

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

**Internal Arbitration Process – City of Greater Geelong Council
(IAP 2023-28)**

Applicants: Councillors Sarah Hathway, Elise
Wilkinson and Jim Mason

Respondent: Councillor Anthony Aitken

Arbiter: Yehudi Blacher

DECISION AND STATEMENT OF REASONS

Background

1. The applicants in this matter are Crs. Ann Hathway, Elise Wilkinson and Jim Mason.
2. The respondent is Cr. Anthony Aitken.
3. On 20 December 2023 Crs. Hathway, Wilkinson and Mason 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 Aitken in relation to comments made by Cr Aitken at a Council Planning Committee meeting held on 14 December 2023.
4. Specifically, the applicants allege that Cr. Aitken accused them of coming into the meeting with a predetermined view on the planning application being considered at the Planning Committee meeting.
5. The applicants stated that the comments were made publicly in the Chamber in front of 30-40 members of the public, the planning applicant and their representatives, and Council officers during a debate on a motion moved by Cr. Aitken to accept the Council Officers' recommendation to approve the planning application.

6. In making these comments Crs. Hathway, Wilkinson and Mason allege that Cr Aitken contravened Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020 which sets out the Standards of Conduct expected to be observed by Councillors in performing their duties and functions. For the purposes of this Arbitration the relevant clause is Clause 1 of the Standards of Conduct which states that “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.

Directions Hearing

7. A Directions Hearing on this matter was held on 22 February 2024. In attendance were Crs. Hathway representing the three applicants and Cr. Aitken and the Council’s Councillor Conduct Officer, Ms. Vesna Allan.
8. At the hearing the Arbiter explained the arbitration process to the parties. He advised the respondent, Cr. Aitken, that he would consider any submission made by him relevant to the complaint lodged by the applicants. He requested that Cr. Aitken, specifically address the reasons why he did not think his comments breached Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020. The Arbiter requested that any submission from Cr. Aitken be provided to Ms. Allan no later than 8 March 2024.

Submission from Cr. Aitken

9. In his submission Cr. Aitken stated that the first time he was aware of the complaint was when he received correspondence from the Principal Councillor Conduct Registrar. He noted that the Geelong Councillor Code of Conduct and the Geelong Councillor Charter both state that councillors should use internal processes to attempt to resolve issues of concern, so as to maintain professional working relationships. He stated that the Code and the Charter were not followed in relation to this complaint.

10. In summary Cr. Aitken's response made the following points:

- a) Approximately 90 minutes into the meeting, after hearing from the relevant Council officer, objectors and the proponent, Cr Mason, as Chair of the meeting, asked for a recommendation from attendees. Cr. Aitken raised his hand and recommended that the Officers' recommendation be supported. This motion was seconded by Cr. Nelson.
- b) Before Cr. Aitken could speak to his recommendation Cr. Mason stated "now do we have an alternative motion." In doing so Cr. Aitken stated that the Chair looked to be soliciting an alternative motion from Councillors to his right.
- c) Cr. Wilkinson stated that she would be voting against the motion and presenting an alternative recommendation. Cr. Hathway then spoke and said she would be supporting the alternative. This was done even though the motion in support had not been voted upon and the alternative was yet to be presented.
- d) Cr. Aitken stated that this intervention "shocked" him and formed the basis of his view that some councillors had a predetermined view of the application and had not come into the meeting with open minds.
- e) Cr. Aitken stated that, to assist the Chair, before an alternative motion could be presented the initial motion needed to be considered. This advice was accepted by Cr. Mason and Cr. Aitken spoke in favour of the Officers' recommendations.
- f) Cr Aitken stated that that felt he needed to make public his concerns that Crs. Hathway Wilkinson and Mason had not come into the meeting with open minds in relation to the application.
- g) On the basis of these points, Cr. Aitken stated that he did not believe that he had breached the Standards and was seeking to assist Cr. Mason in ensuring proper governance procedures were followed.

Arbitration Hearing

11. The Arbitration hearing was held on 27 March 2024. Cr. Aitken attended. Cr. Hathway was due on attend on behalf of the complainants accompanied by Cr. Wilkinson. As the hearing was about to commence a message was received from Cr. Hathway that she was unable to attend due to a work emergency. Cr. Wilkinson was asked and agreed to replace Cr. Hathway and Cr. Aitken agreed to that change. Also in attendance was the Council's Councillor Conduct Officer Ms. Vesna Allan.
12. At the outset it should be noted that this Arbitration is entirely limited to whether Cr. Aitken's comments at the planning meeting constitute misconduct under Schedule 1 of the regulations. The question of whether Crs. Hathway, Wilkinson and Mason had a preconceived view of the planning matter under consideration is relevant only to the extent that it was the subject of Cr. Aitken's comments.
13. In response to the Arbiter's questions Cr. Wilkinson explained that in her view Cr. Aitken's comments were disrespectful and discourteous to herself and the other complainants and was not consistent with councillors' requirements under Schedule 1 of the regulations. She referred to the video recording of the Planning Committee meeting which confirms that immediately after Cr. Aitken's comments she stated that she had not come to the meeting with a preconceived view on the planning application.
14. She further indicated that after the meeting she and Cr. Hathway approached Cr. Aitken in the carpark of the Council and reiterated their concerns. She stated that Cr. Aitken said he noted their comments and walked away.
15. When asked why he said 'noted' rather than apologise to Crs. Wilkinson and Hathway, Cr. Aitken said it was late, he was in a hurry to get away, he did not believe that a formal complaint would be lodged and he thought that there would be an opportunity for councillors to discuss governance issues arising from the meeting.

Arbitration Decision

16. From the evidence presented I find that Cr. Aitken did contravene Clause 1 of the Standards of Conduct of the Local Government (Governance and Integrity) regulations 2020.
17. To his credit Cr Aitken did assist Cr. Mason with advice on how to properly conduct the planning meeting. However, his comments regarding the three councillors having a preconceived view of the outcome, made in a public meeting without providing any evidence, were disrespectful and discourteous within the meaning of the Regulations. This was reinforced by his later response to Crs. Wilkinson and Hathway that he 'noted' their concerns.
18. The Standards of Conduct are there for the purpose of ensuring that councillors treat each other with respect and courtesy. They are included in the Council's Councillor Code of Conduct which all councillors have signed.
19. Had Cr. Aitken been more careful with his words and more sensitive to the concerns expressed by Crs. Wilkinson and Hathway this matter may have been resolved internally. Similarly, had the complainant councillors sought to have the matter resolved internally rather than make a complaint only six days after the meeting, this Arbitration may not have been required. Indeed, the matter could have been resolved at any time after the complaint was made, but before the Hearing, by Cr.Aitken apologising to his fellow councillors. Given that none of these actions were taken, the councillors collectively have subjected Geelong ratepayers to the cost and time involved this external Arbitration.

Sanction

20. I direct that, at the next meeting of the Council after receipt of this decision, Cr. Aitken should publicly apologise to Crs. Hathway, Wilkinson and Mason for the comments he made, that they had a preconceived view of the application under consideration, and that this apology should be circulated by the Council to relevant media outlets in the municipality.

Yehudi Blacher

Local Government Arbiter

15 May 2024