

Municipal Monitor appointed to Wodonga City Council

Report to the Minister for Local Government

1. Background

1.1 Appointment

My appointment by then Minister Leane commenced on 22 April 2022 until 31 January 2023 under the following terms of reference.

1. To monitor the governance processes and practices of the Council, with specific regard to the following matters –
 - a. the Council's Councillor Code of Conduct;
 - b. the Council's meeting procedures and decision making, including Councillor attendance and conduct at Council briefings, the adequacy of the Council's Governance Rules and Councillor adherence to the Governance Rules;
 - 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 policies and processes related to the appointment of an ongoing Chief Executive Officer;
 - e. the Council's policies, processes and practices in relation to the health and safety of councillors and Council staff;
 - f. the Council's policies and practices that manage the interactions between Councillors and Council staff and contractors, and compliance with those policies and practices;
 - g. the Council's policies, processes and practices related to the management of confidential information; and
 - h. 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.

1.2 Context for the City of Wodonga

The Council elected in 2020 comprised a mix of four re-elected Councillors and three new Councillors, one of whom subsequently resigned citing inappropriate behaviour in the Council Chamber, and one re-elected Councillor retired due to ill health. One of the new Councillors Cr Kevin Poulton, was elected as Mayor. Cr Poulton had extensive experience in community and not for profit Boards but was new to local government and therefore undertook a rapid learning period to assume the role of Mayor.

In my view this presented an opportunity for an experienced Councillor, who had also had a professional career as an urban planner in many Councils, including some years ago at Wodonga Council, to offer advice based on his experience much like an officer would. This inevitably became a source of irritation to both new Councillors and senior officers resulting in a culture of wariness and mistrust about both individuals and governance processes. It was compounded by conflict-of-interest concerns referred to below.

Several complaints had earlier been lodged with the Acting CEO and Governance Officer about potential conflicts of interest by one Councillor and a formal complaint lodged with the Chief Municipal Inspector earlier in 2022.

1.3 Monitoring activities

The previous CEO Mark Dixon resigned in November 2021.

At the time of my appointment, the Council had commenced the recruitment process for the vacant CEO position and the first meeting I attended as the Monitor was with all Councillors, the recruitment specialist, and an independent member all of whom constituted the executive recruitment advisory committee.

Discussion was moderated by the Mayor and the recruitment consultant with helpful contributions from the independent member. The shortlisting proceeded interactively and respectfully to produce an agreed shortlist of six candidates. Interviews were arranged as promptly as practical and conducted consistently and professionally.

Council and committee meetings were attended by me predominantly in person, but virtual meeting attendance also occurred. Meetings were held regularly with the Monitor and Acting CEO and at times with the full executive team.

In August 2022, a workshop of all Councillors was facilitated by an independent consultant. The workshop achieved an agreed-upon set of priorities based on the Council Plan, clarified the Council term aims, and reiterated the necessity of working together with the incoming CEO to ensure mutual success.

At this point, the Council had shown no signs of the previously alleged inappropriate behaviour, although there are examples available on Council's website of streamed Council meetings in the previous two years. My counsel to the Councillors as a group was based on the need for compliance with the *Local Government Act 2020* (the Act) and governance policies including the Code of Conduct and Governance Rules.

Individual meetings were held with Councillors as necessary and regular meetings were conducted with the Mayor and Acting CEO.

Following discussions with the Local Government Inspectorate to explain my role as Monitor and my terms of reference, the report on the formal complaint mentioned above was finalised. The Councillor involved shared the results with me and no further action was necessary.

In my view it is helpful to canvass the items of relevance around this issue due to its prominence across all discussions with the Monitor and the importance of culture within the local government sector as contained in the Local Government Culture Project Insights Report. It is fair to say that allegations of conflicts of interest and bias pervaded the Council group and the senior executives all of which had a negative impact on working relationships.

During my time as Monitor, there were declarations made about family links, political party memberships and other matters requiring Council decisions in accordance with the *Local Government Act 2020* (the Act) and Council's Governance Rules.

Apprehension of bias was also raised with me as a matter of concern. This was associated with ongoing advocacy by a Councillor of the same view as expressed in the former professional capacity of that Councillor. In such a situation a Councillor should ensure they express views that are both representative of the community and in the interests of the whole municipality.

In many of my discussions with both Councillors and staff, there were inferences or allegations that there were ongoing undeclared conflicts or bias, but no new or relevant evidence to substantiate these allegations was provided to me.

However, the Mayor during the period November to December 2022, expressed discomfort with political party memberships of some Councillors in a letter to the Minister for Local Government, and copied to me. The letter in part stated:

My concern however (as shared with the community) is that at the very least the 'perception' is that these four (4) Councillors have a direct and declarable link to the Liberal Party / Liberal National Parties which raises the perception of conflict, influence, and 'reach' into local government.

This followed a stalemate over the Mayoral election in a drawn 3-all vote before the seventh Councillor had been sworn in.

Membership of a political party is not prohibited by the Act but the distinction between running as an endorsed candidate on a political platform and declaring an interest as an elected Councillor due to a party membership is important. None of the Wodonga Councillors had run on a political platform and each one had declared their membership in Declaration of Interest returns.

2. Governance at the Council

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

2.1 Observations and findings

The main causes of the difficulties within the Council group were ultimately due to mistrust and differences in personalities, styles, and ego which are all common in any community. All these factors can easily distract from the business of governance in the absence of strong leadership. I was advised by email from the previous CEO that he had resigned because, in part, he felt his leadership was not accepted or respected by a minority of Councillors. He was aggrieved about the circumstances which impelled (in his view) him to resign and sought a "remedy" from Council and the then Minister for Local Government. Neither the Council nor the then Minister provided the remedy sought but the Minister requested that the former CEO's concerns be considered in my report as Monitor.

Looking at these events in context it may be that the relative inexperience of the Mayor and CEO combined provided the opportunity for an experienced councillor with a professional background in local government to proffer advice with strong opinions that intruded on the role of the CEO. The matters referred to in the Councillor's resignation include allegations of inappropriate behavioural interactions which are observable in the video recordings of Council meetings available on the Council's website, although there were also other factors contributing to the Councillor's decision.

These circumstances are a challenge for any professional person elected to Council because the role is clearly representative, not professional. Councillors are duty bound by the Act to represent the whole community when participating in Council decision making.

As the resignation of the CEO occurred before my appointment as Monitor, I will not make any comment except to note that no formal complaint was made prior to the resignation. There is, however, an identifiable gap in the employment conditions of a CEO in the Act which in my view deserves consideration of change.

Whilst the Act in s46(3)(c) gives authority and responsibility to the CEO for managing interactions between Council staff and Councillors it is often a delicate balance due to the contractual arrangements which enable dismissal without reason. The position of CEO is not covered by Occupational Health and Safety legislation and, as the only employee appointed by Council, should be protected through clear accountabilities of the Mayor and Councillors.

Clarification and strengthening of the role definitions for Mayor, Council and CEO are desirable, in my opinion, to ensure Councillor behaviour can be moderated or challenged "in the moment" and to protect the CEO and senior executives. The Act established strategic principles for governance which are intended to ensure Councillors are more strategic in their focus and ensure the management of operations is left to the CEO. However, this is especially challenging when, in a ward-based system, Councillors may focus on matters relevant to their ward.

Through the CEO, staff are the principal source of advice to Council. Tensions emerged between the staff and some Councillors because of councillors challenging the advice of staff during Council meetings, which then required expenditure on independent legal advice to settle an interpretation of legislation or policy. When undue pressure is applied to staff to change their advice by frequent questioning, the assertion of allegations based on opinions rather than fact, and derisory commentary during debate, in my view these actions have the potential to create an unsafe workplace for staff.

Under the acting CEO and since the commencement of the new CEO, the conduct of Councillors and senior officers has been constructive and respectful which augurs well for the future governance of Wodonga.

It is still true however, that under the Act the position of CEO, as the only employee of a Council, is vulnerable to dismissal for no reason and, to uncontrolled offensive behaviour from within the governing body. This is a generalised observation but pervasive within the sector in my experience.

2.2 Councillor behaviour

Authority within the Chamber

It is evident from my experience in many Councils that Mayors on occasions need assistance to manage and control behaviour of individual Councillors within public meetings. This could be achieved by expansion of one or all the Mayor, CEO and Monitor roles.

2.3 Governance

CEO and improvements

The new CEO is working with the Council in a participatory style and has implemented improvements to meeting schedules and officer reports.

2.4 Capacity

Commitment to change

After nearly twelve months of disruption including the loss and replacement of two Councillors, the resignation of the CEO, the recruitment and induction of the new CEO, a changeover of Mayor and Deputy Mayor, and the appointment of a Monitor, the Council and administration have an opportunity to move forward in a positive way, however, it is imperative that respect for each other and an understanding of the clear role of separation as defined in the Act is practised.

3. Recommendations for the Minister for Local Government

That the Minister consider the following:

- 3.1 Stronger authority within the Council Chamber for Mayors and CEOs through clear powers over behavioural and code of conduct issues.
- 3.2 Support for councils to understand and realise the benefits of the role of Monitor, including the ability for the Mayor and CEO to request comment from the Monitor within the Council Chamber on governance matters.
- 3.3 Ways to reinforce the role of a councillor to participate in decisions in the interests of the whole municipal community notwithstanding ward-based electoral structures.
- 3.4 Arrangements to support the health and safety of council CEOs, including the responsibility of councils to address any risks to the health and safety of a CEO.

Janet Dore

Municipal Monitor

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