

**IN AN INTERNAL ARBITRATION PROCESS FOR GLENELG SHIRE COUNCIL  
UNDER SECTION 143 OF THE *LOCAL GOVERNMENT ACT 2020***

<b>LGA IAP REF:</b>	IAP 2023-3
<b>APPLICANTS:</b>	Crs Jayden Smith (representative), Michael Carr, Chrissy Hawker, Anita Rank, Karen Stephens, Gilbert Wilson
<b>RESPONDENT:</b>	Cr Scott Martin
<b>HEARING TYPE:</b>	On the papers
<b>BEFORE:</b>	Arbiter J Silver
<b>DATE:</b>	4 July 2023

Orders

1. The application is dismissed.

**APPEARANCES**

The hearing was conducted on the papers as permitted under sub-reg 11(3)(a) of the *Local Government (Governance and Integrity) Regulations 2020*.

## STATEMENT OF REASONS

### A. Overview

1. On 20 January 2023, Cr Scott Martin, the Mayor of Glenelg Shire, attended a screening of “Minions: The Rise of Gru” at the “grassed area next to the Portland Library” (which is the location described in the event marketing).
2. “Minions: The Rise of Gru” is a 2022 animated feature film, produced by Illumination and distributed by Universal Pictures, the latest in a franchise which began with the 2010 film “Despicable Me”.
3. “Gru” is an anti-hero voiced by the actor Steve Carell, while “the Minions” are a fictional species, defined by their unintelligible language, yellow colour, and lack of any sort of nose (amongst other things). As those characters featured in the event marketing, images of both “Gru” and “the Minions” are also contained in these reasons.
4. The screening was organised by Council’s Youth Team, with the support of partner community groups. Councillors were not officially invited, in the sense they were not sent an official invitation, and it does not seem that any official proceedings were involved. Of the Councillors, only Cr Martin attended.
5. The screening was officially a "blue light" event, meaning alcohol was not allowed. That is in contrast (I am told by Cr Martin) to other, similar events that Council had previously held or coordinated.
6. To what extent the "blue light" condition of entry was clearly communicated in the event advertising, or on the evening, is a matter I considered in these reasons.
7. On 28 February 2023, the effect of the allegations was ventilated in public question time at that day's Council Meeting.

8. On or about 23 March 2023, the applicants lodged an application concerning Cr Martin under section 143 of the *Local Government Act 2020* (**‘the Act’**) with the Principal Councillor Conduct Registrar.
9. At the next Council Meeting on 28 March 2023, Cr Martin made a statement, explaining that he brought alcohol (specifically, a prosecco bottle) to the screening, unaware the event was alcohol-free, and that he did not drink it once he became aware.
10. The applicants maintained their application.
11. On 18 May 2023, the Principal Councillor Conduct Registrar appointed me as arbiter to hear the application under sections 144 and 149 of the *Local Government Act 2020* (**‘the Act’**). On 6 June 2023, I convened a direction hearing for 13 June, the parties attending from Council premises, while I participated via Microsoft Teams.
12. The parties agreed with me that the hearing could appropriately be conducted in-writing, as the facts were largely agreed, with no real challenge mounted to Cr Martin's version of events, and no intention by the applicants to call opposing witnesses.
13. The standard of conduct in schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020* relied on by the applicants was the following:<sup>1</sup>

***4. Councillor must not discredit or mislead Council or public***

*(1) In performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council.*

14. The applicants, represented by Cr Jayden Smith (the Deputy Mayor), agreed that the application and supporting materials would be their evidence and submissions, with Cr Martin to file materials in response. I made orders to that effect, which also referred the

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<sup>1</sup> Although a breach of sub-s 3(c) of the standards of conduct was also raised in the application, at the directions hearing, Cr Smith agreed with my view that because no failure to follow Council's Governance Rules was being alleged (which is what that standard of conduct concerns), I did not need to consider that issue further.

parties to past reasons from internal arbitrations conducted under the Act that explained the phrase '*role of a Councillor*'.<sup>2</sup>

15. Having considered all of the materials, I find that that Cr Martin was *not* performing his role as a Councillor on 20 January 2023: in other words, the standards of conduct do not apply, and I will dismiss the application for that specific reason.
16. But to avoid any suggestion the application has *only* been dismissed on a technicality (that is, I would otherwise have found misconduct), I note that **even if I had decided that the standards of conduct applied** (in other words, if I am wrong in my primary conclusion), I have also reached the following conclusions:
  - (a) I am not satisfied that Cr Martin has brought Council into discredit;
  - (b) I would not have found otherwise if Cr Martin had also consumed any prosecco (rather than just bringing a bottle), as there is no evidence to suggest that he engaged in bad behaviour at the screening; and
  - (c) even if, contrary to those two observations, I instead found that Cr Martin had contravened the standards of conduct, I would not have imposed any sanction.
17. As other members of the Arbiter Panel List have taken to doing, I note the dismissal of the application is no criticism of the Principal Council Conduct Registrar appointing an arbiter to hear this application under section 144, given the fairly narrow parameters in which the Registrar must consider an application.
18. The dismissal also does not indicate that the application had no utility, or should have been withdrawn: the public nature of the allegations against Cr Martin meant that this internal arbitration process was the appropriate way of determining them.

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<sup>2</sup> Those reasons being *Morgan & Lew* (IAP 2021-19 and IAP 2021-23) (Stonnington, tabled 2 May 2022) (Arbiter Blacher) and *Newton & Laurence* (IAP 2022-5 and IAP 2022-6) (Darebin, tabled 14 November 2022) (Arbiter Silver)

## B. The 'role of a Councillor'

19. The phrase 'role of a Councillor' in sub-standard 4(1) also appears in section 28 of the Act, where it is defined with reference to Councillors' decision-making functions.

20. But as I stated in *Newton & Laurence* [IAP 2022-5; 2022-6], I agree with Arbiter Blacher's view in *Morgan v Lew* [IAP 2021-19; 2021-23] that section 28 does not exhaustively define the circumstances when a Councillor is 'performing' their role.

21. It is useful to recite what I observed in *Newton & Laurence*:

*23. In practice, a Councillor fulfils their role whenever they engage in activities in connection with their role as Councillor, which includes publicly commenting on matters in relation to Council (including interactions with their colleagues)...*

*25. Given the expansive meaning of the phrase 'role of a Councillor' in the standards, it follows that a Councillor can do much that might 'bring discredit' upon Council for the standards' purposes.*

*26. 'Bring discredit' includes behaviour that harms Council's reputation.*

*27. Examples of that would include using vulgar language in the Council chamber, or drunken behaviour at a Council function; however, if engaged in during a Councillor's morning walk, the same behaviour is probably not within their role (even if the deleterious effect on Council is just the same).*

22. Having used the underlined, hypothetical example of misconduct, it was perhaps inevitable that an alcohol-related allegation would come before me.

## C. The evidence

23. In the orders of 13 June 2023 made following the directions hearing, I included the following notes under the heading "Other matters" (which the parties have not challenged):

*Based on discussion with the parties at the directions hearing, I summarise the dispute as follows:*

- (a) It is not disputed that Cr Martin brought alcohol to an alcohol-free event, nor [is it] suggested that he was drunken, disorderly, or otherwise acted improperly;*
- (b) According to Cr Martin (which Cr Smith does not dispute), the Councillors were not invited to the event officially, but Cr Martin attended informally. No other Councillors were in attendance;*
- (c) Cr Martin says he attended with his family after seeing a Council social media post... His position is that in learning of the event on social media, he was not made aware that it was alcohol free;*
- (d) As it was a Council event, Cr Smith says, and even though Cr Martin attended in a private or "family" capacity (as no official invitations were sent to Councillors), it should be dealt with under the Standards.*
- (e) Cr Martin says that in attending, he was not performing the "role of a Councillor".*

24. In his public statement at the 28 March 2023 Council Meeting, Cr Martin made the following comments (which I have taken from the written statement included in his submissions, rather than transcribing the as-read statement):

*In January there was an outdoor cinema event that my family attended. This one, like previous ones, were touted as family events where the community is invited to come along and enjoy the night. Previous outdoor cinemas here and throughout the shire allowed alcohol at the events to enjoy with family picnics, in fact local wineries and beer clubs had stalls set up at these great family events.*

*On the evening of the event, we checked the event site on Facebook before we left home, specifically the event details section which is where one would assume the*

*details would be. There was no mention of blue light or freezer involvement in the event details section. Nothing to indicate that it was different from previous events.*

*So, we attended the outdoor cinema, set up our picnic and cheese board, popped the bottle of prosecco to go with the cheese board and whilst in that process noticed there were no wineries set up, no stalls. So... I approached one of the event staff to check if it was alcohol free or not. They were unsure if it was, went away to check and came back informing us that it was.*

*Upon receiving the information, we opened up our soft drinks and we all used our fancy picnic glasses to drink the lemonade and water brought along throughout the night. At the end of the night, we proceeded to tip the bottle of now warm prosecco out.*

25. It was not suggested to me that this explanation was untruthful or unreliable, which I would have found difficult to accept, in any event: it is not commonsense for a public figure to bring alcohol to an event they know is alcohol-free.
26. The applicants primarily referred on an event poster which contained the words "Alcohol and Smoke Free Event" (**'the Gru Poster'**), which is shown below:



How could Cr Martin have missed this? The answer is "rather easily," because the Gru Poster was not readily visible on the Facebook event page, and the conditions of entry were not stated in the event description on that page.

27. In his response submissions, Cr Martin attached a "screengrab" of the Facebook event page. Based on what was shown, I identified and located the page,<sup>3</sup> which was set up by the page "Glenelg Shire Youth" on about 15 December 2022.

<sup>3</sup> Accessible at the URL [https://www.facebook.com/events/1595417610919486?active\\_tab=about](https://www.facebook.com/events/1595417610919486?active_tab=about)



28. The Facebook event page comprised two “tabs.” The “default” tab that first appears when clicking on a link to the page, or by entering the URL into an Internet browser, is the “About” tab, which contained the following description (graphics omitted):

Presenting The Minions: Rise of Gru

FREE FAMILY FRIENDLY EVENT

~Free popcorn and drinks available~

~Dont (sic) forget your picnic rug~

A movie graphic of the Minions appears immediately above this tab, simply titled “minions: THE RISE OF GRU,” as shown below:



On this information, it is clear that the “About” tab did not identify the screening as an alcohol-free event.

29. The second tab on the Facebook event page was the “Discussion” tab, which only opens if the user chooses to click on the tab.

30. I located three posts in the “Discussion” tab. Two were identical posts, "re-sharing" the event page (on 21 and 23 December 2023) by the “Glenelg Libraries” and “Glenelg Shire Youth” pages, clicking which sends the user to the “About” tab.
31. The third post on the “Discussion” tab was of the Gru Poster (posted on 15 December 2022). Without scrolling, the Gru Poster was not visible immediately. Even if a user *were* to scroll down, the size and formatting of the Gru Poster made some wording difficult to read, without clicking to enlarge the image.
32. In other words, because the alcohol-free status of the screening was not clearly communicated by Council on the Facebook page, I do not accept that Cr Martin should be criticised for failing to see the Gru Poster.
33. It was not suggested to me that Council erected signage on the evening reminding attendees of the alcohol-free conditions of entry, and no evidence was presented of steps taken to enforce those conditions.
34. It is also not suggested that Cr Martin was, for example, discovered by Council staff "mid-sip" and refused to discard the alcohol, or that he refused a direction by Council staff to leave due to a breach of the conditions of entry. That would be a serious matter.
35. These observations are not intended as criticisms of Council staff, but merely confirm the circumstances in which Cr Martin made his mistake.

D. Why the standards of conduct do not apply, and Cr Scott Martin's conduct would not be misconduct in any event

36. The application raises an interesting question, which is: can a Councillor attend a Council-run event or a Council facility, without performing the role of a Councillor?
37. In my view, the answer is "yes."

38. The evidence is clear that Cr Martin had no role at the screening, official or otherwise, (for example, helping Council staff set up, or addressing attendees). He was simply there with his family, watching a movie with food and drink brought from home.
39. As Cr Martin had no role, I am unconcerned that the event was "Council run," or occurred on Council land or premises: those facts alone are not determinative.
40. Without wanting to state a rule, for a Councillor to be performing their role, it seems to me that the relevant conduct should be sufficiently connected with the decision-making functions or other associated duties, as informed by section 28 of the Act.
41. To illustrate with hypothetical examples, a Councillor is not performing "the role of a Councillor" when watching their child's Auskick game in a Council park, or attending Council premises to pay property rates.
42. While connected to Council more generally, there is no specific connection in those examples with the performance of the Councillor's role, in contrast, for example, to commenting on matters that Council may make decisions upon (which is why social media posts can come under the standards of conduct).
43. If Cr Martin had also introduced the film beforehand (as Mayor), I may have found that the standards of conduct applied, but not made a misconduct finding.
44. I say that because on the evidence, I am not satisfied that Cr Martin has brought *'discredit upon the Council.'*
45. He was not drunk, disorderly, or otherwise poorly behaved. He made an inconsequential mistake, which has not discredited Council.
46. The application is accordingly dismissed.

**J A SILVER**

ARBITER