



MINUTES

Council Meeting

6.00pm Tuesday 25 July 2023

VENUE:
The Well
19 Heales Street, Smythesdale

NEXT COUNCIL MEETING
6.00pm Tuesday 22 August 2023

Copies of Golden Plains Shire Council's Agendas & Minutes
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**MINUTES OF GOLDEN PLAINS SHIRE COUNCIL
COUNCIL MEETING
HELD AT THE THE WELL, 19 HEALES STREET, SMYTHESDALE
ON TUESDAY, 25 JULY 2023 AT 6.00PM**

PRESENT: Cr Brett Cunningham (Mayor), Cr Gavin Gamble (Deputy Mayor), Cr Helena Kirby, Cr Les Rowe, Cr Owen Sharkey, Cr Ian Getsom, Cr Clayton Whitfield

IN ATTENDANCE: Eric Braslis (CEO), Phil Josipovic (Director Infrastructure and Environment), Steven Sagona (Director Community, Planning and Growth), Lynne Gray (Director Corporate Services), Sophie Brown (Governance and Risk Specialist)

1 OPENING DECLARATION

We the Councillors of Golden Plains Shire declare that we will undertake, on every occasion, to carry out our duties in the best interest of the community and that our conduct shall maintain the standards of the code of good governance so that we may faithfully represent and uphold the trust placed in this Council by the people of Golden Plains Shire

2 ACKNOWLEDGEMENT OF COUNTRY

Golden Plains Shire spans the Traditional lands of the Wadawurrung and Eastern Maar Peoples.

Council acknowledges them as the Traditional Owners and Custodians and pays its respects to both Wadawurrung and Eastern Maar Elders past, present and emerging.

Council extends that respect to all Aboriginal and Torres Strait Islander People who are part of Golden Plains Shire.

3 APOLOGIES AND LEAVE OF ABSENCE

RESOLUTION

Moved: Cr Les Rowe

Seconded: Cr Ian Getsom

Councillor Les Rowe requested a leave of absence from the 26th August 2023 to 3rd October 2023, dates inclusive.

CARRIED

4 CONFIRMATION OF MINUTES

RESOLUTION

Moved: Cr Helena Kirby

Seconded: Cr Clayton Whitfield

That the minutes of the scheduled Council Meeting held on 27 June 2023 be confirmed.

CARRIED

5 DECLARATION OF CONFLICT OF INTEREST

Nil

6 PUBLIC QUESTION TIME

The Mayor made the following statement:

Public question time runs for 30 minutes prior to consideration of the formal Agenda by Council. We consider questions received with notice from the public.

I will call each person who has submitted a question with notice forward. Please come up to the chair and ask your question, as it was submitted.

I note that question time is not an opportunity to make general statements or enter into a debate with Council or officers.

The following public question was read by Graham Turnbull and answer provided by Phil Josipovic, Director Infrastructure and Environment.

Question 1

Thank you for this opportunity to submit this question to Council. I understand the Master plan for the Smythesdale Gardens and Brewery Dam is still to be accepted by Council. The Smythesdale Progress Association would like to ask the following question. If the plan is accepted is there flexibility to change the focus and outcomes if the circumstances change and we consult with the Shire. We as The Progress Association are very thankful for the work that has been provided by the consultants, we believe the biggest factor in achieving this goal is with good communication between the parties.

Answer

The Draft Master plan has been provided to Council to endorse for public exhibition tonight. Council will seek community feedback before the Masterplan is finalised and presented at a Council meeting later this year for adoption. The Masterplan will assist the Smythesdale Progress Association/Committee of Management and Council to prioritise capital project upgrades, explore new opportunities to activate the reserves and increase recreational activity. The Masterplan will also provide a vehicle to advocate for grants and funding opportunities to support implementation.

Masterplans are not static and should be reviewed as circumstances change to determine whether any of the original goals and objectives have changed, and whether the logic behind the proposed developments is still current. Changes to volunteers, planning laws and regulations over time are all factors that may initiate a comprehensive revision of the master plan. Once the Masterplan has been finalised this will not prevent Council from considering ideas/improvements that have not been included on the plan. If there is strategic justification or demonstrated need Council will consider changes.

7 BUSINESS REPORTS FOR DECISION

7.1 CITIZEN RECOGNITION AWARD

Golden Plains Shire is proud to recognise the fantastic achievements and contributions made by young people in the community. We are fortunate today to present a Citizen Recognition Award to Grace Crowe who is being recognised for her achievement in the sport of athletics.

Grace is 14 years old, lives in Ross Creek and commenced Little Athletics at the age of 8. Grace has been competing individually and in relays since being in the under 9's at state level and this year competed individually and in relays at national level representing Victoria at the 2023 Australian Track & Field Championships in Brisbane. Grace also competes for the Ballarat Harriers and for Ballarat at state level individually and in relays.

7.2 DELEGATES REPORT & INFORMAL MEETINGS OF COUNCILLORS RECORDS

EXECUTIVE SUMMARY

At each Council meeting, Councillors have the opportunity to update their colleagues and the community about attendances at various Delegated Boards/Committees/Meetings that they attended on behalf of the Council and can acknowledge significant community events or Council functions / engagement opportunities that they have attended over the past month. This report contains records of informal meetings of Councillors as defined under Rule 1 of Chapter 5 of Council's Governance Rules.

RESOLUTION

Moved: Cr Gavin Gamble

Seconded: Cr Ian Getsom

That Council receive and note the Delegates Report and Informal Meetings of Councillors for the past month.

CARRIED

7.3 ROSS CREEK RECREATION RESERVE MASTERPLAN - ADOPTION

EXECUTIVE SUMMARY

Council has engaged True Resource Group to consult with community stakeholders on current facility provisions at the reserve, identify the demand for possible future facility improvements and explore future participation opportunities through the development of an updated Masterplan (Attachment 1) for the Ross Creek Recreation Reserve.

An extensive community engagement process to develop this Masterplan update was undertaken, with the engagement process demonstrating strong community interest in this reserve, and the current and future opportunities for participation and facility activation. The Ross Creek Recreation Reserve Committee of Management (CoM) took part in face to face and telephone sessions, with further one to one discussion occurring with key user groups, the local primary school, and several Council Officers.

This process has been supported by a detailed research and evidence base, and will inform strategic planning, investment and priorities for future infrastructure and programming opportunities for the period 2023-2033. The Masterplan provides clear and prioritised recommendations and is supported by evidence of community need, benefit and sustainability, and will assist in the scoping of potential funding/grant opportunities which aim to deliver facility improvements and increase participation.

Following Council endorsement in April 2023, the Draft Masterplan was made available via a public exhibition process where no further community comments or feedback was received.

RESOLUTION

Moved: Cr Gavin Gamble

Seconded: Cr Helena Kirby

That Council adopt the attached Ross Creek Recreation Reserve Masterplan 2023.

CARRIED

7.4 MOORABOOL RIVER RESERVE DRAFT MASTER PLAN - ENDORSE FOR CONSULTATION

EXECUTIVE SUMMARY

Council has engaged Thompson Berrill Landscape Design to develop a Master Plan for the Moorabool River Reserve in Batesford. A Draft Master Plan has been developed following collation of background information and a community engagement process. The Draft Master Plan provides guidance on the future management and development of the reserve. Public consultation on the Draft Master Plan is now required to inform the final Moorabool River Reserve Master Plan.

RESOLUTION

Moved: Cr Owen Sharkey
Seconded: Cr Clayton Whitfield

That Council endorse the attached Moorabool River Reserve Draft Master Plan for public consultation.

CARRIED

7.5 SMYTHESDALE GARDENS & BREWERY DAM RESERVE DRAFT MASTERPLAN - ENDORSE FOR CONSULTATION

EXECUTIVE SUMMARY

Council has engaged the services of Insight Leisure Planning to prepare a Master Plan to guide future planning and development of Smythesdale Gardens & Brewery Dam Reserve.

Insight Leisure Planning has consulted with community stakeholders on current facility provisions, future facility improvements and active recreation opportunities through the development of a Draft Master Plan (Attachment 1) for Smythesdale Gardens & Brewery Dam Reserve.

An extensive community engagement process to develop the draft master plan was undertaken, with the Smythesdale Progress Association/Committee of Management (CoM) taking part in a site walk through and consultation session where they were given the opportunity to provide input in relation to site issues, constraints, ideas and suggestions for improvements. A workshop session was also facilitated with a selection of key Council Officers.

This process has been supported by a detailed research and evidence base, and will inform strategic planning, investment and priorities for future infrastructure and activation for the period 2023-2033. The Draft Master Plan provides clear and prioritised recommendations to assist community groups and Council to explore opportunities to source external grants and funding to support implementation.

RESOLUTION

Moved: Cr Clayton Whitfield
Seconded: Cr Helena Kirby

That Council endorse the attached Smythesdale Gardens & Brewery Dam Reserve Draft Master Plan for public consultation.

CARRIED

7.6 DRAFT G21 REGIONAL FOOTBALL (SOCCER) STRATEGY

EXECUTIVE SUMMARY

The draft G21 Regional Football Strategy aims to guide the future planning and development of football (soccer) throughout the G21 Region for the next 10 years.

The draft Strategy is an initiative of Football Victoria and the G21 Sport & Recreation Pillar, and has been informed by a facilities audit, participation data and the collaboration and engagement of stakeholders in the G21 Region, including the five participating Councils.

The draft document highlights key findings, current trends and strategic priorities for football throughout the G21 Region, including for Golden Plains Shire.

The draft G21 Regional Football Strategy has been provided to the member Councils to enable a formal public exhibition process including allowing for broader feedback from the community. It is proposed that the draft Strategy be made available and advertised to the Golden Plains community for a period of 6 weeks.

RESOLUTION

Moved: Cr Clayton Whitfield

Seconded: Cr Helena Kirby

That Council:

1. Endorse the attached draft G21 Regional Football (Soccer) Strategy for public consultation.
2. Provide feedback to the Draft G21 Regional Football Strategy, during the public consultation period including:
 - (a) presenting the recommendations/goals of the Strategy as aspirational, as opposed to deliverable, within the ten (10) year timeframe.
 - (b) Removing references to the 'centre wicket' at the Bannockburn Soccer Facility, as there is not one.

CARRIED

7.7 SUBDIVISIONS ROAD NAMING POLICY - ADOPTION

EXECUTIVE SUMMARY

The draft Subdivision Road Naming Policy aims to provide a consistent and meaningful approach to naming of roads in newly approved subdivisions in Golden Plains Shire, in accordance with the naming rules for places in Victoria.

Following adoption of the policy and procedure, consultation will commence with local first peoples, historical societies and other community groups regarding the development of a register of names suitable for new roads in identified growth areas. Once the register of road names is developed, permit applicants / developers will be advised to review the register prior to lodging a new road name request form.

RESOLUTION

Moved: Cr Owen Sharkey

Seconded: Cr Clayton Whitfield

That Council adopt the attached Subdivision Road Naming Policy and Procedure.

CARRIED

7.8 COMMUNITY SATISFACTION SURVEY JANUARY 2023 - REPORT FINDINGS

EXECUTIVE SUMMARY

Each year, Local Government Victoria (LGV) coordinates a State-wide Local Government Community Satisfaction Survey (CSS) throughout Victorian local government areas. JWS Research conducted the survey on behalf of the participating Councils, including Golden Plains Shire Council (GPSC) in 2023.

The Survey was conducted in early 2023 via telephone interviews with 400 Golden Plains Shire residents with the results and survey reports provided to Council in late June. The survey provides insights into the community's views on both importance and performance in relation to Council services and infrastructure.

Perceptions of GPSC's overall performance have declined in the past 12 months. This decline in overall performance in 2023 is consistent with, but greater than, the pattern across the Large Rural Council groups average. Declines in performance ratings are also evident in almost all individual service areas evaluated, with the exceptions of waste management which has improved, and customer service and sealed local roads which have reduced by less than 3%.

Council performs lower than the State-wide average for all services areas. Against the Large Rural group, Council rates significantly lower than average on almost all evaluated service areas, the exceptions being overall council direction and customer service, where it performs in line with the group average.

The full reports (Attachment One and Two) detail key findings and recommendations on areas for improvement for Council.

RESOLUTION

Moved: Cr Gavin Gamble

Seconded: Cr Clayton Whitfield

That Council:

1. Receive and note the attached 2023 Community Satisfaction Survey reports.
2. Acknowledge the move from annual to quarterly interviewing from the 2023-2024 financial year.
3. Note that all future reports will be made public following the Councillors being briefed.
4. Request a report be brought to a future Councillor briefing to consider actions to improve the most significant areas of concern.

CARRIED

7.9 REHABILITATION OF FEDERATION BRIDGE, INVERLEIGH

EXECUTIVE SUMMARY

The October 2022 floods damaged many Council assets including the Federation Pedestrian Bridge Inverleigh where the cost of damage repair exceeds the bridge's current value. The identified repairs do not necessarily bring the pedestrian bridge up to current safety standards, thus requiring additional works to achieve these requirements.

The estimated repair costs range from \$140,000 to \$204,000, while the full replacement is estimated at \$286,600. These estimates include design, site establishment and contingencies. Given the relative values of the repair options versus the replacement costs, it is a better Value for Money proposition for Council to replace the existing bridge than to repair.

The existing structure is approximately 25 years old, repairs may extend the life of the bridge for another 25 years, while replacement provides a 75-year estimated design life. Preferred option to replace bridge will be delivered via a design and construct tender with works anticipated to be completed in third quarter of 2023-2024.

RESOLUTION

Moved: Cr Clayton Whitfield

Seconded: Cr Ian Getsom

That Council:

1. Approves replacement of the existing Federation Pedestrian Bridge with a new suspension bridge, pending the outcomes of detailed design to provide a 75-year life.
2. Supports an application to Corangamite Catchment Management Authority for reimbursement of eligible costs and that any shortfall in funding to be allocated from Councils Bridge Renewal and Bridge Maintenance programs.

CARRIED

7.10 TENDER FOR KOPKES ROAD, HADDON, ROAD IMPROVEMENTS

EXECUTIVE SUMMARY

Golden Plains Shire Council sought tenders from suitably qualified and experienced contractors for the upgrade of Kopkes Road, Haddon. Kopkes Road is a boundary road between Golden Plains Shire and the City of Ballarat servicing a growing area. The purpose of the project is to reconstruct approximately 1.96km of sealed road to support a safer and more efficient transportation network. The extent of works to be constructed involves widening of the road around existing curves and drainage improvements with upgrades to driveway culverts.

RESOLUTION

Moved: Cr Ian Getsom

Seconded: Cr Clayton Whitfield

That Council:

1. Resolves to award Contract GPSC-RFT-08-2023 Kopkes Road, Haddon Road Improvements to Begbies Contracting for the sum of \$931,550.84 *excl. GST, excl. provisional*.
2. Delegates to the Chief Executive Officer or his delegate authority to execute the contract on

behalf of Council.

CARRIED

7.11 TENDER FOR CAPE CLEAR - ROKEWOOD ROAD, ROKEWOOD JUNCTION, ROAD IMPROVEMENTS

EXECUTIVE SUMMARY

Golden Plains Shire Council sought tenders from suitably qualified and experienced contractors for the upgrade of two sections of Cape Clear-Rokewood Road, Rokewood Junction. The purpose of the project is to construct approximately 1.140km of sealed pavement to support a safer and more efficient transportation network. The extent of works to be constructed is in two sections and involves widening of the road around existing curves and drainage improvements with upgrades to driveway culverts.

RESOLUTION

Moved: Cr Ian Getsom
Seconded: Cr Clayton Whitfield

That Council:

1. Resolves to award Contract GPSC-RFT-04-2023 Cape Clear-Rokewood Road, Rokewood Junction Road Improvements to Fulton Hogan Industries Pty Ltd for the sum of \$450,149.84 *excl. GST, excl. provisional.*
2. Delegates to the Chief Executive Officer or his delegate authority to execute the contract on behalf of Council.

CARRIED

7.12 TENDER FOR LINTON-PIGGOREET ROAD, PIGGOREET - BRIDGE REPLACEMENT

EXECUTIVE SUMMARY

Golden Plains Shire Council sought tenders from suitably qualified and experienced contractors for the design and construction of a replacement culvert or bridge for Linton-Piggoreet Road near Devil's Kitchen Streamside Reserve, Piggoreet.

RESOLUTION

Moved: Cr Ian Getsom
Seconded: Cr Helena Kirby

That Council:

1. Resolves to award Contract RFT-11-2023 Linton-Piggoreet Road, Piggoreet - Bridge Replacement to Fulton Hogan Industries Pty Ltd for the sum of \$1,223,666.98 exclusive of GST and provisional, and for an estimated term of six months.
2. Delegates to the Chief Executive Officer or his delegate authority to execute the contract on behalf of Council.

CARRIED

7.13 TENDER FOR THE RECONSTRUCTION OF THE LINTON OVAL

EXECUTIVE SUMMARY

Golden Plains Shire Council wishes to engage a suitably qualified and experienced contractor to undertake the reconstruction of the Linton Oval at the Linton Recreation Reserve.

Following the undertaking of a selected tender and evaluation process in accordance with Council's Procurement Policy, it is recommended that Global Turf Projects Pty Ltd be appointed to deliver on the project requirements as outlined in the tender specifications.

RESOLUTION

Moved: Cr Ian Getsom

Seconded: Cr Clayton Whitfield

That Council:

1. Resolves to award the Contract GPSC-RFT-07-2023 - Linton Oval Reconstruction – Construction Tender to Global Turf Projects Ltd for the cost of \$1,200,134.16 excluding GST.
2. Delegates to the Chief Executive Officer or his delegate authority to execute the contract on behalf of Council.

CARRIED

7.14 TENDER FOR A PANEL OF SUPPLIERS - PLUMBING MAINTENANCE SERVICES

EXECUTIVE SUMMARY

Golden Plains Shire Council wishes to engage suitably qualified contractors as a panel of suppliers to undertake plumbing maintenance services for Council.

RESOLUTION

Moved: Cr Clayton Whitfield

Seconded: Cr Helena Kirby

That Council:

1. Resolves to award the Contract GPSC-RFT-05-2023-Panel of Suppliers-Plumbing Maintenance Services to Plumbing-Logistics Pty Ltd, Complete-plumbing Construction-Concepts Pty Ltd and Total-Plumbing-Solutions.
2. Delegates to the Chief Executive Officer or his delegate authority to execute the contract on behalf of Council.

CARRIED

7.15 TENDER FOR PANEL OF SUPPLIERS - GENERAL MAINTENANCE SERVICES

EXECUTIVE SUMMARY

Golden Plains Shire Council wishes to engage suitably qualified contractors to undertake general building related maintenance services for Council.

RESOLUTION

Moved: Cr Helena Kirby

Seconded: Cr Ian Getsom

That Council:

1. Resolves to award the Contract GPSC-RFT-02-2023-Panel of Suppliers-General Maintenance Services to Burkhan Pty Ltd T/AS Dolls Cleaning Services, Mr T At Work and Zantagra Group.
2. Delegates to the Chief Executive Office or his delegate authority to execute the contract on behalf of Council.

CARRIED

7.16 COUNCILLOR SUPPORT AND EXPENSES POLICY - ADOPTION

EXECUTIVE SUMMARY

The Councillor Expenses and Entitlements Policy was last reviewed and adopted by Council at its meeting on 23 November 2021 with minor changes to improve clarity and function of the policy. A detailed review has been undertaken and comprehensive changes are suggested to improve the operation of the policy. Following community engagement on the draft policy, the policy is now presented for adoption, as no submissions were received.

RESOLUTION

Moved: Cr Owen Sharkey

Seconded: Cr Clayton Whitfield

That Council adopt the reviewed Councillor Support and Expenses Policy as attached, in place of the previously named Councillor Expenses and Entitlements Policy.

CARRIED

8 NOTICES OF MOTION

8.1 NOTICE OF MOTION - PUBLIC TRANSPORT SERVICE BETWEEN BANNOCKBURN AND GEELONG

Councillor Gavin Gamble gave notice that at the next scheduled meeting of Council held on 25 July 2023, he intended to move the following motion.

RESOLUTION

Moved: Cr Gavin Gamble

Seconded: Cr Brett Cunningham

That Council write, within the next four weeks, to relevant State government politicians and public

officers to convey the community's high level of dissatisfaction with the current public transport service between Bannockburn and Geelong and to seriously consider the implementation of a more accessible and frequent bus service.

The motion was CARRIED.

A division was called.

In Favour: Crs Gavin Gamble, Helena Kirby, Brett Cunningham, Ian Getsom and Clayton Whitfield

Against: Crs Les Rowe and Owen Sharkey

CARRIED 5/2

9 PETITIONS

Nil

10 ITEMS FOR TABLING

In accordance with section 147(4) of the Local Government Act 2020, the Arbiter's decision and statement of reasons on the matter of an application by Councillor Cunningham concerning Councillor Rowe was tabled and is recorded in the minutes of the meeting.

In accordance with the Arbiter's decision and statement of reasons, a written apology from Councillor Les Rowe was also tabled and is recorded in the minutes of the meeting.

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

**Internal Arbitration Process – Golden Plains Shire Council
(IAP 2023-4)**

Applicant: Councillor Brett Cunningham

Respondent: Councillor Les Rowe

Arbiter: Yehudi Blacher

DECISION AND STATEMENT OF REASONS

Background

1. The applicant in this matter is Cr. Brett Cunningham, Mayor of the Golden Plains Shire Council.
2. The respondent is Cr Les Rowe.
3. On 20 March 2023 Cr Cunningham made an application under s 143 of the Local Government Act 2020 for an internal arbitration process to make a finding of misconduct against Cr Rowe in relation to comments apparently made by Cr Rowe regarding the Council's road-grading program which were reported in the Golden Plains Times newspaper on 20 January 2023.
4. Councillor Cunningham alleged that the article was "based on an interview/comments supplied to the reporter by Cr Rowe."
5. Councillor Cunningham further alleged that Cr Rowe's comments were critical of the standard of work of the Council grader drivers/outdoor staff causing a number of staff to be visibly upset.

6. Councillor Cunningham further alleged that a number of Cr Rowe's comments were incorrect and misleading and that this was subsequently pointed out to Cr Rowe in comments attached to the article by the Council's Director of Infrastructure and Environment, Mr Phil Josipovic.
7. Councillor Cunningham stated that, at no time prior to making his comments, did Cr Rowe make contact with the Mayor or the Council's Communications Department as required by the Council's Media Policy and Code of Conduct. He also apparently failed to raise any concerns he may have had with the quality of the work either with the Council's Chief Executive Officer or the relevant senior executive officer.
8. Councillor Cunningham stated that following the publication of the article he met with Cr Rowe to inform him of the feedback from staff and reminded him of his obligations to comply with the Council's Media Policy.
9. Councillor Cunningham stated that he requested that Cr Rowe consider making an apology to the Council staff affected by the comments attributed to him. Cr Cunningham alleged that Cr Rowe refused to do so.
10. On the basis of the above, Cr Cunningham alleged that Cr Rowe's comments breached the standards of conduct set out in schedule 1 of the Local Government (Governance and Integrity) Regulations 2020 (the Standards of Conduct) and therefore constituted misconduct under the *Local Government Act 2020*.

Directions Hearing

11. A Directions Hearing on this matter was held on 19 June 2023. In attendance were Cr Cunningham and Rowe and the Council's Governance officer Ms Lynnere Gray.
12. At the Hearing the Arbiter explained the arbitration process to parties. He advised the respondent, Cr Rowe, that he would consider any submission made by him relevant to the complaint lodged by Cr Cunningham. He requested that Cr Rowe, specifically, address the

reasons why he did not think his comments breached the Council's Code of Conduct or the Council's Media Policy. He also advised Cr Cunningham that he would consider any further submission by the applicant that was directly relevant to the complaint. He requested Cr Cunningham to provide evidence that Council staff were upset by the comments made by Cr Rowe. This could be done either in written form or as a witness statement during the substantive hearing. The Arbiter requested that any submissions be provided to Ms Gray and be received by him no later than 28 June 2023.

Submission from Cr Rowe

13. In his submission Cr Rowe stated that he did not contravene the Council's Media Policy. Cr Row stated that this was because there was no requirement in the policy to consult with the Council's Communications Department and other councillors had made public comments on issues without being sanctioned by the Mayor.
14. In relation to the substance of his comments to the media, Cr Rowe stated that it was not his intention to criticise the work of the staff but merely to state the facts as he saw them. To the extent that his comments could be seen as critical, he maintained they were critical of the Council and not the staff doing the work.
15. He further stated that when rung by the Golden Plains Times reporter he was somewhat distracted because he took the call when working on his tractor. He also stated that he was not given a chance by the newspaper to "proof" what he had said prior to the publication of the article.
16. Councillor Rowe's submission also provided copies of SMS exchanges between he and Cr Cunningham inviting Cr Rowe to attend a "toolbox" meeting of relevant staff to explain his comments. Cr Rowe agreed to attend such a meeting. However, the invitation was subsequently withdrawn by Cr Cunningham on the advice of the Chief Executive Officer and the senior executive responsible for the staff.
17. In his submission Cr Rowe referred to a phone conversation between he and Cr Cunningham where he alleged that Cr Cunningham was

abusive towards him. He also alleged that Cr Cunningham had been abusive to another Councillor during phone conversations. At the Hearing Cr Cunningham denied being abusive towards Cr Rowe but acknowledged that he had been abusive towards another councillor on a previous occasion. The Arbiter counselled Cr Cunningham that in future he should be careful with his choice of words in conversations with other councillors.

Submission from Cr Cunningham and staff statutory declarations

18. Councillor Cunningham provided a short submission in which he referred, inter alia, to a recent finding of an Arbitration process involving Cr Rowe and Cr Gamble (Arbitration Process- IAP 2022-32).
19. I also received statutory declarations from a number of staff stating, amongst other things that they were upset, insulted and felt let down by Cr Rowe's comments in the article.

Arbitration Hearing

20. The Hearing was held on 6 July 2023. In attendance were Crs. Cunningham and Rowe and a Council Governance Officer, Ms Rosie Wright. A support person for Cr Rowe was also in attendance.
21. The Hearing commenced with the Arbiter outlining the process to be followed; in particular, each person to be heard in silence and for any exchange between the councillors to be done in a respectful manner. Both councillors complied with the process.

Did Cr Rowe fail to follow the procedure set out under the Council's Media Policy?

22. Councillor Cunningham contended that Cr Rowe had failed to follow the procedure set out under the Council's Media Policy when he made his statements to the Golden Plains Times. The relevant section of the Council's media policy states that "Media comments and statements should be co-ordinated through the Senior Communications and

Marketing Officer in all instances”. Councillor Cunningham did not articulate how this amounted to a breach of the Standards of Conduct, however for the reasons set out below, this is not something that needs to be determined in this matter.

23. In an email sent from Cr Cunningham to Cr Rowe on 25 January 2023 Cr Cunningham stated that “media comments/statements must be co-ordinated through the Communications Team....” The email further noted that this was agreed to and signed off by all Councillors as a group on 23 February 2021.
24. There is a material difference between the meanings of the words *should* and *must*. In common usage *should* means something which is proper, reasonable or the best thing to do whilst *must* means obliged to do something.
25. The Council’s formal media policy states that it was due for revision in August 2022.
26. Based on the material before the Arbiter the revision apparently agreed to between Councillors on 23 February 2021 does not seem to have been formally incorporated into the Council’s media policy.
27. As indicated in paragraph 13 above, in his submission Cr Rowe stated that other councillors made public comments without being sanctioned by the Mayor. At the Hearing Cr Cunningham acknowledged that this occasionally happened.
28. In view of the failure by the Council to formally amend its media policy to change the word *should* to *must* and because it is apparent that other councillors have made public comments without sanction, I am satisfied that Cr Rowe did not fail to follow the procedure under the Council’s Media Policy as it currently stands.

Did Cr Rowe contravene the Local Government (Governance and Integrity) Regulations 2020?

29. Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020 describes the behaviours expected of councillors in fulfilling their duties. For the purposes of this Arbitration Clause 1 of the Schedule states the “a Councillor must, in performing the role of a

Councillor, treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect ..." These words are replicated in the Council's Councillor Code of Conduct.

30. The key issue to be determined is whether Cr Rowe's comments to the media contravened the standards of conduct set out in the Regulations.
Specifically, whether a reasonable person reading his comments would take them as being critical of the performance of the relevant staff.
31. Cr. Rowe's submission and comments at the Hearing comprise three arguments in his defence:
 - a) that his observations were matters of fact.
 - b) that it was not his intention to criticise the performance of Council staff.
 - c) that he has received many complaints from the community concerning the state of the roads in the municipality.
32. In relation to the first argument the Arbiter asked Cr Rowe whether he had civil engineering or like qualifications to enable him to assess the state of the roads and the process for repairing them. Cr Rowe responded that his statement was not based his technical qualifications but on his extensive experience as a farmer using the roads and that he had relatives who were engineers.
33. In relation to the second argument Cr Rowe seems to think that because he did not intend to criticise the staff it was not his fault that they were offended by his remarks. This is a curious argument. Words have meanings and those meanings are not solely dependent on the intention of the person who said them but also on how they are understood by those to whom the words are directed.
34. It is clear from the statutory declarations I received that there were staff who took his comments as criticisms of their work.
35. When asked by Cr Cunningham whether he would apologise to the staff Cr Rowe said he would not. In his submission Cr Rowe stated "I cannot apologise for any unintended negative impact it may have had on the staff." Cr Rowe maintains this position despite having received

an email from the Council's Chief Executive Officer describing the impact of his comments on the relevant staff.

36. In relation to the third issue the Arbiter asked Cr Rowe whether he passed the concerns from members of the community on to Council officers. Cr Rowe responded that he did not do so in this instance. Given that this was an operational matter which, under the Local Government Act, is the responsibility of Council staff it is disappointing that he failed to do so but instead responded to questions from the Golden Plains Times. Cr Rowe has been on Council for over six years and should not have been unaware that his comments would be controversial.

Arbitration Decision

37. In relation Cr. Rowe's obligations to comply with the standards of conduct under the Local Government (Governance and Integrity) Regulations 2020 it is apparent that any reasonable person would consider that his comments were critical of relevant council staff. I therefore find that Cr Rowe has engaged in misconduct by failing to comply with Clause 1 of the standards of conduct.

Sanctions

38. This is the second Arbitration process Cr Rowe which has been subject to over the past seven months. In the previous Arbitration Cr Rowe was asked to apologise for comments he made to the Chief Executive Officer. In his apology Cr Rowe went beyond what he was directed to do and sought to express the view that in his opinion the matter should never have gone to an Arbitration process. In doing so he clearly went beyond the apology requested of him; an apology he no doubt could have made before the matter went to Arbitration in the first place.
39. In view of Cr Rowe's continual refusal to apologise to staff for his media comments I have determined that an apology alone is not sufficient.

40. I direct Cr Rowe to make a written apology to Council staff at the next Council meeting following this decision, which must be limited to the following and is to be recorded in the minutes of the Council meeting:
- a) acknowledging that relevant Council staff were upset, insulted and felt let down by Cr Rowe's statements to the Golden Plains Times.
 - b) undertaking that in future any operational matters raised with him will be passed on to the Chief Executive Officer or relevant senior staff for any necessary action.
41. Further, I suspend Cr Rowe from the office of Councillor for the period of one month commencing the day after this decision is tabled at the next Council meeting as required under s147(4) of the *Local Government Act 2020*.

Yehudi Blacher
Local Government Arbiter
20 July 2023

DEAR GRADER DRIVERS

I LES ROWE AM WRITING TO ADDRESS THE RECENT SITUATION AND OFFER MY APOLOGIES FOR ANY MISUNDERSTANDINGS THAT MAY HAVE ARISEN FROM MY COMMENTS IN THE LOCAL PAPER. WHILE I STILL FEEL THAT MY WORDS HAVE BEEN MISINTERPRETED, I UNDERSTAND THAT THEY HAVE HAD AN UNINTENDED IMPACT ON SOME STAFF AND ONCE AGAIN I AM SORRY.

AS A COUNCILLOR, IT IS MY RESPONSIBILITY TO REPRESENT THE CONCERNS AND INTERESTS OF THE RATEPAYERS AND RESIDENTS IN OUR COMMUNITY. I FIRMLY BELIEVE THAT BEING TRANSPARENT AND OPEN ABOUT ISSUES AFFECTING OUR MUNICIPALITY IS ESSENTIAL FOR EFFECTIVE GOVERNANCE.

I WANT TO ASSURE YOU THAT MY COMMENTS WERE NEVER INTENDED TO CRITISE THE INDIVIDUAL WORK OF ANY GRADER DRIVER. MY CONCERNS WERE FOCUSED ON THE OVERALL ROAD-GRADING PROGRAM, AND I WAS MERELY EXPRESSING THE FEEDBACK AND COMPLAINTS THAT I HAD RECEIVED FROM NUMEROUS MEMBERS OF OF THE GOLDEN PLAINS COMMUNITY.

I VALUE AND RESPECT THE HARD WORK AND DEDICATION THAT EACH GRADER DRIVER PUTS INTO MAINTAINING OUR ROADS. FURTHERMORE I DID TRY TO REACH OUT TO YOU ALL AND ADDRESS MY STATEMENTS THAT WERE MADE IN THE GOLDEN PLAINS TIMES BUT IT WAS NOT ALLOWED BY THE MAYOR AND C.E.O. OUR RECENT COMMUNITY SATISFACTION RESULT CLEARLY HIGHLIGHTS OUR MAJOR AREA OF CONCERN IS ROADS.

REGARDING THE SUSPENSION IMPOSED AS A CONSEQUENCE OF MY ACTIONS, I FIND IT DIFFICULT TO COMPREHEND WHY ARBITERS WOULDN'T OFFER AN EDUCATIONAL APPROACH INSTEAD. I BELIEVE THAT EDUCATION AND DIALOGUE ARE KEY TO FOSTERING A BETTER WORKING RELATIONSHIP AND UNDERSTANDING AMONG COUNCILLOR MEMBERS.

I HAVE BEEN A COUNCILLOR NOW FOR SOME YEARS AND ALWAYS STRIVE HARD FOR IMPROVEMENTS IN OUR ROADS NETWORK AND I WILL NOT STOP DOING SO. GOING FORWARD I WILL KEEP RAISING THE CONCERNS OF RATEPAYERS WITH THE C.E.O LIKE I HAVE DONE FOR, IN THE PAST 7 YEARS.

REGARDS
LES ROWE



11 CONFIDENTIAL REPORTS FOR DECISION**RESOLUTION**

Moved: Cr Ian Getsom
Seconded: Cr Helena Kirby

That Council considers the confidential report(s) listed below in a meeting closed to the public in accordance with Section 66 of the Local Government Act 2020:

10.1 CEO Interim Performance Review

This matter is considered to be confidential under Section 3(1) – (f) of the Local Government Act, and the Council is satisfied that discussion of this matter in an open meeting would, on balance, be contrary to the public interest as it deals with personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs.

CARRIED**RESOLUTION**

Moved: Cr Helena Kirby
Seconded: Cr Ian Getsom

That Council reopens the Council meeting to the public at 8:22pm.

CARRIED

The Meeting closed at 8:23pm.

The minutes of this meeting were confirmed at the Council Meeting held on 22 August 2023.

DocuSigned by:
Brett Cunningham
P63C9299124C4E9.....

CHAIRPERSON