

Municipal Monitor appointed to Horsham Rural City Council

Report to the Minister for Local Government

1. Background

1.1 Appointment

I was appointed as the Municipal Monitor for Horsham Rural City Council on 22 July 2022 for the period up to 31 January 2023. The Terms of Reference of Appointment (Terms) outline the role¹ and are detailed in 1.3 of this report.

Primarily, the Terms require me to monitor the governance processes and practices of the Council with specific regard to the key areas of concern identified in a letter from the Mayor and Chief Executive Officer dated 14 June 2022. The Terms also require me to provide the Minister with a final report outlining:

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

1.2 Context for the Rural City of Horsham

Horsham Rural City Council (HRCC) is in the western part of the state, covering 4267km² with a population of 20,369². The 2021/2022 Annual Report³ documents the Council's Total Income as \$60 million (M), Total Assets as \$625M, Total Equity as \$596M, and a staffing profile of 188 full time equivalent.

HRCC has seven Councillors. The current cohort are all first-time Councillors except for one Councillor who is in his second term. During my appointment a first-term Councillor resigned, and a new Councillor was elected via count back on 6 September 2022.

The Council has a record of consistent turnover in its Councillor cohort. In 2020 six of the seven Councillors were first-term Councillors; in 2016 four of the seven Councillors were first-term Councillors; and in 2012 five of the seven were first-term Councillors. Over three election periods only four Councillors were returning Councillors; there have been 17 Councillors during this period. In my opinion, this is significant due to the lack of long-term corporate knowledge and strategic and historic context within the Councillor cohort.

1.3 Monitoring activities

The approach I took in the first instance was to:

- Request a suite of core governance documents for reference and review. They included the Councillor Code of Conduct, Governance Rules, Council Plan 2021-2025, Annual Report, Councillor Induction Manual, Audit and Risk Committee Charter, Risk Management Policy, and Occupational Health and Safety Policy.
- Meet with each Councillor to discuss my appointment with them, and to ask a standard suite of questions to provide me with insight about each of their experiences of being a Councillor.
- Meet with each member of the Executive Team (Chief Executive Officer and Directors) to discuss my role.
- Review Council Meetings available on Livestream, covering the period 28 March 2022 to 27 June 2022.
- Speak to the Audit and Risk Committee Chair and internal audit provider about the effectiveness of the Audit and Risk Committee.

¹ Refer to <https://www.localgovernment.vic.gov.au/council-governance/independent-reports/#Municipal%20monitors>, Horsham Rural City Council

² <https://abs.gov.au/census/find-census-data/quickstats/2021/LGA23190>

³ <https://www.hrcc.vic.gov.au/Our-Council/Governance-and-Transparency/Public-Documents/Council-Publications/Annual-Report>

During the engagement I attended:

- Monthly Council Meetings in person (virtually during the floods).
- Council Briefings (minimum two per month) in person or virtually.
- Weekly meetings with the Chief Executive Officer (and Acting Chief Executive Officer when the Chief Executive Officer was on leave).
- Regular meetings with the Mayor.
- Ad hoc meetings with individual Councillors.
- Internally facilitated induction sessions for the newly elected Councillor.
- Externally facilitated workshop for mandatory induction for the newly elected Councillor.
- Two Audit and Risk Committee Meetings.
- Three CEO Employment and Remuneration Committee Meetings.
- Two facilitated leadership development workshops with the Councillors.

Other activities included:

- Facilitating a workshop with the Councillors to review insights from introductory meetings, discuss their value set, and identify stakeholders and their interests in HRCC.
- Providing feedback and advice to the Mayor on Council Meetings and Council Briefings, and other matters as they arose.
- Providing feedback and advice to the Chief Executive Officer (and Acting Chief Executive Officers) and Directors on matters as they arose.

Terms of Reference of Appointment

The Terms of Reference of Appointment states:

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 key areas of concern identified in the letter from the Mayor and Chief Executive Officer of the Council, dated 14 June 2022, including –*
 - a. *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;*
 - b. *the Council's Councillor Code of Conduct, Councillor behaviour with respect to the Councillor Code of Conduct and processes for resolving disputes between Councillors;*
 - c. *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;*
 - d. *the Council's policies, processes and practices related to the management of conflicts of interest;*
 - 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;*
 - f. *the Council's policies, processes and practices in relation to the health and safety of councillors and Council staff; and*
 - g. *any other Council governance policies, processes and practices.*
2. *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 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.*

In response to the Terms, a significant portion of my work was writing reports related to topics identified in the Terms and from my observations. Reports were progressively provided at Council Briefings over the period of the engagement. They provided legislative (and where relevant, Councillor Code of Conduct and Governance Rules) context for the topic, observations, and recommendations to improve governance practices through policy reviews, process improvements, and administrative changes.

Reference to those reports is provided in Section 2 of this report, noting there were no recommendations arising from Report 1 (Role of Municipal Monitor) or Report 9 (Summary of Recommendations Arising from Reports 1 to 8).

2. Governance at the Council

This section includes my observations and findings in relation to matters contained in my terms of reference.

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

In accordance with Section 256(7) of the Act, potential Councillors are required to undertake mandatory candidate training prior to standing for Council. Once elected new Councillors must undertake mandatory induction within six months of signing the Oath or Affirmation of Office in accordance with Section 32(1) of the Act.

Although these induction programs provide important sector level information, they do not provide context for the business of Horsham Rural City Council. This responsibility sits with Chief Executive Officer under Section 46(1)(a) of the *Local Government Act 2020* (the Act) (Functions of the Chief Executive Officer) which states "the Chief Executive Officer is responsible for supporting the Mayor and the Councillors in the performance of their roles".

Due to the resignation of a Councillor and commencement of a new Councillor during my term there was opportunity to observe the induction process firsthand. The new Councillor was provided with a comprehensive and well documented Councillor Induction Manual and met with staff over the first few weeks to understand some of the fundamentals of his role. A facilitated workshop was held that covered most of the Councillor mandatory induction requirements with the remaining requirements scheduled early in 2023, noting the mandatory induction must be completed by 7 March 2023. The facilitated workshop was attended by all Councillors as a refresher to their learning.

However, there was interruption to the HRCC specific induction program after it started, and in my opinion, this was a lost opportunity to support the new Councillor in his role. Report 10 (Councillor Induction Program) contains recommendations to progress the new Councillor's HRCC specific induction process and improve the Councillor induction process for future Councillors.

Overall, in my opinion, the Councillors have a fundamental understanding of their roles and responsibilities. They have been openly engaged in Council Briefing discussions and debate at Council Meetings. However, there is a complexity around local government and the services it provides that takes time to fully understand.

As consideration of certain aspects of the business may only be addressed periodically, re-induction or re-introduction of certain topics can be helpful to assist Councillors in building their knowledge for good decision making. In my opinion, HRCC, having six first-term Councillors and one second-term Councillor reinforces this need, and topics to target professional development opportunities were identified in Report 8 (Skills Matrix and Professional Development Opportunities).

Councillor Code of Conduct, Councillor behaviour with respect to the Councillor Code of Conduct and processes for resolving disputes between Councillors

In my opinion, there has been a reluctance for Councillors to address behaviours that they believe are unacceptable through informal channels documented in Section 7 (Interpersonal Disputes Between Councillors) of the Councillor Code of Conduct (Code), with behaviours either going unchallenged, or being challenged in the first instance through formal channels within Section 8 (Allegations of Contravention of the Code).

Councillors are not compelled to follow logical sequence of the Code to bring early resolution to disputes with Section 7 stating "Councillors will consider pursuing informal steps".

On the other hand, there have been instances during my engagement where Councillors have challenged behaviours of other Councillors during discussion or debate in a Council Briefing or Council Meeting as disrespectful and a breach of the Code that I do not believe represent breaches, and were in the spirit of "vigorous debate" in accordance with Section 3.5 of the Code which states:

"Councillors acknowledge that nothing in the Standards of Conduct is intended to limit, restrict or detract from robust public debate in a democracy. So, while Councillors must always meet

these Standards of Conduct, participation in vigorous debate of matters before Council for decision should not be viewed as being inconsistent with them.”

To provide stronger context around acceptable behaviours, Report 12 (Councillor Code of Conduct) provides a recommendation to incorporate values and expected behaviours into the Code. To facilitate early dispute resolution Report 12 provides a recommendation to strengthen the Code's dispute resolution procedure and to incorporate the whole procedure in one section of the Code (currently it is across Sections 7 and 8).

Council's meeting procedures and decision making, including Councillor attendance at Council Briefings, the adequacy of Council's Governance Rules and Councillor adherence to the Governance Rules.

Council meeting procedures and decision making

In my opinion, the Councillors understand that a Council Meeting is the only decision-making forum for them currently, noting that Delegated Committee Meetings are also decision making forums, however, HRCC does not currently have any Delegated Committees. Councillors also understand the importance of Council Briefings in providing opportunity to discuss and question information being provided to them in the lead up to decision making in a Council Meeting.

During my engagement Council Briefings consistently ran over time, which limited the amount of discussion for some items scheduled towards the end of the Council Briefing agenda. Report 3 (Councillors' Roles and Responsibilities in Decision Making) contains recommendations regarding better forward planning of Council Briefing and Council Meeting agendas and allocation of appropriate timeframes for Council Briefing agendas to provide Councillors with the time they need to understand reports fully prior to considering them at a Council Meeting.

Report 3 also provides recommendations regarding representation on committees and ensuring Councillor representatives fulfil their obligations to attend committee meetings and report back to the broader Councillor cohort to build corporate knowledge about the committee's work.

The report also asked Councillors to consider the Council Report Template in the context of its effectiveness in fully informing Councillors and the community about the strategic and historic context of reports that are being presented, noting some projects can develop over years and multiple Council terms, and with a high turnover of Councillor cohort the historic context can be lost if it is not documented effectively.

Report 6 (Confidential Matters) clarified the difference between “Confidential”, which allows matters that meet the definition of Confidential to be considered in a Confidential Meeting, and the concept of “In Camera”⁴ which is a meeting held in the spirit of discussions being limited to those inside the room.

The Audit and Risk Committee and Council Briefings were considered during this discussion as Councillors and Committee Members need to be comfortable that full and frank discussion can occur, and concepts or projects that have not developed sufficiently for the public to be informed will remain in camera until such time as it is deemed appropriate for public communication.

The requirement to adhere to the public transparency principles in Section 58 of the Act were discussed and Report 6 recommended Council's Public Transparency Policy be reviewed to communicate clearly to the community documentation and information that would be publicly available.

Confidentiality was a concern at times during my engagement. One example was the outcome of a Confidential Report being communicated on social media following the Council Meeting, when the Resolution specifically indicated “The information contained in the Report to Council... remains confidential under Section 125 of the Local Government Act 2020 until the matter has been determined by Council”. These circumstances do not serve the Council well, and in my opinion, diminish goodwill and trust between the Councillors. My concerns were communicated to the Local Government Inspectorate.

⁴ <https://www.vocabulary.com/dictionary/in%20camera> (kept private or confined to those intimately concerned)

Councillor attendance at Council Briefings

Council Briefings are held twice per month, with an additional monthly briefing incorporated into the calendar for key projects such as the annual budget. The 2021-22 Annual Report⁵ shows there were 33 Council Briefings during the financial year; individual Councillors' attendance ranged from 24 to 33, noting one Councillor was on authorised leave during the year.

During my term Council Briefings were well attended, and Councillors' engagement in discussions around the presentations, proposals, and reports being provided to them indicated that they had prepared for the briefings.

Adequacy of Governance Rules and Councillor adherence to the Governance Rules

On 22 August 2022 the Council passed the following Resolution:

That Council:

1. *Adopt the amended Governance Rules*
2. *Commence a review of the Governance Rules within the next three months.*

On 27 September 2022 the Councillors attended a facilitated workshop to commence the review of the Governance Rules in line with the Resolution. The workshop provided an opportunity for all Councillors to clarify any areas of concern or uncertainty within the Governance Rules, and to provide input into a revised document. Report 5 (Governance Rules) was presented to a Council Briefing in advance of the workshop to provide recommendations to inform the review.

Although the workshop did not identify significant change, many items requiring clarification were discussed, and will be considered during finalisation of the review. The draft Governance Rules will be subject to a community engagement process in accordance with Section 60(4) of the Act once the review is complete.

The Council's policies, processes and practices related to the management of conflicts of interest.

The Councillor Induction Manual 2022 contains content on conflicts of interest, personal interest returns and the Gifts, Benefits and Hospitality Policy, and this content is supported by resources on the Councillor section of HRCC's intranet. In addition to this, there are conflict of interest requirements documented in the Governance Rules and Councillors' Code of Conduct.

A review of the intranet found that information could be streamlined, and hyperlinks checked to ensure they are still functioning; these recommendations have been reflected in Report 14 (Conflict of Interest).

The Chief Executive Officer's policies and practices that manage interactions between Councillors and Council staff and contractors, and compliance with those policies and practices.

Council has a Councillor and Staff Interaction Policy to manage the relationship between Councillors and staff in accordance with Section 46(3)(c) of the Act. Based on my observations, Councillors are aware of their obligations under the policy, and the Mayor provides a leadership role in ensuring Councillors are reminded about the policy when required.

However, the policy could be strengthened to provide more clarity and breadth of allowable and non-allowable interactions between Councillors and staff. This has been incorporated into Report 11 (Councillors and Staff Interaction Policy) which provides recommendations to strengthen the formal relationship between Councillors and staff.

Council's policies, processes, and practices in relation to the health and safety of Councillors and Council staff.

Council Staff

At the commencement of my engagement the Council and Australian Services Union were negotiating a process to investigate allegations of bullying towards staff. An investigation was undertaken, and a report provided back to Council during my engagement. Due to this process, this report to the Minister has not addressed the Councillors' relationship with staff, except in relation to review of the Councillor

⁵ <https://www.hrcc.vic.gov.au/Our-Council/Governance-and-Transparency/Public-Documents/Council-Publications/Annual-Report>

and Staff Interaction Policy, and my observations. I have not witnessed any behaviour towards staff during my engagement that would create a concern for me.

Councillors

During the introductory meetings with Councillors, it was evident that there was conflict between the Councillor cohort. Some Councillors acknowledged the difficulty of becoming a new Councillor during periods of COVID-19 lockdowns which reduced opportunities for personal interaction and relationship building and noted the Council Chamber as a stressful environment, some saying their Councillor role had impacted their own health and wellbeing.

In my opinion, the Livestream recordings of Council Meetings held prior to my appointment evidenced tension between Councillors which escalated at times to disrespectful behaviours. It is my view that there was an absence of leadership qualities and behaviours expected of community leaders, and Councillors in line with the Councillor Code of Conduct.

It was acknowledged early in my engagement that strengthening governance practices alone would not address behavioural change required between the Councillors.

The Councillors commenced a facilitated program to focus on building trust between the group and identifying accepted behavioural practices. That program is in progress and will continue into 2023.

Formal recognition of obligations for occupational health and safety is documented in Section 6.6 of the Councillor Code of Conduct (Code); however, the focus is on Council staff and visitors and do not incorporate obligations of Councillors towards each other.

Report 8 (Skills Matrix and Professional Development Opportunities) provides a recommendation that the Council engage external advice to communicate Councillors' responsibilities under the *Occupational Health and Safety Act 2004* and supporting Regulations. Report 13 (Occupational Health and Safety) provides a recommendation to strengthen the Councillors' commitment to each other around occupational health and safety by developing a policy or incorporating additional content into the Code, once their responsibilities are fully understood.

In my opinion, overall behaviour in the Council Chamber during my engagement has improved.

Any other Council governance policies, processes, and practices.

Chief Executive Officer (CEO) Employment and Remuneration Committee

Section 45 of the Act (CEO Employment and Remuneration Policy) states:

- (1) "Council must develop, adopt and keep in force a CEO Employment and Remuneration Policy.
- (2) The policy must:
 - a. "provide for the Council to obtain independent professional advice in relation to the matters dealt with in the Chief Executive Officer Employment and Remuneration Policy".
 - b. Provide for the recruitment and appointment process (i), provisions to be included in the contract of employment (ii), performance monitoring (iii) and an annual review (iv).

Section 18(1)(g) of the Act states the role of the Mayor is to "take a leadership role in ensuring the regular review of the performance of the Chief Executive Officer" and the Mayor was appointed as Chair of the CEO Employment and Remuneration Committee with the introduction of the 2020 Act.

Based on the professional backgrounds of the Councillor cohort, in my opinion, they are not sufficiently equipped to manage staff at CEO level. The Council engaged an independent advisor to annually review the performance of the CEO and assist in developing KPI's for the next year satisfying the requirements of (iii) and (iv); however, the scope of the engagement did not include recruitment and appointment process (i), noting that external legal advice was obtained for the contract of employment (iii).

With the expiration of the CEO's contract occurring in 2023, Report 2 (CEO's Contract and CEO Employment and Remuneration Policy) recommended broadening the scope of the independent advisor's engagement to assist in the process to reappoint or recruit the CEO.

It also recommended appointing the independent advisor as the Chair of the committee to provide knowledge and expertise, consistency, leadership, and independence, and an oversight role for governance processes for the committee.

Report 4 (CEO Employment and Remuneration Policy and Committee Governance Framework) recommended strengthening the policy regarding confidentiality of the contractual relationship with the CEO (current and future) and developing a governance framework for the committee's operations.

Audit and Risk Committee

The Audit and Risk Committee plays an important role in managing governance, risk and compliance on behalf of the Council. The Committee's independent members are experienced and knowledgeable experts in their respective fields and in my opinion collectively have the financial management, risk, and public sector skills required under Section 53(3)(b)(i) and (ii) of the Act to provide valuable support and advice to Council.

During my engagement, Committee members expressed frustration with a lack of progress regarding actions and recommendations resulting from the Committee's work. Report 7 (Audit and Risk Committee) contains recommendations to improve the Audit and Risk Committee function and leverage the expertise of independent committee members.

3. Recommendations for the Minister for Local Government

In my opinion, there are two aspects to addressing the governance issues at HRCC:

1. The first is ensuring that HRCC has policies, procedures, and frameworks to provide the foundation for best practice governance. The reports presented under the Terms have targeted improvement through policy review, process improvement, and administrative change.

I am encouraged by the Councillors' and Executive Team's positive attitude to my engagement. They have worked collaboratively with me, been open to the recommendations provided in my reports, and the Executive Team has commenced implementation of some recommendations during my term.

2. The second is addressing the behavioural issues of the Councillor cohort. I have stated above that I believe there has been an overall improvement in Councillors' behaviour during my engagement. I also believe when Councillors come together in good faith they can and do make decisions for the best interests of the community and fulfill their obligation under Section 8(1) of the Act to "provide good governance.... for the benefit and wellbeing of the municipal community."

The Councillors have committed to a facilitated program to address behavioural issues. This program commenced in 2022 and will continue in 2023. However, I am mindful that the oversight of Municipal Monitor is ending, and behaviours may regress.

The following are my recommendations to the Minister:

Recommendation 1: Implementation Plan

It is recommended that an Implementation Plan incorporating all recommendations provided in the reports delivered during my engagement be developed by the Council and provided to the Minister.

It is further recommended that the Implementation Plan incorporate timeframes for completion of all actions to address the recommendations, ensuring priority is given to review and approval of the:

1. Governance Rules
2. Councillor Code of Conduct.

Recommendation 2: Reporting to the Minister

It is recommended that the Council:

1. Provide a quarterly progress report of the Implementation Plan to the Minister until all recommendations are implemented.
2. Incorporate progress regarding Recommendation 3 (of this report) into the quarterly report.

Recommendation 3: Community Leadership Program

Horsham Rural City Council has a history of low candidate numbers at elections, with nine at the 2020 election, 14 at the 2016 election, and 11 at the 2012 election. At the same time, community members and community groups appear to be interested in Council's activities, programs, and projects through

social media interactions and attendance at Council Meetings. However, this interest does not appear to be translating into candidates.

To foster community members' interest in contesting an elected position and building knowledge of community members around the operations of Council and roles, responsibilities, and expectations of Councillors, it is recommended that Council invest in a community leadership program to support potential candidates at the 2024 election.

Recommendation 4: Development of Best Practice Guidelines

There have been costs incurred by HRCC for the Municipal Monitor engagement and other costs associated with the content in this report.

At the end of each financial year councils provide Councillor costs in the Report of Operations in accordance with Section 10 of the *Local Government (Planning and Reporting) Regulations 2020*, which include:

- f. Details of current allowances fixed for the Mayor, Lord Mayor (if any), Deputy Mayor (if any) and Councillors;
- g. Details of the expenses, including reimbursement of expenses, paid by the Council for each Councillor and member of a Councillor committee, categorised separately as:
 - i. Travel expenses; and
 - ii. Professional development expenses; and
 - iii. Expenses to support the performance of the role.

Within the financial year, Section 40(2) of the Act requires councils to provide details of all reimbursements made to a Councillor or a member of a delegated committee to the Audit and Risk Committee.

Although provided within financial year, the Audit and Risk Committee reporting does not provide full line of sight to all costs related to governing a council.

The annual Report of Operations is produced after the end of financial year and in accordance with Section 100(2)(b) of the Act, is reported at a Council Meeting within four months of the end of financial year⁶. Reporting after the end of the financial year does not allow for monitoring during the financial year, and in my opinion, reporting under the Regulations has scope to be interpreted differently by different councils, particularly under (iii) "expenses to support the performance of the role".

It is recommended that the Minister consider developing best practice guidelines to support the sector in providing consistent reporting and in providing full line of sight to the cost of governing councils.

Jude Holt

Municipal Monitor

⁶ Local Government Act 2020, S100(2)(a) "The Council meeting must be held in a year of a general election, on a day not later than the day before election day".