

# Municipal Monitor appointed to Colac Otway Shire Council

Report to the Minister for Local Government

## 1. Background

### 1.1 Appointment

On 12 July 2024, I was appointed by the Minister for Local Government as municipal monitor to Colac Otway Shire Council under Section 179(1) of the *Local Government Act 2020* (the Act). The appointment was made for the period ending 31 January 2025.

My appointment followed the Chief Municipal Inspector's investigation of concerns raised with the Minister for Local Government relating to the conduct of Councillors and a lack of adherence to governance rules.

My role as municipal monitor has been to oversee, advise and support the council to improve its governance processes and practices and assist in the lead up to, and following, the local government elections held in October 2024, in accordance with the terms of reference set out in Appendix 1.

### 1.2 Context for Colac Otway Shire

Colac Otway Shire is a large rural council with an estimated population of 22,273 in 2023.

Located in Victoria's southwest, the landscape of Colac Otway Shire is diverse with the renowned Great Ocean Road coastline, lush rain-forested Otway Ranges, and lakes, volcanic craters and plains in the north. Lake Colac is Victoria's largest inland lake.<sup>1</sup>

Colac, the Shire's major centre, is situated on the Princes Highway, 160 kms west of Melbourne and within a commutable distance from Geelong and the rapidly

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<sup>1</sup> Colac Otway | Region summary | Data by region | Australian Bureau of Statistics ([abs.gov.au](https://abs.gov.au))

<sup>1</sup> Municipal Monitor appointed to Colac Otway Shire Council

growing south-western suburbs of Melbourne. Apollo Bay, the second largest centre in the Shire, is a significant fishing port and major coastal tourism destination situated on the iconic Great Ocean Road. The Shire also boasts numerous small towns and tight-knit communities, many of which hold their own unique attractions and swell considerably during peak tourist seasons.

The Shire is built on agriculture, manufacturing and tourism with employment growing in the health services sector. It is home to some well-known and nationally significant businesses including Bulla, AKD Timber and Minerva (formerly the Australian Lamb Company).<sup>2</sup>

Colac Otway Shire is an unsubdivided municipality with seven Councillors elected each four-year term of council. Councillors are obligated to consider the best interests of the entire municipality.

In 2020, seven Councillors were elected to Colac Otway Shire, including Cr Stephen Hart, Cr Graham Costin, Cr Kate Hanson, Cr Marg White, Cr Chris Potter, Cr Joe McCracken and Cr Jamie Bell. Of this initial cohort, Crs Hart, Hanson, Potter and McCracken had previously been elected to council. Cr Tosh-Jake Finnigan and Cr Max Arnott were both elected on separate count-backs during the term following the resignation of Cr Joe McCracken (December 2022) and Cr Jamie Bell (January 2023). None of my observations relate to either former Councillors McCracken or Bell as their terms concluded prior to my appointment.

Six new Councillors were elected in October 2024. Cr Chris Potter was the only returning councillor from the 2020-2024 term and was joined by Cr Jason Schram (elected Mayor), Cr Phil Howard (elected Deputy Mayor), Cr Zoe Hudgell, Cr Chrissy De Deugd, Cr Charlie Buchannan and Cr Mick McCrickard. Of this group, Cr Jason Schram and Cr Mick McCrickard have both previously been elected to Council.

The community has provided some confronting feedback to Councillors (2020-2024) about their performance. The most recent Community Satisfaction Survey results indicate that Colac Otway Shire Council's 'Overall Performance' experienced further decline in 2024 and is now at the lowest level since 2017. The 2024 results indicate that perceptions of the 'Overall Council Direction' declined by four points to a record-low index score of 38. Perceptions about the Overall Council Direction have declined over three consecutive years, following the peak rating of 60 seen in 2021, measured shortly after the commencement of the 2020-2024 term.

Setting the strategic direction for council is one of the key responsibilities for Councillors. Two thirds (65%) of Colac Otway Shire residents think there is 'a lot' of

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<sup>2</sup> *Know Your Council - Colac Otway Shire Council* / vic.gov.au ([www.vic.gov.au](http://www.vic.gov.au))

room for improvement in the overall performance of council. Whilst this is consistent with the state-wide trend, the performance of the Colac Otway Shire Council is significantly below the Large Rural Group average on this metric. Since the 2023 evaluation, significantly fewer residents think council is generally heading in the right direction (43% down from 54%).

During the same period the community provided more positive feedback about the quality of services delivered by the organisation with nine (9) of the 16 services measured receiving an increase in rating. Almost seven in ten households (68%) have had contact with council in the last 12 months, representing a four percent increase on the previous year. Encouragingly, 61 percent of residents who have had recent contact with council provided a 'very good' or 'good' customer service rating. Perceptions of customer service are most positive among residents who interacted with council recently either via telephone (index score of 66) or in person (65).<sup>3</sup> While there is room for continued improvement, these results indicate that the organisation can effectively assist residents to address their requests or concerns.

### 1.3 Monitoring activities

Throughout the period of my appointment, I spoke often with the Chief Executive Officer (CEO) and the Mayors from both terms, separately and together. I held discussions with the Local Government Inspectorate (LGI) and Local Government Victoria (LGV) to elicit a greater understanding of the governance and behavioural concerns raised with the Minister for Local Government.

To enable me to better understand the events, issues, views and experiences associated with governance and behavioural concerns from different perspectives, I met with and interviewed Councillors from both terms individually and as a group, and current and former members of the senior executive and leadership teams. These interviews provided me with the opportunity to interrogate the policies, systems and processes in place to support effective governance and identify both work in progress to strengthen governance and further opportunities for improvement.

I also reviewed recordings of some council meetings held prior to my appointment, and I was provided with copies of emails, file notes, media articles and other relevant documents related to the 2020-2024 and prior terms of Council.

The appointment of a municipal monitor came as a surprise to Councillors in the 2020-2024 term. While all Councillors espoused the belief that they were not personally responsible for the reported poor governance or behaviour, all recounted numerous instances they believed had contributed to my appointment, for which

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<sup>3</sup> [2024 Community Satisfaction Survey Results Released - Colac Otway Shire](#)

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they held their peers or council officers responsible. The CEO and council officers were supportive and welcoming of my appointment.

I attended 9 council meetings, 11 briefings, and 2 submissions meetings, in addition to meetings of the Audit and Risk Committee (ARC), the Chief Executive Officer Employment and Management Advisory Committee (CEOEMAC) and some Councillor-only meetings. I held discussions with Mr Bill Millard and Ms Melissa Field, the independent chairs of the CEOEMAC and ARC respectively, about their observations and suggestions for strengthening the governance of Council. Both independent chairs are highly experienced professionals, and council has and will continue to benefit from their counsel.

At the request of Mayor White, I attended a meeting of the Mayor, CEO and senior management of the Colac Herald to discuss the relationship between the two organisations and a meeting with a Councillor to discuss possible governance breaches. At the request of Mayor Schram, I attended meetings with the deputy Mayor, the CEO and a fellow Councillor to clarify roles and preferred working styles.

Additionally, I met with Mr Richard Riordan MP and Ms Libby Mears the Chair of the Great Ocean Road Coasts and Parks Authority, along with a former Colac Otway Shire Councillor, a former CEO, and external governance consultants engaged to provide expert advice to Council. I also met with several community members who sought a meeting with the municipal monitor about matters relevant to my terms of reference. Their experiences and perceptions of council were informative.

The timing of my appointment enabled me to provide input into the design of the Councillor Induction Program for Councillors elected in October 2024 and support the CEO in briefing consultants engaged to deliver elements of the program. The CEO and executive leadership team embraced this feedback and designed a comprehensive program aimed at supporting the new Councillors to succeed from the outset of their term.

I attended 12 days of Councillor Induction during which I shared my observations about opportunities to strengthen governance and performance. I participated in a briefing session run by the Municipal Association Victoria to learn more about the new mandatory training delivered to Mayors and Deputy Mayors.

The opportunity to monitor the newly elected council was limited due to the timing of my appointment. While I was able to observe Councillors during much of the induction process, council went into recess over the summer holiday period, restricting my ability to determine the extent to which governance and behaviours have improved in a sustained way.

During my appointment, I was contacted by several individuals and groups whose concerns were outside the scope of my terms of reference, and where possible, I connected them to the people or agencies best placed to assist.

## 2. Governance at the Council

**The importance of good governance, culture and trust in government:**

Good governance is a cornerstone of trust in any organisation, while trust in government is fundamental to effective democracy and essential for building

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resilient communities. In my opinion, reliance solely on strict adherence to rules, policies and procedures to achieve good governance is inadequate. Good governance requires a culture of trust and respect. Where this culture exists, there is less reliance on rules to maintain positive standards of behaviour, as people are more likely to act in good faith to preserve their relationships, transcending the minimum standards that rules are created to protect.

The Model Councillor Code of Conduct which came into effect in October 2024 replaces the Standards of Conduct (2020). Both mandate behaviours conducive to the building of a positive culture and trust. The Standards and Code require Councillors to treat other Councillors, council officers, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect. In the absence of these values, governance rules can all too easily be abused or become 'weaponised', as was observed during the previous term of council.

Section 8(2) of the Act defines good governance. A Council provides good governance if— (a) it performs its role in accordance with section 9; (b) the Councillors of the Council perform their roles in accordance with section 28. Furthermore, the Victorian Local Government Inspectorate describes good governance and its importance as being: *"... the council's ability to carry out its responsibilities in an efficient and effective manner through the development and implementation of suitable policies and processes and through sound, defensible decision-making practices.*

*... the council may not always make popular decisions according to its community, but it must always abide by the processes in place to make them....Embedding good governance practices allows the council to drive high standards, assist with the maintaining the legal and ethical trust of the community, manage its appetite for risk, meet its objectives and deliver on its obligations to its community.<sup>4</sup>*

The Independent Broad-based Anti-corruption Commission's (IBAC) findings in relation to Operations Sandon and Leo provide an insight into the issues that arise when Councillors choose to ignore or are unaware of their obligations. There were no matters of corrupt conduct that came to my attention in relation to the Colac Otway Shire Council. However, at times I observed a lack of understanding or a willingness to ignore obligations of good governance. This should act as a 'red flag' for any organisation and its leaders, requiring immediate attention and rectification.

### Why does a culture of trust matter?

A culture of trust within an organisation has been shown to generate greater efficiency and productivity. In recent research, McKinsey identified teams that scored above average on trust were 3.3 times more efficient and 5.1 times more

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<sup>4</sup> [Fact sheet: Governance: What is it and why is it important? | lgi.vic.gov.au](#)

<sup>5</sup> Interim Report for the Minister for Local GovernmentInterim Report for the Minister for Local Government  
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likely to produce results, compared with those with below-average trust.<sup>5</sup> A council that enjoys a workplace culture high on trust is best placed to deliver better value to ratepayers.

Trust in the Council administration and its staff is also important. Local government is the closest tier of government to the community, and as the provider of more than 120 services, it has a real capacity to affect residents' quality of life. The erosion of trust in government undermines democracy, social cohesion and community resilience. The Organisation for Economic Cooperation and Development (OECD) reports that: -

*"Continued low trust environments not only damage social cohesion and political participation, but also limit governments' ability to function effectively and respond to complex domestic and global challenges. Public trust is a pillar of democracy, fostering debate and participation, encouraging compliance with the law, and facilitating reforms. In the face of major environmental, demographic, fiscal and technological challenges, governments need to step up their efforts to strengthen trust, govern effectively and secure democratic resilience".* <https://www.oecd.org/en/topics/trust-in-government.html><sup>6</sup>

Damaging the relationship between local government and the community weakens public confidence, which may negatively impact stakeholder and investor confidence. The weakening of trust in local government undermines the community's resilience to major shocks. These outcomes, if realised, damage the entire community.

*"In an age of uncertainty, we are continually facing new and unforeseen threats at both the national and local levels. The UK's 2010 National Security Strategy states that "... In an age of uncertainty, it is impossible to predict every risk, be they severe weather events, bushfires, health pandemics, industrial accidents or malicious acts...fostering community resilience is a fundamental part of building a strong and enduring national resilience".*<sup>7</sup>

## Observations:

Concerns about governance and Councillor behaviour were brought to my attention by the LGI, current and former Councillors and council officers, key stakeholders and community members. It is important to note that the observations of Councillors' poor behaviour and governance which led to the Minister for Local Government appointing a municipal monitor to the Colac Otway Shire were made during the 2020-2024 term of council. While I do not question their deep

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<sup>5</sup> [Cracking the code of team effectiveness | McKinsey](#)

<sup>6</sup> [Trust in government | OECD](#)

<sup>7</sup> [Community resilience: understanding the concept and its application](#)

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commitment to serving their community, I have very little to say about the behaviours of Councillors observed during the period from July to October 2024 that is positive.

It is important to note that some of the practices and behaviours evident in the 2020-2024 term of Council were also reported to have been observed during one or more prior terms of Council. The normalisation of poor governance and behaviour is especially insidious. When someone challenges the normalised poor practice – they are likely to be met with a defensive and dismissive response. It appears that this has occurred in the Colac Otway Shire Council, and this has led to poor governance and behaviours being tolerated by some Councillors and has also pervaded the culture of the Council staff who have become used to such behaviour. This will require sustained efforts to remedy.

In October 2024, a new Council was elected. Given the very different observations made of Council and Councillors pre- and post-election, I will endeavour to distinguish between the two terms in this report.

**In summary** I observed the following:

1. **A lack of understanding and/or acceptance by Councillors of their role**, with Councillors focused primarily on operational rather than strategic matters. I also found that some Councillors appeared to prioritise the interests of part of the community, rather than making decisions for the benefit of the entire municipality.
2. **A failure by Councillors to fulfil their roles as leaders and stewards of the organisation** – undermining the organisation's capacity to deliver services; conduct which damaged the reputation of the Council's administration, and distancing themselves from the organisation, especially when unpopular or undesired outcomes occurred
3. **A culture of mistrust, blame and on occasion hostility**, with very low to no trust existing between Councillors, some Councillors and the CEO, Councillors and Council staff, and Council and the community - resulting in dysfunctional relationships, inappropriate behaviour and poor governance
4. **A lack of accountability** – Councillors were unable or unwilling to hold their peers to account in a constructive way, enabling poor, and in some cases harmful, behaviour to occur
5. **Poor decision making and delegation practices** contributing to poor outcomes and inadequate risk management
6. **Breaches of Council's governance framework** including obligations outlined in legislation, regulations, governance rules, policies and procedures
7. **A failure to exercise Council's obligations as an employer**, including providing timely and constructive feedback and supporting the CEO to meet Occupational Health and Safety obligations.
8. **A lack of understanding and/or concern in relation to the financial management of the organisation** or the impact of Council's decision making on the long-term sustainability or capability of organisation.

At the time of writing, there are some emerging tensions and behaviours of concern evident. These are associated with differences in understanding about the roles of Mayor and Councillor, preferred styles of communication, the relationship between the Mayor and the CEO, the pressure felt by Councillors to 'make good' on their

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election commitments or to preference the interests of segments of the community rather than focusing on the strategic priorities that will deliver the greatest benefits to the entire municipality.

That said, my observations of the newly elected Council (2024-2028) give me reason to believe that this group has the desire and capability to operate effectively as a strategic governing body. They have expressed a strong commitment to building more effective relationships with each other and the Council administration and leading a transformation to rebuild confidence and trust in the organisation. Early indications are that they are courageously and respectfully holding each other to account.

Achieving their ambitions will demand Councillors' steadfast commitment to establishing and maintaining respectful ways of working and holding each other accountable, focusing on performing their strategic roles while actively and demonstrably supporting the CEO and Council staff to deliver high quality services, participating in ongoing professional development, and being effective stewards and leaders of the organisation.

## 2.1 Role clarity and strategic leadership

*I investigated the Councillors' understanding and performance of their statutory roles and responsibilities, including in relation to the separation of roles between Councillors and the Chief Executive Officer.*

*I observed a lack of understanding and/or acceptance by Councillors of their role, with Councillors focused primarily on operational rather than strategic matters. I also found that some Councillors appeared to prioritise the interests of part of the community, rather than making decisions for the benefit of the entire municipality.*

### Legislated role of a Councillor

Interviews with the Councillors (2020-2024 term) demonstrated a poor level of understanding and/or acceptance of their role. While all Councillors were strongly motivated by their desire to serve the community and applied themselves diligently to the significant workload associated with the role, none were able to effectively describe their role in relation to the definition set out in the Local Government Act 2020, (the Act). Section 28 (1) states: *"The role of every Councillor in representing their municipal community includes the following—(a) to participate in the decision making of the Council; (b) to represent the interests of the municipal community in that decision making; (c) to contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan".*

Councillors demonstrated little awareness of the Act as a primary source of information and obligation.

### Operational rather than strategic focus

One of the most frequently observed and reported issues of poor governance was Councillors involving themselves in operational matters, rather than focusing on strategic decision making and direction setting. The Act (Section 46) makes it clear that it is the role of the CEO is to ensure the effective and efficient management of

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the day-to-day operations of the Council. It is a failure of good governance when Councillors involve themselves in matters which are the responsibility of the Chief Executive Officer. Section 28(3) of the Act states that ...*"the role of a Councillor does not include the performance of any responsibilities or functions of the Chief Executive Officer"*.

The newly introduced Model Councillor Code of Conduct (October 2024) further clarifies the distinction between roles, stating *"A Councillor must do everything reasonably necessary to ensure that they perform the role of a Councillor effectively and responsibly, including by—...not performing or purporting to perform any responsibilities or functions of the Chief Executive Officer"*.

When interviewed, all seven Councillors (2020–2024) described their primary function as being to "meet community expectations". When asked to define 'community expectations', all Councillors described it in terms of personally responding to residents who had raised with them a complaint or request for service. This response involved reaching into operational matters to resolve the matter to the community member's satisfaction. It was common for Councillors to withhold the resident's name, leaving staff no option but to work through them as an intermediary. This resulted in Councillors spending considerable time directing the organisation to resolve routine operational matters without view to policy, budget, equity or consistency of service delivery, rather than focusing on strategic leadership of the municipality.

This approach made it difficult for the organisation to gather all the relevant information needed to respond to residents, track and prioritise issues, and ensure equity of service due to the real or implied pressure placed on council officers to prioritise matters raised by Councillors. The CEO's requests that Councillors use the established customer service and complaint management systems were largely ignored.

Councillors' involvement in operational matters frustrated role clarity, undermined the capacity and capability of the organisation to effectively service its community, and undermined community confidence and trust in the organisation.

### Technical expertise

Some Councillors inappropriately debated technical information provided in support of briefing and agenda papers such as detailed engineering specifications, the results of scientific/technical studies, and other independent expert reports. Lengthy questioning and debating of specific technical details achieved little except to unnecessarily delay decisions, introduce risk, model disrespect for the Council staff and their competencies, and further undermine public confidence in Council.

While some Councillors may have professional or lay experience relevant to a proposal being discussed, the job of a Councillor is not to insert themselves into the role of the organisation's technical experts (internal or external), but to use their knowledge to strategically assist the organisation to improve outcomes for the municipality.

I observed and received written records of Councillors debating at length the technical specifications relating to capital works projects, where officers were questioned repeatedly over a period of many months about whether relevant

standards were necessary and/or had been met. This interrogation continued despite compliance assessments having been obtained from independent regulators and assurances provided by the CEO.

On occasion, this inappropriate involvement in project delivery generated regulatory and safety risks. In one instance relayed to me, Councillors (2020–2024) visited an active construction site to inspect a capital project without the knowledge or permission of site supervisors or the organisation. When challenged about this behaviour, it was dismissed as unimportant based on the Councillors' familiarity with work sites. This familiarity should have alerted the Councillors to their obligation to proactively participate in managing the health and safety risks to themselves, the organisation and their contractors.

While Councillors should not spend time endlessly querying the technical details of proposals or projects, it is appropriate they seek assurance that the systems and processes are in place to ensure effective compliance and risk management. If the current briefing/agenda papers do not provide sufficient comfort to Councillors that all relevant legislative, regulatory requirements have been met in relation to specific projects, the organisation should revise its templates to provide this assurance from its subject matter experts. Additional assurance could be requested from Council's Audit and Risk Committee that the organisation's policies, systems and processes give due consideration to compliance with relevant legislative and regulatory requirements and effectively manage risks where this is not possible.

### Opportunity cost

The opportunity cost of Councillors investing their time and energy in operational matters and/or limiting the organisation's capacity to exercise operational management is substantial. The role of Councillors is to make strategic decisions about how council's resources will be best used for the benefit of all residents, now and in the future. This task requires dedicated attention, time and effort. If Councillors focus on operational matters instead of enabling the organisation to do its' job, the ability of Councillors to perform their role is diminished, robbing the community and the organisation of their unique skills, capabilities and representation in progressing matters of strategic significance. It also undermines the ability of the organisation to strengthen and improve its services, systems and processes to better meet the needs of residents. This in turn limits the organisation's ability to generate public trust and confidence.

### Prioritising part of the community

During council briefings and meetings and in correspondence, I observed some Councillors from both terms strongly associate themselves with a particular segment of the community (geographical location, political preference, special interest group, subset of the business community). The propensity for Councillors to want to please cohorts within the community, or avoid displeasing them, was still evident during the 2024 Councillor Induction sessions, with one Councillor going so far as to say that Councillors don't want to make decisions if they are going to "cop it" in social settings. Putting aside these influences and focussing on good governance and sound decisions will continue to be a challenge for all Councillors. The focus of their advocacy and decision making at times appeared to be strongly influenced by particular interest groups, rather than considering the needs of the

entire municipality. This behaviour is inconsistent with the requirements of the Local Government Act 2020, specifically, Section 9 (2) (b) of the Overarching Governance Principles and Supporting Principles that “priority is to be given to achieving the best outcomes for the municipal community, including future generations; and Section 28 (2) (a) “...to consider the diversity of interests and needs of the municipal community”.

While some residents may have voted for a particular Councillor with the expectation that they will better represent the interests of a particular segment of the community, putting this belief into practice is contrary to the role of Councillor in both subdivided and unsubdivided councils.

Councillors face an unenviable challenge in considering and balancing the diverse interests within the municipality. The transparency of decision-making and resource allocation will be supported by a more strategic approach to the development of council’s new Council Plan and Budget in 2024-2028.

#### Steps already taken by Council:

A comprehensive induction program developed by the CEO and executive leadership team has been tailored for the newly elected Councillors, whether they have previous experience or are elected for the first time. It was designed to provide information, skills, and tools to support new Councillors to establish good governance practices, respectful relationships and a positive culture from the outset of this term. The program included a strong focus on the role of Councillors, the Mayor and the CEO/organisation, and how to most effectively work together to make strategic decisions and facilitate delivery of the Council Plan. The induction program provided a clear overview of the strategic planning framework and explained how the strategic plans set the direction for the development of Council’s budgets, annual action plans and will shape services and programs.

A Councillor Library has been established, and all induction material is able to be sourced for reference, along with other guidance documents. Ongoing professional development opportunities have been scheduled. Induction materials and role statements for Councillors have been circulated to all Councillors. The CEO has updated the protocols for interactions between Councillors and staff to formalise the good governance protocols that have been covered during induction. This protocol meets the CEO’s obligations under section 46 of the Local Government Act 2020 and supports the various legislated obligations of Councillors as well as reinforcing role clarity of all parties. The protocol will be provided to all Councillors and to council staff so that everyone has a shared and consistent understanding.

Council has a range of channels for community members to register their concerns including in person, online, in writing (email or letter) or via a 24-hour hotline for emergencies. Council’s Complaints Policy was reviewed and updated in July 2024 to reflect the Victorian Ombudsman’s most recent advice.

The induction program explained to new Councillors how requests for service from customers are most efficiently and effectively handled by Council staff. Councillors have also been given information cards to help residents engage with the council directly. If residents feel insufficiently concerned about a matter that they elect not to contact Council directly, Councillors should not feel compelled to act as their surrogates. Again, the protocol outlining the appropriate interactions between

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Councillors and Staff has been developed to reinforce the role of Councillors in representing the municipal community rather than advocating in the interests of individuals.

Council's administration has developed a Customer Experience Strategy to improve interactions between Council and residents, with the strategic goal being that people *"will enjoy dealing with Council because our processes are easy, our staff are helpful, and our responses are timely"*. Further resourcing is likely to be required including staff training and ongoing enhancement and refinement of processes and systems such as the Customer Relationship Management (CRM) System. It will be important for the organisation to ensure a culture of service excellence is built, aligned to the agreed service standards. Regular reporting to Council will enable Councillors to monitor performance and discuss with officers their strategies to achieve desired service levels.

### Recommendations:

To assist Councillors to maintain their focus on strategic rather than operational matters, and to support the organisation to strengthen its reputation for responsiveness, build capability and support continuous improvement, I recommend that:

1. Council regularly evaluates its compliance with the Local Government (Governance and Integrity) Regulations 2020. This evaluation should incorporate feedback from the executive leadership team.
2. The practice of Councillors overseeing resolution of customer inquiries cease immediately. Instead, all customer requests for assistance (either services or information) or complaints should be directed to the organisation in line with existing policies and procedures.
3. Council reviews its customer service standards, considering resource availability, complexity and priorities. The Council should request the administration to provide regular performance reporting including emerging trends. In addition, these updated standards should be reflected in relevant policies, procedures and where appropriate management should incorporate these into staff performance plans.
4. Council commits to supporting the CEO to implement the Customer Experience Strategy, including reforms required to reinforce a culture of service excellence. This would involve Councillors ensuring that the organisation has sufficient resources to implement this strategy, including any process, system and cultural reforms required, and that they act as champions of the strategy and associated reforms.
5. Council requests staff to incorporate into its review of policies and procedures an assessment to ensure roles and responsibilities of Councillors and officers reflect the Act.
6. Council seeks assurance from its Audit and Risk Committee that the organisation's systems and processes ensure that appropriate legal and technical standards are met, and/or risks are effectively managed where this is not possible.
7. Councillors guard against actual and perceived bias by transparently representing the interests of the entire municipality and ensuring they are not captured by the interests of any cohort, whether that be a particular business,

geographic community, community member or interest group. An evidenced-based approach to strategic planning and decision making, supported by broad community engagement will mitigate the risk of real or perceived bias.

## 2.2 Relationships, trust and respect

*I investigated the relationships between Councillors and between Councillors and Council staff, including Councillor behaviour with respect to the Councillor Code of Conduct and processes for resolving disputes between Councillors.*

*I observed:*

- 1. a culture of mistrust, blame and on occasion hostility, with very low to no trust existing between Councillors, some Councillors and the CEO, Councillors and Council staff, and council and the community - resulting in dysfunctional relationships and poor behaviour and governance*
- 2. an inability or unwillingness by Councillors to hold themselves and their peers to account in a constructive way, enabling poor, and in some cases harmful, behaviour to occur*
- 3. a failure by Councillors to fulfil their roles leaders and stewards of the organisation – undermining the organisation's capacity to deliver services, conduct which damaged the reputation of the organisation and distancing themselves from the organisation, especially when unpopular or undesired outcomes occurred*

### Respectful relationships and conflict management

Councillors are charged with jointly making decisions in the best interests of the community. To do this well, they rely on the advice and recommendations prepared for them by council officers. Furthermore, Councillors rely on the organisation to implement their decisions. If the Council's culture is one where Councillors don't trust or respect each other, or council officers, the quality of decision making and service delivery can be severely compromised. Organisational cultures where conflict is poorly managed and psychological safety is ignored are not organisations in which staff perform to their best ability, innovate or contribute discretionary effort.<sup>8</sup> In these environments, staff are much more likely to provide 'safe' advice rather than 'frank and fearless' advice.

When interviewed, Councillors variously reported feeling bullied, isolated, harassed and frustrated by their colleagues. They all expressed a lack of trust in their colleagues, and some extended this to include the CEO and council officers. Without trust, the environment became adversarial, with point scoring replacing strategic decision making as the focus of debate. There appears to have been a lack of

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<sup>8</sup> [Cracking the code of team effectiveness | McKinsey](#)

willingness by Councillors to report any breaches of the Code of Conduct or to take productive steps to improve relationships or resolve issues.

Interestingly Councillors elected in 2020 reported the first two years of that term as being among the most stable and productive periods in their memory while recalling the last two years of the term as being among the most difficult in their experience, and indeed, several Council staff supported these observations. The mid-term changes to the Councillor group were reported as disruptive to the established dynamic of Council. This change coincided with a series of contentious decisions made about the election to Mayor and Deputy Mayor positions, which were identified by both Councillors and officers as a source of animosity and loss of trust between Councillors. This loss of trust reportedly fractured relationships and contributed to subsequent poor behaviour and decision making. This included what some Councillors described as the abuse of decision-making and governance rules in council chambers to 'settle scores' for perceived personal slights by other Councillors.

By the end of the 2020-2024 term, it appeared that all Councillors were finding the environment very challenging, and the fracturing of relationships became more obvious. I observed instances of rude, dismissive and subtly manipulative behaviour in briefings and meetings. Governance rules were used to influence or redirect decision making. Alarming, several Councillors admitted they regularly manipulated their colleagues so that they would raise objections or argue against proposals, "we load the gun, and they fire the bullets". The body language and tone of communication was at times very disrespectful.

Relationships between Councillors, the CEO and officers were clearly strained. The risk to staff health and wellbeing by being subjected to inappropriate councillor and external party behaviour led the CEO to take action to limit attendance at briefings and meetings to herself and senior staff. Efforts made by the CEO to communicate the impact on staff of unhelpful behaviours, both from Councillors and external parties, were met with accusations of lying, total disregard with comments like "I make no apology, it's my right ..." and suggestions that staff just needed to "harden up". This total disregard for the wellbeing of the Council's employees, many of them residents and ratepayers, was astonishing.

This observed lack of respect, trust and concern for the wellbeing of others is a serious failure of leadership and contrary to the Standards of Conduct: 1 which states that *"A Councillor must, in performing the role of a Councillor, treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring that the Councillor... (c) does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors..."*.

#### Accountability and the Councillor Code of Conduct:

During interviews with Councillors (2020-2024), it became clear they saw themselves as separate from the organisation and having no responsibility for its leadership, stewardship or any of its perceived failings. This attitude underpinned a culture of blame and recrimination.

I observed some Councillors being openly critical of the organisation, the CEO and council officers during briefings, public meetings and in the media, while doing little, if anything, to build public confidence in the organisation or strengthen relationships. On occasion, Councillors' criticism of the CEO featured in local print and social media. It is not known whether what was reported accurately reflected information shared with the media, however I observed no steps taken by Councillors to correct known inaccuracies in what was reported. This behaviour is inconsistent with the Local Government Regulations (2020) Standards of Conduct 4. *"Councillor must not discredit or mislead Council or public (1) In performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council".*

Despite Councillors' (2020-2024) willingness to describe and share evidence of occasions when their peers behaved poorly or allegedly breached Governance Rules or the Councillor Code of Conduct, they demonstrated a reluctance to take action to address these issues. There was no such hesitation when directing blame at the CEO or the organisation.

One limitation of the Councillor Code of Conduct process is that it relies on Councillors to hold each other accountable, despite there being significant disincentives to do so. It is challenging to act when your colleague's behaviour is not up to standard and tempting to avoid the emotional discomfort of conflict to preserve relationships which may be relied on to support future decisions. Councillors reported a perception that the process for making Code of Conduct complaints is protracted and typically resulted in damaged relationships and outcomes that did not discourage a repeat of the behaviour.

Given Councillors' unwillingness to act when the behaviour of their peers disadvantaged or offended them, it is little wonder that they took minimal or no action when they witnessed poor behaviours directed at the CEO or council officers. There is no mechanism for the CEO or officers to make a Code of Conduct complaint about a Councillor. Instead, the CEO is largely reliant on the ability and will of the Mayor to effectively manage the behaviours of fellow Councillors while being obligated themselves to act to protect the welfare of officers under the Occupational Health and Safety legislation.

The selection of the Mayor is critical for maintaining good governance and behaviour and supporting the CEO to meet their obligations to staff. To be effective, the Mayor requires the skills and a preparedness to reinforce the standards of conduct among the Councillors. Role statements outlining the responsibilities and the desired attributes for the positions of Mayor and Deputy Mayor were shared with all new Councillors. The importance of these roles was also a fundamental discussion at the 'Working as a Team' workshop at the commencement of Induction in November 2024.

Changes made to the Local Government (Governance and Integrity) Regulations 2020 which came into effect in October 2024, require Mayors and Deputy Mayors to undertake additional professional development which may assist to address some of the issues identified above.

### Leadership and stewardship

The lack of Councillors' effective stewardship and leadership of the organisation has no doubt reinforced the community's negative perception of the organisation, further reducing trust in the organisation.

The impact of COVID-19 and associated restrictions on meeting in person may have had an adverse impact on the formation of constructive relationships at the beginning of the 2020-2024 term. I have been advised that tensions and conflict emerged between some Councillors in late 2021 and early 2022. The CEO arranged for Councillors to have facilitated workshops supported by an independent consultant on three occasions during 2022 and 2023 to help them to address their issues and create healthy ways of dealing with internal conflict, but these resulted in little to no evidence of improvement.

Further disruption resulted from the mid-term departure of two Councillors. These combined events may have impaired the building of trust amongst councillors, and between Councillors and the administration, but in my opinion, little was done by Councillors to repair the damage, and in some cases, their actions made the situation tangibly worse.

Councillors, who over time, promoted the belief that the administration cannot be trusted to do a good job or to have the community's best interests at heart, have harmed the relationship between the community and Council administration. These practices included publicly denigrating the reputation of the organisation and individual officers, sharing confidential and in some instances inaccurate information with the media, and by inserting themselves into the operational matters, undermining confidence in the organisation. Inaction from Councillors who refused to hold their colleagues accountable for poor behaviour or governance breaches and stayed silent when the reputations of the CEO and officers were being unfairly impugned. This compounded the harm done.

Many of the concerning governance and behavioural matters I observed were consistent with those reported by current and former Councillors and officers as having existed prior to the 2020-2024 term of Council. There is a risk that the cultural factors that permitted these behaviours to go unchallenged in the past remain, and if not tackled proactively, represent an ongoing risk to the current and future terms of council.

I have had the opportunity to spend considerable time with the newly elected Council (2024-2028) during the induction process and observe its functioning during its first few briefings and meetings. My observations are that this new group of Councillors is very interested in understanding the dynamics which contributed to a monitor being appointed, and keen to demonstrate that it will exercise effective governance throughout its term of office. This will require diligence on their part to ensure poor practices and behaviours do not creep in over time. Good intentions alone will not deliver good leadership or create a constructive culture.

Early indications are positive; however, I have not had the opportunity to observe the Council dealing with any highly contentious issues or under any significant or prolonged strain which could erode this goodwill. The requirements for the new Council to update its 10-year Financial Plan, develop a new Council Plan and Budget and undertake a Rate Review in its first six months will see considerable pressure placed on Councillors while roles are still being learned. This period may test the

Councillors' resolve to remain focused on their strategic role and relationships and resist engaging in operational decision making.

Restoring public trust and confidence in the organisation must remain a high priority, along with investing time and energy in maintaining strong relationships amongst the Councillor group and between the Councillors, the CEO and council officers.

#### Steps already taken by Council:

Councillors (2020-2024) did recognise the need to review and update the Governance Rules. This work was completed just prior to the end of their term. The implementation of some of the changes made resulted in encouraging improvements in governance, but there was insufficient time to assess the extent to which these positive effects are sustained.

The induction program included briefing new Councillors on their role and responsibilities and how their leadership and stewardship can support the building of public trust and confidence.

During induction there was a strong focus on building effective relationships between the Councillors, the CEO and executive leadership team with a clear investment in spending time together, creating an understanding of the professionalism of officers, and the capabilities and capacity of the organisation.

An organisational psychologist was engaged to assist Councillors to establish agreed ways of working to support effective governance and positive behaviours.

#### Recommendations:

Restoring public confidence and trust in the organisation and building a constructive culture of respect and stewardship, will require Councillors' ongoing commitment to professional development and relationship building.

The Mayor will play a critical role in demonstrating effective leadership, a commitment to being strategic rather than operational, holding themselves and fellow Councillors accountable for their behaviour, being an effective spokesperson for the organisation and establishing a constructive and professional relationship with the CEO, and through them, the organisation.

Changing the reputation and culture of an organisation requires a plan and sustained effort over time. I recommend that:

8. Council continues to invest in the work already commenced to establish effective ways of working together (as Councillors) focusing on constructive relationships and behaviours, with the assistance of an external consultant to guide this work.
9. Council engages expert assistance to assist with building a culture of respect, with a focus on conflict resolution, psychological safety, and working collaboratively.
10. Council implements the Protocol developed by the CEO in 2025 to support effective compliance with Council policies.

11. Council engages external expertise to undertake an assessment of Councillor's governance, leadership, and integrity performance and tailor its annual professional development content to focus on areas identified for improvement.

## 2.3 Meeting procedures, decision-making and adequacy of Governance

### Rules

*I investigated Council's meeting procedures and decision-making processes, including Councillor attendance at briefings and Council meetings, the adequacy of the Governance Rules and the Council's policies, processes and practices related to the management of conflicts of interest.*

*I observed:*

1. *Poor decision making and delegation practices contributing to poor outcomes and inadequate risk management*
2. *Breaches of Council's governance framework including obligations outlined in legislation, regulations, governance rules, policies and procedures*

### Meeting preparation and conduct

Councillors' attendance at meetings and briefings and their application of the Conflicts of Interest Policy was consistently good during the period of my appointment. Most Councillors were diligent in their preparation for meetings although, based on their extensive questioning of officers some appeared not to have read material provided, despite the information being clearly covered in the briefing and agenda documents. In some cases, the same questions about a particular matter were directed to officers and answered on multiple occasions, unnecessarily extending meeting times and frustrating other Councillors. On occasion it seemed that this approach was used variously to delay decision making, publicly critique the capability or advice of officers, or undermine public confidence in the administration. Despite the regular and significant impost on the time of officers outside of working hours being raised with successive Mayors and Councillors, no change was made to this behaviour.

Council meetings held during the period from late 2022 to 2024 routinely went for several hours, with it becoming routine for meetings to be extended by resolution when the meeting time exceeded 4 hours. It was not uncommon for agenda items to be deferred, and decisions delayed, despite these extended meeting times. This inefficient use of Council's time was the combined result of poor chairing, repetitive questions, an overwhelming demand for detailed operational and technical information, a lack of understanding of the Governance Rules by some Councillors and what appeared to be the 'weaponising' of those same rules by others to disrupt or influence decision making processes.

It was common for Councillors to express their deep frustration in meetings (public and closed) about the organisation's inability to progress implementation of decisions and projects – when the responsibility for the delays and the power to improve the situation rested with them.

During meetings it was common to observe low levels of hostility and inappropriate body language and comments between Councillors and directed towards officers. These behaviours were rarely called out or managed, especially when directed to council officers.

### Decision making and delegation

The frequency of decisions properly made in the Council chamber being revisited and/or overturned for the purpose of recontesting the original decision was concerning. One notable example of this occurring includes decisions relating to a Council property at 69 McLachlan Street, Apollo Bay (a former kindergarten). In addition to undermining good governance, financial management and damaging Councillor relationships, this practice resulted in the organisation's inability to prioritise projects for delivery given the uncertainty about whether projects would proceed; reduced community, stakeholder and investor confidence; and ultimately unmet strategic objectives.

There are examples of decisions made by Council that have been the result of motions put directly by Councillors which, when implemented, have resulted in dissatisfaction amongst Councillors. When explored, Councillors recognised that this was because the wording of the motion had not necessarily reflected the full intention of the mover, or they had not considered conditions or details that were later deemed by Councillors to be important. Even though the officers implemented the Council decisions as per the resolution, Councillors did not accept officers had acted properly and in good faith, and instead publicly criticised the officers in the Council meeting.

I observed a failing by Councillors to understand or value an effective framework for delegating decisions. At times members of the community have also challenged Councillors about allowing decisions to be made under delegation by officers, even when they have professional expertise, or they are low-cost operational decisions. Some members of the public have claimed that nearly all decisions should be made by Councillors because staff can't be trusted to act in the interests of the community and don't represent the community. In the face of such criticisms, Councillors have at times acquiesced and resolved to remove decision-making powers of the CEO or staff, often for very trivial or operational matters. Not only does this reinforce the perception that Councillors can be trusted while the CEO and staff can't, it also generates unnecessary reports to Council Meetings, additional work for Councillors and staff, delays to decision making and requires Councillors to stay focussed on operational rather than focussing on strategic or long-term matters.

Councillors have expressed views that they should make decisions rather than officers, even on technical or operational matters, because it is what the community expects Councillors to be doing. This again reflects a flawed understanding of the role, or that Councillors' desire to please certain community members or raise their own profile is more important than staying focussed on the strategic issues or their leadership role.

Council has in place instruments of delegation for financial and non-financial decision making. It appears on review that some delegations are overly conservative. While the setting of delegations to the CEO is a matter for Councillors, setting the thresholds too low can create costly administrative burdens and delays, especially when relatively minor operational decisions are required to come to council for decision. Examples include (i) the CEO's financial delegation of \$0.3 million compared to the average being \$0.625 million when benchmarked with 10 other similar councils, and (ii) planning delegations being significantly more restrictive than other similar councils with planners able to approve but not refuse certain types of planning decisions.

When delegations are poorly made, it can exacerbate the lack of role clarity. Such is the case in relation to the operational task of assessing applications to hold events at Lake Colac. Councillors resolved to delegate the process of granting of permits to council officers, but to call in for council decision any applications where officers determined to refuse the permit. Assessment of planning applications for housing development in the Farm Zone is another example of Council applying 'qualified' delegations.

This practice of making qualified delegations, where officers can support planning or event applications but not refuse them, raises concerns about the unbiased nature of decision-making by Councillors and whether they are satisfying their statutory obligations. This practice undermines the reputations of officers as skilled professionals who apply the relevant rules and policies when carrying out their duties on behalf of council.

### Breaches of governance

Council's governance framework includes its own Governance Rules, policies and procedures – all of which Councillors consider and ultimately approve for adoption. In addition, Councillors are bound by the Local Government Act (2020), its associated Regulations (including the Councillor Code of Conduct) and other state and federal legislation to which Local Government is subject.

I observed and received advice about breaches of Council's Governance Rules, policies and procedures and some instances where the Councillor Code of Conduct may also have been breached. Where the latter occurred, advice was sought and/or matters were referred to the Local Government Inspectorate for further investigation.

Issues observed included:

- Inappropriate conduct towards the CEO and officers in Council meetings.

- Failure to act on advice from the CEO regarding psychosocial hazards or support the CEO's actions to address these hazards.
- Breaches of Council's Communications Policy with articles originating or including comment from a Councillor, other than the Mayor and without their approval, appearing in social media, the Colac Herald or on ABC Radio Ballarat. In some instances, the reported content was inaccurate and critical of Council and officers.
- Public commentary by Councillors on matters that are not in the remit of Council and expressing sentiments not representative of an agreed Council position or in the absence of any formal or informally agreed position. These instances created additional tension between Councillors, impacted Council's reputation in the community, and strained its relationships with other agencies and organisations that Council needs to work with to achieve optimum community outcomes.
- Failure to support the Mayor by undermining their role as Council's spokesperson, subtle and overt criticism of their performance, and badgering when dealing with matters relating to the management of the CEO. On one occasion I observed a Councillor call out their peers when they were behaving poorly towards the Mayor however, this was an exception rather than the rule.
- Confidential information being shared with local media and members of the community, with the potential to undermine probity and unbiased decision making.

The Local Government (Governance and Integrity) Regulations 2020 Model Councillor Code of Conduct states that... 4. Integrity (1) *A Councillor must act with integrity, exercise reasonable care and diligence and take reasonable steps to avoid any action which may diminish the public's trust and confidence in the integrity of local government, including by—(a) ensuring that their behaviour does not bring discredit upon the Council; and (b) not deliberately misleading the Council or the public about any matter related to the performance of their public duties; and (c) not making Council information publicly available where public availability of the information would be contrary to the public interest.*

It is my opinion the governance breaches, both observed and reported, have contributed to undermining public confidence and trust in the integrity of the Colac Otway Shire Council.

Since the election of the current Council (2024-2028) I have had the opportunity to observe several briefings and Council meetings. I am encouraged by the constructive approach Councillors have taken to seeking additional information during briefings, the increase in respect afforded to council officers, the application of meeting procedures and the more streamlined dealing with agenda items. Meetings are efficiently and effectively chaired, enabling Councillors the opportunity to debate matters and make informed decisions.

#### Steps already taken by Council:

All Councillors participated in sessions during the induction program which detailed their roles and responsibilities with regard to the Council's Governance Framework.

The Mayor and Deputy Mayor participated in additional mandatory training required under the updated Local Government (Governance and Integrity) Regulations.

Some improvements were made by Council to its Governance Rules at the end of the 2020-2024 term with the assistance of expert independent consultants.

The new Model Councillor Code of Conduct makes explicit the obligations of Councillors to obtain the Mayor's authorisation before making public comments which could be construed as representing Council's views... Section 1(e). Performing the role of a Councillor. *"A Councillor must do everything reasonably necessary to ensure that they perform the role of a Councillor effectively and responsibly, including by—(ii)refraining from making public comment, including to the media, that could reasonably be perceived to be an official comment on behalf of the Council where the Councillor has not been authorised by the Mayor to make such a comment".*

Local Government Victoria has signalled it will be developing Model Governance Rules by the end of 2025. If not mandated, there would be benefits for Colac Otway Shire Council voluntarily adopting the Model Governance Rules to ensure it is operating within a best practice framework.

#### Recommendations:

I recommend that:

12. Council undertakes a review of the current instruments of delegation to enable more efficient operations and better reflect the strategic rather than operational role of Councillors.
13. When finalised, Council adopts the Model Governance Rules to reflect their commitment to best practice governance.
14. Councillors adopt a practice of having regular reflections on their effectiveness, including after council meetings, and that the CEO support this practice and be able to provide feedback.

## 2.4 Support for the CEO including creating a safe workplace

*I investigated the support for the Chief Executive Officer to effectively perform their responsibilities and functions, including in relation to establishing policies and practices that manage the interactions between Councillors and Council staff and contractors, and*

*Council's processes and practices in relation to health and safety, including any matters that may be creating a serious risk to the health and safety of Councillors, Council staff or other persons*

*I observed a failure to exercise Councillors' obligations as employer of the CEO, including providing timely and constructive feedback, and a failure to support the CEO to meet her obligations under the Occupational Health and Safety Act (2004).*

### CEO performance and support

I observed the relationships between the Councillors (2020-2024) and the CEO varied, with behaviours ranging from encouraging and supportive to dismissive, disrespectful, rude and at times hostile. All Councillors undermined the role of the CEO to some extent – whether that was through involving themselves in operational matters, making decisions to unreasonably limit or make ‘qualified’ delegations, failing to support the CEO to meet the obligations of their role, neglecting to provide performance reviews and feedback, or failing to act when other Councillors behaved inappropriately.

Notable gaps in the Councillors’ fulfillment of their obligations were observed in relation to their role as an employer (to the CEO) and their role in supporting a safe and respectful working environment. Successive Mayors failed to ensure that the CEO was provided with regular and timely performance reviews.

Without the opportunity to discuss expectations of the CEO and a forum in which to communicate these expectations and provide regular feedback about performance, relationships were strained. Councillors judged the CEO’s performance informally based on matters, opinions or measures that were not articulated in the CEO’s performance objectives. Without feedback, it was impossible for the CEO to address concerns.

It is the Mayor’s responsibility to ensure that regular performance reviews are scheduled. Some Councillors blamed the CEO for these meetings not being held. This exemplified the observed culture of blame where Councillors refused to take accountability for their own leadership failures and instead directed their ire at the CEO and the organisation.

It should be noted there were some Councillors who, when a performance review was finally conducted, provided a fair and reasoned assessment of the CEO’s performance against the agreed but outdated plan. Others persisted in their attempts to hold the CEO accountable to objectives they had only just determined to be important and had not previously communicated to the CEO.

The appointment of a new independent chair of the CEOEMAC in 2024 made a positive difference, assisting Councillors to meet their obligation to conduct a performance review in a professional manner.

### *Maintaining a safe and respectful environment - access to Council Offices*

There was a significant gap in Councillors’ (2020-2024) understanding of the role they and/or the CEO plays in maintaining a safe and healthy workplace. Councillors demonstrated a lack of understanding and/or commitment to meeting their obligations to ensure physical or psychological safety for their employee, or to act in manner that protects council staff in the workplace.

The Occupational Health and Safety Act 2004 (OHS Act) places obligations on the CEO to ensure council facilities are safe and without risks to health. These obligations extend to Councillors, staff, volunteers, contractors and visitors. Providing a respectful workplace free from psychosocial hazards is an important part of meeting this obligation.

Councillors have an explicit role to support the CEO to meet this obligation as well as their own obligation under both the OHS Act (as officers of the corporation entity). These obligations have subsequently been updated and significantly strengthened in the Model Councillor Code of Conduct which states...“(2) A Councillor, as an individual at the workplace, must take reasonable care for their own health and safety and take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons by—(a) adhering to applicable systems and policies put in place by the Chief Executive Officer to manage risks to health and safety in the workplace; and (b) complying, so far as the Councillor is reasonably able, with any reasonable instruction that is given by the Chief Executive Officer to manage risks to health and safety.”

Despite the CEO arranging for independent experts to brief Councillors about their role in building and maintaining a safe and respectful working environment and the increasing challenges associated with preventing psychosocial harm, the prevailing attitude of Councillors was that this was not an important area of focus for them in relation to the health and safety of staff. Some Councillors rejected the feedback that their behaviour (in and out of the chamber) was a risk or causing harm to staff and suggested that staff “should be used to it” or “have more resilience training”, which equates to an attitude that staff just need to ‘harden up’. Other Councillors indicated they were unconcerned about the reported harm their behaviours were causing. Ironically some also reported being concerned about staff turnover rates and suggested this was in response to the CEO’s leadership rather than the result of a culture they had fostered. In conversations with a number of council officers, their commitment to the organisation and serving the community was evident, as was their struggle to work in an environment where Councillors were publicly critical of officers and their work.

Some Councillors did express concerns that the organisation was not doing enough to protect their wellbeing. I was advised of a traumatic experience in which a former Councillor attended the property of a resident who was upset about a Council decision. During that visit the resident was very distressed and behaved in a threatening manner. Since that event, the protocols for Councillors to make site visits have been strengthened to better manage risks. Councillors are discouraged from involving themselves in operational matters, but if they do engage in this type of interaction, they are strongly encouraged to avoid putting themselves in situations where they have no support. The measures in place to protect personal safety of Councillors was covered in detail during the induction process.

Some Councillors extended their limited regard for safety and wellbeing to the community. For example, during a briefing about a proposal to increase the number of events held on Lake Colac, and allow higher-risk events to occur, Councillors did not prioritise consideration of independent scientific or regulatory advice about the risks to public safety associated with water contamination. The focus of discussion was on questioning the veracity of the advice and criticising officers for presenting what Councillors suggested was ‘negative information’ designed to discourage Council from meeting the community’s expectation that more events would be held. The weight given to satisfying the perceived community desire for more events outweighed consideration of risks to public safety, the council and event organisers – as demonstrated by the supported motion that officers can approve event applications, but any applications which officers intend to refuse are to be directed

to council for decision, with the implication being that they would be approved. Disturbingly, the discussion also included Councillors suggesting that if harm resulted to members of the community, Council's insurance policy is in place to protect it from its own "negligence".

It is clearly important that Councillors, especially the Mayor, have access to the CEO and support staff. Until November 2024, Councillors had access to the general office areas, including teams who hold sensitive information. This created a potential risk of Councillors improperly using their position to influence operational matters or access confidential information. It also had the potential to disrupt the good order and effective operation of the organisation through Councillors seeking to direct staff to undertake tasks without knowledge of their manager or the CEO. This situation has since been resolved through the physical separation of Councillors' work and meeting spaces from the general office area.

#### Steps already taken by Council:

A new Councillor Room has been established.

The tailored Councillor Induction program had a strong focus on workplace health and safety matters including how Councillors can keep themselves safe while carrying out their duties and meet their significant obligations to others including Councillors, staff and the public, in their role of 'officers' of the corporate entity that is Council.

Council has and will continue to benefit from having a skilled and experienced independent chair of the CEOEMAC to facilitate and guide the process of managing CEO performance.

#### Recommendations:

I recommend that:

15. Council clarifies its performance objectives for the CEO at the earliest opportunity and provides transparent annual reviews and regular feedback (at least every 6 months), in line with the agreed performance objectives.
16. The CEO performance review process includes the opportunity for the CEO to provide feedback about Council's performance in supporting the CEO to achieve both Councils' and the CEO's defined goals, as well as how Councillors can support the CEO in meeting the obligations of their role. This process will require support from the Independent Chair of the CEOEMAC.
17. Council makes overt its commitment to creating a safe and respectful environment and include in its regular professional development (at least annually), a review of its obligations and performance.

## 2.5 Financial management and community engagement

*I investigated the Council's community engagement and financial and asset management practices, including its ability to meet current and future needs of the community*

*I observed a lack of understanding and/or concern in relation to the financial management of the organisation or the contribution of their own decision making to the long-term sustainability and capability of organisation.*

### Protecting the long-term financial sustainability of Council

The CEO raised with me the issue of Council's financial sustainability and the work she is leading to restore the financial health of the organisation. This work focuses on addressing the impact of legacy decisions by Council which resulted in the over-commitment of cash reserves. Audited financial statements indicate that significant progress has been made to repair this situation over the last three years.

During my interviews with Councillors (2020-24), none of them raised the issues of the financial management or long-term sustainability, despite Council having received advice from the ARC Chair in 2021 that it did not have sufficient cash to meet its obligations and that they had raised this in previous years. This advice appears not to have caused Councillors who were present at this briefing to take stock of their financial literacy, or the rigor being applied to financial decisions through adopted budgets or through resolution.

Most Councillors did draw my attention to several historic high-profile projects or contracts, including the purchase of two-way radios and upgrading the floor at Blue Water stadium, which had resulted in significant cost over-runs. Project failures were interpreted by some Councillors as evidence of staff not valuing public money. The action taken was not to invest in the project or contract management capability, systems or processes to uplift the organisation's performance, but to "punish staff" by reducing the allocation of budgets to Council's human resources, exposing Council to an ongoing shortage of staff and skills in core functions. This approach of constraining staffing capacity has continued in recent years, including Councillors dismissing consideration of funding key roles where there were no resources to meet OHS and/or legislated obligations or policy expectations, and instead advising the CEO that "if you think these roles are important you can find someone else to sack".

In addition to constraining expense budgets, Councillors have also constrained rate revenue and own-revenue sources over time. During the 2020-2024 term, all four budgets were adopted with rate revenue below the cap set under the Fair Go Rates System, despite acknowledgement that the 'rate cap' was below CPI and indexation relevant to Council's expenses and an underlying deficit in three of these four years. It is my understanding that this was not based on advice from the CEO or administration at the time, and some of these decisions were made during the Council meeting without meaningful consultation with staff to understand the consequences.

All Councils have the right to determine their rate revenue to be collected through its adopted budget, but these decisions should not undermine long-term sustainability of the Council and its ability to meet its financial obligations or provide services for the community into the future.

Councillors did not demonstrate a sound understanding of Council's financial reports or the levers they control to restore balance. They did not question the role their decision making played in there being insufficient cash to cover Council's obligations. Ignoring the obligation to ensure the organisation has the resources needed to implement its strategic plan while maintaining its sustainability is a failure of leadership by Councillors in that it limited their capacity to achieve elements of Section 9 of the Act: the Overarching Governance Principles, particularly (9) (b) *priority is to be given to achieving the best outcomes for the municipal community, including future generations; and (c) the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted.*

All Councils have the right to determine budgets, including revenue levels and sources, but these decisions must not undermine the long-term sustainability of the Council and its ability to meet its financial obligations or support future generations. Councillors expected the organisation to find ways to adjust to the decisions of Councillors, rather than working with the community and council staff to re-design or re-shape the business of Council, displaying an attitude of "all care and no responsibility" in relation to Council's finances.

Councillors and the community should also expect the administration to work hard to identify and implement efficiencies, however this should not be done without a careful and transparent assessment of the resulting risks and service impacts.

### *Strategic asset management*

During my interviews with Councillors prior to the 2024 election, the issue of asset management was not raised, suggesting this issue had no more prominence or focus than financial sustainability. During the induction program new Councillors were presented with an overview of the expected asset renewal demand over the next 20 years and were shown that at current funding levels only about half the demand would be met. Council will need to work with the Council administration and community to comprehensively review its asset portfolio and seek to balance its asset management demands with Council's financial capacity and the community's highest priorities or needs.

### *Steps already taken by Council:*

Councillors have been briefed about the organisation's financial situation ahead of the development of the new Council Plan, Financial Plan and Budget for 2025-26.

Council's ARC is a well-functioning committee supported by several skilled independent members. This committee is well placed to provide expert advice to Council about its financial and other risks and the efficacy of steps taken to mitigate these risks.

### *Recommendations:*

I recommend that:

18. Councillors are required to undertake financial literacy training as part of their professional development.

19. Council works closely with the CEO to develop a clear strategy to achieve financial sustainability and seeks the ARC's support to track implementation and efficacy of the strategy.
20. Council should work closely with the CEO to develop a clear strategy to 'right size' its asset portfolio and integrate its implementation into its strategic objectives when developing its Asset Plan and Financial Plan.

### 3. Recommendations for the Minister for Local Government

There are already a number of improvements implemented or well under way at Colac Otway Shire Council. This is in no small part due to the efforts of the Chief Executive Officer, the leadership team and staff who are committed to serving Council and the community to the best of their abilities.

There are several opportunities I have identified to further support Councils to strengthen its governance and leadership which I recommend for your consideration. These include:

1. Evaluating the impact of changes made to the Local Government (Governance and Integrity) Regulations, and particularly the Model Councillor Code of Conduct (October 2024) to determine whether improvements in governance and behaviour have been achieved and are sustained over time.
2. Giving consideration to mandating the adoption of Model Governance Rules to further promote and support Councils to operate within a consistent framework of best practice governance.
3. Exploring the creation of mechanisms for the CEO and officers to raise concerns about breaches of the Model Councillor Code of Conduct, recognising the inherent challenges in workplace power dynamics, and the need for swift investigation and transparent resolution of matters.

In closing, I would like to thank all the Councillors, the CEO and officers of Colac Otway Shire who shared candid advice and insights into the issues they experienced within Council. There is no doubt that all parties are motivated by a deep commitment to public service and a desire to deliver good outcomes for the community. The issues that led to poor governance and behaviours are complex and not the fault of any one individual. They are more the outcome of a series of leadership and governance failures, which when compounded, created a challenging and sometimes harmful environment. This constrained Council's ability to deliver the best possible outcomes for the community.

As has been seen, these issues are not isolated to the Colac Otway Shire Council, and I encourage the new Council to remain vigilant for any indication that its own contribution to public service may be compromised by a return to these behaviours.

Thank you for the opportunity to prepare this report for your consideration.

**Christine Ferguson**

**Municipal Monitor, Colac Otway Shire**

## Appendix 1:

### **TERMS OF REFERENCE OF APPOINTMENT OF THE MUNICIPAL MONITOR TO COLAC OTWAY SHIRE COUNCIL APPOINTED UNDER SECTION 179 OF THE LOCAL GOVERNMENT ACT 2020**

**Having regard to the confidential advice of the Chief Municipal Inspector and without limiting the Municipal Monitor's functions and powers under sections 180 and 181, respectively, of the Act, the Municipal Monitor is:**

1. To monitor the governance processes and practices of the Council, with specific regard to the following matters -
  - a. The Councillors' understanding and performance of their statutory roles and responsibilities, including in relation to the separation of roles between Councillors and the Chief Executive Officer.
  - b. the Council's meeting procedures and decision-making processes, including councillor attendance at briefings and Council meetings, the adequacy of the Governance Rules and the Council's policies, processes and practices related to the management of conflicts of interest
  - c. the relationships between Councillors and between Councillors and Council staff, including councillor behaviour with respect to the Councillor Code of Conduct and processes for resolving disputes between Councillors
  - d. support for the Chief Executive Officer to effectively perform their responsibilities and functions, including in relation to establishing policies and practices that manage the interactions between Councillors and Council staff and contractors
  - e. the Council's processes and practices in relation to health and safety, including any matters that may be creating a serious risk to the health and safety of Councillors, Council staff or other persons
  - f. the Council's community engagement and financial and asset management practices, including its ability to meet current and future needs of the community
  - g. any support needed in the lead up to and following the elections in October 2024 to ensure good governance at the Council; and
  - h. any other matters that may be affecting the Council's ability to effectively perform, including behaviour that may be preventing the Council from performing its functions
2. To advise, and provide any relevant assistance and support, to the Council in relation to improvement of the Council's governance processes and practices, with specific regard to the matters raised in clause 1.
3. To assist the Council to develop an Action Plan and progress update for any necessary governance improvements, with specific regard to the matters raised in clause 1.

4. To report to the Minister for Local Government, with respect to the matters in clause 1, on:

- a. any steps or actions taken by Council to improve its governance and the effectiveness of those steps or actions; and
- b. any recommendations in relation to the exercise of any Ministerial power under the Act.