

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

**Internal Arbitration Process – Mitchell Shire Council
(IAP 2023-10)**

Applicant: Councillor Annie Goble

Respondent: Councillor David Lowe

Date of Hearing: 15 September 2023

Arbiter: Louise Hill

DECISION AND STATEMENT OF REASONS

Application

1. On 21 June 2023, Cr Annie Goble made a joint application with Cr Fiona Stevens Mayor, for internal arbitration to make a finding of misconduct against Cr David Lowe in relation to a point of order made by Cr Lowe during an Ordinary Council meeting of the Mitchell Shire on 17 April 2023, questioning whether a conflict of interest had been previously declared by Cr Goble in relation to a planning item under debate.
2. Cr Fiona Stevens withdrew her application due to the sudden ill health of Cr Lowe after the application was submitted.
3. Cr Goble alleges that Cr Lowe treated her and Mayor Stevens with disrespect by raising a point of order during a public Council meeting debate on a planning application for George Street Kilmore. Cr Goble alleges that Cr Lowe questioned whether the Mayor had declared a conflict of interest for Cr Goble, further stating that he had a recording of the Mayor, Cr Stevens. Cr Goble alleges that Cr Lowe did not raise this matter or seek clarification at the Strategy meeting held the same day as the Council meeting, nor did he raise it during the Council meeting agenda item on conflicts of interest.
4. Cr Goble further alleges that Cr Lowe's actions were calculated and premeditated and designed to embarrass, challenge or unsettle her and/ or the Mayor. She states that the behaviour of Cr Lowe caused confusion during the meeting and was unsettling, disturbing and caused distress to her and the Mayor.
5. Cr Goble therefore alleges that Cr Lowe's actions have breached the four clauses of standards of conduct set out in Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020) and therefore constituted misconduct under the *Local Government Act 2020*.

Directions Hearing

6. A Directions Hearing was held on 31 August 2023 via Microsoft Teams. In attendance were Cr Goble, Cr Lowe and the Council's Councillor Conduct Officer, Mr Laurie Ellis.
7. At the Hearing, I outlined the process for arbitration to both parties and set the timelines for Cr Goble to provide a further submission regarding her application and for Cr Lowe to provide a response. A list of witnesses was also requested for each of the parties, together with short summary of what evidence the witnesses would provide.
8. Ms Lidia Harding, Council's Manager Governance and Risk provided me with links for two Council meeting recordings:
 - Ordinary Council meeting of 17 April 2023 and time mark for the agenda item on George Street Kilmore planning application; and
 - Community Questions and Hearing Committee of 6 February 2023, where two planning applications were listed on the agenda: George Street Kilmore and East Street Kilmore.
9. Mr Laurie Ellis provided me with a copy of Cr Goble's conflict of interest disclosure dated 15 March 2021 regarding East Street Kilmore.

Witness Statements for Cr Goble

10. Summary statements from Mayor Cr Fiona Stevens and Deputy Mayor, Cr Louise Bannister were provided.
11. Mayor Steven's witness summary states that Cr Lowe "blind-sided" the Mayor, Cr Goble and others during a public Ordinary Council meeting on 17 April 2023. She further states that she sent an email to Cr Lowe on 19 April 2023 to get clarity about his Point of Order and to seek the recording. The Mayor reported that no response was received. The Mayor alleged that during the Council meeting, Cr Lowe stated that she had "declared" a conflict of interest on behalf of Cr Goble and that he demonstrated ignorance of the Governance Rules in relation to conflict of interest.
12. The Mayor further stated that Cr Lowe implied that she had acted irresponsibly by declaring a conflict on behalf of Cr Goble and by implication that she had misled the Council. As Cr Lowe repeatedly offered to play the "tape", the Mayor stated that made her question if she had made a mistake and as a consequence, apologised for something which was not a mistake. She claimed that Cr Lowe's actions were overtly planned ("premeditated" (sic)) which resulted in public embarrassment, disruption and which was discrediting and misleading.
13. Deputy Mayor Bannister's witness summary stated that Cr Lowe's actions caused embarrassment and disruption and made the Council appear incohesive. She stated that it was a calculated interruption at a point when the item was well under discussion and that Cr Lowe could have brought this to the attention of Cr Goble, the Mayor or the Manager Governance well in advance of the discussion.

Submission from Cr Lowe

14. Cr Lowe stated in his submission that at the Community Questions and Hearings Committee meeting on 6th February, the Mayor, Cr Stevens "declared" that Cr Goble had a conflict of interest unnecessarily as Cr Goble was absent.

15. Cr Lowe stated that during the Ordinary Council meeting of 17 April 2023, while the planning application for George Street Kilmore was under discussion, he raised a Point of Order. In his submission, Cr Lowe stated that he raised it after remembering during Cr Louise Bannister's speech that the Mayor had made statements about Cr Goble's conflict of interest at the Community Questions and Hearings Committee 6 February meeting. While Cr Bannister was speaking, he used his mobile phone to check on this meeting.
16. Cr Lowe stated that when he raised the Point of Order, Cr Goble responded by saying it was East Street Kilmore on which she had declared a conflict of interest, not George Street Kilmore. He claimed that this was problematic and confusing. He states that she had declared a conflict of interest in the past but that it had not been renewed or updated.
17. Cr Lowe claims that his behaviour was polite and not disrespectful and that by raising the Point of Order he did not bring discredit on the Council. Cr Lowe disputes Cr Goble's application that she has taken part in discussions about George Street Kilmore on other occasions. He stated that there is no proof that he planned to raise the Point of Order in advance.
18. Cr Lowe provided statements from three other councillors who were present that they did not find the matter to be unsettling or embarrassing.
19. Cr Lowe stated that it is ridiculous of Mayor Stevens to say that she was blind-sided and that Points of Order are commonplace and sometimes difficult to deal with. He claimed that the Mayor was put in a difficult position by Cr Goble, having made an error at the Questions and Hearings Committee. Cr Lowe also stated that he should have responded to the Mayor's email of 19 April.

Arbitration Hearing

20. The Hearing was held on 15 September 2023. In attendance were Crs Goble and Lowe, Mr Laurie Ellis, and a support person for Cr Lowe. I outlined the agenda and sought the assurance of the applicant and respondent that they treat each other and witnesses with respect and hold their questions or comments until the person had finished providing their statements.

Recording of meetings

21. The substance of this application covers two Council meetings: the Ordinary Council meeting of 17 April 2023 and the Community Questions and Hearings Committee meeting of 6 February 2023.
22. The Community and Questions and Hearings Committee meeting of 6 February 2023 had two agenda items of business: Planning Permit Application for George Street Kilmore and Planning Permit Application for East Street Kilmore. Mayor Cr Fiona Stevens chaired this meeting and at the beginning of the meeting, noted "We have an apology from Cr Goble tonight. There is a conflict of interest."
23. During the Ordinary Council meeting of 17 April, there were lengthy statements by Cr Lowe and Cr Bannister speaking for and against a Planning Permit Application for George Street Kilmore.
 - As Cr Goble was about to speak, Cr Lowe raised a Point of Order and stated that Cr Goble declared a conflict of interest the last time this came to Council.
 - Mayor Stevens stated she couldn't have, as she was an apology. Cr Lowe then followed with "You declared on her behalf a conflict of interest."

- Cr Goble then stated “East Street not George Street. I declared a conflict of interest on numerous occasions with East Street but not on George Street.”
- Cr Lowe continued, addressing the Mayor, “I can play the recording if you wish.”
- Mayor Stevens then asked the Governance Manager, Ms Lidia Harding who advised no formal advice was received that there was a conflict of interest from Cr Goble at the meeting on George Street. She was an apology.
- Mayor Stevens then announced that she has made a mistake and doesn’t dispute if Cr Lowe said she did, but that it can be clarified. She then asked Cr Goble did she have a conflict of interest and Cr Goble replied that she did not.
- Mayor Stevens then apologised to Cr Lowe if she confused or muddled the water.

Did Cr Lowe contravene the Standards of Conduct?

24. The applicant, Cr Goble, has requested a finding of misconduct for breaches of the following standards of conduct.

1 Treatment of others

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, including by ensuring that the Councillor –

1(d) in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

2 Performing the role of Councillor

A Councillor must, in performing the role of a Councillor, do everything reasonably necessary to ensure that the Councillor performs the role of a Councillor effectively and responsibly, including by ensuring that the Councillor-

2(b) diligently uses Council processes to become informed about matters which are subject to council decisions.

4 Councillor must not discredit or mislead Council or public

4(1) In performing the role of a councillor, a councillor must ensure that their behaviour does not bring discredit upon the Council.

4(2) In performing the role of a councillor, a councillor must not deliberately mislead the Council or the public about any matter related to the performance of their public duties.

25. Firstly, it is alleged by Cr Goble and the Mayor and Deputy Mayor, as witnesses, that Cr Lowe’s action in raising the Point of Order was planned. They asserted that it is highly unlikely that Cr Lowe in less than three minutes, could remember the date of the meeting when conflict of interest was mentioned and then quickly find the recording through the Council website on his mobile phone and to then play the recording while in the meeting. Cr Goble stated that he didn’t do this.
26. Cr Lowe was questioned during the hearing as to how he managed to find the relevant meeting and its recording online. He was adamant that he remembered the conflict discussion as the planning permit application for George Street Kilmore was being debated and then found the recording on the Council’s website which he played to himself during the meeting with his

microphone off. I have no reason or evidence to question Cr Lowe's account and to find otherwise would be to find that Cr Lowe was not telling the truth.

27. While the incident may not have been planned or premeditated by Cr Lowe, the next question is whether Cr Lowe treated his fellow councillors with respect and effectively used Council processes, did not deliberately mislead the Council or the public and did not bring discredit on the Council.
28. Cr Goble asserted that Cr Lowe implied that she had a conflict of interest with the George Street Kilmore planning application which Council was debating live at that moment. Cr Goble considered that this was challenging her integrity.
29. The Mayor said she was blind-sided by the point of order and felt compromised by being asked to play a recording live in a public meeting. She states that she did not know what he was offering on his phone. Cr Lowe did not refer to the recording as the official meeting recording. While she stumbled and got through the moment, she later told the Deputy Mayor that she felt she looked like a "bumbling, rambling idiot."
30. The Deputy Mayor commented that it made her feel that she needed to watch her back, in case her words are used against her in the future. She also added that it made the Council appear incohesive, bringing discredit. Cr Bannister expressed her concern about Cr Lowe challenging the Mayor and Cr Goble and how this may reflect the discourse of disrespect about women in leadership roles.
31. Cr Lowe had other choices at the time. He could have asked for a suspension of the meeting or sought an adjournment to get the issue clarified. When Cr Goble interjected and said that she did not have a conflict with George Street, only East Street Kilmore, Cr Lowe could have let the matter rest, having received an answer. However, he persisted, pushing the Mayor to play the recording on the spot and then she apologised for having caused confusion.
32. When Cr Lowe was questioned about his intent, he said that he was not challenging Cr Goble at all and that he was seeking clarification from the Mayor that she declared a conflict of interest on behalf of Cr Goble for George Street Kilmore. Curiously, he does not appear to understand that Cr Goble justifiably considered that he was challenging her integrity because he stated that he did not direct any questions to her in the meeting.
33. I find that Cr Lowe's behaviour was disrespectful to both Cr Goble and the Mayor, Cr Stevens and. If Cr Lowe had initially accepted Cr Goble's explanation that she had a conflict with East Street Kilmore not George Street Kilmore, that would not be deemed to be disrespectful. However following Cr Goble's explanation, Cr Lowe kept going, insisting that the mayor had declared a conflict of interest for Cr Goble.
34. I conclude that Cr Lowe's intent was to find fault in the Mayor's statements about Cr Goble's apology for the Community Questions and Hearings Committee 6 February meeting. At no time during this meeting did the Mayor state she was declaring a conflict of interest, only that Cr Goble had a conflict of interest. I do not consider this to be a mistake by the Mayor and possibly only unnecessary to explain Cr Goble's absence.
35. Cr Lowe has protested that the Mayor did not make an attempt to resolve the matter internally. The Mayor has provided evidence of an email that she sent to Cr Lowe immediately following the meeting to which he never responded, and acknowledged that that was a mistake. I also

find that this constitutes not treating the Mayor with respect as she sought an explanation from him.

36. Cr Lowe asserted that he has treated the Councillors with respect in relation to this incident because he was polite and did not raise his voice. His behaviour towards these Councillors was, in my view, overtly critical, seeking to catch them out or find fault. His written submission contained several personal jibes about Cr Goble and Cr Stevens which were unnecessary and seemingly unwarranted.
37. The application has also requested a finding of misconduct under Clause 2 Performing the role of Councillor and Clause 4 Councillor must not discredit or mislead Council or the public. I am not satisfied that Cr Lowe's actions or behaviour constituted a breach under either of these clauses. Cr Lowe did use council processes to inform himself about matters subject to council decisions as required under Clause 2(b). In relation to Clause 4, statements from three other councillors supporting Cr Lowe's response stated that his actions had not caused offence or discredited the Council, indicating a divergence of views between those supporting Cr Goble's application and those supporting Cr Lowe's position.

Arbitration Decision

38. In relation to Cr Lowe's obligations to comply with the standards of conduct under the Local Government (Governance and Integrity) Regulations 2020, I find that Cr Lowe has engaged in misconduct by failing to comply with Clause 1 of the standards.
39. Based on the reasoning in paragraph 37 above, I find that Cr Lowe has not failed to comply with Clauses 2 or 4 of the standards.

Sanction

40. I direct that Cr Lowe make a written apology to Cr Annie Goble and Mayor Fiona Stevens, acknowledging that his behaviour towards them has been disrespectful and that he will strive for more constructive and collegiate ways to raise and resolve issues in the future. This apology must be tabled at the next Council meeting following this decision.

Louise Hill
Arbiter
9 October 2023