

**INSPECTOR OF MUNICIPAL ADMINISTRATION  
REPORT ON THE MONITORING OF THE OPERATIONS  
AND GOVERNANCE OF WANGARATTA RURAL CITY  
COUNCIL**

Peter James Stephenson  
Inspector of Municipal Administration  
20 August 2013

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Ordered to be printed

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C/- Local  
Government Victoria  
Level 14, 1 Spring  
Street  
**Melbourne 3000**

20 August 2013

The Hon Jeanette Powell MP  
Minister for Local Government  
Level 17  
8 Nicholson Street  
**East Melbourne 3002**

Dear Minister

I have now completed three months of monitoring the activities and performance of the Rural City of Wangaratta Council in accordance with the Terms of Reference issued by you on 08/5/2013. I now submit my final report for your consideration.

In my view, the elected Council has failed—and continues to fail—to provide good governance. This is primarily due to a serious breakdown in working relationships between Councillors and between Councillors and the administration; and an incapacity and unwillingness by Councillors to accept that their collective behaviour needs to change. The conduct of a number of Councillors is characterised by hostility and acrimonious behaviour; the denigration of staff and colleagues; and, a lack of mutual respect and goodwill. The level of acrimony is such that the CEO and each member of the corporate management team (CMT) have been or are currently on leave for work related conditions; one councillor who is alleged to be the victim of bullying behaviour by another councillor and is the subject of an accepted WorkCover claim has resigned her position; and the executive assistant to the CEO has also resigned after several periods of leave due to an accepted WorkCover claim..

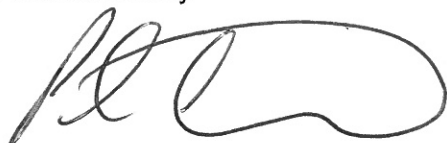
Legal advice provided to the Council suggested they adopt a series of resolutions which were designed to improve workplace safety. To date, the Council has refused to both accept and act on that advice. This lack of action in relation to health and safety matters, combined with the cumulative effect of leave by senior staff—and uncertainty about their future— is impacting on the morale and health and safety of staff throughout the organisation. Further, health and safety concerns directly and negatively affect the capacity of the staff team to appropriately brief— and to seek direction from Council. This in turn impacts directly on both the timeliness and quality of the information provided to Council.

The Rural City of Wangaratta has previously been recognised by many in the sector as a high performing municipality due to the expertise and professionalism of the Chief Executive Officer and the administration. The City is financially sustainable according to objective measures set by the Victorian Auditor General's Office and community satisfaction—as measured by DPCD's Community Satisfaction Survey conducted during February and March 2013—continues to be significantly higher than state-wide and regional centre averages.

The Council has been given ample advice, time and opportunity to rectify its deficiencies. A break in electoral representation will send a clear message that a continuing and serious failure to provide good governance is unacceptable. It should also initiate positive change towards restoring responsible elected representation to the City.

Accordingly, I recommend that you consider suspending and/or dismissing the Councillors of the Rural City of Wangaratta Council and appointing an administrator or administrators until the next general election of Councillors scheduled for the fourth Saturday in October 2016.

Yours sincerely

A handwritten signature in black ink, appearing to read 'PJ Stephenson', with a large, sweeping loop at the end.

**Peter James Stephenson**  
**Municipal Inspector**

## **Appointment**

As a result of a "...myriad of problems that have undermined the operation of the Wangaratta Council", the Minister for Local Government the Hon Jeanette Powell MP appointed me, Peter James Stephenson, to be an Inspector of Municipal Administration under section 223A of the Local Government Act 1989. My task was to oversee the activities and performance of the Wangaratta Rural City Council.

The problems precipitating my appointment included investigations by the Local Government Investigations and Compliance Inspectorate after allegations of breaches of the Local Government Act; and a Councillor Conduct Panel, convened to deal with alleged misconduct by a councillor. In addition, Council had engaged a consultant to examine allegations that a councillor was bullied by the CEO and a Probity Auditor, Mr Bill Scales, was appointed to oversee this inquiry. Further, the Council had engaged an independent industrial relations consultant to assess a number of staff complaints that they have been bullied by a councillor. The resignation of Cr Lisa McInerney and the taking of sick leave by several senior staff—including the CEO—occurred on or about the date of my appointment, adding to the sense of disorder at the Council.

## **Terms of Reference**

The Terms of Reference of my appointment were:

1. To provide advice to the council, individual Councillors and the Chief Executive Officer about governance and conduct issues, and to monitor actions to implement that advice;
2. To provide urgent advice to Council and the administration on strategies for immediate implementation to manage workplace safety issues whilst further investigations take place;
3. To monitor and provide specific advice about Council's meeting procedures and practice;
4. To monitor compliance by Councillors with the recently adopted Code of Conduct;
5. To monitor and provide specific advice about the relationship between individual Councillors and Council staff;
6. To monitor the level of community confidence in the Council;
7. To provide advice about any other matters that the Inspector considers relevant to the above terms of reference; and
8. To report to the Minister on at least a monthly basis throughout the period of appointment and to provide a consolidated 'conduct and governance health check' report after three months following appointment; and otherwise to report immediately if the Inspector identifies any issue requiring urgent action.

## **Overview of Wangaratta Rural City**

The Rural City of Wangaratta (RCOW) is situated approximately 230 kilometres north east of Melbourne at the junction of the Ovens and King Rivers. With a population of more than 27,000, the municipality covers more than 3600 square kilometres and includes the towns of Cheshunt, Glenrowan, Killawarra, Milawa, Springhurst, Tarrowingee, Wangaratta, Whorouly and Whitfield.



The population might be described as largely homogenous, with less than 5% of the population speaking a language other than English at home. More than 17,500 people live within the township, with the population steadily ageing. The population has increased marginally over time, from about 25,000 residents in 1996 to about 26,000 in 2011<sup>1</sup>.

With a diverse local economy, Wangaratta is home to major manufacturing facilities, transport and distribution activities and is the regional headquarters for several state government agencies. Milawa, in the King Valley, is a hub for industries such as Viticulture, cheese making and tourism. The district contributes more than \$1Billion annually to the gross regional product (GRP). Major employment sectors in RCOW are health care and social assistance, retail and agriculture. Unemployment as at the December 2012 quarter was 5.5%, the same as the state average for the same period.<sup>2</sup>.

With an operating budget of about \$50 million and the control of assets worth more than \$350 million, the Wangaratta Rural City Council is an unsubdivided municipality consisting of 7 councillors elected through proportional representation voting. Councillors are:

AMERY, Noel; elected 27 October 2012

ATKINS, Tammy; elected 27 October 2012

FIDGE, Julian; elected 27 October 2012

JOYCE, Don; elected 27 October 2012; previously elected 26 November 2005; 18 March 2000

McCLOUNAN, Colin; elected on countback 11 June 2013<sup>3</sup>

O'BRIEN, Paul; elected 27 October 2012

PARISOTTO, Rozi; (Mayor) elected 27 October 2012; previously elected 18 March 2000; 15 March 2003; 26 November 2005; 29 November 2008.

The Rural City of Wangaratta is currently governed by an inexperienced Council with only two Councillors, Councillor Parisotto and Councillor Joyce having served previously. Councillor Parisotto has served continuously since 2000, while Councillor Joyce has also served several terms, though not continuously. The CEO, Mr Doug Sharp, has been in the role since 2005 and he is supported by a relatively experienced Corporate Management Team (CMT), including Mr Ray Park, a former Alpine Shire CEO, as Director of Sustainability.

Wangaratta Rural City Council is financially sustainable<sup>4</sup> and community satisfaction—as measured by DPCD's Community Satisfaction Survey conducted during February and March 2013—was significantly higher than state-wide and regional centre averages. The City has been able to attract skilled and experienced staff while also attracting support from

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<sup>1</sup> ABS Census of Population and Housing as presented by profile id @ <http://profile.id.com.au/Wangaratta>

<sup>2</sup> DEEWIR; Small Labour Markets

<sup>3</sup> Vacancy created by the resignation of Councillor Lisa McInerney on 8 May 2013

<sup>4</sup> Victorian Auditor General (2012) Local Government: Results of the 2011–12 Audits; available at: <http://www.audit.vic.gov.au/publications/20121128-Local-Government/20121128-Local-Government.pdf>

successive state and federal governments for major projects such as the Ovens River Boardwalk project and the Performing Arts Centre.

### **Monitoring Activities**

Consistent with the terms of reference and since my appointment, I have attended all formal meetings of Council; pre agenda meetings, briefings; and other assemblies of Council. I have also attended regular Corporate Management Team (CMT) meetings, senior management team (SMT) meetings and staff meetings. I have met the Mayor regularly, with each councillor individually on at least one occasion, and have met with all Councillors collectively on numerous occasions.

I have freely made myself available to meet the Mayor and Councillors, Rural City of Wangaratta staff members and members of the public during my appointment. Numerous members of staff at varying levels and departments within the organisation have sought appointments with me. Many members of the public have also taken the opportunity to meet with me including a delegation of nine former Mayors and Councillors. I have also met with a psychologist employed by Council's employee assistance program, who provided her professional insight into the effects of health and safety issues on members of the staff team. At their request, I have also met with representatives of Wangaratta Health, North East Water; Wangaratta RSL Sub Branch; Wangaratta Unlimited; and several other community organisations. I met with Angela Verde, Regional Director DPCD (now DTPLI), at which she discussed the impact that the current situation at Council was having on partnership projects

At each of the meetings with Councillors, including the Mayor, I listened carefully to the views expressed on the issues currently affecting the governance of the Council. I also attempted to gather ideas about how these issues could be resolved to ensure continuing good governance by the Council.

At meetings with the acting CEO, directors and other staff at the Council I have also listened carefully to the views expressed regarding the current difficulties being experienced, in ensuring the orderly business of Council can be attended to in a professional and efficient manner. I have also reviewed various policies and protocols and other documentation relevant to my role.

In meeting with members of the community I have listened carefully to the views expressed.

In performing my role I have from time to time sought advice from the Local Government Investigations and Compliance Inspectorate and Local Government Victoria.

I further understand that because Council has not acted to ensure a safe workplace, the CEO and CMT members are now seeking terms for their separation.

### **Investigations**

A number of investigations are continuing in relation to the Council. These include a number of matters which I referred to the Local Government Inspectorate relating to possible infringements, by Councillors, against Section 76 (D) and (E) of the Local Government Act 1989.

In my previous reports I reported on an alleged attempt by a councillor to direct a staff member in relation to a planning matter and of alleged involvement by Councillors in the procurement process relating to a major Council project.

I understand from Councillor Julian Fidge that there are also at least two matters involving allegations against the CEO and senior members of the Council administration which Councillor Fidge has referred to the Independent Broad-Based Anti-corruption Commission (IBAC). I am not aware of the progress of these matters.

### **Councillor Conduct Panels**

A Councillor Conduct Panel (CCP) which concluded in May 2013 made four findings of misconduct against Councillor Fidge. The panel found evidence of bullying, aggressive and intimidatory behaviour and suspended Councillor Fidge for a two month period, to commence two days after the tabling of the report at the next Ordinary Meeting of Council. That meeting is scheduled for Tuesday 20 August 2013.

Councillor Fidge has attacked the findings of the Panel during interviews for radio, television, and newspapers. He has lodged a stay of proceedings, pending an appeal to the Victorian Civil and Administrative Appeals Tribunal (VCAT) against the findings of the Panel.

During an assembly of Councillors held on Thursday 15 August, Councillor O'Brien asked a series of questions related to the CCP directed to the acting CEO and acting Directors. The thrust of his questions related to the status of the Panel's report i.e. why the authors did not deem it confidential; did the authors have the right to deem that the report was not confidential; how did the Panel obtain several of the documents referred to in the report; and, what right did the Panel have to access these documents? The acting CEO and acting Directors provided answers to some questions and undertook to provide a response to the outstanding matters as soon as possible.

These behaviours suggest that at least some Councillors have not accepted the findings of the CCP, an independent tribunal.

A further CCP in relation to alleged behaviours of Councillor Fidge began sitting on Wednesday 24 July 2013 and is yet to be concluded.

### **Issues in respect to relevant Terms of Reference**

My earlier reports highlighted continuing issues in respect to relevant Terms of Reference as set out below:

*Advice to Council and the administration on strategies for immediate implementation to manage workplace safety issues whilst further investigations take place [TOR 2]*

Health and safety issues as reported in previous reports remain unchanged. The CEO and CMT remain on sick leave and negotiations are underway which suggest they are unlikely to return. Other staff refuse to attend meetings with Councillors.

*To monitor and provide specific advice about Council's meeting procedures and practice [TOR 3]*

In my earlier reports I noted behaviours which may be described as aggressive, intimidatory and/or bullying. This type of behaviour is continuing and adversely affects the conduct of meetings at Wangaratta, including formal Council meetings, pre agenda meetings, forums and briefing sessions. Much effort during meetings is expended at 'political point scoring'. Councillors Atkins and Joyce are regularly targeted in this manner.

The breakdown in relationships between councillors and council staff continue to prevent effective and timely briefing of councillors in relation to decisions before them. With the absence of the CEO and the entire Corporate Management Team, acting Directors do not always have the required corporate knowledge and/or technical information to progress the regular business of council. Further, a lack of trust which some Councillors show towards council officers—including acting Directors—is evidenced by regular challenges to, if not outright disregard for, professional advice given.

The absence of senior staff at internal meetings has impeded the development of Council's asset management program, reducing Council's capacity to access government grants. A number of external stakeholder groups are affected by the 'ban' on staff attending meetings with Councillors: some have not met for some time and in particular, the regional waste management group has not had representation from the portfolio councillor. This has impacted on Council's input into that group. Further, the absence of the CEO has meant that Council has not had representation on stakeholder groups focussing on regional issues.

*To monitor compliance by Councillors with the recently adopted Code of Conduct [TOR 4]*

A lack of adherence to the Code of Conduct as described in earlier reports continues. Personal interactions are often characterised by a lack of respect for the opinions of others and Councillors Atkins and Joyce are regularly targeted with aggressive and intimidatory behaviour.

A dispute between Councillor Fidge and Councillor Atkins is currently the subject of external mediation. The dispute largely centres on an incorrect statement made by Councillor Atkins in a meeting of Councillors convened to discuss contractual matters of the CEO and senior staff. Councillor Fidge called Councillor Atkins a liar and demanded the Mayor initiate a process of internal mediation as described by the Code of Conduct. At that mediation, Councillor Fidge refused to accept Councillor Atkins' apology and demanded that the next step in the process—which is the engagement of an external mediator—be followed. In my view, this is abuse of process for political point scoring and to no real end.

*To monitor the level of community confidence in the Council [TOR 6]*

I have previously reported that community confidence in the Council has been adversely affected by the behaviours of Councillors and in particular the regular public airing of their differences. This situation is unchanged.

*To provide advice about any other matters that the Inspector considers relevant to the Terms of Reference [TOR 7]*

### **Failure to deliver outcomes to the community**

A lack of direction from Council has led to delays in completing a number of strategic planning processes, including the Rural Land Strategy and a local population planning study. A proposal for a major residential development (Reith Road Equine village) has stalled because of the delays in this strategic work, with the result that the developer has sought (unsuccessfully) to bypass Council with a request to the Minister for Planning for a Ministerial amendment to enable the rezoning of that parcel of land.

### **Failure to provide leadership**

The highly publicised council dysfunction, including attacks by councillors on business groups has caused a loss of business confidence in the municipality. Projects impacted include sponsorship for the internationally recognised Wangaratta Jazz festival and a failed bid to hold the Ovens and Murray Football Grand Final in Wangaratta. Both of these are important regional events and create opportunities for local businesses.

Failure to meet project milestones for six council projects involving funding from Regional Development Victoria (RDV) is putting these projects at risk and jeopardising Council's capacity to seek further funding under RDV programmes.

### **Failure to ensure responsible financial management**

Expenditure on director relief, probity audit and councillor conduct panel cost \$338,000 in the 2012-13 financial year. 2013-14 year to date expenditure includes director coverage of \$140k and approximately \$40k for the second councillor conduct panel. Anticipated further expenses include the potential payout of contracts of the CEO and CMT of \$820k; Council's legal fees of approximately \$120k; legal fees of the CEO and CMT of \$10k each; and mediation fees in relation to Councillors Fidge and Atkins of approximately \$2k. This amount does not include any potential exposure as a result of WorkCover or common law claims; and costs associated with recruitment, should the CEO and CMT leave the organisation as expected. Expenditure of this kind is at the expense of potential community projects and/or infrastructure.

The cumulative effect of these expenditures on conduct related matters has been to reduce a foreshadowed budget surplus to budget deficit in 2013-14.

### **Failure to advocate for and promote proposals that are in the best interests of the local community, fostering cohesion**

I have previously reported on representations made to me relating to the Council. These representations continue to represent a loss of confidence in Council, by the community. Issues raised with me consistently include a perceived lack of substance and strategic foresight within the new Council Plan.

### **Steps taken by Council to resolve presenting issues**

Proposed amendment/s to the local law seek to include within its scope all Councillor briefing meetings, forums, information sessions, and pre agenda meetings where officers are required to be present. This would give the Chair of the meeting the capacity to use the local



law to better regulate and control inappropriate behaviour. This will be of little value if the Chair fails to act. Further, there is some doubt that staff will accept that application of the local law to such meetings removes the risk to their safety.

Council has also undertaken some policy development work to support the Code of Conduct which was reviewed and adopted in April 2013. This work involved a full day workshop, however not all councillors were able to attend. Like the Code of Conduct document itself however, policies do not guarantee adherence to behaviours. For example, despite signing the current code of conduct, Councillor Fidge has stated he will not be bound by it.

### **Notice of motion to terminate the employment of the Chief Executive Officer**

Notwithstanding negotiations underway between the legal representatives of Council and the CEO / CMT in relation to separation from the organisation, Councillor Fidge has lodged a Notice of Motion for the next Ordinary meeting of Council scheduled for Tuesday 20 August 2013. That notice of motion calls for the immediate dismissal of CEO Mr Doug Sharp on grounds including "an act of gross disobedience or having neglected to carry out lawful instructions..." Given the events at the centre of this Notice of Motion date back to November 2012, the motivation for this Notice of Motion is questionable.

### **Conclusions and recommendations**

As described earlier, it is my view that certain governance standards and processes at the Rural City of Wangaratta continue to be compromised. The 'stalemate' in relation to health and safety matters continues to impact both on the health and safety of staff, but also the capacity of the staff team to appropriately brief, and to seek direction from Council. Council has had a number of opportunities to adopt resolutions, based on legal advice, that are aimed at protecting the health and safety of staff and continue in their refusal to do so. Councillor Fidge has been asked to sign an agreement in relation to his behaviour towards staff and he continues to refuse to do so. In my view, good governance must include the provision of a safe workplace. A voting majority of the Council appear ambivalent to this requirement.

Through its legal representatives, Council has had the opportunity to agree to provide a safe workplace to facilitate the return to work of the CEO and senior staff but has failed to do so. Both Councillor Atkins and Joyce have continued to request that action be taken to ensure a safe workplace.

Consequently, the CEO and senior officers are still on sick leave with the likely outcome separation from the organisation.

The Acting CEO has sought to negotiate with Council's 3<sup>rd</sup> level managers for improved internal systems and processes to enable a better 'flow' of information to Councillors. However, these staff members have resolved that until the safety of all staff can be guaranteed, they will continue to refuse to work directly with Council.

The Councillor Conduct Panel which concluded in May 2013 provided their findings on Tuesday 13 August 2013. The Panel determined that Councillors Atkins and Joyce had been the subject of bullying, aggressive and intimidatory behaviour. These findings are consistent with my observations that Councillors Atkins and Joyce appear to be unfairly targeted by other Councillors.

The election of Councillor Col McClounan to fill the vacancy left by the resignation of former Councillor Lisa McInerney has injected a positive new dynamic to the Council team. Councillor McClounan has shown a willingness to approach the role and the confronting issues with a mature objectivity and a willingness to talk constructively with all sides within the debate. The Acting CEO, with the support of the Acting Directors, has provided an energetic conduit between the Councillors and the administration. The Acting CEO has also reorganised staff resources to ensure improved support to the Mayor and Councillors.

Despite the positive actions of the Acting CEO and the election of Councillor McClounan I am yet to be convinced that councillors are capable of changing their behaviour sufficiently for the required improvement to governance standards and processes. Of particular continuing concern are the following:

- failure to conduct themselves in a way that is conducive to sound decision-making e.g. by lack of adherence to the Councillors Code of Conduct by Councillors, and lack of agreed protocols for dealing with staff to such an extent that staff feel it is unsafe to put their views forward even on matters of technical expertise,
- lack of will to take collective responsibility by all Councillors, including the Mayor, for the behaviour of colleagues and continued failure to condemn and/or otherwise seek to address the poor behaviour of colleagues;
- continuing allegations of, and Inspectorate investigations into potential breaches and offences against the Act by a number of Councillors;
- the continued desire by a number of Councillors to pursue personal agendas which appear to conflict with governing for the best interests of the whole community as evidenced these councillors conducting separate meetings and appearing to vote as a group in accordance with pre – determined positions rather than exercising independent judgements in response to the issues before them;
- the continued failure to abide by agreed protocols for dealing with the media and abiding by confidentiality requirements necessary for effective decision-making by Council,
- the continuing failure by the Council to recognise and address the occupational health and safety consequences for staff caused by councillor behaviour despite advice from independent consultants and the intervention of Fair Work Australia,
- the continuing failure to respond to the concerns of the community, including senior business representatives, on matters that are critical to the future of the city and region,
- failure to fully comprehend the financial cost to the council of the current circumstances, especially costs associated with staff separations, compensation claims, attraction and retention issues and the costs of ongoing investigations related to conduct and behaviour,
- failure to accept the findings of an independent tribunal constituted to resolve conduct issues.

In my view, the elected Council has failed—and continues to fail—to provide good governance. This is primarily due to the serious breakdown in working relationships between Councillors and between Councillors and the administration; and an incapacity and unwillingness by Councillors to accept that their collective behaviour needs to change. The conduct of a number of Councillors is characterised by hostility and acrimonious behaviour;

the denigration of staff and colleagues; and, a lack of mutual respect and goodwill. This acrimony has resulted in the absence of the CEO and CMT and one Councillor has resigned her position, as has the executive assistant to the CEO. Both the former Councillor and executive assistant have been the subject of accepted WorkCover claims.

Legal advice provided to the Council suggested they adopt a series of resolutions which were designed to improve workplace safety. To date, the Council has refused to both accept and act on that advice. This lack of action in relation to health and safety matters, combined with the cumulative effect of leave by senior staff—and uncertainty about their future— is impacting on the morale and health and safety of staff throughout the organisation. Further, health and safety concerns directly and negatively affects the capacity of the staff team to appropriately brief— and to seek direction from Council, This in turn impacts directly on both the timeliness and quality of the information provided to Council.

The Rural City of Wangaratta has previously been recognised by many in the sector as a high performing municipality due to the expertise and professionalism of the Chief Executive Officer and the administration. The City is financially sustainable according to objective measures set by the Victorian Auditor General's Office and, community satisfaction—as measured by DPCD's Community Satisfaction Survey conducted during February and March 2013—continues to be significantly higher than state-wide and regional centre averages.

The Council has been given ample advice, time and opportunity to rectify its deficiencies. A break in electoral representation will send a clear message that a continuing and serious failure to provide good governance is unacceptable. It should also initiate positive change towards restoring responsible elected representation to the City.

Accordingly, I recommend that you consider suspending and/or dismissing the Councillors of the Rural City of Wangaratta Council and appointing an administrator or administrators until the next general election of Councillors scheduled for the fourth Saturday in October 2016.