

COUNCILLOR CONDUCT PANEL

In the matter of an Application by Councillor Punarji Hewa Gunaratne
concerning Councillor Peter Davis of Benalla Rural City Council
(CCP 2022-6)

HEARING PURSUANT TO PART 6 OF LOCAL GOVERNMENT ACT 2020

Applicant: Cr Punarji Hewa Gunaratne
Respondent: Cr Peter Davis
Date of Hearing: 30 March 2023
Panel Members: Mr Thomas Lynch (Chairperson)
Ms Jan Boynton

DETERMINATION

Pursuant to section 167(1)(d) of the *Local Government Act 2020* the Councillor Conduct Panel dismisses the Application having made no finding of serious misconduct against Cr Peter Davis in relation to any of the six allegations contained therein.

Tom Lynch
Chairperson

Jan Boynton
Panel Member

14 August 2023

STATEMENT OF REASON FOR DECISION

The Application

1. The Application dated 6 June 2022 made by Cr Punarji Hewa Gunaratne contained six allegations relating to the respondent Cr Peter Davis' conduct. It was alleged that on six separate occasions Cr Peter Davis behaved unreasonably towards Cr Gunaratne. These incidents were alleged to have occurred on the following dates:

Allegation 1	26 March 2022
2	26 June 2022
3	20 April 2022
4	3 November 2021
5	1 September 2021
6	1 September 2021

Evidence provided at hearing

2. Written evidence was submitted by both the applicant and the respondent prior to hearing, including witness statements made by witnesses who gave evidence at the hearing.
3. Oral evidence was given at the hearing by both the applicant and respondent.

The jurisdiction of the Panel in relation to this Application

4. Section 154(1) of the *Local Government Act 2020* (the Act) provides that a Councillor Conduct Panel may hear an application that alleges serious misconduct by a Councillor.
5. Pursuant to section 167(1)(a) of the Act a Panel may make a finding of serious misconduct against a Councillor.
6. "Serious misconduct" is defined in section 3 of the Act, including:
 "(f) bullying by a Councillor of another Councillor or a member of Council staff".
7. "Bullying" is defined in section 3 of the act:
 "bullying by a Councillor means the Councillor repeatedly behaves unreasonably towards another Councillor or a member of Council staff and that behaviour creates a risk to the health and safety of that other Councillor or member of Council staff".

Allegation 1

8. Councillor Gunaratne stated that he had received two emails sent by Cr Davis on Saturday, 26 March 2022. The first at 5:59 pm was addressed to Cr Danny Claridge and Cr Gunaratne, and the other Councillors of the Benalla Rural City Council were copied into this email.

“Re: Danny (Copy of Facebook page)

Danny you can only prod the bear for so long then the bear gets angry and things can happen, it's a bit disappointing that all the information on the project has been given to all councillors numerous times. Including Purna. Watch this space.”

9. Councillor Gunaratne believed that this email was a reply to an email sent by Cr Claridge which Cr Gunaratne believed falsely accused him of being a Facebook administrator and supporting an Anti-Council Facebook post in a Facebook group to which he was not a member.

10. Councillor Gunaratne did not reply to the 5:59 pm email.

11. At 9:02pm Cr Davis sent an email to all Councillors of the Benalla Rural City Council.

“Puna, as a councillor I find [REDACTED]'s posting very upsetting and disturbing which is not good for my mental health. All councillors have been briefed on the Vic Project on many occasions and had their questions answered (even as late as last Wednesday's council meeting. Puna as a councillor and mentor of the Facebook page you are in a position to rectify the careless of the truth comments posted by [REDACTED]. You know what's correct and what's not correct. By not taking a stance you have proven to me you have no respect for Mayor, fellow councillors, the CEO and staff as well as ratepayers. (Respect is a little word with a big meaning) Regards, Cr Peter Davis.”

12. [REDACTED] is Cr Gunaratne's partner. Cr Gunaratne did not reply to Cr Davis.

13. Councillor Gunaratne stated that he felt threatened, bullied and unsafe because of the behaviour of Cr Davis in emailing these two emails.

14. Councillor Davis in his written submissions said the emails were a response by him after he read an email from Cr Claridge which referred to Facebook posts concerning the redevelopment of the Benalla Visitors Information Centre and Museum. Councillor Davis believed those posts were misleading and that Cr Gunaratne was a mentor or closely associated with the Facebook page. Further Cr Davis said Cr Gunaratne was a fierce opponent of the redevelopment.

15. Councillor Gunaratne told the panel that Cr Davis had used to expression “poke the bear” towards him at COT meetings.

16. Councillor Davis told the panel that he had only used that expression in that single email. Further he explained that on reflection that they were not the right words to have used. He said the Facebook page moderated in his belief by Cr Gunaratne was very critical of Councillors and he believed a Councillor should follow a decision of Council.
17. Further, Cr Davis said that the expression “this can happen” meant a complaint and a mayoral negotiation. He said such a negotiation occurred on the 28 June 2022. See Allegation 2. Councillor Davis said that the words were not meant to be a threat.
18. The Panel finds that neither email amounted to unreasonable behaviour by Cr Davis towards Cr Gunaratne.

Allegation 2

19. On 28 June 2022 Cr Gunaratne and Cr Davis met with the Mayor Cr Bernie Hearn to negotiate an official complaint lodged against Cr Gunaratne by Cr Davis. Cr Gunaratne stated in his application that he felt that Cr. Davis abused the mayoral negotiation procedure to bully and harass him. He said he was yelled at throughout the negotiation and told not to ask questions at the council meetings. He stated that he felt intimidated because the formal mayoral negotiation was used to create an isolating and bullying experience. Further he stated he felt Cr Davis was allowed to behave in an intimidating manner throughout the meeting and this behaviour was not stopped or restrained.
20. Councillor Gunaratne before the Panel said that Cr Davis was “looking at me and yelling at me like that, banging on the table.” “Banging on the table” was not referred to in his application.
21. Councillor Davis in his written submissions denied that he yelled at Cr Gunaratne.
22. Further, Cr Davis exhibited to his submissions an email dated 5 January 2023 at 3:19:45 from Cr Hearn, the Mayor of Benalla Rural City Council which stated “Regarding the confidential Mayoral negotiation held on 28 June 2022 at all times both Councillor Davis and Councillor Gunaratne conducted themselves in an appropriate manner” and further stated “at the conclusion of the negotiation it was agreed that “this discussion has resolved this dispute and both counsellors are happy and will not take future action.” The statement was signed and dated and copies were given to both parties”
23. Further a copy of the signed statement was exhibited to Cr Davis’ submissions.
24. The panel accepts the statement of Cr Hearn as an accurate recollection of the mayoral negotiation and notes the signed statement of Cr Gunaratne and Cr Davis.

25. The Panel is satisfied that Cr Davis' actions in lodging the complaint against Cr Gunaratne, and his conduct during the mayoral negotiation procedure conducted in respect of that complaint, did not constitute unreasonable behaviour by Cr Davis towards Cr Gunaratne. It is noted that although the application refers to the date of 26 June 2022, the mayoral negotiation was on 28 June 2022.

Allegation 3

26. Councillor Gunaratne in his application said that he was bullied in the Council meeting of 20 April 2022 particularly as Cr Davis suggested that Cr Gunaratne "cannot have had a copy of the proposed budget" and Cr Davis slammed the document on the table.
27. The Panel has viewed the video recording of the meeting. The Panel does not accept that the words spoken by Cr Davis and the actions of Cr Davis were in any way unreasonable behaviour. Indeed, sometimes the theatre of Council is about point making and sometimes is about dropping a piece of paper on a table.

Allegation 4

28. Councillor Gunaratne alleged that on the 3 November 2021 at a Councillor Only Time Meeting (COT), Cr Davis told him that he asked too many questions at the council meeting on 27 October 2021 and that Cr Davis threatened him by saying "if you ask questions like that at council meetings again I will get a point of order against you." Further Cr Davis said he took up too much time at the Council meetings and had said that he should meet staff in person if he wanted to ask questions.
29. Councillor Gunaratne said he felt intimidated by the threat. He said he felt he was being singled out and isolated. Further Cr Gunaratne said Councillors King, Hearn and Davis were in attendance at this meeting.
30. Councillor Gail O'Brien in a written statement said she did not recall the specific details of the COT on 3 November 2021.
32. Councillor Justin King in a written statement dated 12 January 2023 said that he recalled the COT meeting held on 3 November 2021. He said Cr Davis had raised the subject regarding the number of questions Cr Gunaratne had been asking in Council meetings and was respectfully providing advice to how he could be across his material better if there was a problem. He recalled Cr Davis speaking about the Councillor Code of Conduct or the Council's Governance Rules 2020, (he didn't recall exactly which one) and how a Councillor could call a point of order if a Councillor was asking many questions, one after another or not following the procedures of a meeting.
33. He said in his opinion "it was not a threat nor was it intended to insight an action of applying the CCOC or CGR2020. Further I do not believe the language used by Cr Davis was an intimidating or threatening demeanor. This was an educational discussion which was a guide and assist a fellow councillor".

34. Councillor Davis in his written submission stated that at the COT meeting he informed all Councillors to come to meetings well prepared and to ask questions prior to meeting. He stated that in future he would move a point of order to limit the number of questions a Councillor could ask on an item, if a Councillor asked an unreasonable number of questions on an item. He said his action was not threatening but rather it was foreshadowing the legitimate use of a governance rule available to all Councillors.
35. The Panel accepts the statement of Cr King as an accurate memory of the COT of 3 November 2021.
36. The Panel is satisfied that Councillor Davis' actions during the 3 November 2021 COT did not amount to unreasonable behaviour.

Allegation 5

37. Councillor Gunaratne alleged that the video of the Council meeting on the 1 September 2021 between 51.32 and 1.04.52 minutes would show Councillor Davis deliberately interrupting Councillor Gunaratne while he was asking questions, by putting his hand up and waving repeatedly. Councillor Gunaratne stated he felt intimidated and bullied by Councillor Davis' behaviour.
38. This meeting was an online meeting. Councillor Davis agreed he had put up his hand and waved to attract the chair of the meeting and he was not accepted to speak so he put his hand down.
39. The panel watched the relevant part of video recording, which showed no unreasonable behaviour by Cr Davis.

Allegation 6

40. Cr Gunaratne alleged that at a COT meeting held remotely at noon on the 1 September 2021 Cr Davis was disrespectful to him and called him a puppet. Further he said that Cr Davis tried both to create the impression among the other Councillors and to discredit his reputation by saying Cr Gunaratne was not making up his own mind. Further he said the applicant was a puppet to a group of people with whom he should not communicate.
41. Councillor Davis in his written submission stated "I spoke at the meeting to all councillors about my concerns about a group in the community who, after each council election, try to ingratiate themselves with newly elected councillors and become part of these councillors inner circle in an attempt to manipulate these councillors and direct their agenda." Further he noted "their desire to make new councillors their puppets." And he stated he did not refer to Cr Gunaratne directly as a "puppet."

42. Councillors Claridge, O'Brien and King provided statements that they were present during this meeting at which Cr Davis spoke of the attempts to manipulate Councillors. All said nothing was said by Cr Davis which was disrespectful of Cr Gunaratne. Councillor O'Brien said she recalled the word "puppet" being used in the context of responding to approaches by community members and not as an insult to any Councillor. Councillor King recalled the words "none of us are puppets" being said by Councillor Davis.
43. The panel accepts the statements of Crs Claridge, O'Brien and King that nothing was said that was disrespectful of Cr Gunaratne.

Conclusion

44. In light of the above findings in relation to each of the six allegations, the allegation of bullying is not made out. Accordingly, the application for a finding of serious misconduct against Cr Davis is dismissed.