

Municipal Monitors appointed to Glenelg Shire Council

Report to the Minister for Local Government

1. Background

1.1 Appointment

On 31 October 2023, the Minister for Local Government, Melissa Horne MP, appointed Steven Kingshott and Jim Gifford, to be Municipal Monitors to Glenelg Shire Council. The term of the appointment was from 13 November 2023 to 13 February 2024 (inclusive).

This appointment was in response to concerns raised by the then Mayor about the governance functioning of the Council. The specific terms of reference were to monitor and report on:

- the Council's actions and processes in relation to the appointment of an Acting or interim Chief Executive Officer (CEO) to fill the position caused by the recent resignation of the Council's CEO;
- the Council's policies and processes in relation to the appointment of an ongoing CEO, including the Council's CEO Employment and Remuneration Committee;
- councillor understanding and performance of their statutory roles and responsibilities, including in relation to confidentiality requirements;
- 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;
- the Council's meeting procedures and decision-making processes, including Council briefings and meetings, the adequacy of the Council's Governance Rules and councillor adherence to the Governance Rules;
- 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; and
- any other matters that may be affecting the Council's ability to effectively perform.

1.2 Context for the Glenelg Shire

The Shire of Glenelg is unsubdivided, with seven councillors.

On 20 October 2023, the then Mayor of Glenelg Shire Council, Councillor Scott Martin, wrote to the Minister to request the appointment of a Monitor. He cited the resignation of the Chief Executive Officer (CEO) and two councillors as the reason, also noting that he had been unable to foster good working relations between councillors and the CEO. Over a 12 month period preceding the request, Glenelg Shire Council had experienced the resignations of two CEOs and three councillors.

Christmas lights

The final three resignations occurred following an issue with the provision of Christmas lights in Portland. The Council administration issued a media release on 12 October 2023 explaining proposed changes to a long standing practice of Council funding Christmas lights on a Norfolk pine in Portland. This was done on the understanding that councillors supported the change. However, after the media release was issued, councillors indicated they did not support the change.

The issue led to a strong negative public response and included some disrespectful comments about the Council and about specific members of staff on social media and in the press. Some councillors appear to have participated in the public and social media interactions.

From Media statements and interviews it is clear that the Christmas lights episode was a significant factor in several subsequent actions:

- The CEO, who had been on leave at the time, resigned on 20 October 2023.
- No senior manager was eager to step forward as acting CEO.
- Two councillors resigned in the week after the Council's media release.
- A staff member, who had been involved in the matter, resigned.

Overall, the Council's reputation, and its relationship with the community was damaged. We received reports of staff closing their social media accounts and removing their Council badges when leaving the office.

The Council's poor public reputation was further evidenced by the fact that some candidates were unwilling to accept elections to vacant councillor positions when successful in a countback of votes from the election. This would then require multiple countbacks to fill a vacancy.

2022 Rates decision

An earlier matter of significance was the decision to change the rating system in 2022/23. For over a decade the Council had been providing a rate rebate of 30 per cent for land classified for primary production. This meant, in theory, that the land was subject to the same rate level as residential land but that farmers were then rebated 30 percent of that payment. In practice, farmers just paid the lower amount, being equivalent to 70 per cent of the residential rate.

In June 2022, the Council voted to remove the rate rebate and replace it with a differential rate of 70 per cent for primary production land. The impact of this change was that the total amount of rates collected from ratepayers increased substantially. While rate capping had prevented the Council from increasing total rate income above a specified 1.75 per cent, the removal of the rebate meant that the total rates actually raised by the Council could increase by both the rate cap plus the value of the previous rebate without breaching the rate capping rules. The resultant large increase in rates was over 19 per cent and was spread across all categories of ratepayers, including farmers.

The Council vote to adopt the budget and levy the rates was evenly divided (with one councillor an apology) and was only passed on the Mayor's casting vote. Some councillors who voted to adopt the budget and the rates have expressed a concern to us that councillors who voted against the motion had not disclosed their voting intention or expressed their misgivings prior to the Council meeting where the vote was taken.

While it is outside our role as Monitors to judge the 2022 rating decision, we note that the decision was very unpopular in the community. It appears to have contributed to the poor relationship between the Council and the community as well as being a contributing factor in the breakdown of relationships within the Council.

Further background

Up until 2023 and including the time of the rating decision, the Council had appeared to have relatively stable leadership with a long term Mayor and CEO who worked well together and who developed a reputation for successfully obtaining grant funding for the Council. According to some councillors, that stability was maintained because the then Mayor was part of a majority group (or faction) of councillors.

In January 2023, the CEO left and took up another position in Portland. The Mayor, who had not sought re-election as Mayor at the end of 2022, resigned mid-2023 leaving the faction without a majority. Councillor Scott Martin, who had been elected to the position of Mayor in November 2022, was then in the position of trying to lead a Council in which he no longer had majority support.

In November 2023, Councillor Karen Stephens was elected as Mayor and currently holds the position.

Also in November 2023, the Council appointed Mr Greg Wood as CEO on an interim basis for six months. Mr Wood was formerly Chief Executive Officer of Hindmarsh Shire Council.

1.3 Monitoring activities

At the start of the monitoring process we met with the new Mayor and with the remaining four councillors. These meetings were to outline our role and seek the views of the Mayor and councillors about the state of governance at the Council. Once the two councillor vacancies were filled, we also met with the two new councillors.

We met with the Interim CEO and senior members of Council staff early in the process and continued to have regular meetings with the Interim CEO to discuss progress with governance reforms.

In addition to interviews with councillors and senior executives, we met with the two previous CEOs, a previous Mayor, the councillors who had resigned and some other members of Council staff. We were also provided with written material relating to our investigations by councillors and members of Council staff.

We have attended council meetings and councillor briefings since our appointment and have examined many of the Council's policies and processes.

Several members of the public requested meetings with us and, on our advice, submitted their comments to us in writing. Some impromptu verbal comments were also made to us by members of the public when attending council meetings.

Monitoring activities have been limited by the timing of the appointment over the Summer period, as the Council effectively goes into recess for about a month over Christmas and New Year. This has meant that some monitoring activities are incomplete and we have been unable to fully ascertain the extent to which governance behavior has improved.

Reception

While the councillors seemed to initially have some anxiety about our appointment, they have been generally receptive to our recommendations. The Mayor did indicate that the option of seeking a Monitor had been suggested by the previous Mayor but was not then supported by other councillors.

The Interim CEO has worked well with us in seeking to improve governance practices and behaviours and would, no doubt, have initiated several of the changes even without Monitors.

Council managers and staff have been supportive of our appointment at a time when relations with councillors and the public have been in a poor state.

2. Governance at the Council

Five point plan

On 12 December 2023, having examined many of the governance issues facing the Council, we presented a five point plan to the councillors, outlining a set of critical changes required to reset governance. The plan is described below. It provides for:

- 1) Reform the Council’s decision-making processes to improve probity and transparency;
- 2) Respect the role of the administration in managing operational matters;
- 3) Using information in accordance with probity and confidentiality;
- 4) Improving relationships between councillors and with staff; and
- 5) Improving CEO employment processes and employing a suitable CEO.

2.1 Decision making processes

We identified serious problems with the Council’s decision making processes that require fixing. This included decision making in informal workshops and the lack of focus on decision making in council meetings.

Workshops

Until now, the Council has held monthly “workshops” where it has been the practice for councillors to “direct” staff about decisions being made under delegation and about recommendations put forward for decision at council meetings. This practice is incompatible with section 59 of the *Local Government Act 2020* (the Act), patently not transparent and extremely risky.

It was emphasised to councillors that Council decisions can only be made in accordance with the legal framework in Act. That means that decisions must be made by the Council in a formal council meeting or by a committee or officer who has been formally delegated the Council’s authority on the matter. Also, while the Council can formally limit or withdraw its delegation, councillors cannot direct a delegate to decide a matter in a particular way.

This practice also creates concerns about the openness of Council decision making. Part of the reason for holding council meetings is for decisions to be made in a transparent manner for the public to see.

The practice also risks decisions being made on an unclear or false basis. In the case of the Christmas lights, staff had made a presentation to councillors that included a recommendation for change and left the meeting under the impression that councillors supported that recommendation. No formal decision making processes were followed in these meetings and no records were kept of the outcomes.

On our advice, the Council has adopted revised Governance Rules that rename workshops as “councillor briefings” (as is common at most councils) and specifies that the purpose of these meetings is only to share information. The new Governance Rules expressly prohibit decisions of a substantive nature at these meetings as well as requiring a report on each councillor briefing be tabled at a council meeting open to the public.

We strongly recommend that the Council adheres to the revised Governance Rules in regard to councillor briefings.

Council meetings

A second matter of concern has been the way council meetings are conducted. If a member of the community were to watch a council meeting for the first time, they might have thought the purpose of the meeting was for members of the public to criticise and disrupt the Council.

The existing Governance Rules provided for members of the public to each ask up to three questions at the start of the meeting. There was no limit on the length of a question and a small number of regular questioners regularly used question time to ask lengthy questions that were clearly intended to criticise or disrupt the Council. There were also several incidents where questioners refused to comply with directions from the Mayor.

Aside from disrupting decision making, this practice tended to bring the Council and its processes into disrepute by giving undue emphasis to negative comments and interjections made by a small number of individuals who appear to us to be attending council meetings for that purpose.

We note that the Council has other processes for members of the community to communicate with the Council or to contribute to decision making. This includes service request and complaints processes as well as processes for community engagement.

The principal purpose of a council meeting is for the Council to make decisions on matters of importance to the community or the Council. On advice from the Interim CEO, the Council has adopted revised Governance Rules that provide for questions to be lodged in advance and read out by the Mayor. The new rules also remove the necessity for question time to occur at the start of a meeting.

We recommend that question time should be conducted at the end of a council meeting to minimize disruption. This is the practice at a number of other Councils.

2.2 Roles of councillors and administration

Under the Act, the role of a councillor can be broadly described as participating in Council decision making, particularly for strategic decisions, and representing the community. It does not include the administrative and operational roles of the CEO and council staff.

Council records and interviews with council staff give us concern that councillors have not always performed their role in this way. This has included reports of:

- Councillors seeking to give directions to council staff on operational matters;
- Councillors questioning staff about contracts and other operational matters outside formal councillor briefings and council meetings; and
- Councillors duplicating administrative processes by lodging separate service requests in response to customer complaints.

In regard to the service request issue, the Council administration has a well-developed service request and complaint system which is rendered less effective if requests are made through an alternative councillor process. To be fair, councillors are often approached by members of the public and, given that a separate Councillor Request Form process existed, they may have considered they were complying with a proper process.

On our advice the Council has discontinued the separate councillor request process and councillors have been encouraged to refer customer service requests and complaints to the correct administrative process. At the time of writing this report, we have not yet ascertained that this is always occurring.

Regarding other ways in which councillors have involved themselves in operational matters, it is clear from the Act that individual councillors have no authority to give directions to staff about operational matters, and we have advised them accordingly.

However, there are wider reasons for concern. Seeking information or directing staff outside of formal Council processes may engage concerns about possible conflicts of interest, particularly when a councillor, or a person or organisation they are involved with, has a close interest in the matter. To avoid risks of possible conflicts of interest and to ensure actions are in accordance with the law, councillors have been advised that any such matters should only be raised in formal briefings or meetings where other councillors are present and where there are proper disclosure processes.

We recommend that councillors focus on their strategic and decision making responsibilities and avoid engaging in administrative matters outside formal meetings or seeking to direct council staff in operational matters.

Role of the Mayor

A Mayor is elected to lead the Council and be its primary representative to the community. Among other things, the Act gives the Mayor a responsibility to promote a high standard of behaviour among councillors.

We have encouraged the current Mayor to take an active role in encouraging good behaviour and helping mend some of the hurts that have been generated by recent events.

The Act also requires councillors, in performing their role, to acknowledge and support the role of the Mayor. We have concerns that this was not always the case during the previous Mayor's term. This was particularly evident from the recording of the September 2023 council meeting, when some councillors were less than supportive of the Mayor's attempts to control the council meeting during question time.

2.3 Confidential information

We have concerns about the use of confidential information. Specific issues relate to the definition of confidential information, what types of information should be treated confidentially and the inappropriate release of information.

What is confidential information?

The Act includes a definition of "confidential information" and makes it an offence to improperly disclose it. The definition includes, among other things, information about a person's personal affairs, Council and private commercial information, legal privileged information, as well as information that may endanger security or a person's safety.

Some confusion of processes seems to exist. Prior to the passing of the 2020 Act, the 1989 Act gave the CEO and the Council a capacity to decide what information was confidential. This no longer applies and, under current practice, material provided to councillors for briefings lacks clarity about the levels of confidentiality that apply to particular documents.

In our view, there is a distinction between information that is confidential information under section 125 of the Act and documents that should be treated as confidential as a matter of good governance.

Documents that should be treated as confidential as a matter of good governance would normally include documents that are provided as working papers or drafts of final reports as well as documents that may include confidential information under the Act.

We understand, from conversations with the Local Government Inspectorate, that other councils may be experiencing similar difficulties, as the Inspectorate has received a number of misinformed complaints about breaches of confidentiality.

It is important that councillors have clear guidance about the nature of documents and information provided to them. We recommend the following approach:

- Recognise the distinction between a document not intended for circulation and information that may be included on a document and that is confidential information under the Act;
- Allow a CEO to label documents not for public release as “Council-in-Confidence” and make it a condition of the Councillor Code of Conduct that the information not be released without council consent.
- Where relevant, attach a warning that a document includes, or may include, confidential information. This might read, “Warning – This document contains information that is confidential information under Section 125 of the *Local Government Act 2020*”.

Treatment of information types

Where a decision involves confidential information under the Act, it is usual for the Council to determine the matter in a meeting that is closed to the public. In our opinion Glenelg Shire Council has often applied this process to the wrong information.

We are advised by the interim CEO that decisions about commercial contracts have sometimes been made in open Council. This may be because the matter had been previously discussed in a workshop and it was assumed there would be no dispute about the recommendations. However, this does not allow for a genuine discussion about the merits of the proposed contract in the meeting without breaching confidentiality.

In contrast, the Council’s practice has been to treat the details of proposed community grants as confidential information. This is usually not justified unless there are commercial ramifications. It is recommended that the details of proposed community grants be specified in publicly available agenda documents in the future unless there are genuine commercial in confidence matters prohibiting that publication.

The matter of community grants is concerning, as public expenditure should be as transparent as possible, particularly where there is scope for improper action. We have seen one historical record of a community grant, given to an organisation closely linked to a Councillor, which was given under conditions of confidentiality.

Improper disclosure

We have been advised by staff of instances where information provided to councillors in confidence subsequently appears in the media or is otherwise referred to by members of the public, such as during council question time. While we have noted the possible confusion about the levels of confidentiality, councillors have been advised that information that is provided to them “in confidence” should be treated as such as a matter of good governance, even where the information is not subject to an offence under the Act.

We recommend that the Council apply the designation of “confidential information” only to information that satisfies the definition in Section 3 of the Act. We have also recommended to councillors that they apply good governance practices when dealing with information that is confidential information or when dealing with documents should reasonably be kept confidential.

2.4 Councillor relationships – “working together constructively” – We Improve relationships between councillors and with staff

Respect and professionalism

The following issues were identified through the interview process, some examples of concerning behaviours include:

- Instances of subtle intimidation and dismissive behaviours in meetings and briefings,
- Provocative communication including sarcasm, the tone of comments, hand gestures and poor body language,
- Low level hostility leading to officers and junior staff feeling uncomfortable,
- Some councillors feeling bullied and targeted for their voting on particular issues (including name calling).

Harassment can occur in a number of ways, in this instance there appears to have been a culture of subtle harassment through verbal tones, comments and body language. *(Some of these preliminary observations relate to a combination of situations, both recent and over several years. Feedback has been gathered directly through the interview process and through interviewees providing their observations).*

Under the Councillor Code of Conduct, a councillor must treat other councillors, members of council staff, the municipal community and members of the public with ‘*dignity, fairness, objectivity, courtesy and respect*’. We have communicated to the Council that while differences of opinion will always occur and are an important part of a decision making process. These differences need to be worked through in a professional and respectful way for Council to maintain cohesion. We discussed our observations and feedback with the Council. We reinforced that it is important to question and passionately debate issues, but not to play or target the individual as part of the process, whether that be another councillor or an officer. We reinforced the need to follow the processes outlined in the Councillor Code of Conduct – *Standards of Councillor conduct*.

There was indication that some councillors might be determined to focus on past events and replicate old patterns and behaviours. This can create an inability to focus objectively on new matters before the Council for consideration. This was evident in feedback during some of the interviews and creates a barrier to culture and behaviour change. In order to build a positive and more sustainable culture of respect and professionalism we believe that further work needs to be undertaken with the Council if it is going to be more effective. The Council will require some external independent assistance to help focus and build a positive culture. This will require improving skills and understanding around what constitutes harassment and build capacity for interpersonal relationship development. We recognize that this will take time.

We recommend the following:

- Seek the support of an external consultant/s to assist with building a culture of respect and collaboration.
- Key areas of focus: harassment, psychological safety, conflict resolution, and working collaboratively.

Councillor dispute resolution processes

In the Council's Councillor Code of Conduct, there is an internal dispute resolution process for dealing with interpersonal conflicts amongst councillors or any alleged contraventions of the Code of Conduct.

The Council's dispute resolution process involves three "options":

- Option 1. Informal dispute resolution directly between the parties;
- Option 2. Mediated discussion; and
- Option 3. Determination by an independent arbiter or referral to a Councillor Conduct Panel.

In applying the dispute resolution process, there appears to be a strong preference for councillors to opt for option 3 as the preferred method of resolution for disputes when Options 1 and 2 have not always been used or explored. We believe there is an opportunity to optimise the dispute resolution process to work proactively and sequentially through each option as a 'stepped' process and not as a process of choice for "options".

We recommend the following:

- Amend the Councillor Code of Conduct to replace the word "Option" with "Step",
- Actively encourage the 'disputes and resolution' process to be worked through a stepped approach (*as appropriate*). Strongly encourage alleged protagonists to resolve their issues through face-to-face discussion or mediation, before going to arbitration,
- In addition, this process does and will require some degree of skill development. Hence additional training will be required for councillors, if differences are to be productively resolved in the future.

Information management and social media

The use of external communications, in particular social media cannot be underestimated and the associated impact on organisational well-being. Social media has presented significant advances in both the management of mass communications and the individual's ability to engage and contribute.

Based on observations through the interview process and examples of social media posts presented to Monitors, we have observed and found a number of examples where council staff felt undermined, with council information potentially leaked to external individuals and/or organisations. In addition, staff have described being targeted through external social media posts and not feeling supported by their Council or some councillors. We found examples where council staff had to shut down their own social media to avoid ongoing community harassment (*as mentioned earlier in the report*).

Council staff have felt distressed at resignations. As indicated, we were told directly by some staff that they would no longer wear their council badges when going down the street, for want of negative feedback. Staff reported looking over their shoulders, appeared concerned, described trying to second guess 'what would happen next' and feeling embarrassed about their workplace. This is creating an environment of organisational instability.

From what we have reviewed there have been no Workcover claims regarding some of these recent events. Council's OH&S policy states: "The Glenelg Shire Council is committed to maintain a safe and healthy operation for all employees and visitor and recognises that this is an integral part of our business. Glenelg Shire Council will work towards achieving a ZERO HARM... "

We have strongly indicated to the Council that they needed to look at how they respond and manage issues around social media, particularly to external and third party posts. The observation might be made that council officers are not employed to be used as scapegoats for Council decisions.

The Council does have protocols regarding communications with external parties. From our observations and information supplied to us, these protocols do not appear to have been consistently or appropriately applied by councillors.

We recommend as part of the training identified in the above section titled 'Respect and Professionalism' (i.e. *harassment, psychological safety, conflict resolution, working collaboratively*) that appropriate application of communication protocols be revisited.

2.5 Chief Executive Officer (CEO) employment and remuneration policy and appointment

CEO employment and remuneration policy

We reviewed the current CEO Employment and Remuneration policy and found it to be deficient in areas. In particular, performance feedback and evaluation, the annual review process and the engagement of an external professional for independent support.

Through meetings and feedback, we found that the policy has never really been fully operationalised. The policy states that the Council 'may' as opposed to 'will or shall' establish an operational CEO Employment and Remuneration committee. Hence in absence of a clear and direct policy, there is a lack of clarity and misunderstandings can create confusion for the performance of the CEO. The CEO role is a pivotal position within the Council; proper oversight of CEO employment and performance matters is critical for good governance.

We recommend the following:

- Formally review and update the CEO Employment and Remuneration policy, to ensure it is fully implemented by the Council;
- Establish a formal standing advisory committee to Council;
- Appoint an independent member to the committee to provide professional advice;
- Ensure an annual transparent cycle of performance & objectives setting, with regular opportunities for "pulse checks" and feedback (occurring at a minimum of every 6 months, and a maximum of four per annum); and
- Include a process for the CEO to provide feedback on Council performance.

CEO appointment process

In November 2023, the Council appointed Mr Greg Wood as CEO for six months, pending the appointment of a new CEO. The Council has progressed the process of employing a new CEO, although trying to progress the process through the Christmas and New Year period has meant that the appointment of an external agency and professional support is only now gaining momentum.

As this report is being written, on 13 February 2024, councillors will consider (in Committee) a preferred recruitment agency and an independent professional to support the process. From there, a recommendation will go to the Council meeting. In reality, the employment of a new CEO will not likely occur until April or early May 2024. That timeline assumes that the candidate pool is strong and acceptable. We do have a concern regarding the ability of the Council to attract quality candidates, given the issues highlighted within this report and potential perceptions within the local government industry. Also, Glenelg's geographic isolation presents its own issues and may further restrict the candidate pool.

3. Recommendations for the Minister for Local Government

We feel positive that some improvements are underway at Glenelg Shire Council. This is partly attributable to the work of the interim CEO. We are also satisfied that the Council is well served by its management and staff, many of whom indicated they were proud of their work serving the community.

Continued monitoring

As mentioned, the time available to conduct monitoring has been limited by the time of year and the monitoring task is not complete. While we have identified many governance processes and practices that require updating, some of the changes are either in progress or yet to commence. We are also aware that changes can take time to bed down and become standard practice.

In regard to councillor conduct, several behaviours of concern appear to have been long standing and there remain some tensions within the Council. We have concerns that changes to behaviours can be slow and may require longer term monitoring.

We recommend that the monitoring role should continue but at a lower level. Specifically:

- There should continue to be monitoring support for the Council's CEO employment process during early 2024; and
- There should be a low level monitoring through to the end of 2024 to see that changes are put into effect, behaviours improve and that appropriate induction is provided for the Council elected in October.

Confidential information

The Minister may wish to consider changes relating to the use of confidential information that might apply to councils generally. We do not recommend changes to the definition of confidential information in the Act, for which a person can be prosecuted for releasing. However, we consider there is a need for councils to treat certain documents as "Council-in-Confidence" as a matter of good governance. This may be a matter that can be addressed in the Councillor Code of Conduct.

Jim Gifford

Municipal Monitor

Steven Kingshott

Municipal Monitor