



MUNICIPAL MONITOR'S REPORT ON THE GOVERNANCE OF THE CITY OF YARRA

Yehudi Blacher

Municipal Monitor to the City of Yarra

June 2022



Background

My appointment as a Monitor for the City of Yarra commenced on 20 December 2021 for a period of 6 months.

The terms of reference governing my appointment are outlined at the Appendix to this report.

In summary they require me to provide assistance and support to the Council in relation to improvement of its governing processes and practices and to report to the Minister on actions taken by the Council to improve its governance.

Throughout this report references to “the Council” should be read as relating to both Councillors and Council officers. Where matters specifically related to Councillors or Officers only I have made that clear in the text.

I was provided with a comprehensive set of Council policy documents. These included:

- Documents used in the Councillor induction process conducted shortly after the 2020 Council elections
- The Council’s Community Vision
- The Council Plan
- The Annual Report
- Agenda and minutes of all Public Council meetings, Confidential Council meetings, Councillor briefings
- The Audit and Risk Committee Charter and activity report for the first half of 2021
- The Council’s meeting rules and procedures
- The Councillor Code of Conduct.
- Documents relating to the appointment of the CEO


At the first opportunity, I met with all available Councillors to explain my role and referred them to my terms of reference. I emphasised that my role was primarily but not exclusively an advisory role in relation to their governance practices and procedures.

I indicated that I would give them advice on the adequacy of their policies in relation to these matters and any changes I thought should be made.

I made it clear to the councillors that it was not my role to intervene in the specific decisions they made on other matters, as long as they were properly made.

During the period of my appointment, I observed all Council meetings and also had access to the streamed Council meetings undertaken in 2021. I also attended most Councillor briefings and workshops being undertaken to revise key governance documents.

I met with the former CEO on two occasions before she left the Council and at least weekly with the Acting CEO.



I met fortnightly with the Mayor. I also met with each of the Councillors, some on numerous occasions, both at my and their requests.

At these meetings Councillors sought my advice on various governance issues and matters relating to relations with other Councillors.

On my first day in the role, I sent around a circular to all staff outlining my role and inviting anyone who wished to talk to me about matters relating to my terms of reference to do so.

A number of staff at various levels in the organisation took up the offer.

I also met with members of the Council's Executive both individually and collectively.

In addition, I met with representatives of numerous community organisations who wished to give me a perspective on the Council.

All meetings were conducted on an entirely confidential basis.

Context

Yarra City Council is located immediately to the East and North east of the Melbourne's CBD comprising the suburbs of Abbotsford, Alphington (south of Heidelberg Road), Burnley, Carlton North, Clifton Hill, Collingwood, Cremorne, Fairfield (south of Heidelberg Road), Fitzroy, Fitzroy North, Princes Hill and Richmond. It has a population of approximately 100,000 people.

Over the past two decades, by virtue of its proximity to the CBD and as a result of State Government planning policies, it has undergone significant densification and other changes in its urban form and will continue to do so in the future.

The Council has a large number of community groups and individuals actively interested in having input into Council policy matters. To its credit the Council has encouraged an expectation that these groups and individuals be given the opportunity for significant input into policy formulation.

Among these are a number of highly articulate community groups and individuals with strong connections to mainstream media outlets and active use of social media which amplify normal differences of views between councillors. Some councillors actively encourage and indeed use these outlets to create a false impression of controversy and indeed crisis in relation to certain matters.



Observations

Councillor to councillor relations

As a result of the November 2020 Council elections 6 new Councillors were elected – four under a Greens umbrella and two independents. Of the other three Councillors two have been on the Council for over ten years and one for three years. The Councillor elected as Mayor was one of the six new Councillors.

During its first year of operation, apart from having to deal with issues relating to the Covid pandemic, the new Councillors had to deal with the challenge of understanding their roles. Whilst they undertook the required Councillor Induction Program, a number of the new Councillors felt that the program was unsatisfactory and approaches seeking further professional development opportunities were not successful.

It was also evident that a number of them struggled to distinguish their role as Councillors from their party-political allegiances.

A number of the new Councillors advised me that they had sought to review key Governance policies of the Council. For whatever reason this had not been done by the time of my appointment some thirteen months after the election.

The Covid pandemic meant that Councillors rarely had the opportunity to spend face to face time together. This made establishing normal personal relations very difficult.

On the basis of social media postings provided to me, the language used in some social media postings did not comply with the standards expected of Councillors


The unfortunate circumstances of one Councillor being charged with alleged assault also led to some ugly interactions during Council meetings.

During my time as Monitor the interactions between Councillors at Council meetings seem to have improved. The same applies to the language used in social media postings.

However, it is unclear as to whether that is due to my presence or Councillors' growing familiarity with each other -probably a bit of both.

Councillor Briefings

Councillors have an obligation under the Local Government Act to ensure that they understand the issues on which they are making decisions and that these decisions are made in the interests of the whole community. Many of the matters considered by Council are technically complex and/or ones on which there are a variety of views in the community. With



the best will in the world, without discussions between Councillors themselves and with officers it is unlikely that the best decisions are made in the interest of the community.

It is therefore curious that there appears to be a reluctance by the Council to mandate attendance at Councillor briefings by Council officers on matters to be considered at forthcoming Council meetings. I suspect the community would be surprised that Councillors are not required to attend Council briefings.

Attendance at councillor briefings is a component of the Governance Rules currently subject to community consultation. As it now stands the policy only proposes that Councillors are *expected* to attend Councillor briefings with no substantive sanctions for those who do not comply with this expectation. The final Governance policy is due to be considered by Council in early August.

Councillor Code of Conduct and Social Media Policy

During my time as Monitor I have assisted the Council in preparing a revised Councillor Code of Conduct and a new Social Media Policy. These were completed in March 2022.


Most Councillors are generally complying with the Code of Conduct and Social Media Policy and have been responsive to requests to adjust their behaviours when non-compliance has been identified. Whilst it is appropriate for Councillors to have the time to adjust to the new arrangements, should instances of non-compliance continue the Council may need to consider further action in accordance with the Code or the Local Government Act 2020.

There remains one issue in relation to these policies which the Council omitted to address. Under the revised policies there is no provision against personal criticisms by Councillors of their Councillor colleagues using social media. One recent posting has done just that resulting in abusive postings of those Councillors by some community members. The posting was subsequently retracted but the damage was done by the initial posting.

The Code, as it should, allows for Councillors to engage in robust political debate in relation to Council decisions. However, naming particular Councillors is not robust debate but an attempt to denigrate one's colleagues and should be specifically proscribed.

Charter of Mutual Respect between Councillors, Staff and the Community

Council officers are also developing a Charter of Mutual Respect between Councillors, Staff and the Community to govern the ways in which interactions between councillors, staff and the community should be conducted. This charter is necessary because the tone of some of



those interactions have been inappropriate to the proper conduct of Council business. It is scheduled to be considered by Council in July.

Policies and processes for the appointment of the Chief Executive Officer (CEO)

On my arrival as Monitor the process to appoint the new CEO was underway. Following discussions with the Mayor and an experienced former Council CEO, I determined that my involvement in the process should be one of oversight rather than active participation in the selection process.

The Council had prepared a CEO search strategy. I reviewed that document and found it fit for purpose.

Whilst the selection process was underway, I had regular conversations with the Mayor regarding progress. To its credit the Council kept within the process outlined and unanimously appointed the successful candidate.


During my time as Monitor the Acting-CEO was excellent in his leadership of the Council. There remain, however, a number of issues regarding the performance of the Council administration which need to be urgently considered by the incoming CEO. These include the conduct of the Council's planning processes, its organisational structure, the lack of a robust performance management system, under investment in IT systems, certain HR issues and some governance matters relating to possible conflicts of interest.

The new CEO Ms Sue Wilkinson will commence on 27 June one week after my role as Monitor ceases.

Council's Planning Department

During my period as Monitor I met with representatives of numerous community organisations. I also received some correspondence from individuals objecting to particular planning decisions. It was not my role to second-guess those decisions provided they were properly made. I found no instances where due process was not followed.

The most common theme raised was the lack of reasonable engagement by the Yarra planning department. This is an issue not of competence. My observation is that the staff are technically very capable and committed to their jobs. The problem is one of culture. The planning department appears to feel under siege with a high workload and insufficient staffing resources. Organisations in these circumstances often react by turning inwards and defensive. Such cultures are slow in developing and difficult to change.



In my short time as Monitor some planning officers have been subject to verbal abuse at meetings and in correspondence.

Despite these pressures there is an obligation on the part of the planning department to better engage with those individuals and organisations seeking to be heard in ways that go beyond the strict requirements of the Planning and Environment Act 1982; particularly in relation to large scale commercial developments.

This is not just because a more open approach to the councils' processes is likely to reduce the level of criticism of the planning department. No less significant is the complexity and volume of planning issues Yarra has to deal with, reflecting its decades-long transformation into a municipality where residential and commercial developments must coexist cheek by jowl. In this context the planning department needs to spend much more time engaging with the community, explaining in non-technical language the Council's vision of how commercial and residential development can be integrated in ways that benefit all sectors of the municipality.

Chief Executive's policies and practices to manage interactions between Councillors and staff


Whilst Councillors generally understand the distinction between their roles and those of staff, I have observed a number of instances where staff have been criticised by Councillors in public meetings and in social media postings. On a few occasions I have also observed community members criticising Council staff without intervention by the Council. Council officers have no opportunity to defend themselves and the Council has an obligation to prevent it.

One of the roles of the Chief Executive is to work with Councillors to establish an appropriate framework for Council meetings. Some elements of this are being developed in the Governance Rules referred to above and the proposed Charter of Respect between Councillors, Staff and the Community.

Council's financial position

Yarra Council's current financial position is unsustainable. In part this is due to significant reduction in revenue as a result of the Covid pandemic. However, this reduction masks structural budgetary problems which have built up over a number of years. Decisions made and avoided by previous Councils have left the current Council with a problematic legacy which needs to be addressed.

Issues the Council is going to need to address in the future include an historical reliance on Government grants and borrowings to balance the budget, high levels of staffing and overheads when compared with similar inner urban councils, particularly in relation to



corporate services, underinvestment in business improvement IT systems and historical reluctance to increase charges in line with costs increases for Council provided services.

As part of its 2021/22 budget the Council allocated \$150,000 to undertake a strategic review of its finances. Unfortunately, this review had not commenced by the time I took up the role of Monitor. Consequently, the opportunity to act on the review's recommendations in the current budget has been lost.

I assisted the Council administration to prepare the review's terms of reference. The review commenced in March with a first draft being considered by the Council in June. The final report is not likely to be considered by Council until sometime later.

Yarra's 2022/23 budget is currently out for community consultations. In this budget, the Council is proposing to take the first small steps to addressing its revenue problems. The budget will not be formally adopted by the Council until its June meeting.


Summary and Recommendations

This report outlines progress by the Council towards improving its governance arrangements and work still to be completed.

Key decisions to improve Council's governance and financial sustainability have yet to be made. This is due to a combination of past administrative inertia, the lengthy processes of Council decision-making and the fact that the new Chief Executive Officer has not yet commenced.

Specifically, these decisions and matters for further consideration relate to:

- a) Completion of the Council's Governance Rules; particularly the need to mandate attendance by Councillors at Council briefings.
- b) Completion of the proposed Charter of Mutual Respect between Councillors, Staff and the Community.
- c) Sustained compliance with the recently approved Councillor Code of Conduct and Social Media Policy.
- d) Amendment of the Code of Conduct and Social Media Policy to proscribe personal criticisms by Councillors of each other.
- e) Issues relating to the Council's administration which the new Chief Executive will need to address.
- f) Approval of the 2022/23 budget and
- g) Decisions the Council will need to make as a result of the review of Council finances.



To ensure these matters are addressed, it is my recommendation that a Monitor be appointed to the City of Yarra for a further 3 months.

Finally I would like to express my appreciation to Councillors and Council officers for their cooperation and support during my time as Monitor.



APPENDIX

Terms of Reference

Without limiting the Municipal Monitor's functions and powers under sections 180 and 181, respectively, of the Act, the Municipal Monitor is:

1. To advise, and provide any relevant assistance and support, to the Council in relation to the improvement of the Council's governance processes and practices, with specific regard to the following matters –
 - a. the Council's meeting procedures and decision making, including Councillor attendance at Council briefings, the adequacy of the Council's Governance Rules and Councillor adherence to the Governance Rules;
 - b. the Council's policies and processes related to the appointment of the Chief Executive Officer;
 - c. the Councillors' understanding and performance of their statutory roles and responsibilities, including the adequacy of the Council's Councillor induction training program and any ongoing professional development opportunities;
 - d. the Council's Councillor Code of Conduct, Councillor behaviour with respect to the Councillor Code of Conduct and processes for resolving disputes between Councillors;
 - e. the Chief Executive Officer's policies and practices that manage the interactions between Councillors and Council staff and contractors, and compliance with those policies and practices; and
 - f. any other Council governance policies, processes and practices.
2. To monitor the governance processes and practices of the Council, with specific regard to the matters raised in clause 1.
3. To report to the Minister for Local Government, with respect to the matters in clause 1, on:
 - a. any steps or actions taken by the 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.