

Strathbogie Shire Council

**Agenda:
Urgent Business**

Council Meeting

May 16, 2023

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14. URGENT BUSINESS OFFICER REPORTS

14.5 GOVERNANCE AND CUSTOMER SERVICE

14.5.1 Appointment of Municipal Monitor

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EXECUTIVE SUMMARY

The Minister for Local Government, the Hon Melissa Horne MP (the Minister), has informed the Mayor Councillor Laura Binks on 15 May 2023 that a Municipal Monitor, Peter Stephenson, has been appointed for three (3) months under the authority of the Local Government Act 2020 (the Act) (refer Attachment 1). Mr. Stephenson has been appointed to continue the work from the former Municipal Monitor, Janet Dore, and to address ongoing conduct and governance issues at Council.

The Minister has provided for two to three days' support per week on work directly related to acquitting the Terms of Reference (ToR), for the period of the appointment from 15 May 2023 to 15 August 2023.

The appointment has been made in response to concerns around governance and health and safety of councillors and staff. The monitor will examine why the Council has been unable to resolve issues identified by the previous monitor, Janet Dore, over a 12-month appointment made at the request of the Council.

The terms of Mr Stephenson's appointment are specific and different to the previous Monitor. He will be reporting to the Minister on the relationships between Councillors and between Councillors and Council staff. This includes Councillor behaviour with respect to the Councillor Code of Conduct and processes for resolving disputes between Councillors.

In accordance with the ToR as set by the Minister (refer Attachment 2), the focus of the work to be undertaken in this period are:

1. To monitor the Strathbogie Shire Council's (Council) governance functioning, with specific regard to key areas of concern identified in correspondence from the Mayor and other members of the Council dated February and March 2023;
2. To identify the underlying causes of any issues affecting the ability of the Council and / or individual Councillors to properly perform their statutory roles, with specific regard to the matters raised in clause 1, and
3. To report to the Minister, with respect to the matters in clause 1 and 2, on:
 - (a) any steps or actions taken by the Council to improve its governance and the effectiveness of those steps or actions,
 - (b) any recommendations for the Council to ensure the proper performance of its statutory role, including in relation to the conduct of councillors and responding to the advice of the former municipal monitor appointed to the Council, and
 - (c) any recommendations for the Minister, including in relation to the exercise of any Ministerial power under the Local Government Act 2020.

Mr Stephenson has held senior roles in a range of organisations including government, community services, higher education and health sectors. He is a former Councillor and Mayor Darebin City Council. As a Municipal Monitor he was worked with South Gippsland Shire Council and the Rural City of Wangaratta.

14.5.1 Appointment of Municipal Monitor (cont.)

RECOMMENDATION

That Council notes:

- 1. The appointment of the Municipal Monitor Peter Stephenson by the Minister for Local Government the Hon Melissa Horne MP, two to three days per week for the period 15 May 2023 – 15 August 2023 inclusive,***
- 2. The Terms of Reference as set by the Minister for Local Government for the period of Mr. Stephenson's appointment,***
- 3. That the remuneration set for the Municipal Monitor is \$1,259 per day plus expenses.***

PURPOSE AND BACKGROUND

The Minister for Local Government, the Hon Melissa Horne MP (the Minister), informed the Mayor, Cr Laura Binks on 15 May 2023 that a Municipal Monitor Peter Stephenson has been appointed for three (3) months to continue the work from the former Municipal Monitor Janet Dore and to address ongoing conduct and governance issues at Council.

Mr Stephenson's appointment is the second monitor to work with Strathbogie Shire Council over the past two years.

The first Municipal Monitor, Ms Dore, finished her six-month appointment in September 2022 and her report was provided to Council in January 2023, and noted by Council at its February meeting.

Ms Dore provided Council with invaluable learnings and support. She provided an extra layer of education for Council in its pursuit of good governance. Ms Dore finished her six-month appointment in September 2022 and her report can be found on our [website](#).

ISSUES, OPTIONS AND DISCUSSION

One of the overarching governance principles in section 9 of the Local Government Act 2020 is that priority is to be given to achieving the best outcomes for the municipal community, including future generations.

In appointing Mr Stephenson, the Minister is responding to serious concerns about governance and conduct raised with her by Councillors, Council staff and members of Council's Audit and Risk Committee.

The Minister is concerned there are serious risks impacting the functioning of the Council and the health and wellbeing of its members.

The ToR to Mr Stephenson's appointment make it clear he has been appointed to assess the Council's ability to function properly.

14.5.1 Appointment of Municipal Monitor (cont.)

Without limiting the Municipal Monitors' functions and powers under sections 180 and 181, respectively, of the Local Government Act 2020 (the Act), the Municipal Monitor is to:

1. Monitor the Strathbogie Shire Council's (Council) governance functioning, with specific regard to key areas of concern identified in correspondence from the Mayor and other members of the Council dated February and March 2023, including the following matters:
 - (a) The actions taken in response to, and the Council's ability to give effect to, the advice from the former Municipal Monitor appointed to the Council in 2022;
 - (b) Councillor understanding and performance of their statutory roles and responsibilities,
 - (c) The relationships between councillors and between councillors and Council staff, including councillor behaviour with respect to the Councillor Code of Conduct and processes for resolving disputes between councillors,
 - (d) Council's meeting procedures and decision-making processes, including Council briefings and meetings,
 - (e) the Council's processes and practices in relation to health and safety including any matters that may be creating a serious risk to the health and safety of Councillors, Council staff or other persons, and
 - (f) any other matters that may be affecting the Council's ability to effectively perform its statutory role, including behaviour that may be preventing the Council from performing its functions.
2. Identify the underlying causes of any issues affecting the ability of the Council and / or individual councillors to properly perform their statutory roles, with specific regard to the matters raised in clause 1.
3. Report to the Minister for Local Government, with respect to the matters in clause 1 and 2, on:
 - (a) any steps or actions taken by the Council to improve its governance and the effectiveness of those steps or actions,
 - (b) any recommendations for the Council to ensure the proper performance of its statutory role, including in relation to the conduct of councillors and responding to the advice of the former Municipal Monitor appointed to the Council, and
 - (c) any recommendations for the Minister, including in relation to the exercise of any Ministerial power under the Act.

COMMUNITY ENGAGEMENT

One of the overarching governance principles in section 9 of the Local Government Act 2020 is that the municipal community is to be engaged in strategic planning and strategic decision making.

The Minister is not required to undertake consultation with either Council or the community in relation to the appointment of a Municipal Monitor.

14.5.1 Appointment of Municipal Monitor (cont.)

POLICY CONSIDERATIONS

One of the overarching governance principles in section 9 of the *Local Government Act 2020* is that regional, state and national plans and policies are to be taken into account in strategic planning and decision-making.

The appointment of a Municipal Monitor is consistent with State policies and legislation around occupational health and safety and good governance practices across the State and Local government sectors.

The appointment of a Monitor also ties in with the recent Local Government Culture Project Discussion Paper released by the Minister and in response to which Council made a written submission promoting the use of municipal monitors to support good governance practices across Councils in Victoria. This was endorsed by Council at the March 2022 Council Meeting.

Council Plans and Policies

The appointment of the Municipal Monitor is consistent with Strategic Focus Area 6 of the 2021-25 Council Plan – Accountable. Transparent. Responsible in that it assists Council to achieve the highest level of good governance across the organisation and elected Council.

Action 6.4 also relates to the provision of an ongoing good governance program for Councillors, of which the Monitor's discussion and advice forms part.

LEGAL CONSIDERATIONS

One of the overarching governance principles in section 9 of the *Local Government Act 2020* is that Council decisions are to be made and actions taken in accordance with the relevant law.

The Municipal Monitor is appointed by the Minister under section 179 of the Local Government Act 2020 and the terms of reference for the Monitor must be set out under 180 and 181 of the Act. Under section 179(3), the Monitor must be remunerated by Council as set out by the terms and conditions of employment specified by the Minister.

Conflict of Interest Declaration

All officers, and/or contractors, involved in the preparation of this report have signed a written declaration that they do not have a conflict of interest in the subject matter of this report.

Transparency

One of the overarching governance principles in section 9 of the *Local Government Act 2020* is that the transparency of Council decisions, actions and information is to be ensured.

The purpose of this report is to inform our community that a Municipal Monitor has been appointed to assist Council and the administration with ensuring good governance and decision making at Strathbogie Shire Council. Further, the Minister is responding to serious concerns about conduct raised with her by Councillors, Council staff and members of Council's Audit and Risk Committee and the serious risks impacting the functioning of the Council and the health and wellbeing of its members.

14.5.1 Appointment of Municipal Monitor (cont.)

FINANCIAL VIABILITY CONSIDERATIONS

One of the overarching governance principles in section 9 of the *Local Government Act 2020* is that the ongoing financial viability of the Council is to be ensured.

The remuneration costs for the Municipal Monitor will need to be met from within existing budget allocations for the 2022-23 financial year and the draft budget for the 2023-24 financial year.

In accordance with the terms, the payment to the Municipal Monitor will be in the order of \$30,000 - \$45,000 plus expenses based on \$1,259 per day. The Municipal Monitor is eligible to be reimbursed by the Council for reasonable out of pocket expenses such as travelling, accommodation, meals and other incidental expenses in connection with performing the functions and exercising the powers of Municipal Monitor. Such reimbursement is not to exceed the reasonable allowance expense amounts determined by the Commissioner of Taxation for the income year in which the expense is claimed.

COLLABORATION

One of the overarching governance principles in section 9 of the *Local Government Act 2020* is that collaboration with other councils, levels of government and statutory bodies is to be sought.

The benefits and experiences of having a Municipal Monitor has been shared with Local Government Victoria and the local government sector in general. Such feedback to the State government was also shared through our written response to the Local Government Culture Discussion Paper, released by the State government in December 2021 around the issues and challenges around the operation of elected councils since the introduction of the new Local Government Act in 2020.

HUMAN RIGHTS CONSIDERATIONS

The matters discussed in this report do not adversely impact on the *Charter of Human Rights and Responsibilities Act 2006* but it must be noted that the support and advice from the Municipal Monitor over the past six months has had a positive impact on:

- privacy and reputation;
- freedom of thought, conscience, religion and belief;
- freedom of expression;
- taking part in public life;
- cultural rights;
- fair hearing.

CONCLUSION

The appointment of the Municipal Monitor Peter Stephenson for a three-month initial term will be beneficial for the elected Council, the Shire administration and the community to improve governance and the proper performance of its statutory role under the Local Government Act 2020, improved practices in relation to health and safety, and effectively responding to the advice from the former Municipal Monitor.

ATTACHMENTS

Attachment 1: Correspondence from Minister Horne MP

Attachment 2: Instrument of Appointment of Municipal Monitor and Terms of Reference