



Final Report
13 December 2017 to 30 June 2019

1. BACKGROUND

Appointment

On 13 December 2017, the Minister for Local Government appointed me, Prudence Jane Digby, to be a municipal monitor at Frankston City Council under section 223CA of the *Local Government Act 1989* to monitor Frankston City Council's governance processes and practices. The appointment was to conclude on 30 June, 2019.

My appointment followed concerns raised by the Chief Municipal Inspector regarding the functioning of Frankston City Council and its ability to provide good governance for the community. The Chief Municipal Inspector recommended to the Minister for Local Government that a municipal monitor be appointed to ensure the leadership, good governance and the business of the Frankston City Council was conducted within the requirements of the Local Government Act and at the standard expected by the community.

Terms of Reference

The Terms of Reference (TOR) under which I was appointed are as follows:

1. To monitor the Frankston City Council's (Council) governance processes and practices, with specific regards to the key areas of concern identified by the Chief Municipal Inspector, including -
 - a) Council's meeting proceedings and decision making, and Councillor attendance at council briefings and meetings;
 - b) Council's Councillor Code of Conduct, Councillor behaviour with respect to the Code of Conduct, Council's internal resolution procedure, and processes for resolving disputes between Councillors; and
 - c) The Chief Executive Officer's policies and practices that manage the interactions between Councillors and Council staff, and compliance with those policies and practices.
2. To advise on, and provide assurance and support, to the Council in relation to the Council's governance processes and practices, with specific regard to the matters raised in clause 1; and
3. To report to the Minister for Local Government on -
 - a) Any steps taken by the Council to improve its governance and the effectiveness of those steps or actions, with specific reference to the matters raised in clause 1; and

- b) Any recommendations for the exercise of the Minister's powers under the Act.

Frankston City Council

Frankston is located on the eastern shores of Port Phillip Bay, within metropolitan Melbourne and with a population of almost 142,000. Frankston is recognised for its natural reserves, pristine coastline and is increasingly attracting people to locate from other parts of Melbourne for affordability and lifestyle reasons. Frankston's arts, education and health sectors are important growth industries. Frankston also has significant areas of disadvantage and poverty.

Frankston City Council is a subdivided municipality consisting of 3 wards and 9 Councillors elected at the 2016 elections. Of those elected in 2016, only 3 had not previously been Councillors at some stage at Frankston City Council.

Councillors and their wards are:

South Ward

Cr Brian Cunial

Cr Quinn McCormack

Cr Steve Toms

North - West Ward

Cr Kris Bolam

Cr Lillian O'Connor

Cr Glenn Aitken

North - East Ward

Cr Sandra Mayer

Cr Michael O'Reilly

Cr Colin Hampton

Monitoring Activities

During my appointment, I have attended 20 Ordinary meetings of Council, 7 Special Council meetings, a Statutory meeting, 2 Strategic Budget meetings, 69 Councillor Assemblies and 5 Councillor only meetings. In addition, I have attended each meeting of the Chief Executive Officer Performance Review Committee and a meeting of the Audit and Risk Committee. I attended on a number of occasions the meetings between Council and State and Federal Members of Parliament.

I met regularly with the CEO and the Mayor, separately and together and on occasion these meetings included the Deputy Mayor. I also met with the Executive Management Team, both individually and as a group and with relevant senior staff, such as the Principal Conduct Officer, as the need arose.

Other activities that I have been involved in include but are not limited to:

- Participated in Councillor debriefing sessions on their performance following Ordinary Council meetings;
- Assisted in the preparation of the agenda, and participated in 4 Councillor Governance Development Workshops;
- Assisted in the preparation of the agenda, and participated in 3 Executive Management Team Communication and Engagement Workshops;
- Provided advice to Councillors individually on issues of concern to them;
- Provided advice on draft Notices of Motion and alternate motions to CEO and Councillors on their request;
- Provided advice on the revised draft Governance Local Law (Meeting Procedures) and Councillor Code of Conduct;
- Provided advice to Mayor and CEO on a range of issues including responses to confidential information appearing in the media, concerns regarding probity of a procurement process, Councillor behaviour and complaints;
- Provided advice to the Mayor and CEO on the management of certain individual Councillors behaviour, allegations of Code of Conduct breaches, referrals to the Local Government Inspectorate and applications to the Principal Conduct Registrar for a Councillor Conduct Panel;
- Attended meetings, at Councilors' requests, where the Mayor, Principal Conduct Officer and individual Councillors were going through the formal Code of Conduct process; and
- Liaised with Local Government Victoria and the Local Government Inspectorate on the above issues as appropriate.

The Framework for Good Governance

A useful framework for assessing the governance of the Frankston City Council is the framework developed by the Commission of Inquiry into Greater Geelong City Council.

That Framework (attached as Appendix 1) addresses the following eight pillars:

- Direction and Leadership
- Culture and Behaviour
- Structure, Systems and Policies
- Decision Making
- Communication and Community Engagement
- Capability
- Risk and Compliance
- Monitoring and Review

Whilst my Terms of Reference were focused on the areas of Culture and Behaviour and Decision Making, I have made an overall assessment of Frankston City Council against this Framework.

Major decisions regarding the Budget, Council Plan, the 5-year Capital Works Program, granting programs and major projects, to name a few of the suite of plans, are carefully considered and determined by the Council. The Council and administration continue to deliver services to the community at or above the level expected for similar Councils. Council's financial sustainability is strong.

Based on my observations of the Council, my assessment of the Council against the eight pillars of the Framework for Good Governance is as follows:

The Council is performing at or beyond expectations against the following pillars:

- Risk and Compliance
- Structures, Systems and Policies
- Direction and Leadership

The Council is performing adequately against the following pillars:

- Monitoring and Review
- Capability
- Communication and Community Engagement

The Council is performing adequately but there are ongoing concerns and issues that need to be constantly managed against the following pillars:

- Decision Making
- Culture and Behaviour

2. GOVERNANCE ISSUES

I have outlined below my observations in respect to the areas of governance concern covered by my Terms of Reference.

Councillor attendance at Council Ordinary Meetings and briefing sessions (Assemblies)

Since my appointment Ordinary Council meetings have been well attended with absences only for leave or illness.

Attendance at the Councillor briefing sessions (Assemblies) has been varied.

In the earlier stages of my appointment it was regular practice to hold 2 Assemblies each week and whilst the Monday Assembly was usually well attended, the Wednesday Assemblies were not, mainly due to Councillor work and family commitments.

This was a cause of considerable frustration and tension between Councillors. Councillors were also concerned at the lengthy presentations, often from outside stakeholders, which the administration kept placing on the agenda for these Assemblies.

A series of 4 Councillor Governance Development Workshops were designed to improve Councillor communication and engagement with each other and to identify best practice meeting procedures and processes. At the first of these Workshops, held in April 2018, Councillors determined that only one Assembly should, unless there were exceptional circumstances, be held each week. Special

briefings could be organised on issues for 'interested Councillors only'. It was also agreed that Assembly agendas would be structured to maximise the discussion time on the draft Council agenda paper and to minimise the presentations from outside bodies. Councillors also agreed to spend at least some time at an Assembly during the month to have a 'Councillors only' discussion.

Implementation of the above changes has seen relative consistency in attendance at Monday Assemblies. Any absences from these Assemblies are not seeming to have a negative impact on the process of decision making as absent Councillors are seeking information they require outside of the Assemblies. Assemblies held immediately before the Ordinary meetings are well attended and any outstanding issues and discussions regarding Alternate Motions or Notices of Motion are resolved at this time.

Council meeting processes and procedures

In the early stages of my appointment I observed a number of areas where the meeting processes and procedures could be improved:

- There was not a common understanding by all Councillors of what constitutes best practice meeting procedure and processes to ensure the Council business is effectively dealt with;
- Overuse of 'points of order' in Ordinary Council meetings;
- Lack of clarity amongst Councillors regarding Notices of Motion and their immediate impact, or otherwise, on the budget;
- Frequent use of motions of dissent in the ruling of the Chair especially on contentious matters;
- Need to more effectively use Assemblies and discussions on the draft Council agenda, as well as conversations with management, to reduce the number and complexity of Notices of Motion and alternate motions; and
- Briefing agendas and papers were too dense therefore not allowing enough time for discussion and resolution of Councillor queries and this was also impacting on the number of Notices of Motion and alternate motions.

Over the period March 2018 to June 2018 the Governance Local Law (Meeting Procedure) was discussed and revised in order that it could go out for public consultation. The amended Governance Local Law (Meeting Procedure) was adopted by Council in October 2018.

The amended Local Law requires that a Notice of Motion must be in writing, signed by a Councillor and delivered to the Chief Executive Officer at least 11 clear days before the meeting at which it is intended to be considered. Under the previous Local Law, the requirement for lodgement was only 4 days. The amended Local Law also outlines a number of matters for which Notices of Motion will not be accepted, i.e. if it seeks to substantially affect the level of Council services. The adoption of the amended Governance Local Law (Meeting Procedures) improved a number of Council meeting processes and procedures.

A new Notices of Motion template was put into use which clearly identifies whether there is any budgetary impact of the proposed motion and whether the intention is to refer the proposal for mid-year or end of year budget deliberations or to seek funding immediately.

The issue of Notice of Motions was discussed at the 2nd Councillor Governance Development Workshop which led to a better understanding of how they could be more effectively managed.

Efforts to reduce both the number and complexity of Notices of Motions by all Councillors continued until the last few months of my appointment. Draft Notices of Motions and alternate motions were being discussed with the CEO and executive on a regular basis and there was fulsome discussion of alternate motions and Notices of Motions at Councillor Assemblies with changes being agreed and alternates and Notices of Motion being withdrawn or amended.

Since April 2019 I observed that the number and complexity of Notices of Motions started to increase again. I am of the view that this occurred due to Councillors awareness that the Monitor's term was to finish at the end of June and that it was unlikely that there would be any consequences for this behaviour.

This is of concern as the large number of Notices of Motions 'which are impacting on Council decision making' was one of the factors in the Chief Municipal Inspector's Report to the Minister recommending the appointment of a Monitor (28 August 2017). It is noted that whilst Notices of Motion are allowed under Council's Local Law, it is generally considered poor practice by the Victorian Ombudsman and by the Chief Municipal Inspector when it impacts on Council decision making and consistently diverts the organisation's resources.

Upon advice, the Council resolved in July 2018 to establish a CEO Performance Committee and appointed 4 Councillors to the Committee. The Committee has performed well and has conducted, and advised the Council, on the CEO Performance Review, the renewal, or otherwise of the CEO contract which was due to expire in October 2019 and the subsequent recruitment process for a new CEO.

Motions of dissent in the ruling of the Chair at the Ordinary meetings is now extremely rare and the use of 'points of orders' continues to be limited and when they are raised, they are handled very effectively by the Mayor.

Councillors will need to commit to focusing on ensuring that the use, and complexity, of Notices of Motion are kept to a minimum so as not to negatively impact Council decision making or consistently divert the organisation's resources.

Management will have to commit to ensuring that Assembly agendas and papers continue to be streamlined in order to create the maximum opportunity for Councillors to resolve issues and accommodate different points of view.

Councillor Compliance with the Councillor Code of Conduct and Councillor interaction and Councillor and Council staff interaction

This is the Governance area where I have observed issues of greatest concern.

Early on in my appointment I observed that on many occasions Councillors engaged in informative and constructive discussion with each other and with Council staff on issues that led to each Councillor being able to make an effective decision.

I also observed a significant number of occasions where the behaviour of Councillors towards each other, and to a lesser extent staff, was disrespectful and hostile. Sarcasm, point scoring and belittling of another Councillor were commonplace behaviours.

I found that the behaviour of a number of Councillors at Ordinary meetings was disrespectful, hostile and aggressive and brought disrepute on the Councillors and on the Council.

The headlines in the Frankston Times after the January 2018 meeting was 'Council 'circus' on show'.

I observed that there was a lack of trust between Councillors and to a lesser extent between a number of Councillors and the Council Management. It followed that the working relationship between Councillors was poor and they did not display evidence of an effective working team nor an ability to display good governance principles in terms of behaviour.

A staff engagement survey was conducted in early 2018 and the results were very concerning for the Councillors and CEO. The CEO and executive, whilst acknowledging that they needed to make improvements, were of the view that the poor result was also about staff's perception of poor Councillor behaviour. These views were articulated to the Councillors, which caused tensions between the CEO and Councillors.

Frankston City Council also performed poorly in the annual Victorian Community Satisfaction Survey in 2018. It was pleasing to see that they had made a significant improvement in overall community satisfaction in the 2019 survey.

It was agreed with the Councillors in early 2018 that a series of 4 Councillor Governance Development Workshops be held over a period of 9 months with experienced external facilitators to address effective communication and engagement between Councillors and best practice meeting procedures and processes. These Workshops were held in April, July, October 2018 and March 2019. The Workshops focused on best practice meeting procedures and processes, identifying an agreed set of behaviours, effective communication and engagement between the CEO and executive and Councillors with a particular focus on improving the results of the Community Satisfaction and Staff Engagement Survey results. These Workshops served a purpose but were not particularly effective in changing the concerning behaviour of individual Councillors.

It was also agreed to conduct Effective Communication and Engagement Workshops with the executive leadership team, utilising the same facilitators who conducted the Councillor Governance Development Workshops. These Workshops were held in July, August and September 2018 and focused on:

- implementing changes to the way in which the executive engaged with Councillors to increase trust and the effectiveness of communication; and
- changing the organisation's perceptions of management and the Councillors.

A number of actions were put into place as a result of these Workshops which were responded to positively by Councillors.

It was agreed early on in my appointment that Councillors would dedicate part of the Councillor Assembly immediately following the Ordinary meeting to debrief on their performance and behaviour at the Ordinary meeting. These debriefing discussions have been held regularly but without a lot of enthusiasm and Council will need to make an effort to ensure that these discussions continue when my appointment term concludes.

The Councillor Code of Conduct was discussed on a number of occasions from March 2018, revised and adopted in June 2018.

There were a limited number of formal complaints made under the Code of Conduct during my appointment and the complaints that were made related either to a complaint by a Councillor about how they were being treated by another Councillor or a breach of Council's Councillor and Staff Interaction Policy or Councillor Expenses Reimbursement Policy. There were also 2 instances where the Mayor exercised their responsibility under the Act to provide guidance to individual Councillors regarding behaviour which may have resulted in breaches of the Local Government Act or Code of Conduct.

A number of referrals have been made to the Local Government Inspectorate regarding alleged breaches of the Local Government Act.

Two applications have been made to the Principal Councillor Conduct Registrar for Councillor Conduct Panels regarding allegations of serious misconduct. Councillor Conduct Panels have been appointed to consider these applications.

Overall, I observed that the aggressive and hostile behaviour of a group of Councillors towards each other significantly diminished from May 2018. I continued to observe an improvement in the way that Councillors were engaging in informative and constructive discussion with each other and with Council management and that the behaviour of the majority of Councillors in Ordinary meetings and Assemblies had vastly improved. I also observed that on a number of occasions in Closed Council and Assemblies the behaviour of some Councillors deteriorated.

A couple of Councillors started advocating in mid-February 2019 for a decision to be made on whether to renew the CEO's contract or advertise the position. The CEO's contract was to expire in late October 2019.

It was clear at a Councillors only meeting in March 2019 that the majority of Councillors in attendance wanted to proceed to advertise the position. Following this meeting the media sent through a number of questions to the Council's media unit which clearly indicated that they had been briefed on the confidential discussion that a majority of Councillors wanted to advertise the CEO position rather than reappoint the current CEO.

This alleged breach of confidentiality, although not a technical breach of the confidential information provisions under the Local Government Act 1989, as the Councillor only discussion was not an Assembly or Closed Council Meeting, was of major concern. At that stage there was no formal Council resolution on the matter. The Mayor sent an email to all Councillors expressing his disappointment and concern regarding leaking of confidential information which angered a number of Councillors who vehemently denied the information came from a Councillor.

Council resolved in April 2019 to advertise the CEO position.

As a result of the above, the relationship between the CEO and a number of Councillors became very strained. The CEO resigned and exited the organisation on 30 June 2019.

Since mid-February 2019 I observed a significant deterioration in the behaviour of some Councillors in the way in which they engaged with each other and with the CEO in Assemblies, Committees and day to day interactions. The Mayor faced significant challenges in managing the concerning behaviours of some Councillors.

I am of the view that the deterioration in behaviour was driven by factors including, but not limited to:

- Council needing to decide on whether or not to renew the CEOs contract and positioning around control of the recruitment process; and
- Councillor awareness that the Monitor's term was to finish at the end of June and they were unlikely to face any consequences for poor behaviour.

Overall though, at the Ordinary meetings Councillors in the main now display respectful and orderly behaviour even on items where there are differences of opinion and divided votes. The Mayor effectively chairs the Ordinary meetings and the Assemblies with calmness, authority and fairness which the other Councillors respect.

Councillors will need to focus on spending time discussing their performance and behaviours at meetings and ways to hold Councillors to account for poor and inappropriate behaviour.

4. RECOMMENDATIONS

Given my above observations into the Governance Issues outlined in my Terms of Reference I am of the view that the Frankston City Council has made significant progress since my appointment in December 2017 in the key areas of concern identified by the Chief Municipal Inspector.

I am also of the view that the Frankston City Council will need to actively manage the ongoing concerns and issues raised in my report in relation to the governance areas of Decision Making and Culture and Behaviour and I recommend that the Minister consider writing to the Frankston City Council expressing his expectation that the Council will:

- ensure that Councillor Assemblies agendas continue to be structured and streamlined to create opportunities for discussion amongst Councillors to resolve issues and accommodate different points of view;
- continue Councillor debriefing sessions following Council Ordinary meetings to discuss their performance and behaviour;
- continue their efforts to reduce the number and complexity of Notices of Motions and alternate motions by engaging in discussions with the CEO and executive and fulsome discussion at Councillor Assemblies;
- recognise the significant improvement over the last twelve months in the Community Satisfaction Survey results and that Councillors and management commit to further improvement;
- continue Councillors' and management's commitment and efforts to improve the Staff Engagement Survey results; and
- continue to find mechanisms to increase trust and effective communication between management and Councillors.

In addition, I recommend that the Minister require the Council to ensure that the use, and complexity, of Notices of Motion are kept to a minimum so as not to negatively impact Council decision making or consistently divert the organisation's resources and that the Minister seeks reassurance from the Council as to how this will be achieved.

I also requested in May 2019 that the Minister consider whether the term of the Monitor should conclude on 30th June 2019 or be extended with a limited Terms of Reference to monitor the Council's actions and processes in relation to the recruitment and appointment of a permanent Chief Executive Officer to fill the position as a result of the resignation of the Council's Chief Executive Officer, Dennis Hovenden.

**Prue Digby
Municipal Monitor**

Appendix 1: Framework for Good Governance developed by the Commission of Inquiry into Greater Geelong City Council

A FRAMEWORK FOR GOOD GOVERNANCE

APPENDIX 1

OUTCOMES

Social, economic and environmental viability and sustainability of the municipality: conscious of the changing needs of citizens and planning to deliver benefits to them.

Resources are used efficiently and effectively and services provided to best meet the needs of local community: efficiency in the delivery of council services with a positive recognised impact on the GGCC

Quality of life is improved for local community

Business and employment opportunities are promoted: Consistent with agreed directions at the state and national level a plan for the future of Geelong in economic, social and environmental terms.

Services and facilities are accessible and equitable

Transparency and accountability in Council decision making: good relationships across Council and between Council and administration

DRIVES OUTCOMES

POLICIES, PROCEDURES, SYSTEMS, GUIDELINES AND FRAMEWORKS

Direction and Leadership

- Vision
- Budget
- Corporate Plan
- Clear definition of Council's purpose and desired outcomes through Council Plan and Strategic Resource Plan
- Protocols on communication between Council and administration staff
- Financial Sustainability
- Councillor Charter

Culture and Behaviour

- Appropriate corporate culture
- Inclusive employment practices that reflect gender and CALD community
- Employee culture surveys
- Diversity in Councillors and Senior Management
- Staff engagement
- Complaints handling process

Structure, Systems and policies

- Established Committee Systems
- Whistleblowing protections and processes
- Robust Finance and HR systems
- Electoral system and structure

Decision Making

- Well defined functions and responsibilities and related protocols
- A strong governance team and governance processes
- Formal schedule of delegations
- Use of external expertise
- Record of decisions and implementation plans
- Evidence based decisions
- Effective Committee Structure

Communications and Community Engagement

- Community engagement Plan
- Stakeholder engagement Plan
- Communications Strategy
- Open data policy
- Social media policy
- Media engagement

Capability

- Induction training
- Training in systems, policies and procedures
- Behaviour training – bullying, diversity, discrimination
- Skilled staff
- Management of poor/under performance
- Resources and support for Mayor and Councillors
- Talent attraction and succession planning

Risk and Compliance

- Overview and scrutiny bodies – audit, purchasing and contracting, risks plans
- Audit Committee (SI39)
- Codes of conduct for Councillors and Council Staff
- Councillor conduct panel
- Gift and Benefits Policy and Register for Councillors and Council Staff
- Corporate Risk Framework
- Legal compliance
- Incident management plan
- Privacy protocols and policy
- Checks and balances

Monitoring and Review

- Real accountability to stakeholders through reporting and monitoring frameworks
- Performance reviews of staff
- Regular self-assessment of Councillors and staff
- Annual Report
- Quarterly Financial Reporting
- Exit interviews and reporting

Principles and behaviours for Good Governance in Local Government (based on MAV Good Governance Guide)

- Good Governance is accountable:** obligation to report, explain and be answerable for the consequences of decisions it has made on behalf of the community it represents.
- Good Governance is transparent:** People should be able to follow and understand the decision making process – to see clearly how and why a decision was made and what information, advice and consultation council considered.
- Good Governance follows the rule of law:** This means decisions are consistent with relevant LEGISLATION or common law and are within the powers of council.
- Good Governance is responsive:** Local government should always try to serve the needs of the entire community while balancing competing interests in a timely, appropriate and responsive manner.
- Good governance is equitable and inclusive:** all community members feel their interests have been considered by council in the decision making process. All groups, particularly the most vulnerable should have opportunities to participate in the process.
- Good governance is effective and efficient:** Local government should implement decisions and follow processes that make the best use of the available people, resources and time to ensure the best possible results for their community.
- Good governance is participatory:** anyone affected by or interested in a decision should have the opportunity to participate in the process for making that decision.
- Diversity:** In gender, ethnicity and age that reflects community through representative structures, consultative structures and employment practices.
- Build and sustain good relationships:** between Mayor and Council, Council and administration.
- Build trust:** establish good communication, clarify roles, keep an outward focus.
- Decision making:** establish good processes through committees, be clear on delegations to ensure decisions balance community and municipal interests, are consistent with the Strategic Plan and take account of financial implications, are within the powers of Council and recognise natural justice principle.
- Act with integrity and impartiality:** be honest and diligent, avoid conflicts of interest, treat people with respect, act lawfully and show leadership.