



MUNICIPAL MONITOR'S REPORT

ON THE GOVERNANCE AND OPERATIONS
OF THE WHITTLESEA CITY COUNCIL

March 2020

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Municipal Monitor to Whittlesea City Council

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TERMS OF REFERENCE

On 13 December 2019 I was appointed as Municipal Monitor by the Minister for Local Government the Hon. Adem Somyurek to monitor governance functioning, processes and practices at Whittlesea City Council. My terms of reference were as follows:

“Without limiting the municipal monitor’s functions under section 223CB of the Local Government Act 1989 (Act), the municipal monitor is:

To monitor the Whittlesea City Council’s (Council) governance functioning, processes and practices in relation to:

1. The appointment of and oversight of the Council’s Chief Executive Officer.
 - a) Councillor interaction with Council staff.
 - b) The maintenance of a safe workplace.
 - c) The effective delivery of services to the Whittlesea community.
 - d) The handling of confidential information.
 - e) Council decision making.
2. To monitor any other issues identified by the municipal monitor which could impact on the integrity of Council decision-making and the Council’s ability to provide good governance.
3. To advise on and provide assistance and support to the Council in relation to the Council’s governance and practices, with specific regard to the matters raised in clauses 1 and 2.
4. To provide an interim report to the Minister for Local Government by 27 March 2020 with regard to the matters raised in clauses 1,2 and 3 and any further interim advice as is requested by the Minister for Local Government.
5. To advise and report to the Minister for Local Government by 30 June 2020 on:
 - a) If Councillors, individually or as a group are behaving in a manner that does not accord with the role of Councillor;
 - b) Any impact on the integrity and/or functioning of Council decision-making and the orderly governance of Whittlesea City Council arising from any issues identified with regard to the matters raised in clauses 1 and 2;
 - c) The capacity of the Council to address any issues identified with regard to the matters raised in clauses 1 and 2, including the effectiveness of any steps taken by the Council to address the issues identified and advice provided under clause 3; and
 - d) Any recommendations for the exercise of the Minister’s powers under the Act.”

ABOUT MY REPORT



For the purposes of readability, I determined to address my terms of reference as a whole in order to provide a clear assessment of the Council's governance and operation.

I met with Councillors both together and individually, some several times. I attended formal and informal Council meetings from December onwards and met with many members of staff from senior executive to administrative support staff.

I met the Local Government Inspectorate to discuss certain matters relevant to my terms of reference. I also carried out an extensive review of Council documentation relevant to my terms of reference.

Although required by my terms of reference to submit an interim report by 27 March 2020 and a final report by 30 June 2020, the urgency for a final report to be submitted sooner rather than later has become apparent. The collapsing governance of the Council has become critical and exacerbated by the resignation of one Councillor and the periodic absence and unacceptable behaviours of a number of other Councillors.

I therefore submit my final report at this time.

EXECUTIVE SUMMARY

The City of Whittlesea is one of Melbourne's largest municipalities, covering a land area of approximately 490 square kilometres. Whittlesea is the fastest growing area in the north of Melbourne. The City's population, currently estimated at 231,366 will continue to grow and is estimated to reach 377,000 by 2040. About 70 per cent of the city is rural with the other 30 per cent being urban comprising houses, shops and factories.

Whittlesea is one of the most ethnically diverse municipalities in Victoria. Almost half the local residents speak a language other than English at home. The City's Aboriginal and Torres Strait Islander population is the second largest in metropolitan Melbourne.

Residents of the city rely heavily on driving a car to work with 65 per cent travelling outside the city to their place of work. The city is experiencing rapid growth in its fast-growing precincts of Donnybrook, Wollert and Epping North but also strong growth and redevelopment in established areas such as Epping, Thomastown and Lalor.

The City's rapid population growth sets major challenges for the provision of physical and social infrastructure, access to employment and addressing social disconnection. These considerable challenges require leadership and professionalism of a very high order from the Council and its administration.

However, the Council itself is broken by years of internal division, factionalism, personality conflicts and bitter legacies of perceived betrayals. The poisons in Council run so deep that Councillors from both sides of the divide see little prospect of ever bridging their differences. Council governance has irretrievably collapsed.

Some Councillors appear to derive comfort from the thought that, irrespective of their endless feuding, the business of Council continues to get done. It ignores the damage that has been done to the good governance and reputation of the City, to working relationships between Councillors and staff, to their health and wellbeing and to the planning and delivery of services and infrastructure to the community.

That the Council has continued to meet its service and statutory obligations is in no small part due to the resilience and professionalism of its administration. However, both have been sorely tested in the months after the sudden dismissal, whilst on Workcover leave of its Chief Executive Officer Mr. Simon Overland.

Over the past two years the Council has spent over \$500,000 on legal matters relating to a Councillor's working relationships with Mr Overland and other Councillors, as well as legal action being taken by Mr Overland against the Council regarding his dismissal. These costs are expected to increase as this legal action proceeds.

These expenditures are ratepayers' money. The fact that some Councillors are prepared to spend these funds on personal and governance disputes rather than on much needed services to the community is unacceptable.

Council's governance failings are acknowledged by most councillors although some prefer to blame other councillors or lay primary responsibility at the feet of Council staff.



The chalice of the mayoralty and the factional ascendancy that goes with it has driven regular power shifts from one faction to the other. In a Council of eleven members- with a 6 to 5 split between groups, it only requires one councillor to change sides for the balance to alter. One Councillor described being in power as “narcotic” and its loss as “traumatic”.

In March 2018, City of Whittlesea engaged *Governance matters* (GM) to conduct a Council Performance Evaluation and prepare a report on the results. In commenting on the challenges and barriers facing the Council, GM observed that:

“The dysfunction and difficulty the Councillors experience in working together is obvious through their relational dynamics. However, this is seen to be a symptom of a legacy of relentless and accumulative disputes, conflict and stress, which has become institutionalised and carried forward over the years. Passed on from existing councillors to newly elected members, this has eroded trust, respect and professionalism and reinforced opinions, allegiances and conflict”.

Councillor behaviours both inside and outside the Council chamber are not consistent with the Councillor Code of Conduct. A report completed in November 2019 by the consultancy firm *Beyond Excellence*, which interviewed all Councillors and designated Council staff, described:

“countless examples of a lack of professionalism by individual councillors. This covered a wide gamut of behaviours and actions, which were described as threatening and aggressive, stonewalling, shaming, insulting and manipulative, not attending or walking out of meetings, media leaks, crying and litigation to name a few. These are seen to be deliberate and menacing through to staged performances and theatrics.”

Such behaviours have been commonplace, readily observable and frequently reported in the media. They have continued unabated during the time I have been Monitor.

Some Councillors have expressed dread at the thought of attending Council meetings. One councillor described the prospect of continuing in office as akin to being “dragged into the mud with warring pigs.”

The author of the *Beyond Excellence* Report identified that Councillors were confused about their roles, responsibilities and limits of authority. This was also very evident from my observations of Council meetings and from my interviews with individual Councillors and staff.

A number of Councillors seemed either not to understand or chose to ignore that their responsibilities did not encompass operational management and decision-making or that abusive behaviours towards staff and each other were an unacceptable breach of the Councillor Code of Conduct and normal civil behaviour. Staff reported numerous examples of how some Councillors pressured them, on some occasions abusing and swearing at them, if they did not get their way.

EXECUTIVE SUMMARY

Whilst the majority of Councillors did not behave in this way those who did so were not, until recent years, held to account. Their interventions and interactions with staff have been damaging to good decision-making and to the health and wellbeing of staff. In a small group of eleven Councillors with a shifting majority, the behaviours and actions of a small minority can cause disproportionate harm and damage.

Mr. Simon Overland commenced in the CEO role in August 2017, Council having dismissed the previous CEO 11 months into his contract. He recognised early in his tenure the need to refresh the leadership, capabilities and systems of the Council administration and instituted an extensive reform program. However, the termination of his contract on 10 December 2019 brought the reform processes to a halt.

Many staff regarded Mr. Overland as their shield and protector against the unacceptable behaviours of some councillors - behaviours which had become normalised over many years before his appointment. In March 2018, he introduced a revised Protocol for Councillor and Council Staff Interaction setting out new procedures for Councillor contacts with staff. The Protocol was clearly designed to draw a line in the sand and to stop inappropriate Councillor interventions and interactions with staff in operational matters.

However, the Protocol proved to be two edged. From the perspective of staff, it created what some described as a 'haven' and 'safe space' in which to work. From the perspective of several Councillors, the Protocol was seen to restrict and delay the timely provision of information, creating unnecessary distance between Councillors and staff and damaging their good working relationships.

The impacts on the administration of Mr Overland's dismissal have been considerable. A recently completed Pulse Survey of the organisation showed a very significant 33 point drop in the Net Promoter Score (NPS) which is a measure of how the organisation is perceived by staff and how happy people are to work there. Any score above 0 is considered acceptable, with a score between 10 to 30 considered good and a score of 50 and above considered excellent. A score below 0 is considered to be poor and of concern. The City of Whittlesea score was -16.

There are over twenty active investigations, the majority by the Local Government Inspectorate, relating to Whittlesea Council. One Councillor, who figured prominently in my interviews with staff for his bullying and aggressive behaviours, was scheduled to appear before a Councillor Conduct Panel following an application from the Chief Municipal Inspector (CMI) for a finding of serious misconduct against him. However, he resigned and the CMI withdrew the application the following day which dissolved the Panel.

I have made two further referrals arising from my investigations: the first to the CMI and the second to the Independent Broad-Based Anti-Corruption Commission (IBAC).



Councillors have been cavalier in their use of public and social media often using it to criticise staff and other Councillors. A Facebook posting by one Councillor, although subsequently deleted and an apology issued, has had continuing consequences. These include significant discord between groups in the community, disruptive behaviours by some community members at Council meetings and threats and intimidation of some staff and others by a small number of community members. These incidents necessitated the assistance of Victoria Police.

The residents of the City of Whittlesea need a Council whose elected members are committed to engaging collectively and civilly with each other, with Council staff and with the community to meet the challenges of this rapidly growing city. There has been no such commitment from Whittlesea councillors for many years.

In both individual and group discussions with councillors, I was clear that they needed to bury their differences and come together in the interests of the City. I made a number of suggestions that might assist both the Mayor and Councillors but they were not taken up. An informal meeting of Councillors, convened by the Mayor, to promote a more collegiate approach was unsuccessful.

I have come regretfully to the conclusion that there is no prospect that the mindsets and behaviours of the majority of Councillors can change. The factional and personal antagonisms that have long bedevilled good governance at Whittlesea Council, whilst not openly exhibited by all Councillors, are nonetheless deeply embedded and intractable.

FINDINGS AND RECOMMENDATIONS

Council governance has collapsed at the City of Whittlesea, along with its reputation. The Council's deep factional divides and personality conflicts have rendered it dysfunctional.

The Council's behaviours both in the Chamber and outside it have undermined good decision-making.

These behaviours collectively have been damaging and harmful to the Council's administration and the City's reputation. Staff morale is at a very low ebb.

Some Councillors have repeatedly failed in their obligations under the Local Government Act, the Councillor Code of Conduct and possibly the Occupational Health and Safety Act through their abusive behaviours towards Council staff and other Councillors without being called to account.

The present Council cannot deliver the good governance needed by the City and its administration. There needs to be an extended period of administration to enable good governance to be restored.

I therefore recommend that:

- a) the Council is dismissed;
- b) administrators are appointed for a period ending no sooner than the 2024 Council elections; and
- c) administrators develop, implement and publicly report on an action plan to embed good governance at the Council taking into account the reform opportunities in the Local Government Bill 2019.

Yehudi Blacher

Municipal Monitor to Whittlesea City Council

BACKGROUND



THE CITY OF WHITTLESEA

City of Whittlesea is one of Victoria's largest and fastest growing municipalities covering an area of approximately 489 square kilometres. About 70 per cent of the city is rural with the other 30 per cent being urban comprising houses, shops and factories. The City's population, currently estimated at 231,366 will continue to grow and reach an estimated 377,000 by 2040. Around 8,000 new residents arrive in Whittlesea each year.

Whittlesea is one of the most multicultural municipalities in Victoria. Almost half of all local residents speak a language other than English at home. The city's Aboriginal and Torres Strait Islander population is the second largest in metropolitan Melbourne.

Residents of the city rely heavily on driving a car to work with 65 per cent travelling outside the city to their place of work. The city is experiencing rapid growth in its fast-growing precincts of Donnybrook, Wollert and Epping North but also strong growth and redevelopment in established areas such as Epping, Thomastown and Lalor.

The challenges of providing the infrastructure and services for a city with these growing pressures are considerable requiring vision, long term planning, sustainable resource management and a skilled and committed work force.

They also require strong governance and leadership from the Council and its executive management team.

THE GOVERNANCE OF WHITTLESEA CITY COUNCIL

In March 2018, City of Whittlesea engaged *Governance matters* (GM) to conduct a Council Performance Evaluation and prepare a report on the results. GM undertook an evaluation survey and had confidential discussions with the then Mayor, Councillors and nominated executive leadership team members.

The City of Whittlesea scored 55% overall in the quantitative section of the evaluation survey. GM reported that:

"This is the lowest overall client score for any Board or Council Performance Evaluation undertaken by *Governance Matters* over 25 years"; and

"This places City of Whittlesea in the category of poor governance practices. This disappointing result is as a direct result of the behaviour and working relationships of the elected members as evidenced by the lowest rating category of Leadership and Teamwork (50). If behaviours and working relationships improve so will all other dimensions of governance currently rating lower than acceptable in the survey results and this report"; and

BACKGROUND

“From the survey’s qualitative results and from discussions, the critical areas for improvement for the Council, after attending to behaviours and working relationships, lies in the need to develop a long term, future vision and strategy for the City and to function at a governance not operational level.”

In commenting on the challenges and barriers facing the Council, GM observed that:

“The dysfunction and difficulty the Councillors experience in working together is obvious through their relational dynamics. However, this is seen to be a symptom of a legacy of relentless and accumulative disputes, conflict and stress, which has become institutionalised and carried forward over the years. Passed on from existing councillors to newly elected members, this has eroded trust, respect and professionalism and reinforced opinions, allegiances and conflict”.

The *Governance Matters* report, which was provided to all Councillors, effectively challenged the Council to change its ways and to institute good governance practices including long term vision, strategy and leadership.

In November 2018, the Council’s Audit and Risk Committee discussed the governance risks facing the Council and requested a report from the CEO. Following consideration of that report in March 2019, the risk assessment of ineffective council governance was rated as extreme in the Strategic Risk Register. The potential causes were identified as primarily councillor behaviours including poor relationships and communication between councillors and the administration.

Beyond Excellence, a consultancy firm specialising in corporate wellness and health management, was commissioned in August 2019 to meet with all Councillors to discuss and provide feedback to them on issues affecting their performance. The report, provided to Councillors in November 2019, identified that:

“while the Councillors are united in their commitment to improving the municipality, their ability to work together is impacted by relational difficulties, different motivations, the influence of politics and a need for clarity on roles, responsibilities and limits of authority.

Greater trust and accountability are required to change the current dynamics, to strengthen relationships between Councillors and with the CEO and Officers. Achieving this requires the collective commitment and engagement of all Councillors.”

Both of these reports and a further report, which was in preparation but effectively truncated through the refusal by some councillors to participate, provide context for this report. Councillors did not discuss either of the reports provided to them at a formal Council meeting including in confidential session. This is a further example of a total lack of commitment on the part of councillors to improve their accountability.



In my meetings with Councillors both collectively and individually, I emphasised that my strong preference was for the Councillors to come together and establish the good governance relationships and practices necessary for the Council to carry out effectively its important roles and responsibilities.

I made a number of suggestions to the Mayor and to the Councillors on things they might do that would improve how they related to each other in their official roles and in their working relationships with officers of the Council. The Mayor made some initial efforts in this direction but these quickly dissipated with the resumption of hostilities between the two factions.

A majority of Councillors have made it plain to me that they did not believe that the current Council was sustainable.

CURRENT STATE OF GOVERNANCE AT WHITTLESEA COUNCIL

Whittlesea is a broken Council in which the poisons run deep. Much as reported by *Beyond Excellence*, the reasons are to be found in the dominance of personalities, politics, factional disputes and rivalries. One Councillor described the Council as suffering from “a long history of betrayals”.

The principal protagonists appear both unwilling and incapable of finding common ground that could bring some greater measure of civility, respect and consideration to their Councillor relationships. Some Councillors have expressed dread at the thought of attending Council meetings. Another described the prospect of continuing in office as akin to being “dragged into the mud with warring pigs”.

The mayoralty was described at interview by one Councillor as the “golden ticket” with a salary in excess of \$100,000 in addition to the prestige of the office. There can be little doubt that the single-minded pursuit of the Mayoralty and the factional ascendancy that goes with it has damaged good governance in the City of Whittlesea for much of the last fifteen years.

In an eleven member Council with the factions split six and five, it takes but one Councillor to change sides for power to shift from one faction to the other. One Councillor described being in power as a “narcotic” and its loss as “traumatic”.

During their interviews with me, most Councillors readily acknowledged their deep-seated divisions. Some spoke of them as hatreds, with some Councillors refusing to speak to each other unless unavoidably required to do so. One characterised it as being like a “bad divorce” with no prospect of any reconciliation.

The contention of some Councillors that Council business still gets done does not vitiate the failure of Council to provide “leadership and example and act in a way that secures and preserves public confidence in the office of councillor” as required of them under section 76BA of the Local Government Act 1989 and the Council’s own Code of Councillor Conduct.

Some Councillors appeared not to grasp that their behaviours have had profound, adverse impacts on the morale, trust and confidence of Council staff.

That Council services continue to be delivered stands to the professionalism and commitment of staff to the City’s diverse communities.



COUNCIL PLANNING AND DECISION-MAKING

Councillor Meetings

Council meetings, described by one interviewee as “the Colosseum”, are often antagonistic and sometimes chaotic. Meetings can last into the early hours of the next morning with extended bickering, raised voices, aggressive body language, constant points of order and motions designed to delay or obfuscate.

The *Beyond Excellence* report highlighted:

“countless examples of a lack of professionalism by individual councillors. This covered a wide gamut of behaviours and actions, which were described as threatening and aggressive, stonewalling, shaming, insulting and manipulative, not attending or walking out of meetings, media leaks, crying and litigation to name a few. These are seen to be deliberate and menacing through to staged performances and theatrics’.

These behaviours, which have continued despite my presence at Council meetings, are regularly witnessed by staff and the public and reported on by the local media. Council meetings have sometimes failed for lack of a quorum with poor or non-attendance by members of whichever is the minority faction.

Motions, including motions that overturn officer recommendations, may be tabled without notice or prior discussion. Councillor attendance and behaviour at pre-Council briefings given by Council officers is often poor and disappointing for staff who invest their time and effort in preparing presentations. Officers in attendance at Council meetings and briefing forums have been subjected to aggressive questioning and personal criticism by some councillors.

The capacity of any Mayor to be an effective chair of such ructious and sometimes chaotic Council meetings is clearly limited. One former mayor spoke of the stress of being constantly berated in Council and having to just “suck it up”.

Live streaming of Council meetings which was introduced on 4 February 2020 had some impact on Councillor behaviours in the Chamber with greater public restraint visible on all sides. However, the more challenging business of Council meetings is often in the confidential part of the meeting closed to the public where there is not the restraining influence of live streaming.

Indeed at the 4 February 2020 meeting, when the Council went into confidential session to discuss, inter alia, the important process for appointing another acting CEO, four councillors promptly left the meeting.

CURRENT STATE OF GOVERNANCE AT WHITTLESEA COUNCIL

A 'winner takes all mentality' appears to take hold on both sides after council and mayoral elections. The practice of both groups is for the winning one to replace most existing appointees to Council advisory committees and external bodies with their own group, irrespective of the experience or merits of the previous incumbents. The negative implications of this practice appear to count for little with either side.

Decisions of the previous factional majority may also be quickly overturned. The present Council has already reversed a number of decisions. In one case, this involved reinstating funding provision for a project that had previously been funded, then had its funding withdrawn by the rival group when it had a majority and now had its funding reinstated in the budget process.

In another instance, a commitment to funding of infrastructure in a partnership project with a community organisation, was also withdrawn without prior consultation with the organisation concerned. This erratic decision-making reflects poorly on Council and is confusing for both residents and Council staff. One staff member, citing other examples at interview, observed that Council's decision-making after the Mayoral election can "turn on a dime".

Councillor Conflicts of Interest

Section 76BA of the Local Government Act 1989 requires that a Councillor must "avoid conflicts between his or her public duties as a Councillor and his or her personal interests and obligations". The boundaries for some Whittlesea Councillors appear to have been blurred for some time.

Several Instances have been reported in which some Councillors are alleged to have used their official positions to influence decisions in the interests of themselves, family members and other parties rather than those of the community they collectively represent. A number of these allegations have already been referred to the Local Government Inspectorate and remain under investigation.

In all there are currently over twenty active investigations, the majority by the Local Government Inspectorate, relating to Whittlesea Council. One Councillor, who figured prominently in my interviews with staff for his bullying and aggressive behaviours, was scheduled to appear before a Councillor Conduct Panel following an application from the Chief Municipal Inspector (CMI) for a finding of serious misconduct against him. However, he resigned and the CMI withdrew the application the following day which dissolved the Panel.

I have made two further referrals arising from my investigations: the first to the Chief Municipal Inspector (CMI) and the second to the Independent Broad-Based Anti-Corruption Commission (IBAC).

Conflicts of interest involving Councillors can also be experienced in a very direct way by Council staff. Officers reported instances of some Councillors putting pressure on staff, whilst providing home-based IT support, to extend that support to family members. Home based IT support has now been outsourced partly in response to these unethical pressures. Another officer reported being pressed by a councillor seeking favourable consideration of the employment of a family member.



Councillor conflicts of interest sometimes manifest as demands or pressures exerted upon staff by Councillors during meetings with residents. Examples have been drawn to my attention of Councillors placing direct and sometimes public pressure on Council staff with respect to matters under active Council consideration. A recurrent comment about one Councillor was that the Councillor would in effect “create the issue to solve the issue” to win popular support with some groups of residents.

Councillors have a legitimate role in advocating on behalf of their constituents, but not in a way that conflicts with their legislated duty to “impartially exercise his or her responsibilities in the interests of the local community” and “not improperly seek to confer an advantage or disadvantage on any person”. These are key requirements of all councillors under the *Local Government Act 1989*.

None of the above mentioned behaviours are consistent with the responsibilities and expectations of Councillors under the Councillor Code of Conduct.

‘En Bloc’ Voting

The Victorian Ombudsman’s ‘Investigation into the transparency of local government decision-making 2016’ identified ‘en-bloc’ voting as a factor reducing the transparency and accessibility of decision-making and creating risks for unseen influence.

Such ‘en-bloc’ resolutions are an established practice at Whittlesea Council. During 2019 Council approved en-bloc resolutions for more than one hundred agenda items, including financial performance reports, the mid-year budget review, the 2018/19 Annual Report, Certification of the Financial Statements and End of Year Financial Position including decisions on re-allocation of the budget surplus.

There is an efficiency argument to be made for the prudent use of en-bloc resolutions, but their extensive use at Whittlesea Council restricts discussion of important items, reduces the transparency of decision making and diminishes public accountability.

Strategic Planning

Whittlesea Council manages a recurrent budget in excess of \$300 million, with non-current assets totalling nearly \$4 billion and annual capital works expenditure of \$70.4 million as at 30 June 2019.

Under the Local Government Charter in the Local Government Act 1989, the primary objective of a Council is “to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative impacts of decisions”. One of the key functions of Councils is “Planning for and providing services for the local community”.

Developing a long-term future vision was identified as a critical area for improvement in the governance performance evaluation by *Governance Matters*. However, Council itself does not appear to be fully engaged in serious strategic discussion about the City’s challenges, nor do its discussions appear to be driven by any long-term vision or collegiate agenda.

CURRENT STATE OF GOVERNANCE AT WHITTLESEA COUNCIL

The Council executive team arranged a workshop in 2018 with Councillors to discuss a draft long-term plan "Whittlesea 2040: A Place for All". The draft plan was developed by administration staff in extensive consultation with community organisations and individuals across the City. It articulates comprehensive strategies to meet not only the growth area challenges of the City but also the needs of established urban communities within its precinct and those of residents living in rural and semi-rural locations.

Four Councillors did not attend the workshop. The Whittlesea 2040 document was adopted by en-bloc Council resolution with the same four Councillors again absent. These Councillors are now in the majority faction of the Council.

Despite the extensive internal and external consultations which went into the document the failure to engage in its development by some Councillors demonstrated a lack of proper engagement in the development of the key strategy underpinning the future development of the City

COUNCILLOR MISUSE OF PUBLIC AND SOCIAL MEDIA

Outside the Chamber, Councillors from both factions regularly make critical comments in public forums and the media about each other and about Council administration.

The election of the new Mayor in November 2019 brought a flurry of public comment. One Councillor was reported to have said that "It is clear that the lack of life experience of this mayor is resulting in council becoming dysfunctional." Another Councillor responded that "From the moment of her election as Mayor, there has been an orchestrated and vile attack on (the Mayor's) character and leadership by an 'old guard' faction within the Council".

The highly personalised nature of these public criticisms highlights the challenges for this Council of ever behaving collegiately and respectfully towards each other.

These vitriolic disputes also regularly feature in Councillor's use of social media. Several Councillors interviewed expressed the view that they could somehow separate in social media their personal views on Councillors and Council matters from their official responsibilities and obligations under the Local Government Act and the Councillor Code of Conduct. The distinction is illusory and its impacts no less corrosive than comments made through other public channels.

A Facebook posting by one Councillor, although subsequently deleted and an apology issued at the insistence of the Acting CEO, has had continuing consequences. These include significant discord between groups in the community, disruptive behaviours by some community members at Council meetings and intimidation of some staff members and others by a small number of the Councillor's supporters. Victoria Police has had to attend the past two Council meetings and has been informed of the instances of intimidation.



Councillors have a responsibility under the Local Government Act to “consider the diversity of interests and the needs of the local community”. Whittlesea is one of the most culturally diverse communities in Victoria and this continuing issue has shown a singular lack in understanding this core responsibility.

A further example of the inappropriate use of social media involved a councillor who took strong issue with the outcome of the retendering of the Council’s parks and open spaces maintenance contract.

The councillor posted on Facebook a succession of comments and photographs, some of them misleading, highly critical of the performance of the company contracted by Council in April 2018 to undertake maintenance of the Council’s parks. Other councillors have posted similar comments and photographs.

When asked about this post during interview, the Councillor saw no obligation in the first instance to raise such matters directly with staff responsible for management of the contract and reluctantly acknowledged the direct accountability of the Council itself for ensuring performance of the contract. The councillor’s view of council staff was adversarial, accusing some staff of lying.

On 4 September 2018, the Council approved a Communications and Public Comment Policy for Councillors. The policy on social media is very broadly framed affirming the entitlement of councillors “to utilise online channels and social media networks to engage with the community”. Councillors are “wholly responsible for developing, maintaining and monitoring individual social media accounts and accept all legal responsibilities for them”.

The policy further requires that when using social media in a personal capacity, Councillors:

“Should ensure that any personal comments do not compromise their capacity to perform their role at the City of Whittlesea; and

Be mindful of any conflict of interest that may arise with online comments and social connections.”

Use of social media by a number of Whittlesea Councillors appears to have little regard to these requirements. As one Councillor put it at interview, “I am just doing what everyone else is doing”.

Whittlesea Council could benefit from a best practice guide, such as the one issued by the Queensland Independent Assessor, to assist Councillors in managing their social media pages consistent with the Councillor Code of Conduct.

CURRENT STATE OF GOVERNANCE AT WHITTLESEA COUNCIL

COUNCIL AND THE CEO

The City of Whittlesea has had five CEOs in five years including two acting appointments. Another Acting CEO commenced on 2 March 2020.

This would be destabilising for most organisations. It has been particularly destabilising at Whittlesea which has also had to struggle for many years with a fractious, factionalised Council.

It was therefore important that the Council and Mr. Overland, appointed in August 2017, establish good working relationships with each other and that needed reforms of Council governance and administration were supported on all sides. However, within months of his appointment, the relationship between Mr. Overland and some of the Councillors in the then minority faction began to deteriorate.

Two complaints by a Councillor in April 2018 and May 2019 alleging bullying by Mr. Overland were independently investigated and dismissed. A Probity Auditor appointed in each case by the Secretary of the Department of Environment, Land, Water and Planning to oversee the Council's investigation process found that the Council had observed due probity in dealing with each complaint. That Councillor has now sought a judicial review of the Probity Auditor's findings made in the second report.

The ongoing disputation between Mr. Overland and that Councillor was a major distraction from the other pressing business of Council and its administration. It also affected his working relationships with other minority faction councillors as did the introduction of the revised Protocol for Councillor and Council Staff Interaction.

The Mayoral election in November 2019, resulting in the election of a new Mayor and yet another shift of factional power, was a pivotal moment in the relationship between Mr. Overland and the Council. The circumstances and manner in which Mr. Overland's contract was terminated on 10 December 2019 whilst he was on Workcover leave are subject to legal proceedings and I make no comment upon them.

However, I note that prior to the termination of Mr. Overland's contract, the Chief Executive Officer Employment Matters Advisory Committee (CEMAC) had assessed the performance of the CEO for the 2018-19 year as 'exceeding expectations'. This assessment was rejected in November by the faction now holding the majority in the Council. Mr. Overland's dismissal is the subject of continuing deep divisions within the Council with members of the now minority faction publicly urging his reinstatement.

Following Mr. Overland's dismissal, the new majority group appointed an acting CEO Mr. Kelvin Spiller. This was done without him being interviewed by the Council as a whole which is the normal process for such critical appointments.

Over the past two years the Council has spent over \$500,000 on legal matters relating to a Councillor's working relationships with Mr Overland and other Councillors, as well as legal



action being taken by Mr Overland against the Council regarding his dismissal. These costs are expected to increase as this legal action proceeds.

These expenditures are ratepayers' money. The fact that some Councillors are prepared to spend these funds on personal and governance disputes rather than on much needed services to the community is unacceptable.

Moreover the processes leading to Mr. Overland's dismissal and Mr. Spiller's appointment demonstrate a complete lack of understanding by the majority group of their responsibility to the Council administration and its staff, to the future conduct of Council business and to the Council's reputation in the broader Whittlesea community.

The recent appointment of Mr. Joseph Carbone, a well-credentialled former council CEO, as Acting CEO for a period of up to twelve months provides an opportunity to restore stability to the organisation until such time as an ongoing CEO appointment can be made.

COUNCILLOR/ STAFF RELATIONSHIPS

A large number of staff from all levels within the organisation requested to speak with me since my appointment as Monitor. Their stories were highly consistent. They reported having to struggle with operational interventions, pressures and aggressive, bullying behaviours by certain Councillors in years past and the measure of protection afforded them by the Protocol for Councillor and Council Staff Interaction introduced by Mr. Overland.

Comments by staff included that some Councillors were "malicious", "rude and intimidating", "spiteful", "publicly aggressive" and "nasty"; certain councillors would shout at staff if they did not get their way; certain councillors had made racist and disrespectful remarks to indigenous members of staff ; and one Councillor in particular was known to be aggressive and invasive of the personal space of staff.

Examples were provided of certain councillors belittling staff in public, throwing documents prepared by staff and accusing staff of lying. Most staff were also clear that these behaviours were not true of all Councillors.

The Protocol for Councillor and Council Staff Interaction

On 19 March 2019, Mr. Overland introduced a revised Protocol for Councillor and Council Staff Interaction setting out new procedures for Councillor contacts with staff. Councillors were given opportunity to comment prior to its adoption, but only four responded. The Protocol was not presented to Council before being promulgated.

The Protocol required that Councillor requests on behalf of residents and the community were to be directed through the Office of the CEO. Direct contact between Councillors and staff in relation to the exercise of a delegated or statutory function was not to occur except with the prior authorisation of the relevant Director.

CURRENT STATE OF GOVERNANCE AT WHITTLESEA COUNCIL

Directors were appointed as relationship managers for each Councillor to assist them in preparing for forums and Council meetings. Councillors were no longer permitted to have free access to the staff work areas. Some Councillors liked to be on first name terms with staff and to “walk the floors” as one staff member described it. Card access was instituted to stop this practice.

The Protocol was clearly designed to draw a line in the sand and to stop inappropriate Councillor interventions and interactions with staff in operational matters. However, the Protocol proved to be two edged. From the perspective of staff, it created what several described as a ‘haven’ and ‘safe space’ from harassment and bullying by some Councillors.

However, from the perspective of several Councillors the Protocol was seen to restrict and delay the timely and reasonable provision of information and as damaging to their good working relationships with staff.

It also meant that more detailed contextual information which would have assisted Councillors was not available to them. Written requests by councillors for information through the Office of the CEO often took longer than desirable and were often narrowly confined to the question asked resulting in follow-up questions.

This aspect of the implementation of the Protocol became an ongoing point of tension with the former CEO Mr Overland which he was unable to resolve.

In these circumstances, some councillors became both privately and publicly critical of staff responsible for particular projects. In the case of one project, staff reported that a Councillor who had not been fully briefed, berated them in front of community members and at a Council forum describing their handling of the project as a “debacle”. The Councillor’s personal involvement in the project resulted in planning and implementation delays and inadvertently compromised the Council’s standard procurement process.

It is also apparent that the Protocol was not wholly successful in shielding staff from inappropriate Councillor behaviours particularly in Council meetings. On 25 March 2019, Mr. Overland emailed all Councillors as follows:

“If Councillor behaviour does not improve and the risk continues or escalates, my only remaining option to eliminate the risk to staff is to remove or quarantine staff from the risk. That may involve withdrawing staff from Council meetings, and depending on the circumstances, it could extend to imposing restrictions on interactions between Councillors and affected staff. I am reluctant to consider such measures, however I cannot allow staff to continue to experience or be exposed to the types of poor behaviour that have occurred in council meetings, briefings and in some cases interactions between some individual councillors and council staff.”

Following the termination of Mr. Overland’s appointment, many staff reported to me their feelings of anxiety about the future and their fears that past interventions and behaviours by some Councillors would resume. In assessing their representations to me, I took into account the evident loyalty of staff to the former CEO with more than 200 staff signing a petition for his reinstatement. However, it was apparent to me that their concerns were deeply felt and sincerely recounted.



HEALTH AND SAFETY

The *Beyond Excellence* Report to Council of November 2019 commented as follows:

"A range of abrasive behaviours were highlighted through the interviews but dismissed as being the rough and tumble of being in politics. This description does not reflect the negative and harmful impact this has caused others to feel, which has been experienced as "bullying". It was identified that this has eroded the resilience and wellbeing of individuals and has created an unsafe working environment. This behaviour occurs between individual Councillors and more recently is seen to be directed towards members of the Administration including the CEO, Executives and staff.

The abusive behaviours described through the interviews breach the City of Whittlesea's Councillor Code of conduct (2017). It also aligns with the Fair Work Act s.789FD (1) definition of workplace bullying, which is seen to occur when: "An individual or group of individuals repeatedly behaves unreasonably towards a worker or group of workers at work and the behaviour creates a risk to health and safety".

Numerous examples were provided to me of some Councillors behaving with apparent disregard for their obligations to staff under the Councillor Code of Conduct and the Occupational Health and Safety Act. Councillors from both sides acknowledged that "robust" discussions with staff were not uncommon. One Councillor admitted to sometimes "stepping over the line" with officers but blamed this on frustration.

Council officers have advised that Council has in place Occupational Health and Safety (OHS) management systems and processes to meet the requirements of Council under the OHS Act 2004. Council's OHS Roadmap sets the strategic direction, actions and measures to improve safety performance. Council's 2019 Wellbeing Plan, which supports the 2017 People Strategy, adopts a proactive approach to managing safety and reducing hazards and risk.

Achievement against the Wellbeing Plan is reported quarterly to Council. Lost Time Injury Frequency Rate (LTIFR) shows a consistent downward trend and the improved safety performance of Council over the last 18 months has resulted in a reduced WorkCover premium. However it should be noted that the focus of reporting has been primarily on physical risk and injury.

Since November 2017, there has been an upsurge in OHS related incidence reporting by staff. As at 21 January 2019, 14 reported incidences had been forwarded either to the Local Government Inspectorate or Worksafe. A number remain under active investigation.

Eleven staff have taken personal leave directly related to the reported incidences. Of the eleven, ten have since returned to work. Two of those returning to duty indicated that they felt safe to come back because of the presence of the Monitor. Thirteen other staff who reported feeling "stressed" have also taken personal leave.

CURRENT STATE OF GOVERNANCE AT WHITTLESEA COUNCIL

A recently completed Pulse Survey of the organisation showed a very significant 33 point drop in the Net Promoter Score (NPS) which is a measure of how the organisation is perceived by staff and how happy people are to work there. Any score above 0 is considered acceptable, with a score between 10 to 30 considered good and a score of 50 and above considered excellent. A score below 0 is considered to be poor and of concern.

The City of Whittlesea had an NPS score in the good range in the previous two quarters but this dropped in the December quarter to -16 and to -20 if the School Crossing Supervisor results (typically in the excellent range) are excluded. The department with the highest NPS score of 45 and 49 in the last two quarters had a current NPS score of -69 which is described in the Survey Report as a “momentous” shift.

The survey question with the largest variation was the question regarding whether people felt safe at work. The responses to that question had remained constant at 81.5% and 81.3% for the previous two quarters. However, in the December quarter 2019, this dropped significantly to 70.8% below the local government benchmark of 75.1%.

Comments submitted by staff to the survey included:

“The in-fighting with Councillors and the fact that CEO was sacked while on sick leave adds to the stress as it makes you feel that if a staff member can be treated like that, then we are all just disposable and not valued by Council”;

“The last quarter was very difficult and stressful for many given the behaviour of our councillors and the termination of our CEO whilst he was on health-related leave. This has made many staff fearful and angry which has had a substantial impact on the working environment. Whilst the organisation has done all it can to support staff and reinforce our safety at work, the actions of our councillors has made the workplace feel unsafe or less safe for many employees including myself”;

“Working for the City of Whittlesea has become embarrassing. I no longer feel proud to tell people where I work because the organisation is perceived as a joke to outsiders. The conduct of the councillors, whilst not having direct effect on the employees, has directly affected the culture and morale of the office and as a result quality employees are leaving and taking with them years of knowledge. As an organisation it will be incredibly challenging to recover from this”.

Several senior and middle level managers have recently left the organisation or advised that they are intending to do so. The rapid hollowing of the City’s senior and middle level management ranks is adverse for the good management of the organisation, its future capacity to support Council and for the delivery of services to the community.

The prevalence of acting arrangements at management level, the loss of executive leadership and Councillor in-fighting has been immensely damaging to the capability and effectiveness of the organisation, which feels rudderless and becalmed. The loss of community confidence in the Council and its administration and the harm done to the City’s reputation both locally and across the local government sector are very significant challenges requiring urgent and sustained remedial action.

FINDINGS AND RECOMMENDATIONS



Council governance has collapsed at the City of Whittlesea along with its reputation. The Council's deep factional divides and personality conflicts have rendered it dysfunctional.

The Council's behaviours both in the Chamber and outside it have undermined good decision-making.

These behaviours collectively have been damaging and harmful to the Council's administration and the City's reputation. Staff morale is at a very low ebb.

Some Councillors, over many years, have repeatedly and wilfully breached their obligations under the Local Government Act, the Councillor Code of Conduct and possibly the Occupational Health and Safety Act through their abusive behaviours towards Council staff and other Councillors without being called to account.

The present Council cannot deliver the good governance needed by the City and its administration. There needs to be an extended period of administration to enable good governance to be restored.

I therefore recommend that:

- a) the Council is dismissed;
- b) administrators are appointed for a period ending no sooner than the 2024 Council elections; and
- c) administrators develop, implement and publicly report on an action plan to embed good governance at the Council taking into account the reform opportunities in the Local Government Bill 2019.



MUNICIPAL
MONITOR'S
REPORT



