December. Were you aware of that issue at the time?

A. Once the Council got into overdraft and the scope of the work that it was doing which got it into the overdraft, I didn't really know where it was going to finish up and I don't think anybody else did either.

It is clear that the cash crisis did not arise overnight, nor did it arise between September 2013 and November 2013. The way in which the Councillors responded to, considered and dealt with the crisis, reflects poorly on them.

The Councillors appear to have recognised that the crisis was looming, but failed to work together to address the crisis. Rather they hid the crisis and sought to absolve themselves from any responsibility for the crisis.

It was a telling abrogation of their role.

Budgetary Control

Section 405 of the Act requires that Council adopt its operational plan, including its revenue policy, before the commencement of the financial year.

Council adopted its operational plan on 27 June 2013.

The *Local Government (General) Regulation 2005* (the Regulation) requires:

203 Budget review statements and revision of estimates

- (1) Not later than 2 months after the end of each quarter (except the June quarter), the responsible accounting officer of a council must prepare and submit to the council a budget review statement that shows, by reference to the estimate of income and expenditure set out in the statement of the council's revenue policy included in the operational plan for the relevant year, a revised estimate of the income and expenditure for that year.*
- (2) A budget review statement must include or be accompanied by:
 - (a) a report as to whether or not the responsible accounting officer believes that the statement indicates that the financial position of the council is satisfactory, having regard to the original estimate of income and expenditure, and*
 - (b) if that position is unsatisfactory, recommendations for remedial action.**
- (3) A budget review statement must also include any information required by the Code to be included in such a statement.*

Regulation 203 is aimed fairly and squarely at the Council's responsible accounting officer. Not only is the responsible accounting officer given direct responsibility for preparing the report, he or she is required to provide his or her assessment as to whether the financial position of the Council is satisfactory, having regard to the budget. In the event that he or she regards the position as unsatisfactory, he or she must make recommendations for remedial action.

The importance of Regulation 203 cannot be understated, particularly to a council subject to the financial strictures faced by the Council.

Despite this, the information being provided to the Councillors was meagre and poor. It did not give an indication of how the Council was performing against its budget.

No quarterly budget reviews had been provided since June 2012. Instead, the reports provided to the Council essentially comprised:

- A monthly cash balance report.
- A rates and charges collection report.
- Acquittal statements relating to the Council’s engineering and other projects.

The failure to provide the quarterly budget review statements was a breach of the Regulation. It also deprived the Councillors and senior management of the opportunity to review the Council’s position and make any necessary adjustments.

It was part of the poor budgetary control demonstrated by the Council.

To the extent that any report indicated or informed the Council’s budget position, it was the cash report. This report, at least in part, provided an indication of the continuing decline of the Council’s cash position.

The table below was prepared in an attempt to ascertain what would be gleaned from the information.

CENTRAL DARLING SHIRE COUNCIL PUBLIC INQUIRY			
Cash Movements			
Meeting			
21-May-13			
Deposits at call	\$	-	
CDO Investment	\$	1,492,470.00	
Total Investments	\$	1,492,470.00	
Bank Balance			
General Fund		\$1,918,613 - O/D	-\$426,143
Trust Fund	\$	6,168.00	
27-Jun-13			
Deposits at call	\$	-	

	CDO Investment	\$	1,499,010.00		
	Total Investments	\$	1,499,010.00		
	Bank Balance				
	General Fund		\$2,207,524 - O/D		-\$708,514
	Trust Fund	\$	6,168.00		
	Movement				-\$282,371
16-Jul-13					
	Deposits at call	\$	-		
	CDO Investment	\$	-		
	Total Investments	\$	-		
	Bank Balance				
	General Fund		\$1,015,870 - O/D		-\$1,015,870
	Trust Fund	\$	6,168.00		
	Movement				-\$307,356
20-Aug-13					
	Deposits at call	\$	-		
	CDO Investment	\$	-		
	Total Investments	\$	-		
	Bank Balance				
	General Fund	\$	606,872.00	\$606,872	
	Trust Fund	\$	6,179.00		
	Movement				\$1,622,742
17-Sep-13					
	Deposits at call	\$	-		
	CDO Investment	\$	-		
	Total Investments	\$	-		
	Bank Balance				
	General Fund	\$	137,568.00	\$137,568.00	
	Trust Fund	\$	6,179.00		
	Movement				-\$469,304.00
15-Oct-13					
	Deposits at call	\$	-		
	CDO Investment	\$	-		
	Total Investments	\$	-		
	Bank Balance				
	General Fund		\$656,838 - O/D		-\$656,838
	Trust Fund	\$	6,179.00		
	Movement				-\$794,406.00
19-Nov-13					
	Deposits at call	\$	-		
	CDO Investment	\$	-		
	Total Investments	\$	-		
	Bank Balance				

	General Fund	\$1,132,084 - O/D	-\$1,132,084
	Trust Fund	\$ 6,185.00	
	Movement		-\$475,246
17-Dec-13			
	Deposits at call	\$ -	
	CDO Investment	\$ -	
	Total Investments	\$ -	
	Bank Balance		
	General Fund	\$1,178,691 - O/D	-\$1,178,691
	Trust Fund	\$ 6,185.00	
	Movement		-\$46,607

It shows a continuing decline in the cash position in the period from development of the budget to the end of November 2013, despite the payment of the FAG.

Regulation 203 should not be read as solely the responsibility of the accounting officer. Section 232 of the Act requires that Councillors review the performance of the Council, its delivery of services, its delivery program and its revenue policies.

When questioned about the budget review statement, the Councillors admitted that it was a requirement they be provided with this information. However, they also admitted that they were not strong enough to ensure that staff provided such information.

Despite recognising the financial plight of the Council, the Councillors appeared totally consumed by what they saw as the perceived wants and needs of the individual towns. An example is the provision of a \$70,000 town improvement fund for each of the four towns, plus \$20,000 for Sunset Strip. The fund was originally set up to be spread over four years. However, it became an annual allowance without any budgeted plans for the expenditure.

Mr Healy emphasised the importance of the budget process.

MR BROAD

Q.Councils adopt an ongoing budget for the forthcoming financial year . Is there a necessity that Councils adhere to that budget?

A. Look, there is a responsibility for Councils to manage effectively against their budget each year. At the start of the year they set their budget and of course things will come up during the course of the year that may require councils to amend their budget, but at the end of the day Councils should be, like any organisation, seeking to achieve as close a result to budget as it can. The reason we have quarterly budget review statements is to actually provide the formal process for both monitoring the budget but also resolving to make any variances to that budget during the course of the year.

Jennifer Thwaites, acting Chief Executive Officer of the Wilcannia Local Aboriginal Land Council emphasised the importance of quarterly audits in the following terms.

MR BROAD

Q. Can I come back to one of the major reasons we're out here, and that was this that there was a financial crisis in the Council. How do you deal with that sort of thing occurring in the future and no matter what your level of funding is, how do you stop another financial crisis?

A. You need to ensure that your personnel are, either experienced, have access to adequate training, and there's an overview. Again, if that crisis came up this quickly with annual audits, I mean Land Councils get annual audits and we have mini audits every three months, that sort of financial crisis would be pinned

like that. So there's, you know, in the oversight process there must be something wrong.

Councillor Longfellow acknowledged that the quarterly budget reviews were not done and gave the following evidence of his attempts to ensure they were provided.

COMMISSIONER

Q.during this time there would have been a number of Council meetings, budget preparation meetings, budget meetings, quarterly review meetings, was there much debate about the financial situation in those meetings?

A. *Can I just say that the quarterly reviews were not done.*

Q. *I heard that earlier, yes?*

A. *Yes, and I raised that with the Acting General Manager to also discuss it with the finance people at that particular point. And that wasn't just on one occasion. I did that on a number of occasions. I understand that the issues were discussed at what they call MANEX Meeting, which is the senior body of Council or management.*

Q. *Management?*

A. *Management who have a meeting on a monthly or supposedly a monthly. I think that sometimes they do vary and there was no response that came from the people who were in charge of finance regarding quarterly reports.*

Councillor Linnett was also aware the reports were not being provided. He gave the following evidence regarding attempts to obtain them.

MR BROAD

Q. *On a monthly basis were you ever told that in relation to works, say there was a bridge being constructed, whether Council had brought that in on budget or not?*

A. *No. No, we weren't.*

Q. *Did you ask for that sort of information?*

A. *Well, we did do to a certain degree, but everything seemed to be up in the air, like there was jobs on there before Christmas.....Council was going to make money, but we've heard since that they didn't make much money out of it at all. We were taking their word for it. Yeah.*

Q. *The advice you were getting from the staff was not very detailed?*

A. *That's correct, and I think there was sort of, you know the old saying, robbing Peter to pay Paul with those figures, you know, just to perhaps balance the books elsewhere.*

Q. *Were you aware as a Councillor that there was an obligation for quarterly reporting of Council's budget?*

A. *Yes.*

Q. *Were you aware that those quarterly reports were not being provided?*

A. *Yes.*

Q. *Did you seek out the reasons why they weren't being provided?*

A. *Well, various Councillors asked, but again there seemed to be these things up in the air, like, as I mentioned earlier, under the Privacy Act we never ever seen any of the contracts, this, that, like what we used to do, or who was paid what because of the*

Privacy Act, and yeah, no sort of – to me it was far from satisfactory.

Q. You were kept away from the figures?

A. Correct.

Q. In respect of the quarterly budget reports, do you recall getting them previously?

A. Excuse me. Yes. Yes, we used to get them, yep.

Q. When did that stop?

A. I am not sure on that.

Q. Did you talk to the General Manager, the Acting General Manager in the last couple of years in relation to the financial information that you were receiving?

A. Yes, we did, but we did get an answer once that we were told - the staff were told not to tell the Councillors too much, and that did happen on the engineering side of it, going back a few years ago, and also with the General Manager side of things.

Q. Why were you told that?

A. I don't know, I think there was a lot of question marks there as to why, but I don't think the figures were going real well for them and they didn't want us to know.

In subsequent questioning Councillor Linnett conceded the gravity in failing to demand them.

COMMISSIONER

Q. Councillor Lynett, in your resume which you've provided here you've been a councillor for 23 years?

A. Correct.

Q. You've been past chair of the Wentworth Balranald Rural Counselling Service, you're a board member of the Western Lands Advisory Council, you're a board member of the Darling Association?

A. Yep.

Q. Basically a Council is a board, do you agree with that? The Mayor is the chair or the president and the Councillors are the board, so you know how boards operate?

A. Yes, sure.

Q. When I say you, the Council became aware, you said, of the issues that were facing Council and Mr Broad has been through the monthly reports that showed bank balances which showed you were running on overdraft and in some cases a little over your overdraft?

A. Yep.

Q. As I said you've been a Councillor for 23 years, during that period Councils, 152 councils in New South Wales basically run on 152 budgets and they are kept controlled by quarterly budget reviews, and you used to get those quarterly budget reviews. In recent times those quarterly budget reviews seem to have disappeared and we spoke to the Mayor yesterday and--

A. Yep.

Q. As a board do you think you did enough on the basis that you were aware that there was issues, that this control mechanism of the quarterly budget reviews had disappeared, do you feel as a board, as a Council, you did enough to I guess shake the cage to get those budget reviews back in place?

A. *Yeah, good question, sir. Well I think probably, you know, we put faith in the staff and we had - supposed to have had some professional people there, you know financial men and everything, and women, and we were getting the reports and as it turns out now we probably should have been more firmer on it but there was a lot we weren't being told and it was made public not to tell the councillors too much at times you know. So while we're at fault I don't know if we're 100% at fault by really pushing the issue and then you get on - again that I mentioned earlier about the lack of Privacy Act. Like once we'd seen all the contractor's prices, this and that there, but that wasn't allowed and as long as the budget was, we were told, is within every three months review, as long as its within budget the - everything was okay but it didn't allow for cost shifting from one department or another department.*

Q. *But you weren't getting that quarterly--*

A. *No, no. Not in later years, no.*

Q. *In later years when you realised that there was issues because you were seeing the bank balance you were not getting the budget reviews?*

A. *No.*

Q. *You weren't, if you like, demanding the budget reviews?*

A. *Yeah, well we were getting a report monthly, you know verbally and that from the accountants on which way we were going and it appears that it wasn't going the right way and as far as - yeah, there was questions asked from various Council on it but they always came up with a reason for it, yeah.*

Contrasting evidence was given by Councillors Looney and Astill.

While Councillor Looney gave evidence that, to her recollection the failure to provide the reports was not discussed by Councillors, Councillor Astill was much more forceful in his recollection.

MR BROAD

Q. One of the things which, again, you would have heard questions about is the quarterly budget review. As Councillors you weren't getting that?

A. And as Councillors we were critical on many occasions, but at the time with an Acting General Manager, and a few conflicts in some of the departments up there, no matter how many times we'd ask for it, and I raised it with the Mayor on several occasions on the phone saying, look, you know, it's a requirement, we've got to jump on them, and I'm sure the Mayor jumped on to the best of his ability, but if they don't produce the reports there's nothing much I can do about it.

Q. It was fairly critical given the tight budget. It was critical also, I assume for you, because you'd just indicated that you were concerned that things couldn't operate within this budget?

A. Yeah.

The failure to ensure the provision of the quarterly budget review statements substantially weakened the ability of the Councillors to undertake their statutory role.

Councillor Page conceded that it placed a stronger responsibility on himself, as a Councillor, to ensure that he understood the Council's financial position.

Councillor Longfellow acknowledged that the information that Councillors were getting was not sufficient to know where the Council was financially.

MR BROAD

Q. Council was always in a tight budgetary position; you agree with that?

A. Yes.

Q. The information that was provided to you in respect of the investments and the bank balances on a monthly basis, did you ever go through those reports and look at where Council was going financially?

A. Personally, myself, there were questions raised by Councillors regarding issues regarding to that, yes.

Q. Did you have a view about where you were going financially when looking at those reports?

A. Yes, I had an idea, put it that way. Not an in depth knowledge of it, no.

All of the above indicates that there has been no real attempt to obtain a full and complete understanding of the Council's current budget position or the Council's financial position.

Of greater concern is, instead of considering remedial budgetary actions, there has been a propensity to blame others for the situation.

In response to the Office of Local Government's anticipated intervention the Council did meet to review its budget. By that time it was too little too late.

In 2011, the Promoting Better Practice review report had recommended that Council maintain sufficient reserves.

In providing its submission to the Regional Cabinet Meeting at Broken Hill in September 2013, Council had advised it had:

Insufficient funds at 30 June 2013 to meet internal and external restrictions.

On 13 January 2014, the Council's independent auditors reported the following:

Breach of section 409(3) of the Local Government Act 1993

As at 30 June 2013, Central Darling Shire Council had cash and cash equivalents of \$1,002,000 with external restrictions of \$953,000. While at year end, Council had sufficient cash assets to cover its external restrictions, the receipt of the first instalment of the financial assistance grant in June 2013 for \$1,870,000 has restored Council's cash position to cover its external restrictions.

During the year, Council was operating with a bank overdraft for 281 days and had a CDO valued at \$1,500,000 that could not be accessed until 21 June 2013 when it reached maturity. No other cash assets or investment securities were available. The overdraft reached its highest level in March 2013 at \$2,469,504 and spent 259 consecutive days in overdraft from early October 2012 to June 2013. This means the Council was using restricted cash for purposes other than the restriction, firstly from the water and sewerage funds via internal loans to general fund and then from external government grants. Once all available sources of funds were used, the Council utilised its bank overdraft facility which had a limit of \$3,000,000 up until 30 June 2013.

Council is in breach of section 409(3) of the Local Government Act 1993 during the year for using restricted cash for purposes other than the restriction. Further a breach of section 410(3) of the Act has occurred as Council did not seek Ministerial approval for the internal loans from the water and sewerage funds to the general fund.

In addition to internally and externally restricted funds being used for other purposes, there is evidence that specific purpose grants were used for other purposes.

The Recovery Plan recognises a need to generate an annual cash surplus of \$500k per annum for the next four years to restore reserves.

This issue was taken up with the Councillors.

Councillor Page acknowledged that the reserve had been depleted.

MR BROAD

Q. Of course, one of the issues that's come up with this Council is that it's worn down its reserves to nothing.

A. Yes.

Q. Of course, wearing down its reserves to nothing, that has led to breaches of the Act. Have you read the auditor's report that the Commissioner showed you earlier? I'll show it to you now.

A. I've read the responsibility part, and you want me to read the auditor's --

Q. The statement's over the page that I've highlighted.

Q. I think that's a, by comparison, fairly minor, the reference to the time of the auditing. You'll see from that, that the auditing that there have been some breaches.

A. Yes.

Q. You've not kept aside funds for specific purposes, and when the Council's used those funds up, it hasn't sought Ministerial approval. That seems to match with the interim Administrator is saying in the recovery plan, you need to build up reserves, you

need to be able to set those reserves aside. Do you agree that there is that need?

A. There is. The restricted assets are restricted for a reason, because they've put aside whether it's to upgrade an airport or do a job, and that's why they're restricted for that job, and on many occasions has been mentioned whether it's long service leave and other restricted assets, finances, were those finances there as under the Act and on a lot of occasions the answer from our financial people, that money was there for those restricted purposes.

Q. Given the fact that you were given monthly statements which said, effectively, that we're living on overdraft.

A. Yes.

Q. We've got no other bank accounts, all we've got is small money in a trust account. Did that occur to you that Council was using restricted funds other than for the purposes that they were restricted for?

A. On many occasions we were assured that the restricted funds were there, but I'd have to have agree on, I think most people realise that on occasions at the end there, the overdraft had eaten up over and above what we did have allocated as restricted funds so the overdraft had eaten that up. That side of it, yes, there was nothing left.

Councillor Astill was asked if he saw the need to balance income against expenditure and the need to provide a surplus of about \$500k.

MR BROAD

Q. The other is the recovery plan.....has some pillars and that is matching expenditure with revenue and the need to provide an

annual surplus of about half a million dollars to be able to build up reserves. Do you see the necessity to do that?

- A. *Of course. When I first started on Council we had a million dollars in a trust account. We had investments, we had all those. Then the costs of doing business in the bush has increased so much that they eventually went and someone's got to take the responsibility for the fact that no one was propping up Local Government in western New South Wales, and I don't know who we blame for it but it sticks out like the proverbial, that these western councils need assistance And attacking Central Darling Council is only the tip of the iceberg, I can assure you.*

His answer confirmed what appears to be a mantra of shifting the blame for the underlying issues to higher levels of government. In the circumstances, his answer was non-responsive.

Councillor Linnett was equivocal.

MR BROAD

Q. *One of the other things the recovery plan talks about is the need to create a surplus?*

A. *Correct.*

Q. *It talks about a need to provide a surplus of about a half million dollars per year for at least the next four years, do you agree with that need?*

A. *I do. I do agree with it but it depends whether our towns, whether the services are going to suffer on it, you know. The towns aren't getting a great lot at all really because we've got so many towns and villages in there but yeah, there is a need to do it but again we've got to sort of try and keep our communities going too if we possibly can as Councillors, elected Councillors.*

Councillor Sullivan provided a more concise view on the Recovery Plan.

MR BROAD

Q. Have you read the Administrator's recovery plan is what I'm trying to get out?

A. Yes, I have, actually, and my opinion is that in a few years' time the Central Darling Shire will still be in this position.

Q. Sorry?

A. The Council, if it stays like it is under its current structure, the recovery plan will only postpone the inevitable. What I say is I believe that, what's happened, I believe, with the Council up til now is the Council has got rid of all its cash and frittered it away. It's gone, wherever. However you like to put it, it's gone. What I believe that the Administrator's plan is, and what he's doing, is diverting the Council assets to cash. You're not doing the workforce re employments, you're not replacing the housing, you're not doing any work on the housing, you're not replacing plant and equipment, right. So if you don't replace those, you don't spend the cash on them, you hold the cash in hand, right but somewhere along the line those things have to be fixed. The budget that the Administrator has just released in the 14, 15 year, he has budgeted to spend more money than he's actually going to get in. So if you put your assets into cash and you keep budgeting down that line, the cash is going to go again. If you're looking I think the figure is half a million dollars a year.

Q. He's looking at a surplus of half a million roughly a year.

A. Well, the only person that will be working here will be the General Manager before long. I mean, there's just not enough. There's only so much money in the barrel and if you're going to keep each year knocking off a half a million out of your limited funds

that you've got and not fixing the things around the place that need to be done, you're either going to go broke or you're going to change the structure. So to me, as I say, you're only postponing the inevitable. That's my view.

Councillor Longfellow likewise recognised the need to build reserves, but like other Councillors, doubted the capability to do so.

MR BROAD

Q. The recovery plan has a couple of pillars, one of which is the need to match revenue with expenditure?

A. Yes.

Q. I don't think that's probably novel for councils, that's probably what anyone has to do. One of the other points that the Administrator makes is that there is a need to create a surplus to create the funds so that the Council can have reserves. Do you agree with that concept?

A. 100%. Yes.

Q. Do you generally accept what the Administrator has said in the recovery plan?

A. Yes, I do.

Q. As a Councillor, and I know this is one of those questions that probably sticks in the craw, do you recognise the solution in that sense of the expenditure against receipts and the need to create a surplus lies with the Councillors?

A. Yes, I do, but I believe also that if we're given the correct financial - of that we can understand or the whole of Council can understand, I don't believe there would be any disagreement about that at all. We all know that we, I mean the Federal

Government's pulling the belt in, so is the State Government and we are no different to anyone else. However, I think basic services have to be retained.

Q. That's, I suppose this comes back to the operational plan and the operational plan says what we'd like to provide is one thing, what we can provide is this?

A. Correct. Just expanding on that a little bit is that one of our Councillors, or the Deputy Mayor for that matter, will be appearing here tomorrow, indicated that we should have a column of actual costs of provision, and then another column of what the amounts that are granted to those costs against it so that the Department of Local Government, and the Government of the day, the Minister, has a real understanding of what - it's not a matter of building figures out of the air, but the real facts of what it is going to cost to whatever it may be supplying as against the actual moneys that we can afford to provide that service.

Recognising the need to comply with the statutory requirements of the Act is fundamental to good governance. Recognising the need to set aside and utilise restricted funds and utilise them for their intended purpose is likewise fundamental to sound governance.

The first and most fundamental pillar to achieving this outcome is to re-build the required reserves necessary to facilitate this.

In their responses, Councillors failed to accept the importance of this process.

The auditor's report to the 2012/13 annual report provided the following concerns in relation to the Council's ongoing performance.

Material Uncertainty Regarding Continuation as a Going Concern

We draw attention to the financial statements that indicate the Council has recorded a loss of \$968,000 for the year ended 30 June 2013, cash assets were only \$1,002,000 and the unrestricted current ratio of the Council was 0.73:1. Subsequent to year end as noted in Note 23, the cash assets of the Council have continued to deteriorate significantly and is a cash flow crisis. As at 31 October 2013, Council was operating with an overdraft of \$1,130,854 with no other cash asset or investment securities available. The Council sought additional finance from the bank and have been limited to a \$2,000,000 overdraft. The Council has been unable to renegotiate or obtain alternative finance. Further, Council has sought financial assistance from the State Government which to date has been unsuccessful.

The Council has prepared a weekly cash flow budget to 30 June 2014 and based on those projections will exceed its maximum overdraft limit by March 2014 and is budgeted to reach \$3,310,000 in overdraft by early May 2014.

In order to stay within its overdraft limit, the Council would need to significantly alter its business model by either selling plant and equipment, land and buildings, infrastructure assets such as water and sewerage or limiting the use of contractors and reducing employees or hours worked per week for the foreseeable future. All these measures are short term and will not correct the underlying cash flow issues for the Council in the medium to long term.

These conditions, along with the other matters as set forth in Note 23, indicate the existence of a material uncertainty which may cast doubt about the Council's ability to continue as a going concern.

In providing this report it must be noted that it was a review as at 30 June 2013.

As will be apparent from its date, the auditor's report was not provided to the Councillors prior to their suspension. The statement did not come as a surprise to Councillor Looney.

COMMISSIONER

Q. What was your thoughts, I guess, on the qualified report?

A. It was true. We were in dire straits.

Q. There was a line there that says:

"These conditions along with other matters as set forth in note 23 indicate the existence of a material uncertainty which may cast doubt on the council's ability to continue as a going concern."

A. Yes. That was why it was delayed.

Q. Did that shock you?

A. No, it was what I was expecting.

Q. Was there any discussion with other Councillors on that report?

A. Yes.

Q. What was the feeling within Council?

A. Some of the Councillors thought that they may have been able to resolve the issues, but most of us were of the opinion that nothing could be done.

The report to the Council's meeting on 15 October 2013 had given an outline on the draft financial statements.

The report contained the following assessment of the likely content of the auditor's report.

As was the case last year, the Auditor will provide comments on Council's financial position in his report and it is expected to conclude

that Council's overall financial position remains unsatisfactory. It is likely concerns will also be raised about Council's current liquidity situation and the deterioration in its capacity to restrict funds as required by the Local Government Act, Regulations and the Code of Accounting Practice.

While this may have been true, in the past, it failed to consider and to report the seriousness of the Council's financial position.

In the months following 30 June 2013, the Council's position continued to deteriorate. By 30 September 2013, the proceeds of the CDO and the early payment of the FAG had been eaten up and the Council was back in overdraft.

In September 2013, the Council's financial position deteriorated by a further \$794,406 and in October 2013 by a further \$475,246.

The Recovery Plan directly addresses the importance of this concern saying that:

Rebuilding the confidence of essential partners and stakeholders will be a critical success factor for the Council. Sustained lack of confidence in the Council by its bankers, external auditors, State agencies, contractors or suppliers could be fatal to the aspirations of a continuing local government presence in the Shire.

In the period since the cash crisis and the suspension of the Councillors, substantial gains have been made by the Administrator in recovering this confidence.

The ability of the Councillors to continue the re-building process is explored in the latter part of this report.

Awareness of the financial issues

Councillor Page gave evidence that he was aware of the cash crisis affecting the Council from the day he joined the Council.

Councillor Astill indicated that Councillors had been told where the Council's finances were travelling and that he had expected the cash crisis.

MR BROAD

Q.Were you aware that the cash crisis.....in November 2013 was arising?

A. I expected it. I didn't think it was going to be as bad as it has finally finished out of, because, you know, Councillors can only make their decisions on the figures that are put in front of them, and I was trusting those figures up until about probably October/November when I thought those figures were a bit rubbery.

While the information that was being provided to the Councillors was meagre, it did provide an insight into the Council's declining position.

While Councillors may not have known the specifics, it was quite apparent from the report being provided, that the Council's financial position was declining.

Despite this very apparent issue, Councillors failed to exercise their statutory role under section 232 of the Act.

The totality of their evidence fails to provide any reason for what was a very significant failure.

ASSET MANAGEMENT

While much of this report is directed to the Council's financial management, a significant aspect of the overall ills of the Council and, in turn, the focus of the Councillors, centred on asset management.

The comparative information issued by the Office of Local Government shows that in 2012/13 actual asset maintenance expenditure exceeded the required asset maintenance expenditure.

While this figure is encouraging it must not be viewed in isolation.

The comparative information indicates:

- An infrastructure backlog ration (the estimated cost to bring assets to a satisfactory condition) of 7.4, against a group average of 7.5.
- An asset maintenance ration of 1.3, against a group average of 0.9.
- A building and infrastructure renewal ratio of 59.3, against a group average of 101.4.

In its submission to the Inquiry, LG NSW had written:

A further critical consideration to take into account in conjunction with the poor revenue base, is the road network that Central Darling has responsibility for maintaining. The council has a road network of 2,392 km, consisting of 1,602 km of local roads and 790 km of regional roads.

It should be noted that their regional road length is the highest of any council in NSW, with the next highest being other western NSW councils (Lachlan 637 km, Cobar 620 km, Bourke 572 km, Walgett 563 km).

In order to assess this issue, the comparative information of councils with a common boundary was assessed. It gave rise to the following table.

Comparison of Road Expenditure – Central Darling & adjoining councils

Council	Length	Population	Expenditure	Expenditure per capita	% of Expenditure
Central Darling	2,395.8	2,084	2,998.08	\$1.44	32
Cobar	2,320	4,900	1,625.71	\$0.33	34
Bourke	2,453.9	3,027	2,801.73	\$0.92	38
Balranald	1,586	2,343	4,157.92	\$2.62	55
Carathool	2,619	2,700	1,134.07	\$0.42	21
Wentworth	2,318	6,821	959.68	\$0.14	31

In her submission, Councillor Looney expressed concern about the effect of cost cutting on infrastructure in the following terms:

Cutting costs further means Shire infrastructure will deteriorate further regardless of Councillors being reinstated.

Councillor Sullivan's submission put the issue in the following terms:

The problem with reducing the Local Road expenditure is that Shire now has a Local Road network that is costing rural industry with the Shire hundreds of thousands of dollars each year because of

- 1. Reduced Services; Service providers refuse to use local roads.*
- 2. Reduced income; when produce reaches markets after travelling on local roads they are such a condition they are downgraded.*
- 3. Increased cost of production, the service providers that use the roads do so out higher costs. This reduction in income on the Rural Industry results in lost employment opportunities within the Shire.*

Reducing capital expenditure on the replacement of plant and equipment and other Council assets will help balance the budget in the short term, but in a climate of falling real income and rising costs to do business will cost Council more on the long run. The inability of Council to maintain its assets will have an adverse effect on Councils ability to attract highly efficient staff in the future.

The issue was raised with Councillors during the hearings.

Councillor Page provided a pragmatic view, acknowledging that the Council, and other similar councils, had never been viable.

MR BROAD

Q. At the time that Council adopted the budget was it your view that Council could live within its budget?

A. No it's never been my view that this Shire would be financially viable from the day I joined the Shire because knowing the

costings, and I have always put a huge amount of effort in the costings, no matter what Shire I've been on, and this Shire has never been financially viable from the day I joined the Shire due to the infrastructure. Under the Local Government Act you should put away X amount of dollars to replace the infrastructure, it's never been done, not just our Shire. All inland Shires suffer the same financial burden that we do here, so it's not just us, it's all the outback Shires are not financially viable in the long term under the current funding that they have to live with.

Councillor Looney gave evidence acknowledging the issue, attributing blame to the Council.

MR BROAD

Q. If you and the other Councillors were returned, how would you ensure that that plan was carried out?

A. It's going to be very, very difficult, because it's very easy for an Administrator to come in and to cut costs, but it's going to be to the detriment of the Councillors or eventually to the General Manager down the track when things haven't been done and then they're to be done, and where is the money going to come from.

Q. You're talking about asset maintenance and stuff like that?

A. Yes, asset maintenance and all the rest. Everything in the meantime is going to deteriorate because of the lack of funds.

Q. It comes back, I suppose, to the question of there's a hurdle at this moment for Council?

A. Yes, there certainly is a hurdle.

Q. The financial hurdle is in the next year and for some time in the future things have got to be tight?

A. *Yes, and it goes back a long time, because the Shire has never had the money to give each town what it needs, so things have never, ever progressed because there has never, ever been the money there. It has always been something that you just scraped through each year, and this has been going on for years and years and years. I have a list here that I shall give you that I would like to go to the Minister, and it is what I've been collecting when I've had town meetings and everything else, and this is what we require, there's 24 items there, just to bring the Shire up to scratch as a normal town. That is just Menindee, and if you would like one from Wilcannia and Ivanhoe I'm sure they would supply them too. In Wilcannia they do have a lot of indigenous people there that provide funding to Wilcannia, so Wilcannia over the years has received a lot more than what the other towns have because of the access to the funding. Whereas when they say about jealousy or whatever between the different towns, you will find that Wilcannia has always managed to get more than what the other towns have, but it's not through Shire money it's through the access to the extra funding.*

When leaving the hearings, Councillor Looney provided a list of twenty four projects, some infrastructure, some maintenance.

While it reflected her views of Menindee's needs, it failed to recognise the fundamental need to maintain infrastructure.

Regrettably, while financial management issues have focussed the Council's attention, asset management appears to have been totally neglected. Instead, significant efforts have been directed toward providing funds, on an ad-hoc basis, to the individual towns. There also appears to be a prevailing view that the responsibility for the maintenance of assets lies elsewhere.

A major focus of the Integrated Planning and Reporting framework is to highlight, cost, plan and budget for asset maintenance. The Councillors have not demonstrated this focus.

LEGISLATIVE COMPLIANCE

The first of the Terms of Reference direct the Inquiry to investigate and report on whether the Council has properly carried out its functions in relation to legislative compliance.

The answer is clearly 'no'.

The auditor's report of 13 January 2014 reports important breaches of the Act.

The evidence of this report, under the heading 'Financial Management', raises significant concern that the Councillors have failed to properly undertake their role.

Councillors are the governing body of the Council, acting in a similar way to a board.

Councillors conceded that they were generally aware of the Council's failing financial circumstances. However, they failed as a group to respond to and take control of the issue.

Similarly, Councillors were aware of the failure to provide the quarterly budget reviews, but failed to take decisive steps to require the provision of these.

Section 439(1) of the Act provides:

(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 another Act.

It is not suggested that there was any dishonesty on the part of the Councillors. However, the evidence ultimately suggests that they, as a corporate body, failed

to exercise a reasonable degree of care and diligence in carrying out their functions.

Although reluctant to accept responsibility, Councillor Linnett expressed the following view.

COMMISSIONER

Q. As a board do you think you did enough on the basis that you were aware that there was issues, that this control mechanism of the quarterly budget reviews had disappeared. Do you feel as a board, as a Council, you did enough to I guess shake the cage to get those budget reviews back in place?

A. Yeah, good question, sir. Well I think probably, you know, we put faith in the staff and we had, supposed to have had some professional people there, you know financial men and everything, and women, and we were getting the reports and as it turns out now we probably should have been more firmer on it but there was a lot we weren't being told and it was made public not to tell the Councillors too much at times you know. So while we're at fault I don't know if we're 100% at fault by really pushing the issue and then you get on - again that I mentioned earlier about the lack of Privacy Act. Like once we'd seen all the contractor's prices, this and that there, but that wasn't allowed and as long as the budget was, we were told, is within every three months review, as long as its within budget the - everything was okay but it didn't allow for costs shifting from one department or another department.

COMMUNITY LEADERSHIP

It is an interesting task to consider the Councillors' community leadership role in the context of the Council.

The Council has the largest area of any council in New South Wales, but is made up of four or six disparate towns. The physical separation of the towns is greater to the separation between Sydney, Newcastle and Bathurst.

The Council is divided into 3 wards, with Ward A comprising Wilcannia and White Cliffs; Ward B comprising the majority of the Council area (excluding Menindee) and Ward C comprising Menindee and its immediate area. Somewhat curiously, nearby Sunset Strip is not included in Ward C.

The Council appears to focus on the four major towns of Wilcannia, Menindee, Ivanhoe and White Cliffs. Sunset Strip, although significant, appears not to have the same status.

In those terms, it is easy to see how the disparate nature of Shire does little to bind the community. Similarly, it is easy to see how this contributes to the Councillors only being interested in their individual towns' needs, rather than the Shire as a whole.

Despite this, Councillor Astill was swift to point out that Councillors represented the whole community.

MR BROAD

Q. As an elected representative, you were there to represent your community and would you agree that?

A. I just going to have to take you to task on that. We've been taught not just to represent our community, represent the whole Shire and that has been a significant switch in all Councillors in the last five or six years. We've realised that the whole of Council is just as important as our individual towns.

Q. *That's exactly where I was going to go. It's not just the community in Menindee -*

A. *It's the whole of Council -*

Q. *It's the whole Central Darling?*

A. *Yeah.*

Mr Barry Fowler, Acting Secretary of the Sunset Strip Program Association did not share this view.

MR BROAD

Q. *What you are basically saying is that Sunset Strip operates as a discrete village?*

A. *Yes.*

Q. *Can I come back to one thing you said earlier? When I was asking you about consultation you used the expression "They", who do you mean by "they"?*

A. *Well, I guess it's the, you know, Councillors or the officers of the Council.*

Q. *Is it a combination of both?*

A. *Well, sometimes we - you know, we've dealt with - we've dealt with Councillors or other times we've dealt with the staff and generally when it - I guess it gets to a crisis situation, we have had a meeting with the Mayor and the General Manager, and other times we've actually had a Menindee Councillor was appointed to liaise with us and he came out and had a meeting with us with the - with the General Manager. When we had our second community planning forum, we actually invited the Mayor to do the opening and to give him an opportunity to talk about the relationship between Council and that was at the time where the*

Mayor had made a statement saying that thousands had been spent on Sunset Strip on ABC Radio and we asked for that documentation to back that up and at the planning forum he acknowledged that monies hadn't been spent at Sunset Strip and that they needed to a better job but, you know, the projects were talked about that day. He sat there and listened to the - and he said, that's what I'm here for and nothing came of it. We wrote letters saying, yes, the planning day was held at the - in February. Here's the outcome of it. We want money for a viewing platform. We want money for the - and improvements to the hall for 25,000 and then, again, no response so, you know, it had become June. This was when it became, like, 27 June or something that we got then to a meeting, yeah.

Q. The planning day took place in February after the budget had been adopted in the previous June?

A. Yep.

Q. You just mentioned that you had a Menindee Councillor appointed to assist you. As I understand it, Sunset Strip is in ward B, Menindee is in ward C, despite the proximity between the two towns. One of the things you mentioned in the submission is a question about bias or the attitude of Councillors. Are Councillors centred on the town or the villages that comprise their ward?

A. Yep.

Town improvement provided by the Council is determined by reference to a simple division based on the size of the towns. The town improvement funds represent the major funds applied to the towns. Under the arrangement \$70,000 is applied to Wilcannia, Ivanhoe, White Cliffs and Menindee. Sunset Strip received \$20,000.

While the Council provides these amounts, it leaves it for the local community to determine how the funds are to be utilised.

Mr Paul Brown, a former Councillor and Mayor described the process in the following terms.

MR BROAD

- Q. If I can go to another topic, I assume you've completed that, on page three of your submission, after the tables, the third paragraph, it commences with, "However, the major centres", and then continues in the second line, "Too often decisions by Councillors will be made based on how they affect their ward". Can you indicate your views in respect of that?*
- A. The disparity between the different townships is considerable in both demographics and background, and there is a perceived - I suppose a perceived idea in some persons' minds that one town is receiving more than another, and you could refer specifically to Wilcannia where it has been highlighted by other townships as having received various benefits. Kerb and guttering, it has a walkway along the river, it has more parks; there's probably been a lack of understanding as to where those - where the funding for those items has come from. Much of that funding comes from external grants to Council or funding to Council. Council may actually be a conduit for those funds, it may act as the auspicing body, but much of those funding comes because of the make-up of the township, much in Wilcannia comes through Aboriginal sourced funding, whether it's for housing, even our water projects, and much of that is not understood I believe by some representatives from other areas who feel that their townships are being short changed. So when it does come down to particular projects, it's not uncommon or hasn't been uncommon, during my time on Council, for negotiation between Councillors to*

say, well, you'll get this if we get that. I suppose the same thing that happens in the senate these days. Whether that's good or bad is another issue, but it has been difficult at times for Councillors to step outside of their own electorate and make decisions, and I can recall one Councillor speaking to me after a meeting and saying, I had to vote that way, because if I didn't, by the time I get home everybody knew how I voted. That was an item against a particular project for that township, so to me that's proof.

- Q. *One of the things that Council's budget has had over a number of years is the provision of \$70,000 for each town and there seems to be, one, a generic provision in the budget, and two, a subsequent decision by the representatives of the town as to how that money would be spent, can you--*
- A. *This came out of a time when there were projects being run, in Wilcannia in particular, with the CDEP, and there was a project concerning plantings of trees along the riverbank. The CDEP didn't have the funds to provide the trees, and they were looking for someone to source a small amount of money, couple of thousand dollars for materials to have this done. No one had the money. The funding for those trees was eventually sourced through TAFE and CDEP in my understanding was but the following year I believed it was appropriate that Council wouldn't allow in its budget an amount of money that could be made available throughout the year for projects such as that where community groups or community volunteers were performing activities or functions within the township which needed some small amounts of capital, mainly for materials, et cetera, because they had the workforce. That initially was a \$10,000 amount that was put aside and from there it ballooned to 70, and I think in the last budget they put it through at 90,000 odd. The funding was to*

have been based on discussions with community members and councillors of the townships at the works committee meetings which were held, or supposed to be held, quarterly, looking at those things that were being done within those townships. That was the essence of it.

COMMISSIONER

Q. If the community, an individual community, came up with a project, did it have to have the blessing of the ward Councillors, in other words, was the request brought to the Council by the Councillors or did it come directly from community?

A. It would normally come through the Councillors. In most instances the Councillors have a close connection in their community and so they're aware of what is being put to them, and the - most of the electorates have an understanding that their Council has an opportunity to put these items up.

MR BROAD

Q. How did that sort of funding fit within the concept of integrated planning and reporting? The concept of planning the works program over a longer period?

A. Yes, well we'd only just gone into that, obviously it's, what, three years now that integrated planning's been in place. Our first shot at it was based around a consultant coming in, there were consultations in all the townships, there were functions or events at the schools, there were events at the community halls, a wide range of attempts to engage the community in a wider, longer range planning process. We didn't get much more out of it than we had out of previous years to be honest. The second time we'd been through the Better Practice Review that had just been released, and we were trying to make the point to communities

that they needed to be looking ten years ahead and we had to look at where communities would be, what you wanted to see in your community within the next ten years. Unfortunately, again, we weren't getting the input that one would have hoped. It wasn't focussed far enough ahead, much of it was focussed on small individual projects. The last year, obviously I watched what was going on, but much of it was driven from the previous year's program from what I could see.

- Q. The \$70,000 grants aren't strategically based? In other words, there isn't a number of projects that might be fulfilled in stages?*
- A. No. Unfortunately there's been a dependency, again this is my opinion, over the years on what money is available. Suddenly an advice will come out that there's grant funding available for buildings or there's grant funding available for sport and rec or there's grant funding available for something else, and straight away people start to find a way to fit within that parameter or within the parameters of that grant, and so an application goes in. The concept of a shovel ready project is not something that we've ever been overly set up for unfortunately.*

Mr Fowler gave evidence about the issues faced by Sunset Strip, referring to the Council's approach in the following terms.

MR BROAD

- Q. Is there any strategic planning about the use of the funds? You say you get \$25,000. You say that the towns get \$70,000. Is there a strategic plan that says, well, if we had these funds for the next five years, we'll be able to complete these projects; and in year 1 we'll be able to do this part of this project, and year 2 we'll be able to complete it, or whatever it might be. Is there that form of strategic plan?*

A. Well, there is at Sunset Strip, and we have the Sunset Strip community plan, and a Sunset Strip lay management plan, so that's where we've got our projects listed, and say, you know, we've got the people have told us, you know, basically what they want, what the goals are and so last year we've seen, we had our improvements to the boat ramp, and we've seen that funding was available from RMS, Roads and Maritime Services, and, you know, we applied for those funds, and did the work. There is a strategic plan--

Q. You said you applied for those funds, who applied for those funds?

A. The progress association.

Q. The association?

A. Yep.

Q. Your strategic plan, was that developed with Council, or developed by the association?

A. It was developed by the association with the residents. Council attended, the second one and like I say, the Mayor sat, the Mayor was there, and the General Manager was there for the whole period. So they were basically, you know, sat in on the process.

Q. But has that been formally adopted by the Council, as a strategic plan?

A. No, no. It's actually a village plan, well, it's actually the, yeah, it's owned by the, it's not actually the Shire's plan, I guess, yeah but it's certainly, that's what drives anything that we do. There is a council strategic plan, and we participated in the, consultants came around, and we participated in that, and certainly let them

know that, you know, they did that in here but let them have a copy of our, you know, plan, when that process, yeah.

Q. *But that, Council's plan an overarching plan?*

A. *Yeah.*

Q. *It sits above yours?*

A. *Yep.*

Q. *Yours drills down to specific issues, associated with--*

A. *Specifically.*

Q. *-Sunset Strip?*

A. *Yep. We handed that in, but unfortunately, I think, if you go and do a search in that document, you'll find very little reference to Sunset Strip but it is certainly an overarching one, yep.*

The fundamental tenet of the Integrated Planning and Reporting regime is to foster strategic planning. The Council has failed to implement this tenet.

While the Council has limited funds available that may be applied towards town improvement, this does not excuse the need for strategic planning. Rather, it reinforces the need for strategic planning.

The majority of the submissions provided by members of the community failed to support the Councillors. This is not surprising given that there is no evidence that at any stage during the impending financial crisis, the Council provided any information to the community. In fact, there is little evidence that the Council consults or communicates with the community in any meaningful way.

Also relevant, is that the Councillors who addressed the hearings showed little understanding of their responsibility as Councillors. This is despite the fact that some had significant experience in the role.

In summary, the failure to consult, communicate and to provide a strategic plan, indicates that the Council has not properly carried out its functions of financial management, asset management, legislative compliance or community leadership.

CAPACITY TO RESOLVE OUTSTANDING ISSUES

The evidence of failures and inaction previously considered in this report should be tempered by an understanding that the Council is unique.

Its size equates to about 80% of mainland Tasmania, it has a very low rate base and its towns are physically isolated; both from themselves and from major centres. As Councillor Astill put it, the Council faces the tyranny of distance.

In January 2011, the Promoting Better Practice Review report summed up the Council's position in the following terms:

Central Darling Shire Council demonstrates poor strategic planning and a limited view of its role in the local community. Both the elected and corporate bodies express frustration at the current inability of the Council to implement programs and to provide for the community.

Currently, Council appears to be focussed on annual financial survival rather than planning for the longer term. The management plan currently provides limited town budgets, which appear to be little more than the provision of a small budget to provide for some local improvements rather than an ongoing budget to be applied towards a strategically planned program of works.

The position today remains substantially the same.

The question to be answered in this part draws from the failures, considers the uniqueness of the Council and asks:

Whether I can be satisfied that the elected council has the capacity to resolve the outstanding issues and establish a sound foundation for the future sustainability of the Council.

In the lead up to the Council's suspension, there was no evidence of community consultation or effective leadership. There appears to have been total reliance on the new "qualified" General Manager.

The lack of community consultation and leadership appears to be the result of the following:

- The disparate and remote nature of the towns within the Shire.
- The Councillors' total lack of understanding of the situation.
- An apparent inability to communicate the financial crisis and any potential remedy to the community.

In the period since the suspension of the Councillors in December 2013, some significant steps have been taken.

- In March 2014, RSM Bird Cameron provided recommendations and options to improve the Council's financial performance and position.
- An operational plan and budget has been adopted for the 2014/15 financial year.
- The interim Administrator has provided a recovery plan.

The intent of these documents is to evaluate current weaknesses and issues, to provide for the immediate year and to chart the way forward to a longer term recovery.

They are the foundation documents for the Council's ongoing governance.

The Councillors' failure to understand the content of, and the need to implement these documents, was crucial to considering whether to make any recommendation that the civic offices should be declared vacant.

The Councillors saw the financial stress that the Council was in and acknowledged that the recovery plan was a potential way out. However, none of them, either in their submissions or evidence to the hearings, displayed a real

understanding of the complexity and depth of the issues facing the Council. Nor did they display a propensity to tackle the issues head on or any serious vision that the recovery plan be adhered to in the face of “community needs”.

Instead of providing the community leadership required to resolve the issue internally, they continued to blame outside agencies for not providing sufficient and ongoing funds to keep the Council sustainable.

There also appeared to be a “fear” that the community would continue to demand the same, and possibly improved services, as this is what contributed to the Council’s current position.

The Mayor, Councillor Longfellow, indicated that he had gone through the current budget and expressed the following view on it.

MR BROAD

Q.there’s been a period now where there’s been an interim Administrator appointed and there’s been a new budget set. Have you gone through that budget and see where the savings are and where the changes are?

A. I've been through the budget and whilst I don't agree with one particular part of that budget, and that is the cutting of funds to swimming pools, I agree with it and on the letter or the submission that was sent to the Department on the tenth, or I'm not certain, it was in - after the meeting in Sydney where the Department asked for the Council to put forward a submission regarding how they projected to go forward, and that letter I thought was very comprehensive to the Department. With some alterations it is not dissimilar to the one to which the Administrator is operating with at this point.

While not all Councillors were able to attend the hearings, those that did provided various levels of knowledge regarding the current operational plan and the RSM Bird Cameron Report.

Councillor Linnett indicated that he had not read the operational plan and budget, as he had not received it. However, he had read through the RSM Bird Cameron Report.

Councillor Looney indicated that she had only glanced at the operational plan and budget, but had never had access to it. However, she did understand its thrust.

Likewise, Councillor Astill had reviewed the operational plan and budget and expressed the following view on it.

MR BROAD

Q. I won't go into obviously the events that occurred afterwards, but go forward and in the last six odd months there's been a new operational plan and budget introduced. Have you reviewed that operational plan and budget?

A. Yes I have, yes.

Q. What are your views on it?

A. It's achievable. There'll be a hell of a lot of resistance from the local communities, especially the suggestion that we cut our swimming pool times dramatically. When you get ten days in a row over 45 degrees heat here like we did early in January this year and you've got no swimming pool, what are you going to do, let the kids swim in the river? It's the reason we built the swimming pool. You can't teach kids to swim in the river. There'll be kids dropping dead in White Cliffs and Wilcannia with the heat because they've got no swimming pool. I think that was - and when we had our discussion about reducing costs at Council we were going - this is before the Minister decided to sack us, we were actually going through the process of reducing costs on as many things as we could before lunchtime and then we got that letter from the Minister saying you're going to get the

shaft. We were already doing that. The first thing we said we cannot touch is the swimming pools because we've got a responsibility to our communities and to our tourists that travel through the area. When it's - if you ever come up here in the summertime Angus you will realise how incredibly hot it gets and that's about the only thing the kids have got in the town. It's not like they're surrounded by luxury. We give them the basics and hope we can do the best with them, and any suggestion to me in this new budget that they propose, that the swimming pool hours be cut I will oppose and I will do the best I can through the media to make sure it gets the attention that it deserves.

Q. The other report that's been obtained is the Bird Cameron report. I assume you've read that?

A. I've read that. One of the criticisms that Councillors were giving their communities too much. Ask the community whether we've given them too much.

In part, the inability of Councillors Linnett and Looney to review the budget is a reflection on the poor communications in the area, as a number of the Councillors do not have internet access.

In these circumstances, their views on the Recovery Plan may provide a better insight into their capacity to lead the Council forward.

Councillor Astill saw the responsibility lying elsewhere.

MR BROAD

Q. The other is the recovery plan and the recovery plan and you've heard me mention before, has some pillars and that is matching expenditure with revenue and the need to provide an annual surplus of about half a million dollars to be able to build up reserves. Do you see the necessity to do that?

A. *Of course. When I first started on Council we had a million dollars in a trust account. We had investments, we had all those. Then the costs of doing business in the bush has increased so much that they eventually went and someone's got to take the responsibility for the fact that no one was propping up Local Government in western New South Wales, and I don't know who we blame for it but it sticks out like the proverbial, that these western Councils need assistance and attacking Central Darling Council is only the tip of the iceberg, I can assure you.*

Councillor Sullivan, expressed doubts as to whether the Council should be there, in its present structure.

MR BROAD

Q. *Have you read the Administrator's recovery plan is what I'm trying to get out?*

A. *Yes, I have, actually, and my opinion is that in a few years' time the Central Darling Shire will still be in this position.*

Q. *Sorry?*

A. *The Council, if it stays like it is under its current structure, the recovery plan will only postpone the inevitable. What I say is I believe that - what's happened, I believe, with the Council up til now is the Council has got rid of all its cash and frittered it away. It's gone, wherever. However you like to put it, it's gone. What I believe that the Administrator's plan is, and what he's doing, is diverting the Council assets to cash. You're not doing the workforce re-employments, you're not replacing the housing, you're not doing any work on the housing, you're not replacing plant and equipment, right. So if you don't replace those, you don't spend the cash on them, you hold the cash in hand, right but somewhere along the line those things have to be fixed. The*

budget that the Administrator has just released in the 14, 15 year, he has budgeted to spend more money than he's actually going to get in. So if you put your assets into cash and you keep budgeting down that line, the cash is going to go again. If you're looking - I think the figure is half a million dollars a year--

Q. He's looking at a surplus of half a million roughly a year.

A. Well, the only person that will be working here will be the General Manager before long. I mean, there's just not enough - there's only so much money in the barrel and if you're going to keep each year knocking off a half a million out of your limited funds that you've got and not fixing the things around the place that need to be done, you're either going to go broke or you're going to change the structure. So to me, as I say, you're only postponing the inevitable. That's my view.

Councillor Looney was likewise aware of the content of the Recovery Plan, but simply expressed the view that it was flawed because the Administrator had not gone to Menindee.

Councillor Page, who had brought the Recovery Plan to the hearings, was taken to various parts and expressed the following view on it.

MR BROAD

Q. The Local Government Act provides that Council can only borrow against its rates income, and of course, they have an overdraft of 2.5 million. We're talking about a number of years of rates income?

A. Yes.

Q. It's a significant amount that had been lent. Can I go forward, and you have in front of you the recovery plan. Can I go to page 25, if you go to the third paragraph, it reads:

"In reality, the council has for some considerable time, spending more than it receives. There are only two ways to remedy that situation, earn more and or spend less. Opportunities to increase the revenue base of council are very limited. Equity in the financial assistance grants system would be beneficial, but is not the panacea for council's ills. The real and pragmatic answer is to cut costs."

What are your views in respect of that statement?

A. I've said on many occasions and over the last 20 years, a lot of Councillors don't - I'll phrase my words, I don't normally phrase them this way, but I'll phrase them - they don't want to not give the ratepayers the things that the ratepayers see as being their right. So there's another way to phrase it, that the Councils just have had the courage to make the cut. If you do make cuts it affects your employment in the town, it affects the morale of the town. You need to look at both sides of it. Yes, we could be financially viable if roads rates and rubbish, but if you look at the other side of it, what would be the overall outcome and the results, it's not an easy option to take.

Q. You're saying this, that he's not saying that you have to be old RRR of Council, the rates road rubbish council, isn't what he's saying that you've got to be selective in what you provide, because first and foremost you have to balance your budget?

A. Yes.

Q. Do you agree that that has to be the reality?

A. Yes.

Q. I think that comes back to what I was talking about earlier that when Council went through its budget process in February to

May last year, it was looking at not only balancing its budget, but creating a surplus?

A. Unless the hard decisions are made, you'll never have a surplus.

Q. If I can go on to the following page, the interim Administrator says in the second paragraph:

"Rebuilding the confidence of a central partners and stakeholders will be a critical success factor for the council. Sustained length of confidence in the Council by its bankers, external auditors, estate agencies, contractors or suppliers could be fatal to the aspirations of a continuing Local Government presence in the shire."

That's a valid comment.

Q. Would you agree there is that need?

A. Yes. Well, there is, because if it gets around that Council's in this situation, people think if they do anything for Council, they won't be paid, so it does have a pretty big effect on how Council were seeing it.

Councillors Linnett and Longfellow gave the following evidence.

Councillor Linnett

MR BROAD

Q. Have you read the Administrator's recovery plan?

A. Yes, I have.

Q. The Administrator's recovery plan I suppose has a couple of pillars, one of which is the need to match Council's expenditure with its revenue. Do you accept that Council has got only limited forms of revenue and those forms are rates?

A. Yes.

Q. *It's other income, whether that's from works, whether it's from usage charges, et cetera and from grants and from works contracts and do you accept that win, lose or draw those are finite, you can't change those?*

A. Correct.

Q. *Do you agree that expenditure has to be controlled to meet the income?*

A. Totally, yep.

Q. *One of the other things the recovery plan talks about is the need to create a surplus?*

A. Correct.

Q. *It talks about a need to provide a surplus of about a half million dollars per year for at least the next four years, do you agree with that need?*

A. *I do. I do agree with it but it depends whether our towns, whether the services are going to suffer on it, you know. The towns aren't getting a great lot at all really because we've got so many towns and villages in there but yeah, there is a need to do it but again we've got to sort of try and keep our communities going too if we possibly can as Councillors, elected Councillors.*

Q. *I suppose we come to this, that if you've only got so much money you've then got I suppose budget well to make sure you can provide as many services for your communities as possible?*

A. Within?

Q. *Within your budget?*

A. *Correct, yes. You know, as I said earlier I've been in business you know and I know what it's like to value that dollar and you've got to sit down and do your book works and do your budgets with your bank manager each year sort of thing. Its - yes, I agree.*

Q. *One of the other things that the recovery plan talks about is facilitating a culture of compliance. I asked you earlier about whether you were aware there'd been non-compliance with Council's activities, and I talked about the financial activities. Do you agree that there has to be a culture of compliance within the Council?*

A. *Certainly, yeah.*

Q. *Do you see the Councillors as having a role in creating that culture?*

A. *I do.*

Councillor Longfellow

MR BROAD

Q. *The Administrator put together a recovery plan?*

A. *Yes.*

Q. *It's got a couple of pillars in it, one of which is that there's a need to match expenditure with revenue, which is probably the first and most fundamental thing--*

A. *Sorry, I couldn't hear you then.*

Q. *The recovery plan has a couple of pillars, one of which is the need to match revenue with expenditure?*

A. *Yes.*

Q. *I don't think that's probably novel for councils. That's probably what anyone has to do. One of the other points that the Administrator makes is that there is a need to create a surplus to create the funds so that the Council can have reserves. Do you agree with that concept?*

A. *100%. Yes.*

Q. *Do you generally accept what the Administrator has said in the recovery plan?*

A. *Yes, I do.*

Q. *As a Councillor, and I know this is one of those questions that probably sticks in the craw, do you recognise the solution in that sense of the expenditure against receipts and the need to create a surplus lies with the Councillors?*

A. *Yes, I do, but I believe also that if we're given the correct financial - of that we can understand or the whole of Council can understand, I don't believe there would be any disagreement about that at all. We all know that we, I mean the Federal Government's pulling the belt in, so is the State Government and we are no different to anyone else. However, I think basic services have to be retained.*

While recognising the need to implement, some sort of recovery plan, the Councillors were largely lukewarm in their response. Ultimately, for many the need to provide what they perceive as “basic services” to their communities constricts their acceptance of the recovery plan.

Similarly, Councillors have demonstrated only passing adherence to dealing with the issues thrown up in the RMS Bird Cameron report, and accepting responsibility for and implementing the operational plan and budget.

In summary, there are a number of deep and complex issues facing the Shire. Addressing and resolving these issues requires a consistent and ongoing approach, over a long period of time.

It is difficult to see the current Council having the capacity do so, let alone, establishing a foundation for a sustainable future.

OTHER MATTERS

The submissions and evidence provided at the public hearing raise a number of issues.

First, it is apparent that the disparate nature of the local government area, where four towns are separated by two and three hundred kilometres, has generated a perceived sense of jealousy between the towns and the Councillors representing the towns. In most cases, it would seem that this jealousy is misplaced. However, because of the distances involved and the overall lack of adequate funds, the perception appears real.

This situation has led to the Councillors becoming representatives of quasi “village committees” rather than representatives of the total local government area. This, in turn, has prevented them from carrying out their responsibilities relating to financial management, asset management, legislative compliance and overall community leadership.

Second, is the desperate state of staff administration, at all levels of the organisation. This situation, particularly over recent years, has been brought about by the small available staff pool, the lack of staff training at an affordable cost, the remoteness of the area, and the difficulty in recruiting. It has contributed to the accelerated decline in financial management, asset management and legislative compliance. It is considered that improving staff competence would assist in avoiding a repetition of the current situation.

Third, the hiring of two consultant financial officers appears to have been misguided. There is little, if any, evidence that the officers possessed a level of competence required given the Council’s situation at the time. The officers also appear to have had little understanding of the relevant legislative requirements. This is demonstrated by the following:

- The failure to seek approval or advise the Council of the release and use of restricted funds for general recurrent expenditure.

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- The failure to provide the Council with quarterly budget reviews, despite several requests from the Council.
 - The failure to provide timely accounts which, according to the auditor's reports, were delivered several months late in the previous two years.

Had the Council received competent and timely financial advice, it may have been alerted to the impending disaster earlier, and given the opportunity to lessen the fallout.

Finally, comment should be made about the fact that different companies were used to prepare the external auditor's report for the previous two years.

The auditor's report of 17 December 2012, noted that the Council's liquidity position had "deteriorated significantly over the last year". Further, in the part of the report dealing with the conduct of the audit, it was noted that "this poor cash position will have a major impact in the Council being able to deliver services into the future".

Despite this, the only real qualification provided in the report was that the financial statements did not comply, as they were not completed within four months of the year's end.

In contrast, the auditor's report of January 2014, provides several significant qualifications, as follows:

- The lack of Ministerial approval for and misuse of restricted funds.
- The dramatic decline in liquidity.
- The impending breach of the Council's overdraft limit.
- The lateness of the financial statements.
- The "existence of a material uncertainty which may cast doubt about the Council's ability to continue as a going concern".

Based on the findings outlined in this report, it would be difficult for me to recommend to the Minister that the current Council has the capacity to resolve the issues at hand, or to return the Council to a sustainable position for the future.

Declaring civic offices vacant is a recommendation of last resort, and should be avoided if there is a viable alternative. The issues facing Central Darling Shire Council are deep and complex, reaching beyond the immediate financial viability of the Council. In fact, they go ultimately to the structure of the Council area.

Therefore, my considered view is that there is no viable alternative for the Council, other than a lengthy period of administration. Further, that this will be in the best interests of the residents and current ratepayers, in the long term.

This concludes my report on the Public Inquiry into Central Darling Shire Council.

Richard Colley
Commissioner

22 October 2014