

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

Internal Arbitration Process – Brimbank City Council

(IAP 2024-4)

Applicant: Crs Ranka Rasic, Jae Papalia, Jasmine Nguyen, Sam David and Sarah Branton, represented by Cr Ranka Rasic

Respondent: Cr Maria Kerr

Arbiter: Dr Meredith Gibbs

Date of Hearing: 22 April 2024

DETERMINATION

Pursuant to section 147(1) of the *Local Government Act 2020* (**Act**) the Arbiter makes a finding of misconduct against Cr Maria Kerr.

STATEMENT OF REASONS FOR DECISION

BACKGROUND AND PROCEDURAL MATTERS

The Application

1. On 20 December 2023, the Applicant made Application IAP 2024-4 (**Application**) seeking a finding of misconduct against the Respondent.
2. The allegations relate to 15 matters which can be grouped as follows (noting that there are no allegations numbered 11 and 13):

Allegations 1, 2, 3, 14 and 15 which relate to the behaviour of Cr Kerr at the Brimbank City Council (**Council**) meeting on 17 November 2023

Allegation 9 which relates to the behaviour of Cr Kerr at the Council meeting on 17 October 2023

Allegations 4, 5, 6, 7, 8, 10, 12, 16 and 17 which relate to an email sent by Cr Kerr (Allegation 4) and various social media posts by Cr Kerr (the remainder of Allegations).

3. The Applicant alleges that the Respondent breached the standards of conduct set out in Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020* (**Standards**) and therefore engaged in misconduct.
4. The Applicant did not specify the relevant clauses of the Standards alleged to have been breached despite several requests by the Arbiter that the parties do so, instead referring to the following sections of the Brimbank City Council Councillor Code of Conduct (dated February 2021) (**Councillor Code**):

- a. Councillors must treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, courtesy and respect (section 3.1);
 - b. Councillors must behave in a manner that does not bring discredit upon the Council and does not deliberately mislead the Council or the public about any matter related to the performance of their public duties (section 3.4);
 - c. A Councillor must not intentionally or recklessly disclose information that he or she knows, or should reasonably know, is confidential information (section 4.3);
 - d. Councillors acknowledge that meeting Council's obligations as an employer under the Occupational Health and Safety Act 2004 by, among other things, providing a safe workplace for members of Council staff and visitors to Council premises is essential, and are committed to working in ways that protect and promote the health and safety of members of Council staff and visitors to Council premises and to minimise risks to them. occupational health and safety (section 5.7).
5. At the Directions Hearing and again at the Hearing, the Arbiter stated that the allegations related to alleged breaches of clause 1 and 4 of the Standards. This was not challenged by either party and the process proceeded on this basis.
 6. The Respondent denied that her behaviour constituted misconduct.

Directions Hearing

7. A Directions Hearing was held on 18 March 2024 online at which the Arbiter explained the arbitration process to the parties and heard submissions from the parties on various procedural matters including whether some of the Allegations could be heard "on the papers". With the agreement of the parties, the Arbiter directed that Allegations 4, 5, 6, 7, 8, 10, 12, 16 and 17 would be heard "on the papers" and Allegations 1, 2, 3, 9, 14 and 15 would be heard "in person". On 25 March 2024, the Arbiter issued a series of Directions to this effect and set out a timetable for the exchange of submissions and information for all allegations.

Procedural matters

Requests for support at the Hearing

8. On 25 March 2024, Cr Kerr made a request for a support person to attend the Hearing based on various grounds including that Cr Kerr had previously suffered an acute panic attack which had been caused by these proceedings, and she needed a support person to feel at ease and safe at the Hearing. Cr Kerr subsequently proposed a work colleague and friend, Ms Lambrou, to be her support person.
9. The Arbiter granted Ms Kerr's request for a support person and made the following direction in this respect:

Direction 10 of the Arbiter's directions dated 25 March 2024 is amended to read as follows:

10. The Hearing is not open to the public and must only be attended by the Applicant, the Respondent and her support person (Ms Janet Lambrou), the Council's Councillor Conduct Officer, and the Council appointed recording service. Ms Lambrou is not permitted to take part in the Hearing and is present to provide personal support only to the Respondent. Ms Lambrou's attendance is subject to her providing assurance of the following matters:

- *Ms Lambrou has no legal qualifications.*
- *Ms Lambrou will keep all information from the Hearing confidential and will not disclose or discuss anything learnt at the Hearing to or with any other person.*

The Respondent must provide a letter from Ms Lambrou providing confirmation of the above matters no later than COB Wednesday 17 April 2024.

If Ms Lambrou is not available for the Hearing and the Respondent wishes to have an alternative person attend as a support person, the Respondent must seek further approval from the Arbiter before the Hearing commences and the above conditions will apply to any other support person as approved by the Arbiter.

10. Ms Lambrou provided a letter dated 28 March 2024 advising that having graduated as a lawyer in 1992, she holds a legal qualification but does not hold a current practising certificate. Ms Lambrou confirmed that she would be attending the Hearing for “moral support” only to Cr Kerr and would not provide legal advice to Ms Lambrou. She acknowledged she would not have the right to speak at or take part in the Hearing and confirmed that she would keep all information confidential.
11. Subsequently, the Arbiter invited the Applicant to make submissions on the appropriateness of Ms Lambrou to provide support to Cr Kerr at the Hearing. The Applicant strongly objected to Ms Lambrou attending the Hearing as the Respondent’s support person expressing concerns in relation to Ms Lambrou’s legal background. The Respondent was given an opportunity to respond to the Applicant’s submissions and did so, stating that Ms Lambrou would attend the Hearing to support her on a personal level only.
12. The Arbiter determined that it would not be appropriate for Ms Lambrou to attend the Hearing as the Respondent’s support person due to her legal background and invited the Respondent to nominate another support person on the same conditions as Direction 10 (as amended). The Respondent nominated Mr Steve Ravic who duly provided the required assurance that he holds no legal qualification and would keep all matters relating to the internal arbitration process confidential. This assurance was repeated by Mr Ravic, in person, at the commencement of the Hearing.
13. Cr Rasic made a request on 29 March 2024 for a support person based on the reasons given by Cr Kerr on 25 March 2024. The Arbiter responded by requesting that Cr Rasic provide reasons why procedural fairness required her to have a support person based on her own circumstances rather than those of Cr Kerr. Cr Rasic withdrew her request for a support person on 3 April 2024.

Request for Council staff to provide witness statements

14. On 29 March 2024, Cr Rasic made a request through the Councillor Conduct Officer for various Council staff and the Chief Executive Officer (CEO), Ms Fiona Blair, to provide witness statements. The Council’s Councillor Conduct Officer referred this request to the CEO.
15. The CEO advised on 5 April 2024 that she did not consider it appropriate for Council officers to be involved as witnesses in the arbitration process and had advised the Council officers concerned that they were not required to provide witness statements. She also advised that she would not provide a witness statement herself.
16. The Applicant did not pursue the matter further.
17. The Arbiter proceeded to hear the case on the basis that there was sufficient material before her with respect to the events at the 17 October and November 2023 Council meetings, notwithstanding the inability of either party to call Council staff. This material included a written witness statement from Ms Rebecca Plieger (nee Soloman), who at the time of the 17 November 2023 meeting was employed as Executive Manager, Communications and Engagement at Council but is no longer employed at Council. Ms Plieger did not appear in person at the Hearing.

Confidentiality

18. In the lead up to the Hearing both parties raised concerns that the other party had breached confidentiality with respect to the internal arbitration process. The Arbiter responded to the parties by noting:
- Breach of confidentiality is “serious misconduct” under the Act. The Act sets out the process for dealing with matters of serious misconduct.
 - The role of an arbiter in an internal arbitration process does not include making findings on allegations of serious misconduct. However, an arbiter may make directions to the parties with a view to ensuring that the arbitration process is kept confidential.
 - The Act also provides that intentional or reckless disclosure of confidential information is an offence.
19. In addition, the Respondent inadvertently copied a third party (the Municipal Monitors currently appointed for Brimbank City Council) to an email relating to these proceedings in direct contravention of the Arbiter’s direction regarding confidentiality. As a result, the Arbiter directed as follows:
- Councillor Kerr must:*
- As a matter of urgency and by no later than COB today (Tuesday 9 February 2024), retract her email to monitors@brimbank.vic.gov.au and send a further email to that email address:*
 - explaining that the email was sent in error and*
 - request that the email be deleted*
 - request advice of the names of all persons who read the email*
 - request that each of those persons provide a written assurance that they will keep the matters contained within the email (and the email chain) confidential by COB Friday 12 April 2024*
 - By no later than COB today (Tuesday 9 February 2024), confirm to the Councillor Conduct Officer (and copy to the Applicant) that the above email has been sent and provide him with a copy of the email (date stamped)*
 - By no later than COB Friday 12 April 2024, provide copies of the written confirmations referred to in Direction 1(d) to the Councillor Conduct Officer (and copy to the Applicant).*
20. The Respondent complied with these directions to the best her ability. However, the Municipal Monitors did not respond to her request (and three follow ups).

Witness Statements and the Hearing

21. An in-person Hearing of Allegations 1, 2, 3, 9, 14 and 15 took place on 22 April 2024 at the Keilor Community Hub, Keilor Village.
22. Prior to the Hearing the parties provided written submissions and supporting documentation, including witness statements. The parties provided witness statements as follows:

Witness name	Called by	Appeared in person
Cr Sarah Branton	Applicant	Yes
Cr Sam David	Applicant	No
Cr Jasmine Nguyen	Applicant	Yes
Cr Jae Papalia	Applicant	Yes
Ms Rebecca Plieger (nee Soloman)	Applicant	No

Cr Bruce Lancashire	Respondent	No
Cr Virginia Tachos	Respondent	No
Ms Dianne Cappelli	Respondent	No
Mr Mark Jekic	Respondent	No

23. Cr David made a written statement but did not appear in person at the Hearing. His written statement did not address the allegations and will not be referred to further.
24. Cr Lancashire, Cr Tachos, Mr Jekic and Ms Cappelli each provided written witness statements for the Respondent but did not appear in person at the Hearing.

THE ALLEGATIONS

25. The Allegations will be dealt with in the following order:
- The 17 November Allegations:** Allegations 1, 2, 3, 14 and 15 relate to the behaviour of Cr Kerr at the Council meeting on 17 November 2023 and will be dealt with together.
 - The 17 October Allegation:** Allegation 9 relates to the behaviour of Cr Kerr at the Council meeting on 17 October 2023 and will be dealt with as a separate item.
 - Social Media Allegations:** The remaining Allegations relate to an email (Allegation 4) and social media posts.

ALLEGATIONS RELATING TO THE COUNCIL MEETING ON 17 NOVEMBER 2023

Background

26. The 17 November Allegations concern the behaviour of the Respondent during the 17 November 2023 Council meeting and breaks at which mayoral and deputy mayoral elections were held. The meeting was to commence at 6pm, rather than the usual 7pm for Council meetings.
27. It was common ground between the parties that:
- at 6pm, Cr David was not present at the meeting. Cr Rasic moved a motion to adjourn the proceedings to wait for Cr David. The meeting reconvened approximately 15 minutes later when Cr David arrived; and
 - Cr Branton advised by email on the afternoon of the meeting that she would be an apology for the meeting. Despite this, she did in fact attend the meeting.

The Applicant's submissions on the 17 November Allegations

28. The Applicant submitted the Respondent:
- made comments such as "*scraping the bottom of the barrel*", "*getting desperate*", "*betrayal*" directed towards Crs Papalia and Branton (supported by evidence from Crs Branton and Papalia);
 - made comments about a Councillor "*not turning up all year*" and attending the meeting after putting in an apology due to illness, assumed to be about Cr Branton who had had a long illness and originally been an apology for the meeting. Regardless of who the comments were about, the Applicant submitted that "*the open-ended disparaging comments were unkind and unprofessional, wherever they were directed*" (supported by evidence from Cr Branton);
 - was leaning forward in her seat in the Council Chamber and staring towards Crs Papalia and Branton in order to intimidate (supported by evidence from Crs Branton and Nguyen);

- d. during a break in the meeting, aggressively said to the CEO that she (the Respondent) would sue Council if there was someone present in the meeting with COVID, in breach of the duty to provide a safe workplace. It was originally thought the comment was made in reference to Cr Branton (having been an apology but later attending the meeting) but it later became clear the comment was referring to Cr David who Cr Kerr thought had COVID. In any case, the Applicant submitted it was *“incredibly inappropriate to discuss people’s health publicly”* (supported by evidence from Crs Branton and Rasic);
 - e. said *“Oh, poor Sam ... How does it feel to be backstabbers?”* which could be interpreted as either:
 - i. other Councillors were backstabbing a colleague based on an assumption regarding mayoral nominations; or
 - ii. as belittling Cr David for not being nominated as a mayoral candidate (supported by evidence from Cr Nguyen);
 - f. said *“You are a desperate little scumbag”* to Cr Papalia and/or Cr Branton in a disrespectful and offensive manner (supported by evidence from Cr Nguyen and Cr Papalia).
29. At the Hearing, Cr Rasic said that when Cr David arrived at the 17 November meeting, a Council officer asked Cr David if he had COVID to which Cr David replied *“No”*. Cr Rasic confirmed that she had heard the exchange between the Respondent and the CEO about COVID. She described the Respondent’s body language as *“agitated”*.
30. Cr Rasic said that after the mayoral vote (which Cr Rasic won), she left the Chamber to change into the mayoral robes and as a result she did not hear the other comments which were allegedly made by Cr Kerr.
31. Crs Branton, Nguyen and Papalia each made written statements and gave oral evidence at the Hearing about the Respondent’s behaviour at the 17 November 2023 meeting. These Councillors are co-signatories to the Application.
32. In addition to the evidence noted above at paragraph [28], Cr Nguyen gave evidence:
- a. The comments *“Poor Sam, how does it feel to be backstabbers”*, *“Scraping the bottom of the barrel”*, and *“desperate scumbags”* were made just before or after the mayoral vote (when Cr Rasic went to put her robes on) and were directed at Crs Papalia and Branton. There were more comments after the mayoral vote, and she recalled the Respondent saying *“desperate scumbag”* to Crs Papalia and Branton while turning her body towards them. She could tell Cr Kerr was not happy and some people may have found her body language intimidating.
 - b. The Respondent said, *“Have you heard of this documentary? It’s called ‘Rat in the Ranks’”* and said that someone should take a RAT test. She thought this could be interpreted as calling other Councillors ‘rats’ or making comments about another Councillor’s health.
 - c. She heard Mr Vo (Coordinator, Council Business) ask Cr David if he had COVID.
 - d. She did not know why Cr David was late to the meeting. She also said Cr David had told her he was late because he had been visiting a friend in hospital. She did not recall Cr David wearing a mask and had not heard any rumours about Councillors having COVID.
 - e. She was unsure exactly what the Respondent said to the CEO about COVID, but recalled it was to express displeasure at how the meeting was run. There were other things going on in the Chamber at the time.
 - f. When questioned about the contents of Cr Lancashire’s and Cr Tachos’ witness statements’ which said that neither heard any derogatory remarks by the Respondent, Cr Nguyen responded that it was up to each person to interpret what was ‘derogatory’.

- g. She did not remember every minute detail of the meeting but was confident in the evidence she had given.
33. In addition to the evidence noted above at paragraph [28], Cr Papalia gave evidence:
- a. She entered the Chamber and sat down beside Cr Branton who was already seated.
 - b. The Respondent called out to her and Cr Branton that they were *“desperate”*, *“scraping the bottom of the barrel”*, and *“disgusting”* as she walked into the Council meeting. Under questioning, Cr Papalia confirmed that although the Respondent had not used her name, she knew the Respondent was speaking to her because she was looking at her at the time. The Respondent made further comments after the mayoral vote including saying to her (Cr Papalia), *“You are a desperate little scumbag”*. There was tension and aggression and she felt uncomfortable due to the comments the Respondent was making. She was unsure how to respond.
 - c. The Respondent asked Cr Tachos if anyone had a RAT test and was joking making comments that there were rats in the Chamber. Cr Papalia said this exchange was loud and made her feel uncomfortable, not only for herself but also for Cr Branton because she felt the comments were directed to her (Cr Papalia), or both her and Cr Branton. Cr Papalia said she was unsure if it was a joke or an allegation, but she felt the discussion was not out of a genuine concern about someone having COVID.
 - d. She did not recall Cr David wearing a mask when he arrived at the meeting, any rumours about Cr David having COVID or Cr David being asked whether he had COVID.
 - e. The Respondent’s comments were loud enough that Cr Lancashire (who was sitting between the Respondent and Cr Papalia) would have heard them. When questioned about the contents of Cr Lancashire’s witness statement which said that he did not hear any derogatory remarks by the Respondent, Cr Papalia responded that Cr Lancashire’s witness statement was *“not true”*. She was unsure if Cr Tachos would have heard because she was sitting on the opposite table (approximately three metres away).
34. In addition to the evidence noted above at paragraph [28], Cr Branton gave evidence:
- a. She entered the Chamber alone, earlier than most Councillors.
 - b. The comments *“scraping the bottom of the barrel”*, *“getting desperate”*, *“betrayal”* were made by the Respondent while she sat in the Council Chamber, with some comments made before the mayoral vote and others after. Cr Branton felt the Respondent’s comments were directed at her because the Respondent was looking in her direction and due to the Respondent’s posture (leaning forward), but she could not be sure because she did not meet the Respondent’s eye.
 - c. When the Respondent leant forward and stared at her and Cr Papalia, she felt that the Respondent was intending to intimidate her to vote a certain way.
 - d. She believed the Respondent’s comments about attending the meeting after putting in an apology due to illness and *“not turning up all year”* were in reference to Cr Branton’s extended leave due to illness and were intended to put her down and make her feel uncomfortable. She found it upsetting to have her health used against her *“as a weapon ... in a public space”*. Cr Branton acknowledged that she did not know the intention of the comments but said the comments were disparaging, unkind and unprofessional *“wherever they were directed”*.
 - e. She heard the Respondent refer to ‘RATs’ and thought it was a double entendre, calling other Councillors rats, but was said in a joking manner.
 - f. She did not remember whether Cr David was wearing a mask and did not hear any rumours about Cr David having COVID.

- g. The Respondent's voice was raised when she spoke to the CEO, threatening to sue Council if there was someone at the meeting with COVID.
 - h. She did not recall the Respondent saying, "*You are a desperate little scumbag*", but did remember the word "*disgrace*".
 - i. When questioned about the contents of Cr Lancashire's and Cr Tachos' witness statements' which said that neither heard any derogatory remarks by the Respondent, Cr Branton responded that they may not have noticed if they were not paying attention and they could have been focussed on something else at the time.
35. In her written evidence, Ms Plieger gave evidence:
- a. At the time of the 17 November 2023 meeting she was employed at Council as Executive Manager, Communications and Engagement and was present at the meeting in that capacity.
 - b. She felt uncomfortable in the meeting due to the comments made by the Respondent and Cr Tachos towards other Councillors. She did not recall the exact words but said Crs Kerr and Tachos were suggesting the election was a farce and were singling out other Councillors for how they voted. They mumbled under their breath and looked at other Councillors. She thought their behaviour was disrespectful to the meeting and other Councillors.
 - c. The Respondent questioned the mental health of Cr Branton.
 - d. The newly elected Mayor, Cr Rasic, did not want to return to the Chamber after putting on her mayoral robes due to how uncomfortable Cr Rasic had felt in the Chamber.
36. The Applicant submitted that the Respondent's behaviour breached sections 3.1, 3.4 and 5.7 of the Councillor Code.
37. The Applicant submitted that there was a difference between being passionate and behaving properly and respectfully towards fellow Councillors and that the Respondent's behaviour was unacceptable and disrespectful to others in breach of the Standards. She said that the Respondent's behaviour has had a significant negative impact on her (Cr Rasic's) mental health.

The Respondent's submissions on the 17 November Allegations

38. The Respondent stated:
- a. She made a comment relating to Cr Branton's attendance because she had received an email earlier that day advising that Cr Branton was an apology for the meeting. The Respondent said she was concerned about Cr Branton's mental health and that Cr Branton "*appeared distressed to be there and it appeared to me she was coerced and guided in by Cr Papalia*". She said that Cr Branton had been "*flanked*" by Cr Papalia as they both entered the Chamber, and that Cr Branton "*looked visibly distressed*". She did not think that Cr Branton had COVID.
 - b. She made a comment about "*not turning up all year*", but the comment was in relation to a member of the public gallery known to her, not Cr Branton. She was leaning forward as she said this so that she could see the relevant person in the public gallery.
 - c. Cr David was wearing a mask when he arrived at the meeting. He was late to the meeting and rumours had been circulating that he had COVID. She said:

I did make a comment to the CEO and asked if he had Covid and she said she doesn't know, I asked her to confirm for me as I started to get very uncomfortable. I had just lost my uncle to Covid late last year. I did say to the CEO that if my parents got sick, I would sue the council for negligence. I may have overreacted but at that point of time I was under a lot of distress and I apologise for my

reaction. However, I was very scared. I have a fear of Covid and seeing Cr David in a mask really triggered me... .

- d. She was not aggressive to the CEO, but rather she was concerned. Her intention was not to intimidate or be aggressive to the CEO. The CEO has never spoken to the Respondent about this incident.
- e. She asked whether Cr David had taken a RAT test but did not refer to anyone as a 'rat'. She had a conversation with Cr Tachos about a documentary on YouTube called "Rats in the Ranks" because it was relevant to a mayoral vote.
- f. She said, "*Poor Sam*". She felt genuinely sorry for him, and it was not her intention to belittle him. She did not recall saying anything about backstabbing. She would be happy to apologise to Cr David.
- g. She did not say "*You are a desperate little scumbag*".
- h. Prior to these allegations, there had been no questions or issues raised about her behaviour in her time as Councillor (approximately 3.5 years), nor had she been approached about her behaviour.
- i. She said:

I feel intimidated by the Mayor and I feel targeted and bullied by the fact that she has rallied others to target me because I try to introduce debate and present community concerns to council.

39. Cr Lancashire stated in his written statement:

- a. He was in the Council Chamber at the 17 November meeting and was able to observe Cr Kerr, Cr Rasic and several other Councillors, and overhear all conversations between Councillors seated in the Chamber. He was keenly listening and watching all events.
- b. He did not hear the Respondent make any comments he would consider derogatory.
- c. He did not observe anything that could be construed as excessive staring by the Respondent.
- d. He believed that the Respondent had a concern about COVID and, having himself been hospitalised with COVID, equally shared Cr Kerr's concern.

40. Cr Tachos stated in her written statement:

- a. She did not hear Cr Kerr make any derogatory statements regarding Cr Branton's presence at the mayoral vote after an email was sent by the CEO stating Cr Branton would be an apology.
- b. There was concern for Cr Branton's well-being as she looked visibly shaken.
- c. She did not hear the alleged exchange about COVID between the Respondent and the CEO. The Respondent's tone was of concern for fellow Councillors and herself.
- d. There were growing concerns about Cr David having tested positive for COVID. Cr David entered the meeting wearing a face mask which was unusual and triggered grave concerns about a COVID-positive person attending the meeting.
- e. Councillors felt genuine compassion for Cr David.

41. Mr Jekic's written statement said he was present at the mayoral vote on 17 November 2023 but did not witness any inappropriate conduct or hear any inappropriate comments from Cr Kerr. He heard rumours that night that Cr David came to the mayoral vote with COVID.

42. Ms Cappelli provided a witness statement saying that she had attended the 17 November 2023 Council meeting and saw various Councillors who were upset.

43. The Respondent denied that she had breached the Standards.

Findings of the Arbiter on the 17 November Allegations

44. Pursuant to s147(1) of the Act the Arbiter makes a finding of misconduct against Cr Maria Kerr on the basis that the Respondent has breached clause 1 of Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020*.

Reasons

45. I have viewed the entire video recording of the 17 November 2023 Council meeting. The alleged comments are not recorded on the video, being either:
- a. made during breaks in the meeting when no video coverage is available; or
 - b. made during the meeting at times when the audio is not recorded.

Therefore, I rely on evidence from those at the meeting as to whether comments were made.

46. The video footage shows the Respondent leaning forward, turned towards Crs Papalia and Branton, at various points during the meeting. The Respondent can be seen variously to be looking around the Chamber, looking down, looking at her phone and speaking with Councillors next to her and across the room, as well as looking towards Crs Papalia and Branton. Sometimes she is smiling and at other times she is not. Due to the distance from which the video footage was taken, I do not find it possible to determine from the video alone whether the Respondent was leaning forward and looking at Crs Papalia and Branton in an intimidating manner.
47. There were discrepancies in the evidence given by the co-signatories to the Application relating to:
- a. the exact timing of the comments alleged to have been made by the Respondent (for example, whether before or after the mayoral vote); and
 - b. the reason for Cr David's lateness with Cr Nguyen stating in her oral evidence that she did not know why Cr David was late but later stating that he had told her that he was late because he was visiting a friend in hospital.

These discrepancies detracted from their evidence. Further, the co-signatories appear to have, at times, interpreted matters differently (for example, whether other attendees at the meeting would have been able to hear the various alleged comments) or made differing assumptions about the Respondent's behaviour. Each admitted that their memory of the night was imperfect.

48. Despite these issues, I found the evidence of the co-signatories overall to be compelling and truthful as to the key matters before me, appearing to honestly admit when they did not remember a detail of the night.
49. What came through was a clear, overarching picture of a meeting (including the breaks) in which the Respondent made a series of comments to her fellow Councillors which made them uncomfortable. Each of the alleged comments was supported by at least one witness.
50. In contrast, I found the evidence of the Respondent to be overall less compelling. When she admitted to allegations, she provided alternative interpretations of events and I have given these some weight. As her witnesses did not appear in person it was not possible to test their statements.
51. I have also given weight to the witness statement of former Council officer, Ms Plieger, who gave evidence that she felt uncomfortable in the meeting due to the comments made by the Respondent towards other Councillors and felt that the Respondent's behaviour was disrespectful.
52. I find that the Respondent made the following comments to at least one or more of her fellow Councillors:
- a. *"scraping the bottom of the barrel"*
 - b. *"getting desperate"*

- c. *"betrayal"*
- d. *"desperate scumbag"*.

53. In making these comments, the Respondent has not shown her fellow Councillors courtesy and respect and is therefore in breach of clause 1 of the Standards. I do not find it necessary to determine which of the co-signatories each of these comments were directed towards because I find that they were directed to at least one or more Councillor present.
54. I accept the evidence that there was an exchange in the Chamber between the Respondent and Cr Tachos, in the presence of other Councillors, about a RAT test or tests and that a joke was made about 'rats' in the Chamber. As this occurred after the mayoral vote, it is reasonable to infer that the reference to rats was intended to be a reference to the Respondent's fellow Councillors as being 'rats' in a derogatory manner. Referring to one's fellow Councillor as a 'rat' is disrespectful and a breach of clause 1 of the Standards.
55. I accept the evidence that the Respondent made comments about someone *"not turning up all year"* and this was admitted by the Respondent. It seems likely that this was directed at Cr Branton, rather than a member of the public gallery as suggested by the Respondent, but the evidence on this point is not compelling either way. The Applicant argued that regardless of who the comment was directed at, it was disparaging, unkind and unprofessional. Based on the evidence before me, it is unclear whether the Respondent was being disparaging or simply stating a fact. I therefore make no finding of misconduct in this respect.
56. I also accept the evidence that the Respondent spoke loudly and aggressively to the CEO, threatening to sue Council if a person in the meeting had COVID. I accept that the Respondent was concerned about the prospect of catching COVID and passing it on to her elderly parents. However, this does not justify speaking aggressively and loudly to the CEO and making threats against the Council in a public forum. The Respondent failed to treat the CEO with courtesy and respect and breached clause 1 of the Standards.
57. The Applicant alleged that the comments *"Oh, poor Sam ... How does it feel to be backstabbers"* and *"You are a desperate little scumbag"* were also a breach of clause 4 of the Standards. Most relevant is clause 4(1) which requires Councillors not to bring discredit on the Council. On the evidence before me, it is not clear whether members of the public gallery heard, or would have been able to hear, the offending comments. They are not audible on the YouTube video that is available online. There was evidence that they were made in front of Council staff who would have been able to hear them but also evidence that the Respondent only raised her voice when speaking with the CEO and not otherwise. On balance, therefore, I find that there is insufficient evidence to establish that the comments were made publicly. On this basis I find no breach of clause 4(1) of the Standards.
58. Clause 4(2) requires the respondent to not deliberately mislead the Council or the public. The Applicant provided no evidence of how the Respondent had deliberately misled anyone. In the context of the meeting and on the evidence before me, I find not any deliberate misleading of the Council or the public.

ALLEGATION RELATING TO THE COUNCIL MEETING ON 17 OCTOBER 2023

Background

59. The 17 October Allegation concerns the behaviour of the Respondent during the 17 October 2023 Council meeting during item 12.11. This item concerned the Respondent's Notice of Motion, which had been moved at the 18 July 2023 meeting, that the Council introduce monthly, live and unscripted, public consultation forums (**Motion**).

60. The Council officer report did not support the Motion.
61. Cr Kerr moved an alternative motion to the Motion (**Alternate Motion**).
62. Cr Rasic proposed an amendment to the Alternate Motion.
63. Cr Kerr wished to amend Cr Rasic's amendment but was not permitted to do so by the Chair.
64. Cr Kerr left the meeting before the amendment to the Alternate Motion was voted on.
65. Members of the public gallery were yelling out during proceedings.
66. The meeting was chaired by (then) Mayor, Cr Lancashire.

The Applicant's submissions on the 17 October Allegation

67. The Applicant alleged:
 - a. The Respondent "*stormed out*" of the 17 October 2023 Council meeting after saying that her Alternate Motion had been "*hijacked*", implying that she was being silenced by Cr Lancashire who had chaired the meeting according to the Brimbank Governance Rules.¹
 - b. The Respondent's behaviour was disruptive and disrespectful to Councillors, the CEO and the Mayor.
 - c. Cr Kerr's behaviour was a breach of clauses 1 and 4 of the Standards.
68. Cr Rasic said that during the 17 October meeting:

Councillor Kerr proceeded to get aggressive, scream out that her motion was being hijacked, adversely spoke of the mayor and myself, before eventually slamming her laptop shut and storming out of the meeting. This can be all seen on the Brimbank Council YouTube recorded that night which I have provided.
69. Cr Rasic submitted:
 - a. She knew that the Respondent was eager to have the Motion passed in its original form, but the Council Officer recommendation did not support the Motion.
 - b. Cr Rasic wanted to find a middle ground and proposed an amendment to the Alternate Motion. She did not 'hijack' the Alternate Motion.
 - c. The Respondent could have spoken respectfully and there could have been a healthy debate about the Alternate Motion and amendment. There is a difference between being passionate and being proper and respectful towards others.
 - d. Cr Lancashire's witness statement on the way that Cr Kerr left the meeting is not true.
 - e. The group in the public gallery were Cr Kerr supporters who yelled out "*Cr Kerr for Mayor*". They were disruptive and talked over Cr Rasic every time she tried to speak.
 - f. The Chair correctly applied the Governance Rules.
70. Cr Papalia's evidence was:
 - a. The Respondent was interrupting Cr Rasic when it was Cr Rasic's turn to speak on her proposed amendment (while the wording was being put up on the screen).
 - b. The Respondent said that she felt her motion had been "*hijacked*" which was "*appalling*" and "*disgusting*" behaviour.
 - c. The Respondent then got up and walked out of the meeting.
 - d. The public gallery was making a lot of noise throughout.
 - e. The Respondent could have acted more respectfully. In her view, the way the Respondent left the meeting "*was an opportunity to razz up the [public] gallery*".
 - f. The Governance Rules had been followed.
71. Cr Nguyen's evidence was:
 - a. Cr Kerr looked upset about Cr Rasic's amendment and appeared frustrated as she wanted to speak to her Alternate Motion.

¹ The 2020 version of the Brimbank Governance Rules were in force at the time.

- b. When she was denied the opportunity to speak, the Respondent packed up her things and said that her motion had been “hijacked”.
- c. She recalled the public gallery shouting out, including yelling “Maria for Mayor”.

72. Cr Branton said:

- a. The Respondent was upset about the proposed amendment to her Alternate Motion, speaking in a loud voice and making a comment about it being “hijacked”.
- b. The Respondent then left the meeting.
- c. The Respondent appeared to be angry or frustrated, and directed that towards Cr Rasic.
- d. Correct meeting procedure was followed.

The Respondent’s submissions on the 17 October Allegation

73. The Respondent said:

- a. In the meeting, while the Alternate Motion was up on screen and before she got to speak to it, Cr Rasic sought to amend it in a manner that changed the essence of the proposal.
- b. Cr Rasic did not give an opportunity for the Alternate Motion to be seconded before Cr Rasic began speaking about her proposed amendments to it.
- c. The Governance Rules may have been applied correctly.

74. The Respondent said she was having an anxiety attack when she left the meeting:

I was so upset and distraught that that I didn't get a chance to articulate what I was trying to do because I was blindsided and gaslit. ... I did get visibly, um, passionate and upset and I - I don't, um, refute those - those words... I don't think that the way I was treated that night was fair and reasonable.

...

Yes, I walked out of the meeting because I was not given the opportunity to speak. It became too overwhelming for me so I left the meeting. Cr Rasic also spoke to me in an aggressive manner during the exchange. I put that down to robust political debate. I have no issue with passionate debate and I am also happy to agree to disagree. I left the meeting as I felt I could no longer deal with my anxiety levels at that time.

75. Cr Lancashire stated in his written statement:

- a. As Mayor at the time, he was responsible for maintaining good order at the meeting.
- b. The debate over public forums had raised concern with people in the gallery who made it clear they supported the proposal.
- c. He recalled Cr Kerr leaving the meeting but did not recall her making any comments when she left the meeting. He did not think Cr Kerr ‘stormed out’ of the meeting.

76. Cr Tachos stated in her written statement that during the meeting, the Chair went straight to Cr Rasic’s proposed amendment to the Alternative Motion, which had been seconded, without Cr Kerr having had an opportunity to speak to it. She said:

This obviously caused her tremendous distress as she was very passionate on advocating for greater transparency through forums. I saw she became highly anxious, due to feeling her [Notice of Motion] was shut down or completely altered. [I] believed [this] led her to walk out as she felt shut down - this is not the first time amendments have been put through without any prior discussion amongst Councillors. It creates a feeling of distrust and also control.

Findings of the Arbiter on the 17 October Allegation

77. Pursuant to s147(1) of the Act the Arbiter makes a finding of misconduct against Cr Maria Kerr on the basis that the Respondent has breached clauses 1 and 4 of Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020*.

Reasons

78. I have viewed the video footage of the 17 October 2023 Council meeting relating to this allegation. The video recording of the meeting shows:
- a. The Chair introduced the item (Item 12.11) and asked the Director to speak to the Council officer report. The Council officer report did not support the Motion.
 - b. Cr Kerr then proposed to move the Alternate Motion, as set out on the shared screen.
 - c. Before the Alternate Motion was seconded, Cr Rasic interjected and indicated that she wished to move an amendment to the Alternate Motion.
 - d. Cr Kerr objected, asking for the Alternate Motion (as per the shared screen) to first be seconded as required by the Governance Rules.
 - e. The Chair (Cr Lancashire) then asked the Respondent if she agreed with Cr Rasic's amendment. Cr Kerr responded that she did not know exactly what the amendment was as she was not a "*mind reader*". Members of the public gallery clapped at this comment.
 - f. Cr Rasic then spoke to her amendment to the Alternate Motion.
 - g. The Chair stopped Cr Rasic stating that she was required to state the proposed amendment and not speak to it. Cr Rasic replied that was what she was doing. The Chair stated that she needed to move it as an amendment.
 - h. Cr Kerr interrupted pointing out that she had not had an opportunity to speak to the Alternate Motion and said she did not understand why Councillors could not allocate one hour per month to the forums. The public gallery clapped and cheered.
 - i. The Chair then stated that he required a seconder to the Alternate Motion. There was some discussion about the correct procedure at this point. The Alternate Motion was then seconded.
 - j. Cr Kerr then spoke to her Alternate Motion. Members of the gallery supported Cr Kerr.
 - k. Cr Rasic was then given an opportunity to move her proposed amendment. She began to speak to the amendment before being interrupted by the Chair and asked to state the amendment. Cr Rasic then began to state her amendment.
 - l. Cr Kerr interrupted asking at what stage could she propose an amendment to the amendment. The Chair responded that Cr Rasic's amendment had priority.
 - m. Cr Rasic then proceeded with stating her amendment and as she did so, the wording of the amendment was typed up on the shared screen. As this was occurring, Cr Kerr made a point of order, again asking the Chair at what stage she was able to make amendments to Cr Rasic's amendment, saying that her Alternate Motion was being "*hijacked*". The Chair said that the amendment needed to be moved and seconded. Cr Kerr continued to interject and said variously: "*virtue signalling, that's what it is*", "*Scared of the community and scared to answer questions*", "*That's what we are paid for. We are paid by ratepayers to answer questions*".
 - n. As Cr Kerr continued to interject, her voice rose, she began tapping her finger on the desk to emphasize her words, and the tone of the room intensified with noise and clapping in the public gallery increasing. She continued, "*If you can't allocate one hour a month, what an absolute, appalling joke to our residents. This is appalling*" and "*Take note [pointing at the gallery], all of the residents of Brimbank should take note of this*".

- o. During this time, Cr Rasic made a point of order asking Cr Kerr to be respectful. The Chair also called a point of order several times, but Cr Kerr continued to speak. Cr Rasic then said there was no need for Cr Kerr to get angry and Cr Kerr responded, *"Let's just ignore the community"*. The Chair raised his voice considerably calling for order and asked Cr Rasic to finish her amendment. Cr Kerr again interjected saying, *"It's appalling, disgraceful behaviour"*. Members of the public gallery continued to call out. As Cr Rasic continued to put her amendments Cr Kerr continued to make comments.
 - p. Once Cr Rasic's proposed amendment to the Alternate Motion has been stated, it was then seconded. Someone in the gallery called out *"you are a puppet"*.
 - q. Cr Kerr then sought to amend the amendment and was denied by the Chair.
 - r. Members of the public gallery called out variously *"corruption, corruption"*, *"you're all sold out"*, *"you're all puppets"*, *"Maria Kerr for Mayor"*. Cr Kerr can be seen smiling in the direction of the public gallery.
 - s. The Respondent then began to pack up her belongings. The Chair warned the public gallery to stop their disruptive behaviour, or he would direct them to leave the meeting. As he did so, Cr Kerr said, *"I think the community has seen enough"*. The Respondent then left her seat and walked out of the meeting, continuing to make comments such as *"appalling"* and *"shameful"*. The public gallery continued to call out and clap.
 - t. The Chair then adjourned the meeting.
79. As this sequence of events shows, there was confusion about the correct procedure in several respects. For example, the Chair asked the Respondent whether she accepted Cr Rasic's proposed amendments to the Alternate Motion *before* the Alternate Motion had been seconded and *before* the substance of the proposed amendment had been stated. Cr Rasic sought to move her amendment to the Alternate Motion *before* the Alternate Motion had been seconded. The Respondent was clearly unaware of the process for amending a motion as set out in the Governance Rules.
80. I consider that the failure to correctly apply Governance Rules, together with what appears to have been a general lack of knowledge of the Governance Rules by several Councillors, created an atmosphere of confusion and misunderstanding in the meeting at the time of the Alternate Motion.
81. In this context, it is perhaps understandable that the Respondent became frustrated with the way this item proceeded. However, her frustration appears to also have been caused by her own lack of understanding of the Governance Rules and how they applied in the situation as it unfolded. She became most upset when she was unable to amend the proposed amendment which would have changed some of the key aspects of the Alternate Motion and she appears to have not understood that this could properly occur. At critical points she was unable to follow or use the correct procedure and instead resorted to speaking over Cr Rasic and the Chair in her frustration to get her points across. Matters were not helped by the public gallery which became more and more disruptive as the item proceeded.
82. Overall, I find that Cr Kerr's constant interruptions, speaking out of turn, her words, raised voice and demeanour throughout item 12.11 were discourteous and disruptive to other Councillors, primarily Cr Rasic and the Chair (Cr Lancashire). I also find that the way the Respondent left the meeting while making inappropriate and disruptive comments was discourteous. This conduct was not respectful of the meeting process and the fact that it occurred in front of members of the public (both those present in person and those viewing the meeting online) brings discredit on the Council. The fact that the Governance Rules had not been properly followed at times during item 12.11 did not give the Respondent leave to abandon compliance with the Governance Rules herself and to behave rudely.

83. The Respondent said she left the meeting because she became overwhelmed and anxious. This was not evident in her demeanour on the video footage. Rather, she appeared angry and frustrated about the proposed changes to her Alternate Motion, and at other times as if she were enjoying the comments of the public gallery. If the Respondent had felt overwhelmed or anxious, she could have advised the Chair that she felt unwell and asked for a short adjournment to the meeting rather than leaving as she did. It was always open to Cr Kerr to speak and behave courteously and follow procedure, but she chose not to do so.
84. Accordingly, I find that Cr Kerr breached clauses 1 and 4 of the Standards.

ALLEGATIONS RELATING TO EMAIL AND USE OF SOCIAL MEDIA

85. All but one of the following allegations relate to the use of the Respondent's social media Facebook account.
86. The Respondent made the relevant posts and comments using her Facebook account which is named "Maria Kerr – Councillor for Taylors Ward – Brimbank City Council".
87. It was not in contention that Cr Kerr was acting in her role as Councillor when making these posts and comments. The Supreme Court held in *Lew v Blacher* [2023] VSC 604 that the phrase 'in performing the role of a Councillor' as it appears in the Local Government (Governance and Integrity) Regulations 2020 is capable of applying to behaviour of a Councillor in communicating with members of the public (including via social media) about matters for decision before the Council (rather than being limited to the formal decision-making itself). Therefore, the posts and comments made by the Respondent using her Facebook account in this instance are capable of being considered to have been made in her role as a Councillor.
88. I find that the posts and comments were made in her role as a Councillor.

Allegation 4

89. Allegation 4 relates to an email sent by the Respondent on 18 November 2023 (the day after the 17 November 2023 meeting which is dealt with above) to the CEO and copied to Councillors and various Council officers, which stated:

*Hi Team,
I would like a formal statement regards Cr David's Covid status.
He told people as he walked in he has Covid.
I would like something in writing, regarding this.
Regards,
Cr Kerr*

90. The Applicant alleged that this was a breach of clause 1 of the Standards because it was "extremely inappropriate and unprofessional to discuss personal information about health and illness". The Applicant alleged that in any other workplace this would be illegal.
91. The Respondent admitted to sending the email saying she was very worried that Cr David had COVID when he attended the 17 November 2023 meeting (the night before). She said that her intention was not to shame Cr David but to find out if she had reason to be concerned. The Respondent stated in relation to the 17 November Allegations that she was concerned about catching COVID because she has children and elderly parents and wanted to understand whether she needed to isolate.

Findings of the Arbiter on Allegation 4

92. The Arbiter makes no finding of misconduct against Cr Maria Kerr in relation to Allegation 4.

Reasons

93. Clause 1 of the Standards requires that a Councillor treat other Councillors with dignity, fairness, objectivity, courtesy and respect. In my view, the Respondent's email does not breach this standard. Her request is to the CEO. It is for a Council position on the COVID status of another Councillor. It does not imply any disrespect to or for Cr David.
94. I make no comment on whether Cr Kerr's request is illegal (as alleged) or what the appropriate response for Council might have been. Those matters are outside my jurisdiction in this matter.

Allegation 5

95. Allegation 5 relates to a public post made by the Respondent on her Facebook page on 18 October 2023 (the day after the 17 October meeting discussed above). The post states:

I want to thank you all for the overwhelming support ...

Last night it was clear democracy was squashed, and clarified which councillors do not want any form of transparency or accountability.

Unfortunately the community needs to be aware who they are voting for.

I will continue to fight for the community and advocate against hypocrisy.

Messages of support:

... seeing how they [other Councillors] treated you is absolutely ridiculous and quite frankly disgusting and hurtful.

... the appalling behaviour of [Cr Rasic] last night was unwarranted and downright disgusting. ... she accused you of being abusive. When in fact it was her who had been abusive and disrespectful.

... Tonight at the Brimbank Council Meeting, we saw democracy trampled ... Cr Branton's complaint that [the motion] was too onerous was quite ludicrous, particularly in light of her utter lack of representation for Grassland Ward.

96. The sources of the "messages of support" were not provided.
97. The Applicant alleged that the posting of these comments by the Respondent was a breach of clause 1 of the Standards because the unattributed comments are negative towards Cr Rasic and several other Councillors.
98. The Respondent admitted to the post and said she did not make the negative comments herself.

Findings of the Arbiter on Allegation 5

99. Pursuant to s147(1) of the Act the Arbiter makes a finding of misconduct against Cr Maria Kerr on the basis that the Respondent has breached clause 1 of Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020.

Reasons

100. By posting unattributed comments on her Facebook page and referring to them as messages of support, it can reasonably be inferred that the Respondent agreed with the comments posted. By doing so, the Respondent effectively adopted the unattributed comments as her own.
101. The comments say publicly that the conduct of other Councillors at the 17 October 2023 meeting was "*disgusting*" (twice), "*abusive*" and "*ludicrous*". They also allege that a Councillor has failed to represent her Ward. These comments are disrespectful and offensive to those

Councillors. They fail to show common courtesy and cast doubt on the integrity of the Respondent's fellow Councillors. I therefore find that Cr Kerr has breached clause 1 of the Standards.

Allegation 6

102. Allegation 6 relates to a public post made by the Respondent on her Facebook page on 18 October 2023 (the day after the 17 November 2023 meeting discussed above). The post states:

I didn't lose anything last night, but the entire brimbank community did. ...[Cr] Sam David was thrown under the bus and made to look a fool and both positions went to Labor. ... 7 out of 8 positions this term have gone to Labor, jobs for mates, nepotism at its finest. Only you the community can change this, next year is your chance. Put Labor last and end the neglect and disgraceful money grabbing debortuary [sic – debauchery].

103. The Applicant alleged that that the post breached clause 1 of the Standards.
104. The Respondent submitted that the post speaks for itself and was her opinion. She felt sorry for Cr David, and it was not her intention to hurt him. She said that the post was her way of "venting my frustrations" and was just "general, robust political opinion".

Findings of the Arbiter on Allegation 6

105. Pursuant to s147(1) of the Act the Arbiter makes a finding of misconduct against Cr Maria Kerr on the basis that the Respondent has breached clause 1 of Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020.

Reasons

106. I find that the Respondent's comments relating to her fellow Councillors having thrown another Councillor "under the bus" and made him look a "fool", engaged in "jobs for the mates", "nepotism", "neglect and disgraceful money grabbing" debauchery to be disrespectful to them and offensive. It also casts doubt on their integrity.
107. I do not accept the Respondent's argument that her comments amount to robust political debate. Because the Standards are not intended to limit robust political debate (clause 5 of the Standards), a balance between robust political debate and maintaining the Standards must be struck. I find that Cr Kerr's post has crossed the line of what is acceptable political debate and has breached clause 1 of the Standards.

Allegations 7 and 10

108. Allegations 7 and 10 relate to a public post made by the Respondent on her Facebook page on 27 November 2023 as follows:
- Thank you for all the support ... I will continue to always support the community ... I won't request questions a week in advance or only give you an hour a quarter. ... I won't stand for bullying, harassment or stand over tactics.*
109. The Applicant alleged that this was a breach of clause 1 of the Standards because the comments that the Respondent will not stand for "bullying, harassment or stand over tactics" amounts to a false accusation against other Councillors and the Council itself. The Applicant also alleges that the comments are slanderous.
110. The Respondent stated:
- The post is my truth and how I felt, they are not false allegations, they are my truth and I believe I have the right to say that I feel unsafe and threatened. Why should someone have the right to tell me how I am meant to be feeling? It took me some time and therapy*

to be able to attend council again as I was feeling triggered, anxious and physically unwell at the thought of walking into that room again.

Findings of the Arbiter on Allegations 7 and 10

111. Pursuant to s147(1) of the Act the Arbiter makes a finding of misconduct against Cr Maria Kerr on the basis that the Respondent has breached clause 1 of Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020.

Reasons

112. I find that the Respondent's Facebook comments regarding not standing for bullying, harassment or stand over tactics could reasonably infer that this behaviour is taking place in Brimbank City Council meetings. This is because the Respondent's references to requesting questions a week in advance and only giving the community an hour each quarter are clearly references to the notice of motion that Cr Kerr put in the meeting dated 17 October 2023 (discussed above) which proposed that Councillors hold monthly, unscripted, public forums. Members of the public following this issue on Cr Kerr's Facebook page could reasonably have inferred that Cr Kerr was implying that she had been subject to bullying, harassment and stand over tactics in Council meetings.
113. The Respondent states that because the comments are "*her truth*" and that she has the right to say she felt unsafe and threatened. However, she provided no evidence to support why she felt unsafe or threatened, nor any specific evidence of the alleged bullying or standover tactics to support "*her truth*". Therefore, on the evidence before me, I accept the Applicant's submission that the Facebook post amounts to a false accusation and as a result, is disrespectful and discourteous to other Councillors.
114. I therefore find that Cr Kerr's has breached clause 1 of Schedule 1 of the Standards.

Allegations 8 and 17

115. Allegation 8 relates to a public post made by the Respondent on her Facebook page on 19 October 2023 as follows:

In case the community needs reminding who the puppets are!

#PutLaborLast

Ward	Independent	Branton	
	Labor	Thuy Dang	
	Labor	Jasmine Nguyen	Mayor (2021-) Deputy Mayor (2020-2021)
Harvester Ward	Labor	Sam David JP	
	Independent	Thomas O'Reilly	
Horseshoe Bend Ward	Independent	Virginia Tachos	
	Labor	Jae	

116. The Applicant alleged that this was a breach of clause 1 of the Standards because it referred to Cr Rasic as a Labor puppet.
117. The Respondent stated that she did not refer to Cr Rasic as a puppet, the image was from Wikipedia and that the post was "*normal political banter*".

118. Allegation 17 relates to a public comment made by the Respondent on the Keilor Downs Residents Facebook page on 16 December 2023 as follows:
I'm disgusted in our local member & mayor who are meant to be representing us. So far I hear crickets. It's time the community takes notice & votes these Labor puppets out.
119. The Applicant alleged that this post was a breach of clauses 1 and 4 of the Standards.
120. In response, the Respondent stated:
I was responding to safety concerns in my community and I was disappointed the Mayor of the day and our local member of State Government had not addressed the communities concerns. I did not use the names of those mentioned as to not offend them personally. This is common practice when advocating for your community. I apologise to Cr Rasic if she was personally offended, but the fact is the community's concerns were not addressed.

Findings of the Arbiter on Allegations 8 and 17

121. Pursuant to s147(1) of the Act the Arbiter makes a finding of misconduct against Cr Maria Kerr on the basis that the Respondent has breached clauses 1 and 4(1) of Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020.

Reasons

122. For Allegation 8, the Respondent's post (at least the portion provided in the Application) does not include reference to Cr Rasic. It does, however, clearly highlight Crs Dang, Nguyen and David as being Labor Councillors. I note that the final highlighted Councillor's name is cut off, only referring to "Jae". This is most likely a reference to Cr Jae Papalia. I find that the reference to "puppets" together with the hashtag "#PutLaborLast" and highlighting of Labor Councillors could reasonably be interpreted as the Respondent saying that the Brimbank Labor Councillors are "puppets". Similarly, for Allegation 17, the reference to "Labor puppets" after reference to the Mayor could reasonably be interpreted as the Respondent referring to Cr Rasic as a Labor puppet.
123. Reference to a puppet in this context infers that the Brimbank Labor Councillors are not acting on their own volition but are controlled by the Labor Party. Used in this context, it is a disparaging term and is disrespectful to the Councillors concerned. Such a comment casts doubt on the integrity of Councillors and brings the Council into disrepute because it suggests that Councillors are not acting in the best interests of the municipality. These comments were made in public fora, that is the Respondent's public Facebook page and the Keilor Downs Residents Facebook page. I therefore find that the Respondent has breached clauses 1 and 4(1) of the Standards.
124. For Allegation 17, the Applicant also alleges that by using the word "disgusted" in reference to the Mayor "who [is] meant to be representing us", the post is a breach of clause 4 of the Standards. The Applicant did not specify whether clause 4(1) or 4(2), or both, of the Standards had (allegedly) been breached.
125. I do not accept the Respondent's arguments that because she did not name the Mayor or that such behaviour is common practice that the behaviour is therefore acceptable. The Respondent's behaviour must be judged against the Standards. Clause 4(1) requires that the Respondent not bring discredit on the Council. Referring to other Councillors as puppets and expressing disgust in the Mayor in a public forum such as Facebook brings discredit on the Council, in breach of clause 4(1).
126. Clause 4(2) requires the respondent to not deliberately mislead the Council or the public. The Applicant provided no evidence of how the Respondent had deliberately misled anyone. In

the context of the post and on the evidence before me, I find not any deliberate misleading of the Council or the public.

Allegation 12

127. Allegation 12 relates to a public comment made by the Respondent on the “Community Hub for Keilor” Facebook page on 4 December 2023 under a link to an article in the Dandenong Star Community titled, “Long words spark ‘caucus’ furore” as follows:
Labor lowlife crooks! I’d be embarrassed to be associated with that scum!
128. The Applicant alleged that this was a breach of clause 1 of the Standards.
129. The Respondent stated that the comment was not about Brimbank but instead about another council “on the other side of town”.

Findings of the Arbiter on Allegation 12

130. Pursuant to s147(1) of the Act the Arbiter makes a finding of misconduct against Cr Maria Kerr on the basis that the Respondent has breached clause 1 of Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020.

Reasons

131. I find that the Respondent’s comments “*Labor lowlife crooks*” and “*scum*” could be reasonably interpreted as referring to the Councillors of Greater Dandenong Council given that the comment is posted below a link to an article about deputy mayoral elections at Greater Dandenong Council. The comments are clearly offensive and disrespectful of those Councillors.
132. Clause 1 of the Standards requires that a Councillor treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect. The duty is not confined to Brimbank. Whether Great Dandenong Councillors are considered to be “other Councillors” or “members of the public”, the Standards require that the Respondent show them respect which she has failed to do so. I therefore find that the Respondent has breached clause 1 of the Standards.

Allegation 16

133. Allegation 16 relates to a public post by the Respondent on her Facebook page on 17 October 2023 as follows:
If you are free come and watch tomorrow night’s Brimbank Council meeting in person or online. See for yourself who is representing the communities [sic] best interest & who just wants an easy pay check & zero accountability.
134. The Applicant alleged the post was a breach of clause 1 of the Standards because it infers that some Brimbank Councillors are here just for an “*easy pay check and zero accountability*”.
135. The Respondent stated she believed the post to be true and she did not name anyone.

Findings of the Arbiter on Allegation 16

136. Pursuant to s147(1) of the Act the Arbiter makes a finding of misconduct against Cr Maria Kerr on the basis that the Respondent has breached clause 1 of Schedule 1 of the Local Government (Governance and Integrity) Regulations 2020.

Reasons

137. I find that the Respondent’s post reasonably infers that some Brimbank City Councillors are not representing the community’s best interests and are only Councillors to receive a salary without working hard and without being accountable. These comments are disparaging and

disrespectful to other Councillors and cast doubt on the integrity of Brimbank Councillors. The comments were made in a public forum.

138. The fact that the Respondent believes this to be true and did not name the Councillors does not absolve her of the statutory requirement to comply with the Standards.

139. Therefore, I find the Respondent has breached clause 1 of the Standards.

SANCTIONS

Submissions on sanctions

140. The parties made no submissions on sanctions.

Sanctions

141. Pursuant to s147(2)(a) of the Act, the Arbiter directs Cr Kerr to:

17 November Allegations

- a. make a **verbal apology** to all of her fellow Councillors for the disrespect she showed to them during the 17 November 2023 Council meeting by making inappropriate comments and failing to show them courtesy and respect;
- b. make a **verbal apology** to the CEO, Ms Fiona Blair, for speaking to her loudly and aggressively on the night of 17 November 2023 and failing to show her courtesy and respect;

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- c. make a **verbal apology** to all of her fellow Councillors for the disrespect and lack of courtesy to Crs Rasic, Lancashire and other Councillors during the 17 October 2023 Council meeting, and for her discourteous and disruptive behaviour in leaving the 17 October meeting while it was still in progress;

Allegations relating to email and use of social media

- d. make a **verbal apology** to all of her fellow Councillors for the discourteous, disrespectful and offensive comments on:
 - i. her Facebook page, posted on 17 October 2023;
 - ii. her Facebook page, posted on 18 October 2023;
 - iii. her Facebook page, posted on 19 October 2023;
 - iv. her Facebook page, posted on 27 November 2023;
 - v. the Keilor Downs Residents Facebook page, posted on 16 December 2023;
- e. make a **verbal apology** to Cr Branton for her disrespectful and offensive comment on her Facebook page, posted on 18 October 2023, that Cr Branton had not represented the Grasslands Ward.

In each case, the apology must be spoken by her in person at the next Council meeting after this decision (and statement of reasons) is tabled in accordance with s147(4) of the Act. In each case, the apology must be unreserved and reference that Cr Kerr has engaged in misconduct by breaching the standards of conduct set out Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020*.

142. Pursuant to s147(2)(a) of the Act, the Arbiter directs Cr Kerr to make a **written apology**, on her public Facebook page (the same page as used in the Allegations), to her fellow Councillors for the discourteous, disrespectful and offensive comments about them she posted on:

- i. her Facebook page posted on 17 October 2023;
- ii. her Facebook page, posted on 18 October 2023, regarding the 17 October 2023 meeting;

- iii. her Facebook page posted on 19 October 2023; and
- iv. her Facebook page posted on 27 November 2023.

The apology must be unreserved and reference that Cr Kerr has engaged in misconduct by breaching the standards of conduct set out Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020* and be made **prior to** the Council meeting at which this decision (and statement of reasons) is tabled in accordance with s147(4) of the Act.

143. Pursuant to s147(2)(a) of the Act, the Arbiter directs Cr Kerr to make a **written apology**, on the Keilor Downs Residents Facebook page, to Cr Rasic for the disparaging and disrespectful comments about her she posted on the Keilor Downs Residents Facebook page on 16 December 2023, which apology must be unreserved and reference that Cr Kerr has engaged in misconduct by breaching the standards of conduct set out Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020* and be made **prior to** the Council meeting at which this decision (and statement of reasons) is tabled in accordance with s147(4) of the Act.
144. Pursuant to s147(2)(a) of the Act, the Arbiter directs Cr Kerr to make a **written apology by letter** sent to the Councillors of Greater Dandenong for her offensive and disrespectful comments about the Greater Dandenong City Councillors on the “Community Hub for Keilor” Facebook page on 4 December 2023 suggesting that they are “*Labor lowlife crooks*” and “*scum*”, which apology must be unreserved and reference that Cr Kerr has engaged in misconduct by breaching the standards of conduct set out Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020* and be made **prior to** the Council meeting at which this decision (and statement of reasons) is tabled in accordance with s147(4) of the Act.
145. Pursuant to s147(2)(b) of the Act, Cr Kerr **is suspended** for the period of three weeks which will commence on the day after this decision (and statement of reasons) is tabled in accordance with s147(4) of the Act.
146. Pursuant to s147(2)(e) of the Act, the Arbiter directs Cr Kerr to **attend training** (which could take the form of coaching) to increase her understanding of:
 - a. Brimbank Governance Rules and correct meeting procedure (at least one session);
 - b. how to prosecute her political opinions in a robust manner while meeting the Standards, in particular the need to be respectful of all people while engaging in political debate (at least monthly sessions over not less than three months);
 - c. the appropriate use of social media and the role and responsibilities of being a Councillor which is to include Council’s standards and expectations for Councillor use of social media for at least the following:
 - i. engaging in respectful debate in accordance with the Standards and handling of varying points of view on social media; and
 - ii. examples of engaging in debate on social media that does and does not breach the Standards but still allows for robust public debate (at least one session).

The Council (through the Chief Executive Officer and/or Council officers) is to organise the above training (or coaching), which may be provided by one or more providers as appropriate, as soon as possible.

Reasons

147. Although invited to do so, neither party made any submissions on appropriate sanctions.
148. In reaching my decisions on appropriate sanctions I have considered the following matters:
 - a. The findings in this arbitration demonstrate a pattern of behaviour by the Respondent of using Council meetings and social media to engage in disrespectful behaviour towards her fellow Councillors.

- b. Throughout these internal arbitration proceedings, the Respondent showed little insight into what is required of her to meet the Standards. She also showed little insight into the impact of her behaviour on her fellow Councillors or the reputation of the Council as an institution in the community. Her submissions indicated a belief that because she has not previously been called out for inappropriate behaviour or that what she says is “*her truth*”, she can say what she likes. She also appears to have given little consideration to her position in the Brimbank community as a role model when posting about others calling them “*scum*”, “*lowlife crooks*” and so on.
- c. The Respondent gave the impression of being a passionate advocate for the causes she believes in, and this is to be commended. However, she needs to develop and hone her skills in robustly prosecuting her political opinions in a manner that also meets the requirements of the Standards. She also needs to better understand the Brimbank Governance Rules so that she can better take part in Council meetings. For these reasons, I consider it necessary for Cr Kerr to undertake the training specified.
- d. I believe that a three-week suspension will provide an appropriate length of time for Cr Kerr to reflect on her behaviour.
- e. I do not consider sanctions under ss147(2)(c) or (d) of the Act to be appropriate because I am not aware of any position representing the Council or chair of a delegated committee held by the Respondent.
- f. The Arbiter has no power to direct the Respondent to take down the offending social media posts referred to in Allegations 5, 6, 7, 8, 10, 12, 16 and 17. However, while those posts remain in the public domain, they continue to constitute breaches of the Standards and could form the basis of future allegations of (serious) misconduct. I therefore recommend that the Respondent remove these posts from all social media platforms as soon as possible, if she has not already done so.

Dr Meredith Gibbs

Legal Member

Date: 30 May 2024