

City of Casey Municipal Monitor Report

February 2020

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1. Background

Appointment

I, Laurinda Gardner, was appointed by the Minister for Local Government as a Municipal Monitor for the City of Casey on 27 November 2019. This appointment, made under section 22CA of the Local Government Act 1989, was to monitor the Casey City Council's governance functioning, processes and practices, and to conclude on 31 January 2020. The appointment was subsequently extended to 11 February 2020. The appointment arose from the Independent Broad-Based Anti-Corruption Commission's (IBAC) Operation Sandon which is investigating allegations of corrupt conduct involving Councillors and property developers in the City of Casey, and the information that has come to light as part of that Investigation in public examinations. Details regarding Operation Sandon can be found on the IBAC website.

My report

The structure of my report is a description of my observations as they relate to the core statutory responsibilities of the council and councillors under the Local Government Act 1989. I have included the reference to the relevant term of reference (ToR) for my appointment in each section, and where applicable, referenced the pillars and principles from the Framework for Good Governance developed by the Commissioners from the Geelong Commission of Inquiry.

Terms of Reference

The terms of Reference for my appointment were as follows:

1. *To monitor the Casey City Council's (Council) governance functioning, processes and practices in light of Operation Sandon being conducted by the Independent Broad-Based Anti-Corruption Commission (IBAC)*
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 processes and practices, with specific regard to the matters raised in clauses 1 and 2*
4. *To advise and report to the Minister for Local Government by 31 January 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 the City of Casey arising from 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 stopes taken by the Council to address the issues identified; and*
 - d. *Any recommendations for the exercise of the Minister's powers under the Act*

Overview of the City of Casey

The City of Casey is one of Victoria's largest and fastest growing municipalities. The current population is around 350 000 and is projected to grow to 550 000 by 2040. It extends from Endeavour Hills in the

north to Tooradin and Warneet in the south, and includes the developing urban areas of Narre Warren, Cranbourne, Berwick and Clyde. 38.2% of the population were borne overseas, compared to 33.8% for Greater Melbourne. The annual budget is \$500m and there are approximately 1500 employees.

The City of Casey is comprised of 6 wards, including 1 single member ward and 5 x 2 member wards.

Edrington Ward, Councillor Susan Serey (Mayor), Councillor Tim Jackson

Balla Balla Ward, Councillor Geoff Ablett

Mayfield Ward Councillor Amanda Stapleton. Councillor Gary Rowe (Deputy Mayor)

Four Oaks Ward, Councillor Rosalie Crestani, Councillor Milla Gilic

River Gum Ward, Councillor Damien Rosario, Councillor Wayne Smith

Springfield Ward, Councillor Sam Aziz, Councillor Rex Flannery (Deputy Mayor)

Monitoring Activities

Both the Administration and the Councillors I have come in contact with have been very welcoming and co-operative with my appointment and work.

- ToR 3: To advise on and provide assistance and support to the Council in relation to the Council's governance processes and practices

There have been four main aspects to my monitoring activities.

- Observing the functioning of Council by attending Council meetings, Assemblies of Councillors, and an Audit Committee meeting
- Interviewing 10 of the 11 Councillors, CEO and directors and a number of other senior staff
- Reading background material including governance policies and media reports
- Providing advice and support to the CEO, senior staff and individual Councillors
- Interviewing a number of community members actively engaged with the business of the council

2. How is Casey City Council functioning in light of the IBAC Investigation?

- ToR 1: To monitor the Casey City Council's (Council) governance functioning, processes and practices in light of Operation Sardon being conducted by the Independent Broad-Based Anti-Corruption Commission (IBAC)

Administration and Service Delivery

The City of Casey benefits from having an experienced leader and CEO, Glenn Patterson, and a strong executive team. The advent of the IBAC Investigation has presented a challenge that would be difficult for any leader and executive to manage. The council's operating environment has been affected by Glenn Patterson being called as a witness to the Investigation, limiting his ability to discuss the process and evidence before the Investigation with colleagues and Councillors.

In response to the situation the CEO and executive have engaged external advisers with experience with these types of situations. This has included issues management, staff support and scenario

planning. There has been continual communication with staff, provision of counselling, forums to enable staff to raise issues and report feedback from community members, and specific support to individual staff experiencing greater impact.

Both the Administration and Councillors report no reduction in service delivery over the last 2-3 months and this view is reinforced by customer contact and complaints information. The exceptions to this are increased caution by some staff in making decisions and putting items to Councillor forums and Council meetings. This is resulting in a backlog of Council business items and even shorter than usual Council meetings. There has also been the need to compromise the annual business planning and budgeting process. The latter was to commence with a one-day planning session between management and Council in December. This was cancelled and a short discussion and abridged process for gaining Councillor input to the capital program has been undertaken. The Administration is also cautious about the extent of community engagement in this annual planning process at this time when the dominant community concern relates to issues arising from the IBAC investigation.

My assessment is that the CEO and executive are managing the current situation professionally and calmly, the general mood is very constructive, staff are continuing to serve the Casey community and there has been no impact on day to day service delivery to ratepayers.

Councillors

The IBAC investigation has had a significant impact on the confidence and emotional state of the Councillor group. These effects are expected to endure for a lengthy period of time.

The dominant theme from my interviews with Councillors is their stated shock and sadness at the information that has come to light as a result of Operation Sardon. They have further stated that they are committed to continue their roles as Councillors, that the Investigation has brought them closer together and that that their work was easier without the presence of the Councillors at the centre of the investigation. Several of the Councillors were visibly emotional and upset. Several were extremely concerned about the inability to defend their own and the Councillor group reputation in the face of information coming from the IBAC hearings and media coverage. Those Councillors who have been summoned as IBAC witnesses are under additional stress due to restrictions on their ability to talk to other witnesses and read media reports, the lack of understanding of why they have been summoned and what they will be questioned about at the hearings. They have not all taken up the counselling support the Administration has offered. The extension of time for the IBAC public hearings has caused additional stress and the likelihood of further revelations will only add to the fragility and capacity of individual Councillors and the Councillor group to maintain perspective and fully undertake their statutory roles.

The media (all forms) coverage during the Investigation has been disturbing for Councillors and as a group they have been anxious to 'do something' to defend themselves and their reputation. Media sentiment data for the last 6 months indicates a significant increase in negative sentiment over November, December 2019 and early January 2020 and this all relates to the media and public response to the information flowing from the IBAC Investigation.

Councillors have put pressure on the Administration to engage issues management consultants, to put out media statements, organise radio interviews, write to all MPs, and seek a variety of legal advice including what action can be taken against Councillors at the centre of the Investigation.

My observation is that Councillors have been more concerned about their own reputation rather than that of the City of Casey and have reluctantly taken advice to not generate more media coverage by making further statements. Despite this and advice to the contrary the Council have made some

media statements that have led to more negative media coverage and community commentary and pursued the calling of a Special Council meeting for the 31 December to resolve to approve the establishment of Section 86 Special Committee to deal with non-delegated planning matters in the belief that the Committee will ensure efficient handling of planning matters and assist in restoring public confidence in the Council. The timing of the Special Council meeting and the concept and resolution to form the Special Committee is of significant concern to the community members I spoke to as an example of poor process and little regard for the community.

Despite the information arising from the IBAC investigation, there have been no requests from Councillors to refresh or have additional training around conflict of interest and their governance responsibilities more generally. The establishment of the Special Committee indicates a willingness to pass responsibility onto another body rather than taking up the challenge of demonstrating how they can govern well, and restore community trust and confidence. There is an overriding view that if one or both Councillors at the centre of the Investigation to date were removed everything would be all right and that the remaining Councillors have 'done nothing wrong'. This is an inadequate response to the situation because it is illustrative of a lack of understanding by the Councillors of the poor governance practices underpinning the IBAC allegations, their collective responsibilities to meet the requirements under the Local Government Act and the mechanisms available to them to hold one another to account when individual Councillors fail to meet the standards required of them under the Act.

3. What is the state of Governance at the City of Casey?

Below I discuss my observations in relation to some of my terms of reference (in italics) and align those observations with the pillars and principles in the Framework for Good Governance (in bold).

- *ToR 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*
- *ToR 4a: If Councillors, individually or as a group, are behaving in a manner that does not accord with the role of Councillor*
- *ToR 4b: Any impact on the integrity and/or functioning of Council decision making and the orderly governance of the City of Casey*
- *ToR 4c: The capacity of the Council to address any issues identified*

The City of Casey is well served by a professional and skilled governance team within the Administration of the Council. The City of Casey has a Councillor Code of Conduct and a Meeting Procedures Local Law both of which are good practice. An assessment against the 'Framework for Good Governance' developed as part of the City of Greater Geelong Commission of Inquiry Report is undertaken annually and indicates a well-functioning Administration with a commitment to continuous improvement.

Considering these provisions and the Framework for Good Governance, there are a number of ways that good governance is compromised at the City of Casey and has contributed to the current situation.

Culture and Behaviour - Councillor Conduct

Section 65 of the Local Government Act outlines the role of a councillor which is to participate in the decision-making of the council, represent the community in that decision-making and to contribute to the strategic direction of the council through the development and review of key strategic council documents such as the Council Plan. In performing this role, the Act also requires councillors to

observe principles of good governance, consider the diversity of interests and needs of the local community and facilitate effective communication between the council and the community.

The Act also stipulates the required standards of conduct expected of councillors. Section 76B and 76BA of the Act outline the principles of councillor conduct. For example, section 76B(a) requires councillors to act with integrity, section 76BA(c) requires a councillor to treat all persons with respect and section 76BA(g) requires a councillor to support and promote these principles by leadership and example and act in a way that secures and preserves public confidence in the office of councillor. Section 76C of the Act outlines what must be included in the council's Councillor Code of Conduct. The Code of Conduct and the Act also provide mechanisms for the council to address instances where councillor conduct does not meet the standards expected of a councillor.

The City of Casey's Code of Conduct draws heavily from the provisions of Part 4 of the Local Government Act. It includes requirements from the Local Government Act, including regarding treating all people with respect, promoting leadership, and acting to preserve public confidence in the role of councillor. Despite this, I have observed and been made aware of instances where the Council has failed to meet these statutory requirements. Some of these instances are discussed below.

Bullying and intimidation

Several Councillors I interviewed stated that they had observed or experienced 'bullying' by other Councillors. This alleged bullying is reported to largely comprise behaviour of exclusion, cliques, and intimidation by Councillors. The cliques centre on one or more dominant personalities and political affiliations and result in perceptions that matters have not been properly considered by all Councillors or decisions have been made behind closed doors. (See later discussion on 'en bloc' voting). I have sighted email exchanges between Councillors that are disrespectful and inflammatory, and complaints from ratepayers regarding Councillor behaviour.

Despite these experiences over this Council term, there has been a disturbing pattern of withdrawing complaints between Councillors and not pursuing Councillor Conduct Panels. Community members commented on poor behaviour between Councillors and toward themselves, not calling out poor behaviour by Mayors at Council meetings and inconsistent treatment of Councillors during Council debates.

Bullying, intimidation and exclusion are unacceptable behaviours in any workplace. An apparent embedded culture of a failure to challenge these Councillor behaviours and hold the responsible Councillor parties to account represents a serious governance failure at the Council.

Fear of Conflict or Intimidation

This unwillingness of Councillors to call out unacceptable Councillor behaviour and hold each other to account appears to be motivated by a fear of conflict or further intimidation that has enabled inappropriate behaviour to go unchecked. Since my appointment Councillors have mostly been well behaved and cordial to each other, but this reinforces the observation that they are not willing to take action under their own volition for risk of creating conflict. My view is that Councillors (except where they have a strongly held view on a specific matter or less significant issues) are vulnerable to being led by more dominant characters and therefore less likely to question, debate issues fully or strongly express their view. This assessment is reinforced by my observations regarding transparency and 'en bloc' voting, see below.

A strong avoidance culture exists among Councillors which undermines good governance at the Council. In one instance, councillors decided not to pursue an investigation into a leak of confidential material, in part because they would then need to deal with the outcomes of that investigation.

Councillor engagement and participation

Generally Councillor attendance at Council meetings is high. Councillors have been reluctant to not agree to requests for leaves of absence. During 2019, one Councillor only attended 5 of the 22 ordinary Council meetings (7 apologies, 10 leaves of absence), with a relatively low attendance record in previous years. Whilst there may be some valid reasons for part of this non-attendance, the absences have been unchallenged and any reasons not transparent. This reluctance is a further example of Councillors failing to hold each other to account. These repeated absences also result in a reduced participation by Councillors in Council decision-making, reduced community representation and questioning of why Councillors continue to receive allowances.

The Administration report a low level of engagement by Councillors in strategic items before the Council, e.g. the Annual Plan. Councillor forums held monthly to discuss forward Council meeting agendas and discuss strategies and items of significance have relatively poor attendance, with an average of 6 Councillors attending over the last year. In addition an analysis of Councillor request data (requests from Community members to Councillors and passed to the Administration) indicates that 50% of Councillors have had less than 10 requests, and some of those zero or 1, into the system over the last 6 months, compared to over 30 from 3 more active Councillors. Some community members I spoke to feel they are not listened to, disrespected, disenfranchised and some noted that some Councillors do very little in their wards. This data points to some Councillors having a low-level of regard for engagement with the communities they are elected to represent, and a failing in one of the core responsibilities of being a councillor.

Decision Making - Transparency and accountability

The Council's Code of Conduct includes the Local Government Act's requirements that Councillors participate in Council decision making, review strategic documents and act with integrity and impartiality.

Additionally, there are clear requirements under the Act designed to ensure the integrity and transparency of council decision-making. Section 3D(a) of the Act provides that the role of council includes acting as a representative government by taking into account the diverse needs of the local community in decision making. Section 76B(b) of the Act requires a councillor to impartially exercise his or her responsibilities in the interests of the local community, section 76BA(a) requires councillors to avoid conflicts between their public duties as a councillor and their personal interests and obligations, and section 79 outlines the requirements for disclosing a conflict of interest.

Despite processes in place at the Council to support the Council to meet the requirements of the Act, I have observed and been advised of instances where the Council has failed to meet these requirements. Some of these instances are discussed below.

Conflicts of Interest

Section 79(1) of the Act requires a councillor with a conflict of interest in a matter at a council meeting to disclose the conflict of interest in accordance with the requirements of section 79(2) of the Act.

At Council meetings I observed Councillors stumbling over what was required in declaring conflicts of interest and a gallery completely uninformed about the reason behind declared conflicts. This demonstrated a culture of a low-level of understanding and regard for the importance of effectively

and transparently managing councillor conflicts of interest. This is despite efforts by the Administration to educate and provide just-in-time advice and the current scrutiny arising from the IBAC Investigation.

Two Councillors I interviewed stated that they suspected one or more other Councillors have had undeclared conflicts of interest but did not act on this suspicion in part because they did not understand their responsibility and how to approach the issue. This raises concerns about Casey Council fulfilling the primary role of Council in *'making all decisions impartially and in the best interests of the whole community'*. Councillors have been provided with opportunities to identify training needs and to participate in a range of governance sessions run by peak local government and other governance bodies. From the data provided to me there has been little take up.

'En Bloc' Voting

The Local Government Act includes provisions designed to ensure the transparency of council meetings and decisions for its community. For example, Section 89 provides that council meetings must be open to the public unless the council has a valid reason for resolving to close the meeting, section 90 prohibits secret voting at open council meetings, and section 93 requires councils to keep minutes for their meetings.

An observation of Casey Council meetings is the low level of transparency and accountability created by the extent of agenda items which are resolved 'en bloc' with no discussion. Casey Councillors meet before the Council meeting and decide those business items they wish to 'withdraw for discussion' at the Council meeting (these are usually identified by an individual Councillor/s wanting to make a public comment on an item or have an alternative recommendation). This results in the majority of items not being discussed in the open Council meeting. Over the second half of 2019, 70% of officer reports were adopted 'en bloc'. Examples of items that the community would expect discussion at a Council meeting include: Quarterly Report to the Community, Casey's Growth Area Contribution Plans-Priority List and Implementation Strategy, 2018/19 budget outcome. This practice appears to be a result of a general tendency to accept officers' recommendations with little/or no questioning, lack of preparation by Councillors and a narrow focus on what interests individual Councillors.

The Victorian Ombudsman's *'Investigation into the transparency of local government decision making 2016'* report, nominated 'en bloc' voting as a factor impacting on accessibility and transparency of decision making, and presenting a risk of unseen influence. At Casey the risk of excessive 'en bloc' voting is a heightened risk, real and/or perceived, that decisions are being made prior to the Council meeting behind closed doors and issues have been given little consideration by Councillors. Unseen influence is one of the main aspects being examined and brought to light as part of the IBAC Investigation.

Council meetings

'En bloc' voting also contributes to very short Council meetings, often under one hour. Gallery attendees often do not get to observe discussion on items which they may be interested in or end up confused about what is actually happening during a council meeting. The latter particularly relates to attendees from non-English speaking backgrounds.

At the Council meetings I attended, and video recordings I viewed, more time was taken up with Councillor statements not related to the Council meeting agenda and acknowledgement of community members/groups achievements than the actual business of the meeting. Whilst these statements are highly beneficial and a key role of the Council, the balance is not appropriate for the

effective governance of a large and complex organisation and raises serious concerns about the integrity and robustness of Council's decision-making.

The other aspect of Council meetings that is the major and common concern to all the community members I spoke to is the low standard of debate, a perception of pre-determined decisions, lack of thorough, critical analysis and objective consideration of matters, lack of diversity of thought, and non-preparedness (with some community members considering it obvious that some Councillors have not read the meeting papers).

This low quality of consideration of matters and little debate at Council meetings is now of heightened significance given the low level of community confidence in Council decision making as a result of the IBAC Investigation. It raises concerns regarding Councillors' obligation to '*exercise reasonable care and diligence*' and '*act in a way that secures and preserves public confidence in the office of Councillor*' under section 76BA of the Act.

Community Interest

An added factor is the apparent relatively low level of community interest or pressure on Council accountability. Although some community groups exist, they are either disregarded or not highly vocal, local print media is not assertive compared to metropolitan or local print media in other parts of Victoria and attendance at Council meetings is low and predominantly related to specific issues. There is a low appetite on the part of Councillors to encourage broader community engagement in democracy.

4. Findings and Recommendations

- ToR 4d: Any recommendations for the exercise of the Minister's powers under the Act

Findings

Based on my observations detailed above, I make the following findings:

- There have been significant governance failures at the Council, including in relation to the Council's responsibilities under the Local Government Act 1989 regarding:
 - the role of the council;
 - the role of councillor;
 - councillor conduct;
 - the conduct of council meetings;
 - disclosure of conflicts of interest; and
 - council decision-making.
- An embedded 'avoidance culture' is evident among Councillors which has enabled alleged bullying, intimidation, exclusion and other inappropriate conduct to go unchallenged.
- In response to the intense scrutiny by IBAC and the appointment of a municipal monitor, the Councillors have prioritised protecting their reputations rather than that of the City of Casey.
- The Councillors have failed to fully understand the core causes of their governance failings or to demonstrate a willingness to improve their ability to meet statutory obligations.
- There has been serious damage to the reputation of, and public confidence in, the Council.

For these reasons, I do not have confidence in the ability of the Casey City Council to meet its statutory obligations under the Act for the foreseeable future, particularly in relation to its ability to 'act in a way that secures and preserves public confidence in the office of councillor'.

Recommendations

The IBAC Investigation will resume in March 2020 and further matters are likely come into the public arena. This will add to the fragility of some Councillors at the Casey City Council, serve as a further and prolonged distraction from Council business and may highlight further serious governance failures by individual Councillors at the Council.

The City of Casey is a fast growing and ethnically diverse community and it warrants a Council that is also diverse in background and thought, of high integrity and willing to debate issues and take accountability.

I am of the view that the Council requires:

1. A thorough review of policies, procedures and processes to ensure the Council has clear and appropriate decision-making roles and responsibilities in place, including to manage Councillor interaction with affected stakeholders; and
2. Significant work to repair the damage to the Council's reputation and standing in its community, so that the community has a pool of high-quality candidates to choose from when electing their next Council.

I therefore recommend that:

1. The Casey City Council is dismissed and administrators are appointed.
2. The term of Administration extends beyond the general elections for local government in October 2020 to enable:
 - a thorough review and embedding of policies, procedures and processes for more effective decision-making and responsibilities; and
 - the development and implementation of an extensive municipal wide program to develop more and diverse community leaders, greater participation in setting a vision for Casey, and more awareness and interest in local democracy, the role of Council and the responsibilities of Councillors.

Laurinda Gardner
Municipal Monitor
Casey City Council

11 February 2020