



GANNAWARRA
Shire Council

Council Meeting

MINUTES

Wednesday, 19 April 2023

10:00am

Senior Citizens Centre

Kerang

Order Of Business

1	Acknowledgement of Country	3
2	Opening Declaration.....	3
3	Apologies	3
4	Confirmation of Minutes	3
5	Declaration of Conflict of Interest	3
6	Briefing Sessions.....	4
6.1	Records of Councillor Briefings - 8 March to 4 April 2023	4
7	Business Reports for Decision	5
7.1	Proposed Budget 2023/2024	5
7.2	Domestic Animal Management Plan - Annual Review.....	6
7.3	Delegation Update - Council to Members of Council Staff.....	7
8	Tabling of A Recent Arbiter’s Descision and Statement of Reasons.....	7
9	Urgent Business.....	13
10	Notices of Motion.....	13
10.2	Notice of Motion - 84	13
10.1	Notice of Motion - 83	14
11	Question Time.....	14
12	Delegates Reports	14
12.1	Delegates Reports	14
13	Confidential Items	15

**MINUTES OF GANNAWARRA SHIRE COUNCIL
COUNCIL MEETING
HELD AT THE SENIOR CITIZENS CENTRE, KERANG
ON WEDNESDAY, 19 APRIL 2023 AT 10:00AM**

PRESENT:

Cr Charlie Gillingham (Mayor)	Avoca Ward
Cr Jane Ogden (Deputy Mayor)	Patchell Ward
Cr Travis Collier	Patchell Ward
Cr Ross Stanton	Murray Ward
Cr Garner Smith	Yarran Ward
Cr Keith Link	Yarran Ward

IN ATTENDANCE: Chief Executive Officer
Manager Governance

Gallery: Nil

Media: Nil

1 ACKNOWLEDGEMENT OF COUNTRY

Mayor Charlie Gillingham read the Acknowledgement of Country.

2 OPENING DECLARATION

The Deputy Mayor read the Opening Declaration.

3 APOLOGIES

Cr Kelvin Burt was noted as an apology.

4 CONFIRMATION OF MINUTES

RESOLUTION

Moved: Cr Travis Collier

Seconded: Cr Ross Stanton

That the minutes of the Council Meeting held on 15 March 2023 be confirmed.

CARRIED

5 DECLARATION OF CONFLICT OF INTEREST

Chief Executive Officer, Geoff Rollinson declared a Material Conflict of Interest in relation to Items 10.1 and 10.2.

6 BRIEFING SESSIONS

6.1 RECORDS OF COUNCILLOR BRIEFINGS - 8 MARCH TO 4 APRIL 2023

EXECUTIVE SUMMARY

This report presents to Council written records of Councillor Briefings in accordance with Clause 31 of the Gannawarra Shire Council Governance Rules.

MOTION

Moved: Cr Ross Stanton

Seconded: Cr Jane Ogden

That Council note the records of Councillor Briefings 8 March to 4 April 2023.

The Mayor adjourned the Meeting for 5 minutes at 10:06am to seek governance advice.

The Meeting resumed at 10:11am.

AMENDMENT

Moved: Cr Keith Link

Seconded: Cr Garner Smith

That Council note the records of Councillor Briefings from 8 March to 4 April 2023. The briefing record on 3/4/23 wasn't closed by mutual agreement with issues unresolved and some councillors wishing to discuss matters to come to a resolution. The Mayor unlawfully closed the meeting and breached councillor code of conduct – council policy No.078, 2.1 © improper and unethical manner, 2.1(d) – abuse of power, 2.1(g) constitutes a bullying behaviour because it is repetitive.

LOST

Cr Link called for a Division

In Favour: Crs Link and Smith

Against: Crs Stanton, Ogden, Collier and Gillingham

RESOLUTION

Moved: Cr Ross Stanton

Seconded: Cr Jane Ogden

That Council note the records of Councillor Briefings 8 March to 4 April 2023.

CARRIED

7 BUSINESS REPORTS FOR DECISION

7.1 PROPOSED BUDGET 2023/2024

EXECUTIVE SUMMARY

The Budget has been prepared in accordance with the requirements of the *Local Government Act 2020*. The Budget seeks to achieve the actions and activities set out in the Council Plan by balancing the demand for services and infrastructure with the community's capacity to pay.

The proposed increase in rate revenue for the 2023/2024 financial year is 3.50% in line with the order by the Minister for Local Government under the Fair Go Rates System.

Continued capital investment in assets (\$38.441m) comprising new works (\$4.552m) renewal works (\$18.182m) and upgrade works (\$15.707m) as features in the budget.

The Budget also achieves a Comprehensive Income result of (\$31,327m) surplus.

RESOLUTION

Moved: Cr Garner Smith

Seconded: Cr Ross Stanton

That Council:

- 1. Accept the Proposed Budget 2023/2024 as presented and attached to this report, prepared by Council for the purposes of the *Local Government Act 2020* and the Local Government (Planning and Reporting) Regulations 2020.**
- 2. Authorise the Chief Executive Officer or delegate, to implement the Communication Plan for the Proposed Budget 2023/2024.**
- 3. Agree that subject to changes to the Proposed Budget 2023/2024 after the implementation of the Communication Plan, the Proposed Budget 2023/2024 will be presented for adoption as Council's Budget 2023/2024, in accordance with Sections 94 and 96 of the *Local Government Act 2020*, at the Council Meeting to be held on Wednesday 28 June, 2023.**

CARRIED

7.2 DOMESTIC ANIMAL MANAGEMENT PLAN - ANNUAL REVIEW**EXECUTIVE SUMMARY**

Council must review the Domestic Animal Management Plan (DAM Plan) on an annual basis and if appropriate, amend the plan. A copy of the DAM Plan must be provided to the Secretary, including any amendments. In addition, Council must also publish an evaluation of the implementation of the DAM Plan in its annual report.

RESOLUTION

Moved: Cr Keith Link

Seconded: Cr Travis Collier

That Council:

- 1. Receive the annual review of the Domestic Animal Management Plan;**
- 2. Adopt the revised Domestic Animal Management Plan; and**
- 3. Approve the Chief Executive Officer to make administrative changes to the Plan as required.**

CARRIED

7.3 DELEGATION UPDATE - COUNCIL TO MEMBERS OF COUNCIL STAFF

EXECUTIVE SUMMARY

Gannawarra Shire Council has functions and duties which it must perform and powers which it may exercise, pursuant to the *Local Government Act 1989* (the 1989 Act), the *Local Government Act 2020* (the 2020 Act) as well as a range of other Acts and regulations. Legislation referred to in the attached instrument of delegation provides for Council to delegate certain powers, duties or functions to members of staff rather than having all functions and duties dealt with by Council resolution.

Delegations are regularly reviewed to reflect changes in legislation, regulations and Council's organisational structure.

This report addresses delegations to members of Council staff.

RESOLUTION

Moved: Cr Ross Stanton

Seconded: Cr Jane Ogden

That Council in the exercise of the powers conferred by the legislation referred to in the attached instrument of delegation, resolves that:

1. **There be delegated to the members of Council staff holding, acting in or performing the duties of the offices or positions referred to in the attached *Instrument of Delegation to Members of Council Staff*, the powers, duties and functions set out in that instrument, subject to the conditions and limitations specified in that Instrument.**
2. **The instrument comes into force immediately the common seal of Council is affixed to the instrument.**
3. **On the coming into force of the instrument all previous delegations to members of Council staff (other than the Chief Executive Officer) are revoked.**
4. **The duties and functions set out in the instrument must be performed, and the powers set out in the instruments must be executed, in accordance with any guidelines or policies of Council that it may from time to time adopt.**

CARRIED

8 TABLING OF A RECENT ARBITER'S DECISION AND STATEMENT OF REASONS

That in accordance with Section 147(4) of the *Local Government Act 2020*, the Arbitrator's decision and statement of reasons on the matter of an application by Gannawarra Shire Council concerning Councillor Garner Smith is tabled and is to be recorded in the minutes of the meeting.

**ARBITRATION PURSUANT TO DIVISION 5 OF PART 6 OF THE
LOCAL GOVERNMENT ACT 2020**

**Internal Arbitration Process – Gannawarra Shire Council
(IAP 2022-29)**

Applicant: Gannawarra Shire Council

Respondent: Cr Garner Smith

Arbiter: Yehudi Blacher

DECISION AND STATEMENT OF REASONS

Background

1. The applicant in this matter is the Gannawarra Shire Council. Councillor Charlie Gillingham is the appointed representative of the Council.
2. The respondent is Cr Garner Smith.
3. On 21 September 2022 the Council carried the following resolution:
“That the Principal Councillor Conduct Registrar to appoint an arbiter to make findings in relation to certain allegations concerning Councillor Garner Smith’s recent social media posts concerning a video involving a well-known AFL footballer: that the social media posts breach the Standards of Conduct set out in Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020 in that:
 1. they breach clause 1(a) concerning the elimination of discrimination, sexual harassment and victimisation in accordance with the Equal Opportunity Act 2010;

2. they breach clause 1(b) in that they are inconsistent with supporting Council in fulfilling its obligation to achieve and promote gender equality;
 3. they breach clause 1(c) in that they involve the Councillor engaging in obscene behaviour in his dealings with members of the public;
 4. they breach clause 1(d) in that they fail to treat all persons with respect; and
 5. they breach clause 4(1) in that they bring discredit upon the Council.”
4. A Directions Hearing on this matter was held on 30 November 2022. At the Hearing the Arbiter explained the arbitration process to parties. He advised the respondent, Cr Smith, that he would consider any submission made by him relevant to the complaints lodged by the Council. He also advised Cr Gillingham that he would consider any further submission by the applicant that was directly relevant to the complaint. Any submissions would need to reach the Arbiter by close of business on 16 December 2022. Councillor Smith provided his submission by the due date. No further material was provided by the applicant.
 5. A Hearing on this matter took place on 7 March 2023 at the Gannawarra Shire Offices, Kerang.

Councillor Smith’s submission

6. Councillor Smith provided a one-page submission in which he made three salient points.
 - a) He argued that criticism of his language was unreasonable because neither the AFL nor any government authority had taken any action regarding the player concerned.
 - b) Because the AFL had taken no action against the player, none of his comments could be construed as a contravening the provisions of the Standards of Conduct under the *Local Government Act 2020* (the Act) and therefore did not bring the Council into disrepute.

- c) He also argued that his comments were not made in his capacity as a Councillor and therefore did not fall under any relevant Code or section of the Act.

Comments on Cr Smith's submission

7. In relation to points a) and b), Cr Smith seems to misunderstand the nature of the complaint. The complaint related to comments made by Cr Smith not the actions of the player. The fact that the AFL took no action on the matter is irrelevant to whether Cr Smith's comments contravened relevant sections of the *Local Government Act 2020* or the Standards of Conduct. At the Hearing Cr Smith remained emphatic on this matter despite several attempts to explain why his understanding was incorrect.
8. I have been provided with two Facebook postings made by Cr Smith. The first is a response to a comment made by another person as to the reason the player may or may not have touched a woman's breasts. Cr Smith posted "I'd be more worried if he didn't go in for a feel".
9. This comment resulted in another person on the Facebook page posting that Cr Smith is "a councillor at Gannawarra council. Wonder if they think this is ok."
10. Councillor Smith's response is as follows - "To all you triggered, whinging, whining, bleating, bitching, offended losers. Instead of getting a skinny soy latte with a twist of lemon, head to your local independent hardware store, buy a bag of cement and harden the #@&! Up."
11. In response to the Councillor's comments a posting was made as follows - "Garner Smith this comment actually makes me feel sick. What a sl**ze you are. My hope is that you don't ever have daughters."
12. Section 28(2)(e) of the *Local Government Act 2020* states that "In performing the role of a Councillor, a Councillor must ... (e) act in accordance with the standards of conduct."
13. Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020 prescribes the Standards of Conduct for Councillors. Clause 1 of Schedule 1 of the regulations requires Councillors inter-alia

to treat members of the public with dignity, fairness, objectivity courtesy and respect. Clause 1 also refers to the need for a councillor to take positive action to eliminate discrimination sexual harassment and victimisation ... to actively promote gender equality ... and not engage in abusive, obscene, or threatening behaviour in their dealings with members of the public. Clause 4(1) of Schedule 1 requires Councillors to ensure that their behaviour does not bring discredit upon the Council.

14. The Council's media policy states the "Councillors choosing to express a personal opinion through the media will make it clear that this is a personal view and does not represent the position of Council. Councillors will ensure that any such position is devoid of comments which could reasonably be construed as being derogatory, offensive, or insulting to any person."
15. Councillor Smith argues that his comments were made in a private capacity rather than in his role as a Councillor. The relevant sections of the *Local Government Act 2020* and the Regulations all refer to the roles, behaviours and expectations of Councillors "in performing the role of a Councillor." Arguably these references suggest that a distinction can be made between actions and public comments by a Councillor in a private capacity and those made in performing the role of a Councillor. On this basis it could be argued that his initial comment was not made in performing the role of a Councillor. However, this argument is not relevant in this instance because Cr Smith's Facebook page states that he is a Councillor at the Shire of Gannawarra.
16. Moreover, having made the initial comment, Cr Smith was identified in a further posting as a Gannawarra Councillor. Once that occurred any further postings by Cr Smith could reasonably be interpreted as one being made in his role as a Councillor.
17. On this basis I have determined that Cr Smith is guilty of misconduct in that he did not comply with Clauses 1(a), 1(b), 1(c), 1(d) and 4(1) of the standards of conduct in the Local Government (Governance and Integrity) Regulations 2020.

Arbiter's determination

18. I direct Cr Smith to make a public apology to the Shire of Gannawarra community for his postings on this matter. The apology must be issued to the relevant local media within seven days of this decision, and must also be tabled at the next Council meeting on 19 April 2023 (under section 147(4) of the *Local Government Act 2020*) and recorded in the minutes of that meeting.
19. It is also apparent that Cr Smith is not aware of his obligations as a Councillor in relation to public statements made in using social media. Accordingly, I direct that he be required to undergo specific training in the proper use of social media to the satisfaction of the Mayor.

Yehudi Blacher
Arbiter
31 March 2023

Cr Smith handed a copy of his apology to the Chief Executive Officer to be included in the minutes.

An arbiter has instructed me to apologise for my comments relating to Dustin Martin. An arbiter appointed by a motion of this council. A motion moved by Cr Jane Ogden but supplied by the Mayor Charlie Gillingham. The Mayor has claimed he got it from another, yet to be confirmed, complaint. This process prevented me from asking the complainants to justify their accusations and there is no option for me to appeal this decision.

My comment related to defending an action of Dustin Martin. An action not considered an offence in the eyes of the law, not an offence in the eyes of the AFL integrity department. All evidence suggests that he has done nothing wrong in the eyes of the vast majority of the public. Yet, The media tried to profit from the issue and failed. To everyday people, it is clear that the woman was working in a professional capacity and Dustin Martin is only guilty of doing something hardly surprising under the circumstances.

I apologise to the Shire of Gannawarra community for my postings on this matter. My interpretation of the arbiters decision is that an apology would not be necessary if I had begun my comment with "I am a councillor of the Gannawarra Shire, but this is strictly my option".

PROCEDURAL MOTION

Moved: Cr Garner Smith

That we push Item 9 to after Item 10.

LOST

8 URGENT BUSINESS

The Mayor adjourned the meeting at 10:39am for a couple of minutes to consider a proposed urgent business item.

The meeting resumed at 10:41am.

The proposed urgent business item was not accepted by the Mayor under Governance Rule 105(a).

10:42am – Cr Link received an official warning from the Chair, Mayor Gillingham for disrespectful behaviour.

Chief Executive Officer, Geoff Rollinson declared a Material Conflict of Interest in relation to items 10.1 and 10.2 and left the meeting at 10:43am.

PROCEDURAL MOTION

Moved: Cr Garner Smith

That we discuss Item 10.2 before Item 10.1.

CARRIED

9 NOTICES OF MOTION

10.2 NOTICE OF MOTION - 84

MOTION

Moved: Cr Garner Smith

Seconded: Cr Keith Link

That the Gannawarra CEO KPIs, that are not confidential, be published in the Council's annual report.

RESOLUTION

That Council grant Cr Garner Smith an extension speaking time.

CARRIED

MOTION

Moved: Cr Garner Smith

Seconded: Cr Keith Link

That the Gannawarra CEO KPIs, that are not confidential, be published in the Council's annual report.

LOST

Cr Link called for a Division

In Favour: Crs Link and Smith

Against: Crs Stanton, Ogden, Collier and Gillingham

10.1 NOTICE OF MOTION - 83**MOTION**

Moved: Cr Garner Smith

Seconded: Cr Keith Link

That the Gannawarra Council engage a consultant to assist in developing the CEO KPIs.

LOST

Chief Executive Officer, Geoff Rollinson returned to the meeting at 11:11am.

10 QUESTION TIME

Nil

11 DELEGATES REPORTS**12.1 DELEGATES REPORTS**

Association	Appointed Council Delegate
Central Victorian Greenhouse Alliance	Cr Stanton
Community Halls Community Asset Committee	Cr Burt
Loddon Campaspe Group of Councils	Mayor
Municipal Association of Victoria	Cr Collier
Municipal Fire Management Planning Committee (MFMPC)	Cr Link
Murray River Group of Councils (MRGC)	Mayor
Rail Freight Alliance	Cr Stanton
Rural Councils Victoria	Cr Smith
Timber Towns Victoria	Cr Smith

NB: * Audit and Risk Committee - no delegate report is required as the Audit and Risk Committee formally reports back separately to Council in accord with the Audit and Risk Committee Charter.

Councillors gave verbal updates on attendance at meeting to which they are the appointed delegate.

12 CONFIDENTIAL ITEMS

Nil

The Meeting closed at 11:17am.

The Minutes of this Meeting were confirmed at the Meeting of the Gannawarra Shire Council held on 17 May 2023.

**Mayor Charlie Gillingham
CHAIRPERSON**