

Report of the Commission of Inquiry into South Gippsland Shire Council

*An independent inquiry established by the Minister for Local Government under section 209
of the Local Government Act 1989*

June 2019

**The Hon Frank Vincent AO QC (Chair of Commissioners)
Ms Julie Eisenbise (Commissioner)
Mr John Watson (Commissioner)**

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Executive Summary

The Commission was established following concerns raised with the responsible Minister about matters at the South Gippsland Shire Council (**the Council**). In particular the Chief Municipal Inspector, in May 2018, advised of an increased number of complaints about conduct and decision-making at the Council and his serious concerns about governance at the Council.

A Municipal Monitor was appointed in June 2018 to advise and provide assistance to the Council on a range of matters including meeting procedures and decision-making, management of confidential information, interactions between councillors and between councillors and staff and any other governance issues identified.

The Municipal Monitor provided a final report to the Minister for Local Government (**the Minister**) on 21 March 2019 in which he noted the Council was not able to provide good government to the municipality, due to the behaviours of, and conflict between councillors. He therefore recommended the Minister consider suspending the Council and require the councillors to undertake governance training.

As required by section 219 of the *Local Government Act 1989* (**the Act**), the Minister provided a “show cause” letter to the Council on 2 April 2019. He subsequently determined to establish this Commission which commenced on 21 May 2019. Our terms of reference required us to inquire into matters relating to the Council by examining a range of specific matters including any issues impacting on the Council’s ability to function.

We have had regard to two key principles. First, in light of the important local democratic representative role played by councils, intervention by the Minister should only be recommended when it is clear that a council, for one reason or another, is not performing this representative function. Secondly, we have been conscious throughout of the need to accord natural justice, particularly in relation to any findings of fact. However, we have made no determination in relation to the truth or falsity of specific assertions, or justification for individual complaints by councillors.

We identified two key questions. First; what impact did the issues identified have on council performance, in particular its role as a representative, democratic body, its decision-making processes and overall governance? Secondly, if there has been a negative impact what should be done to promote a fully functioning council able to observe good governance principles and provide good government to its community in future?

Following an extensive number of interviews with all of the relevant people, consideration of relevant documentation, and the holding of a public hearing in the municipality, we made the following findings.

There has been a high level of tension, discord and conflict between the councillors elected in 2016. The motivations for individuals involved are irrelevant to this basic fact.

This continuing conflict between councillors has impacted negatively on the Council’s performance and its role as a representative, decision-making body, and performance of its role and the role of councillors as required by the Act.

This conflict has reduced the respect for, and the standing of, the Council in the community.

Nearly all individuals involved have been heavily impacted emotionally by their experiences on, and with, the Council.

This conflict has had a detrimental impact on decision-making by councillors. This is both in relation to long term strategic decisions critical to the sustainability of the Council as well as decisions on potentially controversial issues.

Conflict between councillors has impaired the opportunity for staff to provide appropriate professional advice. It has also seriously affected relationships between councillors and staff at all levels of the organisation which will take considerable time and commitment by all parties to overcome.

Lack of training provided to councillors has not been a contributing factor in the conflict.

The resignations of four councillors for reasons associated with the conflict¹ and their replacement by new councillors, along with replacement of another councillor who resigned for different reasons, means the Council as presently constituted does not reflect a high level of community support when considering votes cast in the 2016 election. While of itself this would not justify intervention, it does weaken the current Council's legitimacy as a truly representative body. In our view, it can legitimately be taken into account against the background of ongoing conflict and disharmony on the Council that is inextricably linked to four of those resignations. It is our view that the underlying tensions between councillors and poor decision-making process are continuing.

We are unpersuaded that the issues that led to the Council being in this position have been resolved. This is evident from the processes and decisions regarding the CEO and Acting CEO and deficiencies identified in the process currently underway to finalise the 2019-20 council budget.

Council staff, especially, although not limited to, those in positions involving face to face contact with people in the community, have been subjected to unfair criticism due to the public not distinguishing between their role and that of councillors.

The standing of the Council has been damaged because of the conflict between and behaviours of councillors. This extends to community leaders who have expressed reluctance to participate in council advisory forums.

Whilst we are of the view that internal council training is, and has been, sufficient we recommend a community leadership training program accessible to all in the municipality, including councillors, be undertaken to enhance understanding of the role of council and the roles and responsibilities of councillors.

For these reasons we recommend to the Minister that the Council be dismissed.

¹ There are now five resignations due to conflict, given the recent resignation of Cr Brown on 12 June 2019, citing this as the cause.

Part One: Background

1. The Commission

On 9 May 2019 the Minister for Local Government The Hon Adem Somyurek MLC (the Minister) announced the establishment of this Commission of Inquiry into South Gippsland Shire Council (the Council) pursuant to section 209 of the *Local Government Act 1989* (the Act) to “look at the stability of the Council, the behaviours of individual councillors, the process of hiring a CEO and the efficiency and effectiveness of governance arrangements in delivering services to the community”.² On 15 May 2019 the Minister announced our appointments and we commenced on 21 May 2019. Our Instrument of Appointment, including terms of reference is at Attachment 1.

2. Events Preceding the Commission

The Council

Councils are made up of two parts which work together to serve their communities: the council (comprised of elected councillors) and administration (council staff). The council sets the overall direction for the municipality through long-term planning and decision making. It adopts a strategic view of the future it wishes to achieve for the community and makes plans and policies to achieve this. Councillors are responsible for appointing the Chief Executive Officer (CEO) and also responsible for managing and reviewing the CEO's performance.

The CEO is the only staff member who is appointed by the council. The CEO is appointed for no more than five years at a time on a performance-based contract; and can be re-appointed for further terms. The CEO is responsible for managing the organisational structure for the council and employing all other council staff, ensuring that council decisions are implemented, the day to day management of the council's operations and providing advice to council. The CEO is also responsible for supporting the mayor in the performance of his or her role, and the development, implementation and enforcement of policies and protocols to manage interactions between councillors and council staff.

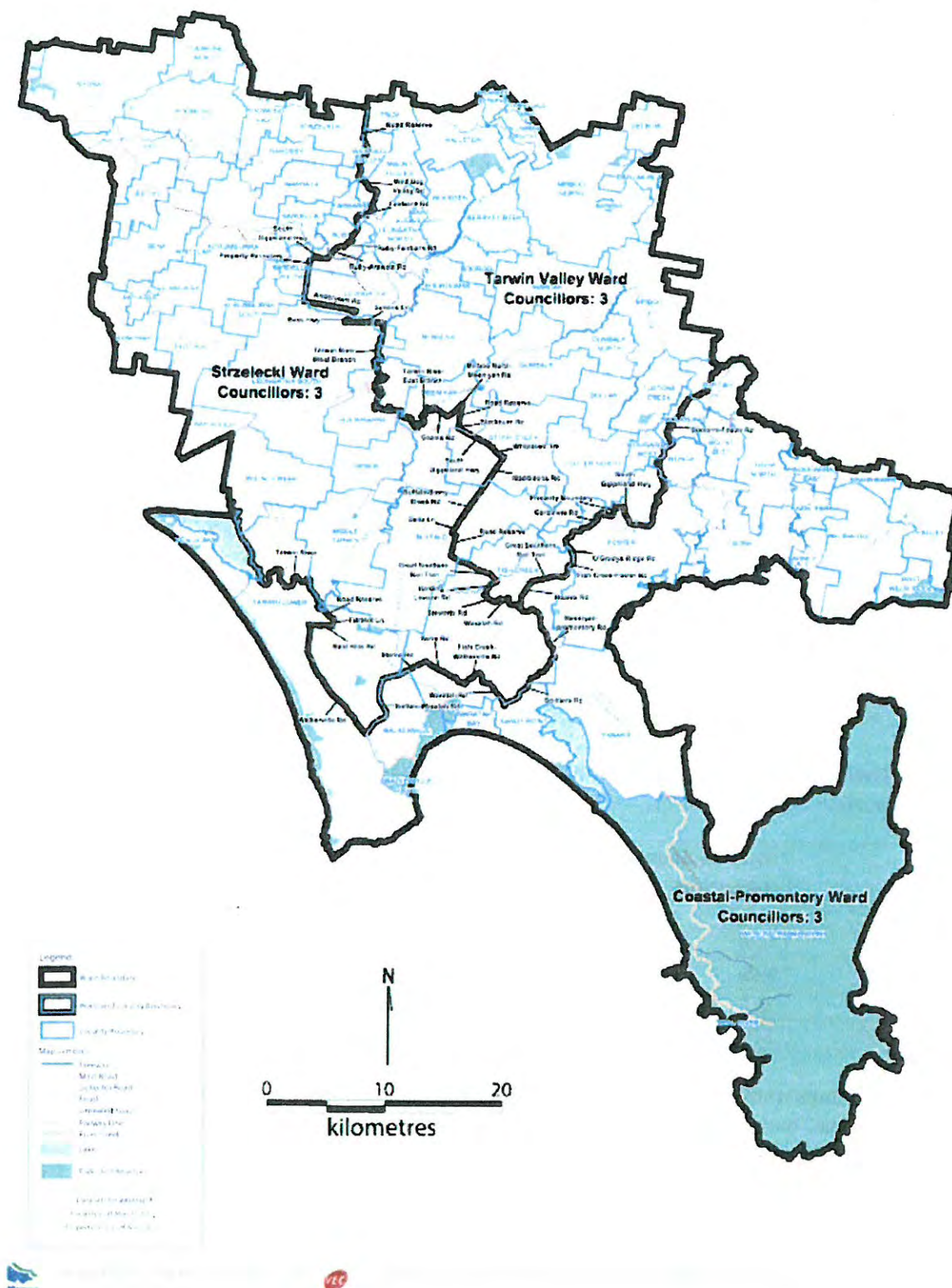
Council staff are responsible for providing advice, implementing council's direction and taking action on council decisions. Council officers also provide advice and expertise that help a council to form policy decisions, along with delivering services and implementing decisions. Sections of the Act setting out these roles are at Attachment 2.

South Gippsland Shire Council is located in south east Victoria, covering 3,308.9 square kilometres and encompassing 26 townships and hamlets that are widely dispersed around the district. The five most populous towns are Leongatha, Korumburra, Mirboo North, Foster and Nyora. In 2018, the municipality currently has a resident population of approximately 30,000. Approximately 47 per cent of that population is aged 50 and over and around 5 per cent are from a non-English speaking background. It is a geographically diverse municipality with challenging topography and climate along with a dispersed population which impacts on the delivery of Council services.

A map of the municipality is included below. It comprises nine councillors elected from across three wards: the Coastal-Promontory ward (three councillors), the Strzelecki ward (three councillors) and

² Media Release from Minister Somyurek, 9 May 2019, <https://www.premier.vic.gov.au/commission-of-inquiry-into-south-gippsland-shire-council/>

the Tarwin Valley ward (three councillors). Of the nine councillors elected to the Council in 2016, six were first term councillors.



The Council has approximately 332 staff, comprising 253.2 full-time equivalent (FTE) staff. There are four Executive Officers, including its CEO.

The Council provides around 120 different services for the benefit of its community, including in the areas of public health, community services, traffic, planning, parking and animal management.

Concerns Raised with Government

Establishment of this Commission follows a period during which concerns about the performance of the Council were being raised with the State Government. A timeline of relevant events is at Attachment 3.

In April 2018 the then mayor of the Council, Councillor Lorraine Brunt sent two letters to the then Minister for Local Government, Ms Marlene Kairouz MP (Minister Kairouz).

The first dated 18 April 2018 sought advice regarding a possible conflict of interest on the part of a serving councillor in relation to a legal issue between the Council and a company, Ansevata, regarding the Walkerville Retarding Basin.³

The second dated 27 April 2018 expressed concern that the Council was no longer fulfilling its role as set out in section 3D of the Act to provide leadership for the good governance of the municipal district and the local community and sought the appointment of a Municipal Monitor. The mayor, in both letters, did not purport to speak on behalf of the Council.

Complaints to the Local Government Inspectorate

In the period preceding the mayor's correspondence the Local Government Inspectorate had been dealing with complaints received relating to the actions of some councillors at the Council.

The following table summarises the complaints received by the Inspectorate about the Council between 2015-16 until 2018-19.

Year	Total number of complaints	South Gippsland Shire Council	Percentage of all Victorian council complaints received by the Inspectorate
2015-16	397	2	0.80
2016-17	576	11	6.34
2017-18	417	21	8.75
2018-19	370	13	4.81

The data demonstrates that since the commencement of the current Council's term in October 2016, the Council has been highly represented in complaint volume received by the Inspectorate.

³ The Walkerville Retarding Basin was built in 1988. In 1990, the Shire of Woorayl entered into a water taking agreement with Ansevata Nominees Pty Ltd to facilitate a retarding basin for the stormwater management of the Promontory Views Estate. This agreement included Council, at its expense, testing, monitoring and maintenance requirements for 80 years, until 2070, to facilitate the supply of water to a Walkerville farm associated with members of Ansevata. Ansevata raised concerns about the Council's adherence to the terms of the agreement.

The CMI has completed five investigations each comprising of multiple allegations, including in relation to conflicts of interest and the unauthorised release of confidential information which are offences under the Act.

Concern about the number and nature of these complaints led the Chief Municipal Inspector, David Wolf (**the CMI**) recommending, in a letter to Minister Kairouz dated 11 May 2018, the appointment of a Municipal Monitor to the Council.

The CMI noted he was concerned at the capability of the Council *“to provide leadership and good governance for the municipality”*. He noted he was investigating allegations of unauthorised distribution of information by individual councillors and contentious issues involving the personal interests of councillors that may involve breaches of the Act.

He also expressed concern about governance issues including frequency of urgent special meetings, rescission notices and notices of motion which appeared to indicate divisions between councillors, and between councillors and the administration.

He advised that he was *“concerned that the actions and relationships between councillors is affecting or has affected the business of council and their primary role in the provision of leadership and good governance in the municipal district”*. For these reasons he recommended the appointment of a Municipal Monitor.

Appointment of a Municipal Monitor

Following his appointment by Minister Kairouz, Mr Peter Stephenson commenced as Municipal Monitor at the Council on 18 June 2018. His role was to monitor the Council's governance processes and practices particularly with respect to the issues identified by the Chief Municipal Inspector. These were:

- a) meeting procedures and decision-making,
- b) conflict of interest processes,
- c) management of confidential information,
- d) interactions between councillors and between councillors and council staff,
- e) adherence to the Councillor Code of Conduct, and
- f) any other governance issues identified.

The Monitor was to advise on and provide assistance to the Council in respect to these matters and to report to the Minister on steps taken by the Council to improve its governance. He was also to make recommendations to the Minister on the exercise of the Minister's powers under the Act. The Monitor was in place at the Council from 18 June 2018 to 2 April 2019.

Resignation of Councillors

From towards the end of 2018, a number of councillors elected at the 2016 general election, and through subsequent countbacks, have resigned from the Council. These resignations triggered operation of countbacks in accordance with Schedule 3A Act.

The Victorian Electoral Commission provides the following explanation of countbacks in local government elections. *“Countbacks occur for local councils when the vacancy to be filled is in a multi-councillor ward or un-subdivided municipality and there is more than one eligible candidate remaining from the general election that was not elected. Voters do not need to vote again in a countback as the ballot papers from the previous election are used. In a countback, votes for the vacating councillor*

*from the last election are redistributed to unsuccessful candidates according to the voters' preferences. A candidate who receives more than 50% of the votes is declared elected. If no candidate receives more than 50% of the vote, the candidate with the least votes is excluded and their votes are also redistributed. This process continues until a candidate can be declared elected."*⁴

The vacancy provisions are designed, and have been used, primarily to deal with extraordinary circumstances such as ill-health, death and re-location. Hence the vacancies caused by the resignations of councillors in these circumstances are called 'extraordinary vacancies'.

Resignations commenced with that of Cr Maxine Kiel on 25 September 2018. It took effect on 26 September 2018. Cr Kiel was subsequently replaced by Cr Rosemary Cousin who was elected by countback on 22 October 2018.⁵

Cr Meg Edwards resigned on 4 October 2018 effective 30 October 2018. She was replaced by former councillor, Cr James Fawcett. He was elected by countback on 5 November 2018.

Crs Lorraine Brunt and Cr Fawcett resigned on 28 February 2019 effective 1 April 2019. Cr Brunt was replaced by Cr Frank Hirst who was elected by countback on 1 April 2019. Cr Fawcett was replaced by Cr Steve Finlay who was elected by countback on 8 April 2019.

Following the resignation of Cr Edwards in October 2018 and again after the resignation of Cr Fawcett in February 2019, the first person elected by countback, Mr Nigel Hutchinson-Brooks, declined to accept the position of councillor. In the case of the resignation of Cr Fawcett, the second person elected by countback, Mr Graeme Winkler, also declined to accept the position of councillor.

All of these resigning councillors and individuals who declined the position, except for Mr Winkler, cited concerns about the behaviour of councillors including bullying, threatening and intimidating behaviour and poor decision-making processes as central to their decisions.

These resignations and failure to accept the position of councillor are relevant to our inquiry for two reasons. Firstly as indicative of the level of turmoil being experienced within the Council. Secondly because they have resulted in the Council now being constituted substantially by individuals who were not elected by popular vote as the first choice from amongst residents and rate-payers. We return to this issue later in this report.

A fifth councillor, Cr Rich resigned on 22 April 2019 effective from 9 May 2019 for personal reasons unrelated to the problems being experienced by the Council. He was replaced by countback by Mr Matthew Sherry on 27 May 2019.

A table setting out this sequence of resignations of councillors elected in 2016 and their replacements by countback is at Attachment 4.

⁴ Victorian Electoral Commission, 2017.

<https://www.vec.vic.gov.au/Elections/CountbacksByElectionsAndAppointments.html>

⁵ Under section 68A of the Local Government Act 1989, a councillor is taken to have resigned on the date that the resignation is delivered to the Chief Executive Officer. The councillor continues to hold office until the date specified in his or her resignation but they cannot continue in office after the result of a by-election or countback is declared. An election is then conducted by the Victorian Electoral Commission to fill the extraordinary vacancy caused by the resignation of a councillor. In the case of South Gippsland Shire Council, the elections to fill these extraordinary vacancies were conducted by countback.

Community Concern

All of the issues and conflicts being experienced in the Council have been covered extensively in the local newspapers; the South Gippsland Sentinel Times, the Great Southern Star, the Foster Mirror and the Mirboo North Times.

This coverage has included reports emanating from leaks of information from the Council, letters and opinion pieces from councillors making claims and counter claims and letters from the public.

A public meeting of residents was held on 14 March 2019. Organised by the Leongatha Business Association it was promoted on the Association's Facebook page with the title "Councillor Crisis Public Meeting" and the description "*Your Community Your Town Your Say*". Community members were urged to attend to discuss "*the dysfunction of the current Councillors*". This was reportedly attended by over 400 residents of whom approximately 90 percent supported dismissal of the Council.

It is clear that what was happening at the Council was a matter of significant public concern and causing division in the community.

3. The Municipal Monitor's Final Report

As required by our terms of reference we have examined the Monitor's final report to the Minister which he provided on 21 March 2019. We have also interviewed Mr Stephenson in the course of our inquiry. We note that over the course of our inquiry this report had been provided to councillors but not publicly released.

The Monitor recommended the Minister suspend the Council and that upon their return from suspension, councillors be required to undertake governance training to the satisfaction of the Minister. Suspension processes are set out in section 219 of the Act and enable the Minister to recommend to the Governor in Council suspension of councillors for a period of up to twelve months.

In his report, the Monitor found the Council performing poorly against three key pillars of good governance⁶:

- 1) Direction and leadership,
- 2) Culture and behaviour, and
- 3) Decision-making.

He also expressed concern about how the Council was dealing with:

- 1) Communications and community engagement, and
- 2) Risk and compliance.

His report includes examples of councillors acting without authority from the Council in pursuit of individual agendas and special interests; failure to respect previous council decisions; inappropriate use of notices of motion and an overall failure to set strategic directions despite ample time to do so and the availability of council staff to provide strategic advice.

⁶ The pillars are referred to in the Framework for Good Governance developed by the Commissioners who conducted the 2016 inquiry into the Greater Geelong City Council. The Framework was developed by the Commission to support an examination of the Council's governance structures and processes, which related directly to its terms of reference.

Symptomatic of the lack of direction and leadership in the Monitor's view was that *"individual councillors are able to act outside of the Council's collective decision-making processes with apparent impunity"*. He also found that instead of focussing on setting strategic directions *"councillors have involved themselves in 'pet interests' and the implementation of Council decisions which is the role of the CEO and Council administration"*.

The Monitor found a lack of understanding of conflict of interest issues by some councillors. This is despite training on this issue both at induction and by an external facilitator organised by the administration through the Municipal Association of Victoria.

The Monitor found that councillors:

- a) had not addressed the continuing issue of unauthorised release of confidential information;
- b) some councillors demonstrate by both their words and actions that they do not respect the division of roles between councillors and staff and some staff are visibly anxious in the presence of some councillors;
- c) a number of councillors do not act in accordance with the Councillor Code of Conduct and intimidating and/or disrespectful behaviours are commonplace.

The Monitor noted, speaking of the current mayor; *"The Mayor has been unable to foster and establish good working relationships between himself and all Councillors and has on occasion, in my view, fuelled the acrimony between Councillors both through comments made in local papers and during council briefings and meetings."*

Taken together the Monitor said these behaviours *"paint a picture of a divided and combative Council distracted by conflict"* and are symptomatic of a toxic culture that reflects poorly on the Council's communications and community engagement. He noted that it also impacts on the filling of extraordinary vacancies with one former councillor declining to accept the position of councillor following a countback, citing as his reasons bullying, threatening and intimidatory behaviour by councillors.

The Monitor also noted the public meeting referred to above, noting this reflected how sections of the community including business groups in the two main towns within the municipality, service organisations and stakeholders and community members are increasingly critical of the Council. In his view there is widespread concern amongst the community *"about the performance of the Council and a substantial level of cynicism about the possibility of any change in culture or actions of the Council in the future"*.

The Monitor notes that the problems within the Council rest with the councillors and not with the Council administration. In his view they are deep seated, noting councillors were resistant to change during his term of appointment despite his regular advice to the Mayor and councillors. The Council has had ample opportunity to address the issues but *"have failed to demonstrate an understanding of their individual and collective behaviour and what constitutes good governance and good government"*.

The Monitor therefore recommended that the Minister consider suspending the Councillors and should this occur, on return from their suspension Councillors should undertake a course of instruction in governance to the satisfaction of the Minister.

On the basis of our inquiry we consider that the Monitor's final report is a reasonable reflection of the situation at the Council during the period of his appointment. It is clear from the report that the

Monitor believed that his recommended course of action, if given a level of co-operation by councillors, would be capable of satisfactorily resolving the issues he identified.

4. Submissions Sought in Response to the Monitor's Report

On 2 April 2019 the Minister wrote to the Mayor copying in all councillors advising of the Monitor's recommendation that the Council be suspended and giving the Council and councillors the opportunity to respond.

He sought advice on what steps the Council had taken to address and remedy the issues identified in the Monitor's report.

The Minister noted that if he was satisfied on reasonable grounds, having considered the steps taken by the Council and any other relevant considerations, that there was a serious failure to provide good government it was open to him to recommend to the Governor in Council that the councillors be suspended and an administrator be appointed.

Submissions from the Council were to be provided by 2 May 2019. Subsequently, at the request of the mayor, this deadline was extended by one week, to 9 May 2019.

The Council's response

The Minister received a letter from Kellehers Australia Lawyers, advising that the firm was acting on behalf of the Council and the Mayor and Crs Skinner, McEwen, Argento, Cousin, Hirst and Finlay. It provides a lengthy legal argument why each of the issues noted by the Monitor do not reflect breaches of the Act or any other unlawful activity. We note that the Monitor did not assert any unlawful actions.

The letter from Kellehers also encloses a response from the seven councillors. It is unclear from the minutes of a special meeting of the Council on 8 May 2019 whether this response has been endorsed by the Council. We note Cr Brown in his separate response indicated he was not involved in the preparation of this document.

The 8 May council meeting decided that actions "*above and beyond anything as called for within the Monitor's Report*" would be called the South Gippsland Shire Good Governance Action Plan. It would not be made public until released publicly by the Minister. A motion to endorse the intent of the plan, bring it back for formal adoption and have the CEO develop an implementation plan regarding the actions contained therein was carried.

Essentially the response characterises the disputation occurring in the council as a conflict between two sides. That is between "*councillors who were opposing change and more progressive councillors who had an agenda for change*". Whilst acknowledging some inappropriate behaviours the submission asserted "*a majority of councillors now wish to progress a positive agenda and are willing to work together in a collegiate manner*". This is a consistent thread through the submission; that whatever problems occurred are in the past and that the Council, following resignations of former councillors and their replacement, is now "*working productively and respectfully*".

The councillors are critical of the fact the Council was not advised of the receipt and content of letters to the Minister from Cr Brunt and from the CMI. They are also critical of the nature and extent of advice provided by the Monitor during his time at the Council. They criticise him for not raising matters in his report with the Council prior to it being submitted to the Minister. Councillors rely upon a Good

Governance Action Plan to resolve the issues that have arisen at the Council and to avoid suspension of the Council.

[We would interpolate here our view that it is evident that the Monitor discharged his responsibilities appropriately according to his terms of reference. He properly gave councillors notice of the views that he subsequently included in his report and provided ample opportunity to take action in response. Similarly, we are of the view that councillors were not disadvantaged by the correspondence from Cr Brunt and the CMI. They knew of the issues that were concerning Cr Brunt and also had full knowledge of the matters referred to by the CMI.]

The submission admits intermittent tensions earlier in this term of the Council but suggests these have been addressed over 18 months ago and refutes any charges of bullying. Inappropriate leaking of information is acknowledged but it is suggested this would not have come from existing councillors as it is they who are damaged by leaks, and it is therefore not in their interest to leak. Conflicts of interest are matters for individual councillors and not a council matter and there are council policies and procedures in place. The issues raised by the Monitor are old issues and have been resolved and haven't occurred for the past year. It alleges the media has "*grossly inflated these issues*".

The Good Governance Action Plan is annexed to the submission. It is a table containing each of the actions referred to in the Monitor's report and a response.

[We would interpolate that in essence the nature of these responses repeat the view expressed by these councillors that their proposed actions on the issues that concerned the Monitor were appropriate, or, if there had been problems these were in the past].

The plan then proposes new policies and procedures to be developed by the Council administration. There does not seem to be a genuine engagement with the issues identified by the Monitor especially about the behaviour of councillors and adherence to policies and procedures. For example, the response to alleged leaking of confidential information is to suggest this is the responsibility of the Council administration, specifically the media unit as directed by the CEO, to manage.

Crs Frank Hirst and Steve Finlay response

These two councillors were signatories to the joint councillors' response, despite not being elected councillors during the period reported on by the Monitor.

They also jointly wrote a separate letter in which they indicated support for the general direction the remaining councillors wish to take. They believe that they "*will be able to work constructively with them to improve the governance and optimise the outcomes for our Shire*". They note if they hadn't believed this, they would have declined to accept the position of councillor, "*as two others who were offered the posts chose to do*". They hope that problems can be addressed without the suspension of the councillors.

Cr Rosemary Cousin response

Cr Cousin was a signatory to the joint councillors' response. She is critical of the Monitor for not raising specific governance performance issues that needed to be addressed by the Council, instead providing general advice about the principles of good governance. She expected specific advice, either formal or informal, and believed this was consistent with his role. She stated that she had asked the Monitor to investigate claims made by former Cr Edwards in the media which in her view were damaging the Council's reputation, but he did not respond to her request.

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She also sought to have the Mayor and CEO issue a statement rejecting intimidation of council staff and was advised by both the Mayor and CEO that this was not her role which she does not accept. She expected the Monitor to support her and was disturbed by his silence. She notes Council's media response to leaks was poor and believes this is the most significant governance weakness by the Council but that it is up to the CEO to whom the media unit reports.

She contends the councillors who resigned were damaging the standing of the Council with their *"repeated public statements"* and failure to take their concerns through proper processes in Local Laws and the Act. She expressed concern that councillors did not have access to the CMI letter recommending appointment of a Monitor and supported the Good Governance Action Plan.

Cr Alyson Skinner response

Cr Skinner was also a signatory to the joint councillor response and in her individual response also supported the Good Governance Action Plan as a way to deal with the issues identified by the Monitor. She accepted that the current controversy is having a damaging effect on the Council and that it would *"take significant goodwill and trust from councillors, the administration and the community to repair"*.

In her view suspension of the Council would be *"the loss of democratic representation for our communities"* and would prolong the damage to the Shire.

Cr Aaron Brown response

Cr Aaron Brown noted that *"any other form of submissions received from other Councillors (whether joint or individual) has had no input from me. I consider this submission to be the only account of my views"*.

Cr Brown supported the Monitor's recommendation that current councillors be suspended stating that the Monitor's report is *"a balanced, accurate, detailed and professional assessment of the various situations, processes and behaviours that have occurred since he was appointed"*.

In his view the councillor only sessions, designed to set strategic directions, *"have been of little value. They have been used at times to try and unreasonably 'condition' councillors on particular issues to achieve a particular outcome. The environment in these sessions was regularly hostile, not receptive to other ideas and not open to different points of view"*. He was concerned that staff were not in attendance and that their expert opinion was not available on topics that would have major ramifications.

He noted that at Executive Update sessions (staff briefings) attended by senior officers, some councillors indicated *"they didn't want officers there listening and trying to help facilitate discussion to better inform councillor decision-making"*. He described this as indicative of a lack of trust between councillors and staff. In his opinion some councillors confused the roles of councillors and staff and often risked getting involved in operational issues. He was often dismayed at the inability of some councillors to appropriately discern conflict of interest issues as *"explained in our induction package and set out in legislation"*.

He noted that Councillor Conduct processes were too arduous and drawn out resulting in little benefit to complainants so poor behaviour wasn't dealt with adequately, that despite commitments to better behaviour *"little changed behind closed doors"* and that interpersonal relationships in some instances could be *"classified as 'out of control'"*.

Cr Brown accepts that since the resignations of four councillors there is more cohesion, but this has come through ostracising and marginalising those with different views and has resulted in a reduced diversity of opinion. There is a risk of 'group think' occurring and a *"prospect of there being no questioning or assessing of alternative courses of action on various Council issues. Objective thinking and moral judgement can deteriorate as a result of pressures in the group to conform"*.

According to Cr Brown training provided to councillors was more than adequate. It was his view councillors haven't taken the issues raised by the Monitor seriously, and that the Council has *"damaged the brand of the South Gippsland Shire Council"*.

Part Two: Principles and Methodology

1. Commission principles

In undertaking our role, we have had regard to two key principles:

1 Democratic representation

The importance of local government is enshrined in the *Victorian Constitution Act 1975 (the Constitution)* which requires Parliament to ensure that there is a proper system of local democracy in place that encompasses a wide range of subjects of particular relevance to that community. Specifically, sub-section 74A(1) states *"Local Government is a distinct and essential tier of government consisting of democratically elected Councils having the functions and powers that the Parliament considers are necessary to ensure the peace, order and good government of each municipal district"*.

The Constitution in sub-section 74A(1A) further states that subject to laws enacted by the Parliament each council *"(a) is responsible for the governance of the area designated by its municipal boundaries; and (b) is constituted by democratically elected Councillors as the governing body which is – (i) accountable for its decisions and actions; and (ii) responsible for ensuring good governance; and (c) includes and administration which – (i) implements the decisions of the Council; and (ii) facilitates the performance of the duties and functions of the Council"*.

Sub-section 74B(2) of the Constitution provides that *"A Council cannot be dismissed except by an Act of Parliament relating to the Council"*.

The Act is the legislation enacted by the Parliament to regulate Victoria's system of local government. Section 219 of the Act provides a mechanism whereby the Minister may recommend, and the Governor in Council may order, the suspension of all of the councillors of a council. The Act provides that a period of suspension must expire, and the councillors return to office, a maximum of 1 year after the order is made for their removal.⁷

Councillors are elected by residents and ratepayers of the municipality to represent their legitimate interests and, in the ordinary course of events, can be expected to serve their full term. In our view, only when it is clear that a Council, for one reason or another, cannot or is not properly performing this function would the Commission be justified in recommending intervention by the Minister; whether by suspension under the Act or dismissal.

The Commission in this inquiry, is seeking to determine, in relation to the current Council, whether this situation has arisen, and, if so, what is required to ensure that ratepayers in the municipality have a proper functioning council that complies with the Act.

2. Natural Justice

We have been conscious throughout of the need to accord natural justice, particularly in relation to any findings of fact.

⁷ This is unless the Minister has set a date for a general election (which must be within 100 days after the date the Order expires), or a bill has been introduced into the Parliament to dismiss the Council (ss209(9) – 209(9B)) of the Act.

In the course of our examination of the functioning of the Council, it was necessary to identify the policy and inter personal tensions that have clearly arisen between various councillors and interactions between councillors and the Council staff.

This was not undertaken in order to determine the truth or falsity of specific assertions made or the justification for individual complaints. What is important in our view is the acknowledgment by all involved of such acrimony and dysfunction within the Council that a number of councillors have resigned.

It is the impact of these internal conflicts upon the proper operation of the Council and, ultimately, its representative character to which our attention has been directed.

To attempt to attribute personal responsibility to particular members or groups for this state of affairs would serve no useful purpose at this stage and would involve different processes to ensure adherence to the principles of natural justice before any findings of that kind could be made.

There are other forums in which disputes of this nature are determined which utilise these processes.

1. Key questions for the Commission

In approaching our work, we identified two key questions:

1. What impact did the issues identified have on council performance, in particular its role as a representative, democratic body, its decision-making processes and overall governance?
2. If there has been a negative impact, what should be done to promote a fully functioning council able to observe good governance principles and provide good government to its community in future?

2. Methodology

In undertaking our inquiry, we have provided opportunities to any person wishing to contribute. We established a web page on 23 May 2019 which included our terms of reference and information about how the inquiry was to be conducted including how people could be involved.

Notices were placed in two local newspapers - the Sentinel Times and the Great Southern Star - in the week of 27 May 2019 advising community members of how they could contribute to the inquiry. The notices included the URL for the Inquiry's web page, an email address for written submissions and the date of a public hearing to be held in Korumburra on 5 June 2019.

The primary methods we employed to conduct our inquiry are described below:

- Private interviews between 22 May 2019 until 11 June 2019 resulting in a total of 33 interviews.
- The opportunity to provide written submissions and / or seek interviews originally over the period 23 May 2019 – 5 June 2019, but extended to 11 June 2019.
- A review of relevant documents held by the Council and submitted by those we interviewed.
- The conduct of a public hearing in Korumburra on Wednesday evening, 5 June 2019, attended by approximately 30 people.

We interviewed all persons elected to the Council in the general election of 2016 and all of the new councillors who have been elected at subsequent countbacks except for Cr Sherry who was elected on 27 May 2019. We also interviewed some former councillors and members of the community.

Interviews were conducted with Council staff including the current CEO and recently appointed Acting CEO. Also interviewed were the independent Chair of the CEO Employment and Remuneration Committee and the Municipal Monitor and the Chief Municipal Inspector.

A full list of the people we interviewed is at [Attachment 5](#).

The issues raised in written submissions and at the public hearing were consistent with the issues and views put to us during our private interviews and are as follows:

- councillor resignations and conflict between councillors,
- the relationship between councillors, the CEO and the Council administration,
- Council's decision-making processes, particularly in relation to contentious and complex issues (such as its annual budget, rating strategy and planning scheme),
- the process used to appoint the Acting CEO,
- the Council's Community Satisfaction Survey results,
- the Minister's consideration of the future of the Council,
- Planning issues, and
- local media coverage of the Council.

Whilst we were willing to speak to anyone who requested it, and considered all written submissions, we note that where planning matters were raised, and where these were the primary issue, we did not interview individuals, and we limited ourselves to consideration of how these issues impacted on our terms of reference.

Part 3: What we heard and found

1. What We Heard

We have been required under our terms of reference to inquire into the conduct of councillors. We emphasise this has not been for the purpose of determining any claims and counterclaims about personal behaviour. Our purpose has been to determine councillors' understanding of their role and responsibilities as councillors and the impact of their behaviour on the governance and proper functioning of the Council. This goes to the role of councils and the role of councillors, set out in the Act and which are at Attachment 2.

Amongst those we interviewed there was a near unanimity about the high level of conflict at the Council for most of the period encompassed in our review. What disagreement there was centred on the motivations behind the conduct, the impact of behaviour on others, and the impact on the proper functioning of the Council.

Decision-making processes at the Council

Councillors spend a full day, from around 9am to 5pm, every Wednesday on the first, second and third week of every month in various meetings. These are taken up by staff briefings, councillor only meetings and every third Wednesday includes opportunities for public question and answer sessions. The public council meeting takes place in the fourth week of every month and is live-streamed.

Councillors also represent the Council on a long list of internal committees and external bodies.

This is an extensive commitment of time by councillors. Nevertheless, many of those interviewed asserted they had limited opportunities to raise issues with officers or to discuss matters of strategic importance.

Conduct of councillors

We heard from almost all of those we interviewed about extreme conflict between councillors. This included councillors (including ex-councillors), prospective councillors, staff and consultants employed by the Council and members of the community.

It was evident that a number of those involved had been heavily emotionally impacted by this conflict; some to the extent of requiring medical treatment.

Whilst it must be anticipated that there will be robust debate on important issues to be decided by a council, we heard that the behaviours observed were far in excess of what would be considered reasonable discussion.

The behaviours brought to our attention included:

- a. shouting and overt aggression in meetings,
- b. the 'shutting down' of alternative points of view,
- c. intimidation of those seeking different outcomes by bombarding them with emails and telephone calls,
- d. restricting access to information to those with contrary views,
- e. lack of respect for collective council decisions,
- f. leaking council information to the media,

g. attacking each other in local newspapers.

This conflict clearly damaged relationships between councillors. We were told that conflict was at its peak during the councillor only meetings and in interactions between councillors themselves; including aggressive emails copied to all councillors and sometimes to staff, and in abusive telephone calls and messages, including late at night. Conflict also spilled over into staff briefings and formal council meetings where it was observed, and impacted on staff.

Even after the Monitor was appointed this conflict continued, albeit to a lesser degree while he was present. The Monitor confirmed that the most extreme conflict was apparent in councillor only meetings but was still of concern in staff briefings and in formal council meetings.

Conflict was of such intensity that it was named as the principle reason behind the decision of the four councillors who resigned and one prospective councillor who twice declined to take up the position after countbacks.

Conflict between councillors also impacted on council staff, especially but not limited to, senior officers including the CEO.

This is despite a new protocol being put in place by the Council CEO requiring all interaction between councillors and council staff to be via requests through the CEO. Senior staff attended meetings with councillors as requested. Interaction between junior staff and councillors was kept to a minimum.

In particular staff reported being impacted by the conflict between councillors in the following ways:

- a. difficulty in the preparation of council advice because councillors could not agree on general directions and between options on particular issues as proposed by staff resulting in extra work by staff which was not ultimately utilised,
- b. being pressured by some councillors to change their advice on issues to conform to the councillor's views,
- c. by having councillors challenge their professional advice without evidence; for example constant reworking of financial spreadsheets to change outcomes,
- d. being prevented from preparing and delivering advice, especially on long term significance of strategic decisions being made by the Council,
- e. being prevented from carrying out their duties as staff thought appropriate,
- f. some staff, particularly in areas involving contact with the public, being abused by members of the community as a result of media reports about the conflict.

We heard there was a perceived involvement of councillors in what could be called operational issues, often due to public comment by councillors. This resulted in confusion in the community over the separate roles of councillors and council staff, resulting in staff being publicly criticised for matters over which they had no control.

We were told that there would need to be a *"healing"* and a *"reconciliation process"* between councillors and staff regardless of any decision by the Minister about the future of the Council.

The conflict between councillors commenced from the start of their term of office, and continued throughout the terms of three mayors, each of whom took different approaches to dealing with it. These three approaches were described to us as: *"appeasement"*, *"authoritarian"* and *"controlling"*. None of these approaches reduced the level of conflict which was described as getting worse over time.

This made it difficult for the role of the Council, as expressed in the Act, to be carried out effectively because decision-making became almost impossible on particular issues. Councillors were unable to engage in rational discussion about issues of great significance for the municipality; both current and future. They were not able to explore issues in a respectful way before formal decisions were made. They were not able to agree on the need for reports on the implications of decisions from the administration.

This made consideration of the key strategic documents for which councillors are responsible extremely fraught. This was particularly the case with the Council Plan and the Council budget, and we heard that some elements in the Council Plan were included against advice.

Deliberations about the budget and rating strategy are ongoing but it would seem there have been multiple meetings and extensive work by staff that have not delivered the level of consensus required. This process has included establishment of a Rating Strategy Advisory Committee with an independent chair and members of the public working with councillors and council staff.

While all council deliberations around budget can be difficult and stressful, it would seem in this instance, the process has been marked by the intense conflict between councillors. This has centred on the importance or otherwise of expert professional advice which is particularly important in terms of the Council's obligation to ensure the long-term financial sustainability of the municipality.

Concerns expressed about the budget and rating strategy process to date have been that the advice from the Rating Strategy Advisory Committee, despite multiple meetings was ignored, and that some councillors have attempted to replace professional budget modelling presented in meetings with their own work.

Conflict between councillors also made consideration of controversial decisions difficult. We were advised of particular matters that require the careful consideration of complex legal issues to ensure the Council is not exposed to significant financial loss that were said to be affected by conflict between councillors.

Some councillors had personal interests in some of these matters and it was suggested that a faction developed among some councillors who usually came together to support each other's particular issue. Quite separately from formal disclosure of conflicts of interest (which are a matter for the CMI), we were told that conflicts about how these issues should be handled and final decisions in respect to them were a significant contributory factor to the dysfunction evident at the Council.

We heard that the high level of conflict has now ceased since the replacement of four councillors with another four via the countback processes in the Act.

The current councillors have assured us that now so-called "*old guard*" councillors are no longer on the Council the atmosphere has improved substantially. Councillors are now acting harmoniously and there is no longer any overt conflict in council forums.

Despite this asserted new harmony we heard that some of the behaviours that allegedly were the foundation of the intense conflict observed by the Monitor and which are the subject of this inquiry are continuing.

Current councillors, and staff observing this group, have advised us of:

- inadequate flow of information between councillors leading to feelings of exclusion,
- overbearing behaviour by some councillors,

- difficulty in coming to agreed positions, for example even when developing the Good Governance Action Plan,
- difficulties getting items on the councillor only meeting agenda,
- likely difficulties given the different levels of experience of councillors,
- continuing distrust of staff by councillors,
- staff still feeling they are treated badly by councillors, and
- councillors feeling there is not enough time to discuss issues.

It is evident that there is still a reluctance to receive and act on professional advice from staff and independent expert advice.

Council staff are of the view that there is still significant lack of trust of staff by some of the current councillors and a desire to be involved in operational matters.

Processes regarding the CEO and Acting CEO

As required by our terms of reference, we have reviewed decisions taken relating to the CEO and the appointment of an Acting CEO.

In 2018, the Council established its CEO Employment and Remuneration Committee and over time this came to include all councillors. The Committee had its first meeting chaired by independent consultant Phil Shanahan, on 7 November 2018 (**the Independent Chair**). Whilst an experienced consultant was appointed to chair the Committee, we note the following issues of concern over the process:

- late compliance with the performance review requirements in the existing CEO contract;
- a remarkable number of meetings – eleven - required,
- inadequacy of the existing Performance Indicators as a basis to carry out a comprehensive review of the current CEO's contract,
- public comments by the mayor during the CEO contract renewal decision process,
- a limited call for internal applicants for the position of Acting CEO, ,
- inadequate time for councillors to consider applications for the Acting CEO position, and
- failure to fully deal with the appointment of the Acting CEO in camera.

The terms of the contract ultimately entered into with the Acting CEO are also of concern. Initially a clause requiring the full pay out of the 12-month contract was proposed by councillors against the advice of the the Independent Chair, and this was not proceeded with when he threatened to resign.

However, another clause was inserted into the contract contrary to advice from both the Independent Chair and an independent Lawyer. This clause was designed to ensure that should the Council be suspended (as recommended by the Monitor) and administrators be appointed, it would hamper the appointment of an ongoing CEO during the period of administration. Most of the current councillors advised us that they felt very strongly that appointment of a CEO was of such importance, that only elected councillors should be able to make such an appointment and the purpose of this clause was intentional.

The advice to councillors was that such a clause risked breaching the statutory duty held by a council to appoint a permanent CEO as soon as possible, and may invite criticism that the Council was seeking to effectively direct and restrain a future council (constituted by administrators), and was unlikely to be enforceable. [Attachment 6](#) is a copy of the contested clause and associated legal advice provided to the Mayor. The caution expressed by these professional advisors was largely ignored, and the

disputed clause was included in the contract. We were advised this was not in response to a request from the person appointed to the role.

Inclusion of this clause in the Acting CEO's contract is indicative of the reluctance of at least a majority of the current councillors to accept professional advice, including legal advice. This indicates a continuing lack of preparedness to address the issues identified by the Monitor in his report.

The Acting CEO was appointed at the Council meeting on 8 May 2019.

Decisions of the Council since 2 April 2019

Our terms of reference require us to consider whether any other decision taken by the Council since the Minister's show cause letter of 2 April 2019 is of concern.

As indicated above, we have been advised of significant concerns by some councillors and some senior council staff about the process currently underway regarding finalisation of the Council 2019-20 budget.

Whilst no decision has yet been made there is very real concern that a final decision may have a significant, negative, long-term impact on the financial sustainability of the municipality and that this decision may be made without due process and care.

We note the Council at a special meeting on 29 May 2019 resolved to *"call for a report to the 26 June 2019 ordinary council meeting to consider options to achieve the three percent 'rate reduction strategy' for the 2019-20 annual budget."* Our understanding is that this resolution was made despite the previous advice of Council staff on the long-term negative impact of such a decision on the financial sustainability of the Council, especially within the current rate capped environment.

The resolution of 29 May 2019 would seem to be a limited request to the Council administration designed to support a pre-determined objective regardless of its impact.

Our purpose in noting this matter is that it is a further indication of concerning behaviour on the part of some of the current councillors in terms of both processes for decision-making and the impact of significant decisions on the municipality.

Some of those interviewed were concerned that the most recent councillors were not familiar with budget processes and without proper advice would not understand the full import of the decisions required of them.

Impact on service delivery

Our terms of reference include an examination of the efficiency and effectiveness of the Council's governance arrangements in delivering services to its constituents.

At no stage during our inquiry have we heard of any systemic issues with service delivery by council staff.

There is only one major section where the difficulties being experienced by the Council appear to have begun to affect service delivery and that is in the area of planning applications. This can be a sensitive issue in all councils and one where councillors often seek to express the views of their constituents.

The Monitor found there was an attempt to change planning staff delegations via a Notice of Motion to make councillors responsible for planning applications. Ultimately this did not proceed, and it seems there has been no objective evidence that council staff have been exercising their delegations inappropriately.

On the contrary we have been advised that council staff have continued to deliver the usual council services expected by the community. We were told that this was despite the conflict and tensions between councillors which were known to, and impacting on, them.

This is borne out by statistics on the *Know Your Council* website managed by Local Government Victoria. This tracks comparisons between similar councils across a range of council services. In the period 2017-18 the Council had eighty percent of its planning decisions upheld at VCAT against an average of 61.19 percent.

However, we have been advised that concerns about internal conflict in the Council have been expressed by external agencies who are important partners of the Council in delivering services. Should this perception of conflict and division continue staff are concerned that it will impact on their ability to obtain State Government support, including partnerships with departments via regional officers, in delivering services.

Members of the community do not always distinguish between the work of councillors and council staff, and staff have reported bearing the brunt of community frustration about the conflict between councillors.

Several staff, particularly those involved in direct service delivery roles, have reportedly been subjected to abuse by members of the community in response to the critical media coverage of the Council.

Community Standing of the Council

Notwithstanding staff continuing to deliver services, we were told that the standing of the Council in the community has suffered as a result of the issues described above.

According to a comparison of results from the Council's annual community satisfaction survey, performance against the measure *Overall Image and Reputation* has declined from 42 in 2018 to 27 in 2019.

This is not surprising given how disharmony on the Council has spilled over into the community. The South Gippsland Action Group, a grouping of approximately thirty members has been actively supporting a number of the current councillors. Business associations have expressed concerns about the state of the Council as have community leaders interviewed in the course of this inquiry.

2. What We Found

Conflict

There has been a high level of tension, discord and conflict between the councillors elected in 2016. The motivations for individuals involved are irrelevant to this basic fact.

This continuing conflict between councillors has impacted negatively on the Council's performance and its role as a representative, decision-making body, and performance of its role and the role of councillors as required by the Act.

This conflict has reduced the respect for, and the standing of, the Council in the community.

We found nearly all individuals involved have been heavily impacted emotionally by their experiences on, and with, the Council.

Decision-making Processes

This conflict has had a detrimental impact on decision-making by councillors. This is both in relation to long term strategic decisions critical to the sustainability of the Council as well as decisions on potentially controversial issues.

Staff

Conflict between councillors has impaired the opportunity for staff to provide appropriate professional advice. It has also seriously affected relationships between councillors and staff at all levels of the organisation which will take considerable time and commitment by all parties to overcome.

Training

Lack of training provided to councillors has not been a contributing factor in the conflict. On the contrary we find that extensive training was provided. We were advised this amounted to over fifty hours of training covering the Councillor Code of Conduct, conflict of interest, council meeting procedures anti-discrimination and bullying and harassment policies and other matters that councillors were required to understand. We were also advised that councillors were offered ongoing training in financial matters, but this was rarely taken up.

Impact of Resignations⁸

Despite some of the current Councillors asserting that the conflict has ceased since the resignations of three councillors elected in 2016, and another elected via countback in 2018, we are satisfied that the problem continues.

We put to one side the resignation of Cr Rich as this was for reasons unconnected to the conflict occurring at the Council. However, we note that the effect of his resignation is that another new councillor has been elected by countback to replace him.

This means there are now only five of the councillors who were elected in 2016 remaining on the Council along with four others who did not receive sufficient support at that election to be councillors.

It is our view that the resignations of four councillors and the refusal (twice) of one councillor-elect to take up the position, and once by another, indicates the deep-seated nature of the problems in the Council rather than representing a solution to those problems as was put to us by some.

⁸ This section of our report was completed before the resignation of Cr Brown on 12 June 2019; therefore these figures do not reflect his departure from the Council.

Achievement of harmonious views by conduct resulting in the resignation of councillors with different views undermines the role of councils in providing local democratic representation.

In the situation before us it is agreed that levels of conflict were wellnigh intolerable. We accept it was the genuinely held reason for the resignations of four councillors.

It is acknowledged that all current councillors have been lawfully elected including those appointed under the countback system which is the legislated process for filling vacancies on unsubdivided councils or councils with multi-member wards. The provisions of the Act dealing with extraordinary vacancies are most commonly used for reasons of ill-health, re-location and election to the State or Commonwealth Parliament. They also apply in the event of the death of a councillor.

However, it is true to say, the Council as presently constituted does not reflect a high level of community support when considering first preference votes counted in the 2016 election.

This is reflected in the figures set out in [Attachment 7](#). Some of those on the Council are there on the basis of very low levels of first preferences. This is most pronounced in the Tarwin Valley ward where Cr Finlay represents voters' eleventh preference in terms of first preference votes. However, we now have a situation where councillors with lower levels of support now represent residents and ratepayers in each of the three wards.

Therefore, whilst current councillors formally constitute the Council in accordance with the Act, in no real sense can it truly be said to represent the residents and ratepayers as expressed in the 2016 election.

The resignations of four councillors for reasons associated with the conflict⁹ and their replacement by new councillors, along with replacement of another councillor for different reasons, means the Council as presently constituted does not reflect a high level of community support when considering votes cast in the 2016 election. While of itself this would not justify intervention, it does weaken the current Council's legitimacy as a truly representative body. In our view, it can legitimately be taken into account against the background of ongoing conflict and disharmony on the Council that is inextricably linked to four of those resignations. It is our view that the underlying tensions between councillors and poor decision-making processes are continuing.

[We note that at the time of writing of this report Cr Aaron Brown announced his resignation on, and effective from, 12 June 2019. He cited as his reasons for this decision *"a number of factors including a toxic culture which isn't conducive to constructive discussion and respect for different opinions. It certainly isn't conducive to achieving good outcomes for our community. Additionally, I have been concerned by dysfunctional councillor behaviours and decision making. Finally there has been an unwillingness to follow best practice governance processes and quite simply the current culture is one that I no longer wish to be associated with".*]

The Current Council

We are unpersuaded that the issues that led to the Council being in this position have in fact been resolved. The new councillors are very new and have yet to be involved in many decisions, but already some have expressed concern at how decisions are being made.

⁹ There are now five resignations due to conflict, given the recent resignation of Cr Brown on 12 June 2019, citing this as the cause.

The proposed Governance Action Plan does not satisfy what is required. It is an inadequate response primarily because it fails to recognise any responsibility by councillors in any of the problems encountered. Instead it transfers responsibility to council staff to come up with solutions to problems caused by councillors.

It has been acknowledged that relationships between councillors and staff need to be rebuilt. The existing processes in place for decision-making, including councillor only sessions exclusive of staff, remain in place.

Our concerns that the current Council continues to exhibit some of the same features of the conflict riddled council have been exacerbated by our examination of the two specific matters we were asked to investigate.

The CEO and appointment of the Acting CEO

The processes and decisions regarding the CEO and the Acting CEO reflect ongoing problems with how the current Council, despite being told of its newly harmonious nature, is making decisions.

It is our view that the way these matters have been dealt with is indicative that the current Council continues to exhibit features of the Council that have been roundly criticised by the Monitor and which have led to the resignations of councillors referred to above.

Any other Decision of the Council since 2 April 2019 – current consideration of the Council Budget

We note that this process has not been concluded at the time of this report. However, we are of the view that deficiencies in this process indicate that the problems experienced by the previously constituted council continue.

Impact on Service Delivery

Council staff, especially, although not limited to, those in positions involving face to face contact with people in the community, have been subjected to unfair criticism due to the public not distinguishing between their role and that of councillors.

Community Standing of the Council

The standing of the Council has been damaged because of the conflict between and behaviours of councillors. This extends to community leaders who have expressed reluctance to participate in council advisory forums.

Leadership and Governance Training

Throughout the course of our inquiry the issue of councillor training has been raised a number of times. We have noted that significant training is offered to all councillors when elected and additional training is available on request. Despite this we have observed in councillors a lack of proper understanding of basic governance principles such as conflict of interest, confidential information requirements, and good meeting procedure practices.

We have been advised in the course of our inquiry, that the Committee for Gippsland manages and facilitates the Gippsland Community Leadership Program for the development and growth of existing and emerging leaders within the Gippsland region. This is a highly regarded program but requires a significant payment per participant making it not generally accessible to the broader community.

We note that at the Brimbank City Council a successful Community Leadership training program introduced during the previous period of administration is continuing and has been successful. As provided by the Brimbank City Council it is free for participants at a small cost to the council and is open to anyone in the community. It is designed to raise leadership and governance skills in people participating in community organisations.

It is our view that there would be great merit in the Council investing in such a program for the benefit of the community including increasing understanding of the role of council and the roles and responsibilities of councillors.

Part 4: Conclusions and recommendations

1. What Should Happen Now

Having concluded, in response to our first question, that the issues identified in relation to council performance have had a negative impact on the Council's role as a representative, democratic body, we now turn to consider what should be done to promote a fully functioning council able to provide good government to its community in the future.

In determining our recommendations to the Minister, we have considered three options.

Option 1: The Status Quo

This is the option favoured by most of the councillors who currently constitute the Council.

We do not support this option for the following reasons.

The Council as now constituted is fundamentally different from, and does not reflect, the Council that residents and ratepayers elected at the 2016 election.

The problems identified in this report going to council performance have not been resolved. Ongoing issues include the handling of the appointment of an Acting CEO and the current process underway relating to the 2019-20 budget.

It is our view that even if steps are taken by council staff to achieve full implementation of the Governance Action Plan it is unlikely to reduce friction and conflict on the Council. It is very early in the terms of the new councillors with the last one elected on 27 May 2019 and at the time of this report, yet to participate in an ordinary meeting of council.

The reputation of the Council has been so severely damaged in the community that retention of the status quo would be completely unacceptable to residents and ratepayers.

Option 2: Suspension of Councillors as Initially Proposed by the Municipal Monitor

As noted earlier, section 219 of the Act provides that a period of suspension must expire, and the councillors return to office, a maximum of 1 year after the order is made for the councillors' removal.¹⁰ In our view this option would be inadequate for the following reasons.

It does not provide a sufficient break to ensure past behaviours and practices are not continued.

Having initially recommended suspension accompanied by training, the Municipal Monitor advised us he now recommended dismissal because suspension for 12 months was not an adequate time to address the problems he encountered.

¹⁰ As noted above, this is unless the Minister has set a date for a general election (which must be within 100 days after the date the Order expires), or a bill has been introduced into the Parliament to dismiss the Council (ss209(9) – 209(9B)) of the Act.

Given the intransigence of past behaviours that have contributed to conflict and an impairment of long-term decision-making processes, a suspension for twelve months is not a sufficient break to make the necessary readjustments in council processes and decision-making.

We do not support the view that the problems that have arisen at the Council are the result of any deficiency in training and do not believe requiring additional training would be sufficient to address the problems recurring. We note the Monitor concurs with this view.

Option 3: Dismissal of the Council

We recognise that this is a significant intervention; a council cannot be dismissed except by an Act of Parliament.

However, we are of the view, that for the residents and ratepayers of the Council to be assured that they have a proper functioning council under the Act, such intervention is warranted.

We consider a two-year break in the elected council is necessary to:

- disrupt the pattern of conflict and disharmony between councillors,
- re-establish a proper basis for trust and professional relationships between councillors and staff,
- establish proper governance practices including meeting procedures, and
- repair the damage to the Council's standing in the community so that community.

Alongside a break in the elected council, we are of the view that an extensive community leadership development programme encouraging widespread participation in training to encourage community leadership more broadly and to also raise community understanding of the role of council and the role of councillors would be of benefit in the municipality.

2. Recommendations

We recommend that:

1. The South Gippsland Shire Council be dismissed;
2. The term of dismissal be until October 2021;
3. During the period of administration, the Council:
 - a. Develops and delivers an extensive community leadership development programme that:
 - i. Encourages widespread participation in community and civic life in the municipality;
 - ii. Supports the development of community leadership skills; and
 - iii. Supports an improvement in the relationship between the Council and its community.
 - b. Reviews and implements improved council policies and processes, with a focus on councillor induction and training, the Councillor Code of Conduct and meeting procedures.

Attachments

1. Instrument of Appointment and terms of reference
2. Legislated role of a council, councillors and a council Chief Executive Officer
3. Timeline of relevant events
4. Sequence of councillor resignations and countbacks
5. List of people interviewed
6. Contested clause in the Acting CEO contract and associated legal advice
7. 2016 election results for South Gippsland Shire Council

Attachment 1: Instrument of Appointment and Terms of Reference

LOCAL GOVERNMENT ACT 1989

INSTRUMENT OF APPOINTMENT

I, Adem Somyurek, Minister for Local Government, acting under section 209 of the *Local Government Act 1989*, hereby APPOINT the persons listed below as Commissioners to conduct an inquiry into matters relating to the affairs of the South Gippsland Shire Council as set out in the attached terms of reference, with the first named Commissioner to act as Chair.

Frank Vincent AO QC

Julie Eisenbise

John Watson

It is declared that these appointments come into force on 21 May 2019 and cease to be in force on the day the final report from the Commissioners is delivered to me.



THE HON ADEM SOMYUREK MP
Minister for Local Government

1615119

TERMS OF REFERENCE FOR COMMISSIONERS

SOUTH GIPPSLAND SHIRE COUNCIL

1. To conduct an inquiry into matters relating to the affairs of the South Gippsland Shire Council, including through an examination of:
 - a. The final report from the municipal monitor and any responses from the Council or Councillors to the Minister's letter dated 2 April 2019;
 - b. The conduct of individual councillors during the term of the current Council;
 - c. Processes and decisions in the lead up to the conclusion of the current Chief Executive Officer contract, including the appointment of an Acting Chief Executive Officer;
 - d. Any other decisions made, or actions taken, by the Council after the Minister's letter dated 2 April 2019 to the Council;
 - e. The efficiency and effectiveness of the Council's governance arrangements in delivering services to its constituents; and
 - f. Any other matters identified by the Commissioners that have an impact on the Council's ability to function.
2. To report to the Minister for Local Government in writing on the matters outlined above by 13 June 2019.

Attachment 2: Role of Council, Councillor and Council CEO

Local Government Act 1989

Part 1A – Local Government Charter

3D What is the role of a Council?

- (1) A Council is elected to provide leadership for the good governance of the municipal district and the local community.
- (2) The role of a Council includes—
 - (a) acting as a representative government by taking into account the diverse needs of the local community in decision making;
 - (b) providing leadership by establishing strategic objectives and monitoring their achievement;
 - (c) maintaining the viability of the Council by ensuring that resources are managed in a responsible and accountable manner;
 - (d) advocating the interests of the local community to other communities and governments;
 - (e) acting as a responsible partner in government by taking into account the needs of other communities;
 - (f) fostering community cohesion and encouraging active participation in civic life.

Part 4 – Council administration

65 What is the role of a Councillor?

- (1) The role of a Councillor is—
 - (a) to participate in the decision-making of the Council; and
 - (b) to represent the local community in that decision-making; and
 - (c) to contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.
- (2) In performing the role of a Councillor, a Councillor must—
 - (a) consider the diversity of interests and needs of the local community; and
 - (b) observe principles of good governance and act with integrity; and
 - (c) provide civic leadership in relation to the exercise of the various functions and responsibilities of the Council under this Act and other Acts; and
 - (d) participate in the responsible allocation of the resources of Council through the annual budget; and
 - (e) facilitate effective communication between the Council and the community.
- (3) The role of a Councillor does not include the performance of any functions that are specified as functions of the Chief Executive Officer under section 94A.

94A Functions of the Chief Executive Officer

- (1) A Chief Executive Officer is responsible for—
 - (a) establishing and maintaining an appropriate organisational structure for the Council; and

Attachment 2: Role of Council, Councillor and Council CEO

- (b) ensuring that the decisions of the Council are implemented without undue delay; and
- (c) the day to day management of the Council's operations in accordance with the Council Plan; and
- (ca) developing, adopting and disseminating a code of conduct for Council staff; and
- (d) providing timely advice to the Council; and
- (da) ensuring that the Council receives timely and reliable advice about its legal obligations under this Act and any other Act; and
- (db) supporting the Mayor in the performance of the Mayor's role as Mayor; and
- (e) carrying out the Council's responsibilities as a deemed employer with respect to Councillors, as deemed workers, which arise under or with respect to the **Accident Compensation Act 1985** or the **Workplace Injury Rehabilitation and Compensation Act 2013**; and

Note

See section 14AA of the **Accident Compensation Act 1985** and clause 15 of Schedule 1 to the **Workplace Injury Rehabilitation and Compensation Act 2013**.

- (f) performing any other function or duty of the Chief Executive Officer specified in this Act or any other Act.
- (2) The Chief Executive Officer may appoint as many members of Council staff as are required to enable the functions of the Council under this Act or any other Act to be carried out and to enable the Chief Executive Officer to carry out her or his functions.
- (3) The Chief Executive Officer is responsible for appointing, directing, managing and dismissing Council staff and for all other issues that relate to Council staff.
- (3A) The Chief Executive Officer is responsible for managing interactions between Council staff and Councillors including by ensuring that appropriate policies, practices and protocols are in place defining appropriate arrangements for interaction between Council staff and Councillors.
- (4) A reference to Council staff in this section does not include a reference to the Chief Executive Officer.

Attachment 3: Timeline of relevant events preceding the establishment of the Commission

Date	Event
18 April 2018	Then Mayor (Lorraine Brunt) writes to then Minister for Local Government, Ms Marlene Kairouz MP (Minister Kairouz), seeking assistance concerning a possible conflict of interest held by a serving Councillor.
27 April 2018	Mayor Brunt subsequently directs a further letter to Minister Kairouz requesting the appointment of a Municipal Monitor under s 223CA of the <i>Local Government Act 1989 (LGA)</i> .
11 May 2018	The Chief Municipal Inspector writes to Minister Kairouz advising of concerns at the South Gippsland Shire Council, and the Council's capability to provide leadership and good governance for the community. The Chief Municipal Inspector recommends to the Minister a municipal monitor be appointed for an initial period of 12 months.
18 June 2018	At the recommendation of the Chief Municipal Inspector, Minister Kairouz appoints Peter Stephenson as the Municipal Monitor to the South Gippsland Shire Council for a period of 12 months.
25 September 2018	Councillor Maxine Kiel resigns. ¹
4 October 2018	Councillor Meg Edwards resigns. ²
24 October 2018	Council issues public statement during an ordinary Council meeting acknowledging that inappropriate behaviour had occurred and would be called out in future.
7 November 2018	First meeting of the Council's CEO Employment and Remuneration Committee which is chaired by independent consultant Phil Shanahan.
21 November 2018	The presiding Mayor (Cr Lorraine Brunt) is replaced by current Mayor (Don Hill). Alyson Skinner is appointed to the role of Deputy Mayor.
5 December 2018	The Council's CEO Employment and Remuneration Committee completes the annual appraisal required of the current CEO's contract. Based on surveys and reviews conducted by the Independent Chair, which found that there had been "overwhelming support for the management and leadership capabilities" of the current CEO, the Committee determined that the CEO's performance had met, or exceeded, expectations.
27 February 2019	Council resolves to invite applications for the role of CEO in a public process under s 94(3) of the LGA, rather than by the use of the reappointment mechanism available under s 94(4) of the LGA.
28 February 2019	Councillor James Fawcett resigns. ³
28 February 2019	Councillor Lorraine Brunt resigns. ⁴
14 March 2019	Community meeting organised by the Leongatha Business Association and reportedly attended by 400 people.
21 March 2019	The Municipal Monitor provides his final report to the Minister for Local Government, the Hon. Adem Somyurek MLC (the Minister), advising that, in his view, there had been a serious failure by the Council to provide good government, and recommending that the Minister consider suspending all Councillors of the Council pursuant to s 219(1)(a) of the LGA.
29 March 2019	The Leongatha Business Association writes to the Minister in relation to a public meeting held on 14 March 2019. The letter indicates both that the meeting was well attended, and that strong support was given by the community members present to a resolution in favour of dismissing the Council. The Minister is asked to give urgent consideration to this request.

¹ On 22 October 2018, Cr Rosemary Cousin is elected by countback to replace Maxine Kiel.

² On 5 November 2018, Cr James Fawcett is elected by countback to replace Meg Edwards..

³ On 8 April 2019, Cr Steve Finlay is elected by countback to replace James Fawcett. Cr Finlay's election occurs after two countbacks where the first person elected by countback, Mr Nigel Hutchinson-Brooks, declined to accept the position of councillor and the second candidate, Mr Graeme Winkler, did not lodge a written declaration as to his eligibility to become a councillor within the required 48 hours.

⁴ On 1 April 2019, Cr Frank Hirst is elected by countback to replace Lorraine Brunt.

Attachment 3: Timeline of relevant events preceding the establishment of the Commission

Date	Event
2 April 2019	The Minister writes to the Mayor, copying in all Councillors, and enclosing the Final Report of the Municipal Monitor. The Minister allows 28 days for the Council, and any Councillors, to make submissions about the issues identified in the report. This time is set to expire at 5pm on Thursday 2 May 2019. The Minister concurrently revokes the appointment of the Municipal Monitor at the Council.
15 April 2019	A request made by the Mayor (on behalf of the Councillors), for further time to respond to the Minister's letter is agreed to, with time extended until Thursday 9 May 2019 .
22 April 2019	Councillor Jeremy Rich resigns.
24 April 2019	Council resolves at an ordinary meeting to formally seek applicants for the role of Acting CEO for a 12 month term, as a matter of urgent business, stating that there was a "clear desirability" for any decision about the appointment of a permanent CEO to be made by a democratically elected Council. Wednesday 8 May 2019 is nominated as the preferred appointment date.
23 April 2019 - 30 April 2019	Advice is provided by the Independent Chair of the CEO Employment and Remuneration Committee, and an independent legal advisor, concerning the use of a special clause in the Acting CEO Contract, designed to limit the ability of an administrator, should the Council be suspended, from appointing a permanent CEO. Legal advice (refer to Attachment 6) is provided to the Council that the use of such a clause risked breaching the statutory duty held by the Council to appoint a CEO as soon as practicable, and may invite criticism that the Council was seeking to effectively direct and restrain a future Council (as constituted by an administrator).
8 May 2019	Council holds a Special (Emergency) Meeting of Council, which endorses the intent of a "Good Governance Action Plan" (the Council's response to the Minister) and the appointment of Bryan Sword to the role of Acting CEO for a 12 month term.
8 May 2019 - 9 May 2019	The Minister receives responses to his letter of 2 April 2019 ("show cause letter") to the Council from: • Cr Aaron Brown • Kellehers Australia (acting on behalf of Mayor Hill, Crs Skinner, McEwen, Argento, Cousin, Hirst and Finlay, and stating to be acting on behalf of the Council); • Crs Frank Hirst and Steve Finlay • Cr Rosemary Cousin • Cr Alyson Skinner • Councillor submission (stated to be authored by Mayor Hill, Crs Skinner, McEwen, Argento, Cousin, Hirst and Finlay).
9 May 2019	The Minister announces the establishment of this Commission of Inquiry into South Gippsland Shire Council
15 May 2019	The Minister announced our appointments as Commissioners, and issued terms of reference.
21 May 2019	Commission of Inquiry commences

Attachment 4 – Sequence of councillor resignations and countbacks

*Current councillor at South Gippsland Shire Council

WARD	ELECTED OCT 2012	ELECTED OCT 2016	RESIGNATION	ELECTED ON COUNTBACK	RESIGNATION	ELECTED ON COUNTBACK	RESIGNATION	ELECTED ON COUNTBACK	RESIGNATION	ELECTED ON COUNTBACK	RESIGNATION
TARWIN VALLEY	Don Hill (new)	Don Hill*									
	James Fawcett	Maxine Kiel (new)	25 Sep 2018	Rosemary Cousin* (new) 22 Oct 2018							
	Nigel Hutchinson- Brooks (new)	Meg Edwards (new)			30 Oct 2018	Nigel Hutchinson- Brooks (declined) James Fawcett 15 Nov 2018	28 Feb 2019	N. Hutchinson- Brooks (declined) Max Winkler (failed to accept) Steve Finlay* (new) 8 Apr 2019			
STRZELECKI	Andrew McEwen (new)	Andrew McEwen*									
	Bob Newton	Aaron Brown* (new)									12 June 2019
	Lorraine Brunt (new)	Lorraine Brunt					28 Feb 2019	Frank Hirst* (new) 1 Apr 2019			
COASTAL- PROMONTORY	Mohya Davies	Alyson Skinner* (new)									
	Kieran Kennedy	Ray Argento* (new)									
	James Harding	Jeremy Rich (new)							22 Apr 2019	Matthew Sherry* (new) 27 May 2019	

Attachment 5 – Interview List

	INTERVIEWEE	ROLE / POSITION	DATE
1	Mr Peter Stephenson	Municipal monitor	22 May 2019
2	Mr Tim Tamlin	CEO (until 24 June 2019)	22 May 2019
3	Mr Phil Shanahan	Chair of CEO Employment & Remuneration Committee	22 May 2019
4	Mr David Wolf	Chief Municipal Inspector	22 May 2019
5	Cr Aaron Brown	Councillor	24 May 2019
6	Mr Phil Dwyer	People & Culture Manager – SGSC	24 May 2019
7	Cr Alyson Skinner	Councillor (Deputy Mayor)	24 May 2019
8	Cr Steve Finlay	Councillor	24 May 2019
9	Cr Rosemary Cousin	Councillor	24 May 2019
10	Cr Andrew McEwen	Councillor	28 May 2019
11	Cr Don Hill	Councillor (Mayor)	28 May 2019
12	Mr Bryan Sword	Acting CEO	28 May 2019
13	Cr Frank Hirst	Councillor	28 May 2019
14	Lorraine Brunt	Former councillor	28 May 2019
15	Cr Ray Argento	Councillor	29 May 2019
16	Ms Faith Page	Council staff member	29 May 2019
17	Maxine Kiel	Former councillor	29 May 2019
18	Mr Brenton Williams	President of the Leongatha Business Association	29 May 2019
19	Mr Anthony Seabrook	Council staff member	30 May 2019
20	Mr James (Jim) Fawcett	Former councillor	30 May 2019
21	Nigel Hutchinson-Brooks	Former councillor	31 May 2019
22	Mr Joe Sheppard	Council staff member	31 May 2019
23	Mr Jeremy Rich	Former councillor	31 May 2019
24	Mr James Forbes	Former councillor	5 June 2019
25	Mr Paul Hamlett	Community member	5 June 2019
26	Ms Meg Edwards	Former councillor	5 June 2019
27	Mr Luke Anthony	Council staff member	5 June 2019
28	Ms Megan Knight	Community member	7 June 2019
29	Mr Ralph Gallagher	Community member	7 June 2019
30	Ms Heather Lyon	Council staff member	7 June 2019
31	Mr Rick Rutjens	Council staff member	7 June 2019
32	Ms Joan Liley	Community member	11 June 2019
33	Mr Dean Miller	Former staff member	11 June 2019

Attachment 6: Copy of the contested clause and associated legal advice

Final clause as inserted:

15. Termination if and when Chief Executive Officer appointed

- 15.1 If the Council resolves to appoint a person to the substantive position of Chief Executive Officer during the Term, the Officer agrees that this Agreement comes to an end on the day before the commencement date of the new Chief Executive Officer and the Officer has the right to return to the Substantive Position.
- 15.2 To the extent permitted by s94 of the Act, clause 15.1 will not take effect unless:
 - 15.2.1 the Officer has been in the Acting Position for 3 months; and either
 - 15.2.2 the current Councillors have received notification from the Minister for Local Government or Governor in Council (or a delegate of either) that as a result of the recent report by Municipal Monitor Peter Stephenson they will not be suspended pursuant to s219 of the Act; or
 - 15.2.3 the current Councillors have been suspended and subsequently returned to their positions.



Maddocks

Lawyers
Collins Square, Tower Two
Level 25, 727 Collins Street
Melbourne VIC 3008
Australia

Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

Email Letter

From Tamsin Webster	Date 30 April 2019	
Direct 03 9258 3738	Email tamsin.webster@maddocks.com.au	
Partner Ross Jackson		
To Phil Shanahan	Organisation South Gippsland Shire Council	Email shanahan12@optusnet.com.au
And to Don Hill	South Gippsland Shire Council	Don.Hill@southgippsland.vic.gov.au

Our Ref RKJ:TXW:7859425

Dear Phil

Acting CEO Contract – Clause 18

We refer to the Acting CEO contract that we provided to you on 15 April 2019 (**Acting Contract**), our phone call on 24 April 2019 and your email on 26 April 2019.

You have asked us to provide advice in relation to whether the following wording can be included in clause 18 of the Acting Contract:

Clause 18 does not take effect until subclauses A and B have both eventuated.

- A 3 months have passed since the appointment of this Acting CEO contract; AND
- B
 - i) The Councillors have received notification from the Minister that they or Council will not be suspended or dismissed following his receipt and review of the Council submission in response to the Monitors report: OR
 - ii) The Councillors have been suspended and returned to office.

You have stated that the intent of this clause is to prohibit an administrator from appointing a permanent CEO whilst the current Councillors are suspended (if this occurs).

Advice

1. Firstly, we note that section 94(1A) of the *Local Government Act 1989* (Vic) (**Act**) requires Council to make a permanent appointment to the position of CEO 'as soon as is reasonably practicable after a vacancy in the position occurs'. If Councillors are suspended and an administrator appointed under section 219 of the Act, the administrator constitutes "the Council" in lieu of the Councillors: see sections 5B and 219(3) of the Act.

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2. Whilst it may not be reasonably practicable to appoint a permanent CEO within less than 3 months of the position becoming vacant, it would be expected that Council would start to take steps to advertise the position and consider applications after a few months at most after the vacancy arises.
3. A statutory body that has a duty conferred on it by statute cannot fetter its performance of that duty by any contractual promise or commitment as to how it will act at some future time.¹ If a term in a contract does unlawfully fetter the performance of a statutory duty, that term will be void and unenforceable. If the term in question cannot be severed, the entire contract will be set aside. If the substance of the clause was held to be an unlawful fetter because of its impact on the administrator's ability to comply with section 94(1A), then this would be the potential outcome.
4. In order to ensure that the proposed wording in the Acting Contract is enforceable at least as far as the Act is concerned, we suggest stating that the wording is operative 'to the extent permitted by s94 of the Act'. If Council is not suspended, or is only suspended for a short period of time, the wording may be permitted by s94 of the Act. We have included this wording in the Acting Contract at clause 15 (previously clause 18). If Council is suspended for more than a few months, we think it would be consistent with the Act for the administrator to appoint a permanent CEO, irrespective of what the Acting Contract says, on the basis that the Act overrides the contract and it requires an appointment to be made "as soon as practicable" after the vacancy occurred. Including the wording we suggest should also reduce the likelihood of a fettering argument succeeding.
5. Secondly, we note that this clause will not have the effect of completely prohibiting an administrator from appointing a permanent CEO. Since the administrator will step into the shoes of Council, she, he or they could terminate the Acting Contract under clause 14 (previously clause 17) for reasons relating to capacity or conduct or under clauses 12 or 13 for underperformance or serious misconduct. In these circumstances, the Acting Contract would come to an end and the terms of clause 15 (previously clause 18) would no longer have any effect. Alternatively, the administrator could simply come to an agreement with the Acting CEO to vary the Acting Contract in writing and delete the proposed wording.
6. We also note that the Acting Contract will expire within 12 months of its commencement (as required by the Act) and once it expires the wording will have no validity (if any suspension was extended to 12 months or beyond).
7. Finally, we note that including this wording in the Acting Contract could expose Council to criticism for seeking to effectively direct and restrain a future Council (as constituted by any administrator). If the Minister becomes aware of it whilst considering whether further action is required in relation to Council, it may be viewed unfavourably.

Please do not hesitate to contact us if you have any questions.

Yours faithfully



Ross Jackson
Partner

¹ *Ansett Transport Industries (Operations) Pty Ltd v Commonwealth* (1977) 139 CLR 54.

Attachment 7 – South Gippsland Shire Council election results 2016

Legend

Green	Current councillor
Grey	Elected as councillor but subsequently resigned from the office of councillor
*	Elected as a councillor by countback
Yellow	Elected by countback but declined to take up the role of councillor

Tarwin Valley Ward

Candidate	First preference votes	Percentage
Kiel, Maxine	1385	18.90
Hill, Don	1263	17.23
Edwards, Meg	761	10.38
Fawcett, James D.*	712	9.71
Hutchinson-Brooks, Nigel	558	7.61
Winkler, Graeme Max	530	7.23
Cousin, Rosemary Anne*	432	5.89
Corcoran, Ben	395	5.39
Heath, Graeme Fredrick	345	4.71
Murphy, Philip	263	3.59
Finlay, Steve*	251	3.42
White, Kim	235	3.21
Tod, Di	199	2.72

Strzelecki Ward

Candidate	First preference votes	Percentage
McEwen, Andrew	1679	21.88
Newton, Robert	1192	15.53
Brunt, Lorraine Mary	1036	13.50
Amor, David	750	9.77
Brown, Aaron	749	9.76
Hirst, Frank*	701	9.13
Nicholas, Ian	551	7.18
Wanless, David A.	391	5.10
Forbes, Jim	325	4.24
Pepper, Viv	300	3.91

Coastal-Promontory Ward

Candidate	First preference votes	Percentage
Skinner, Alyson	1128	16.16
Argento, Ray	1127	16.14
Morfuni, Vincent Alfonso	976	13.98
Davies, Mohya	918	13.15
Rich, Jeremy Benjamin	858	12.29
Harding, Jeanette	569	8.15
Sherry, Matthew*	507	7.26
Oostermeyer, Frank	463	6.63
Wilson, Jill Maree	435	6.23

