

ARBITRATION PURSUANT TO DIVISION 5, PART 6 OF THE

LOCAL GOVERNMENT ACT 2020

Internal Arbitration Process

Brimbank City Council IAP 2024-5

Applicants: Councillors Ranka Rasic (Mayor), Jae Papalia, Jasmine Nguyen, Sam David and Sarah Branton

Respondent: Councillor Virginia Tachos

Arbiter: Ms Sarah Fowler

Date: 31 May 2024

DETERMINATION

Pursuant to s147(1) of the Local Government Act 2020 (the Act) the Arbiter makes a finding of misconduct against Cr Virginia Tachos in relation to this Application.

Pursuant to s 146(2), Cr Tachos is directed to make a formal apology to Council regarding the proven misconduct in this Decision and attend training on the appropriate use of social media by a local government representative.

SUMMARY OF ALLEGED MISCONDUCT AND FINDINGS

1. The Application listed 10 allegations of misconduct, in a disjointed, random and sometimes incomplete or inaccurate manner. In short, it is alleged the Respondent breached sections 3.1 and/or 3.4 of Brimbank City Council's *Councillor Code of Conduct* (the Councillor Code of Conduct) in:
 - a. comments the Respondent allegedly made regarding fellow Councillors (**Allegations 1 and 9**) and directly to Cr Rasic (**Allegation 6**) during and following the mayoral vote at the Council meeting on 17 November 2023 (the Council Meeting);
 - b. an email the Respondent sent to the CEO and all Councillors on 18 November 2023 regarding perceived procedural irregularities at the Council Meeting (**Allegation 2**);
 - c. two comments made by the Respondent in the comments thread to a Facebook post by Cr Maria Kerr on 18 November 2023 regarding the outcome of the mayoral vote (**Allegations 3 and 4**);
 - d. one comment made by the Respondent in the comments thread to a Facebook post by Brimbank Community Action Group dated 21 November 2023 regarding the outcome of the mayoral vote (**Allegations 5 and 7**);
 - e. one comment made in the comments thread to an unidentified Facebook post (undated) (**Allegation 8**); and
 - f. a Facebook post on the Councillor Virginia Tachos page dated 27 November 2023 (**Allegation 10**).
2. I find the Respondent engaged in misconduct by breaching:
 - a. Section 3.1 of the Councillor Code of Conduct when at the Council Meeting, she:
 - i. referred to her fellow Councillors as "rats" (**Allegation 1**); and
 - ii. shouted at Cr Rasic, called her "shallow" and swore in the public gallery (**Allegations 6 and 9**).
 - b. Section 3.4 of the Councillor Code of Conduct in that she brought discredit on Council when she:
 - i. made sweeping statements on social media, implying Council tolerates and ignores inappropriate behaviours experienced by Councillors, when, by her own admission, she chose not to raise her concerns through the processes available to her in Section 7 of the Councillor Code of Conduct (**Allegations, 4, 5/7 and 10**); and
 - ii. stated on social media that Council ran a "fake process" for the mayoral election (**Allegation 8**).
3. The Respondent is directed to:
 - a. make a formal apology to Council regarding her proven misconduct summarised in paragraph 2 (at the first Council Meeting following her return from a leave of absence scheduled to be completed in late June 2024); and
 - b. attend training regarding the appropriate use of social media by a local government representative.

REASONS FOR DECISION

The Application

4. The Application, dated 20 December 2023, alleges the Respondent breached Sections 3.1 (Treatment of others), 3.4 (Counsellor must not discredit or mislead Council or public) and/or 5.7 (Occupational health and safety) of Brimbank City Council's *Councillor Code of Conduct*.
5. Sections 3.1 and 3.4 of the Councillor Code of Conduct reflect Clauses 1 and 4 in Schedule 1 of the *Local Government (Governance and Integrity Regulations) 2020 – Standards of Conduct* (the Standards). The Act limits the jurisdiction of an arbiter to any breaches of the prescribed Standards (s 141(1)). This decision will therefore only consider whether the alleged conduct has breached Standards 1 and 4 (sections 3.1 and 3.4 of the Councillor Code of Conduct, respectively).

3.1 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:

- (a) takes positive action to eliminate discrimination, sexual harassment and victimisation in accordance with the Equal Opportunity Act 2010; and*
- (b) supports the Council in fulfilling its obligation to achieve and promote gender equality; and*
- (c) does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors; and*
- (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.*

3.4 Councillor must not discredit or mislead Council or public

In performing the role of a Councillor, a Councillor must:

- ensure that their behaviour does not bring discredit upon Council; and*
- not deliberately mislead Council or the public about any matter related to the performance of their duties.*

6. The Applicants nominated Cr Rasic as their representative for the Application.
7. The Application listed 10 alleged breaches of the Standards (detailed below), and appended:
 - a. screenshots from social media feeds (extracts only);
 - b. a Channel 31 recording of the Council meeting on 17 November 2023;
 - c. a mobile phone video recording of an exchange between Cr Rasic and the Respondent at the Council meeting on 17 November 2023; and
 - d. links to Star Weekly newspaper articles.

8. In some instances, the supporting documentation attached to the Application was either insufficient or inaccurate. Throughout the Arbitration process, I requested additional supporting evidence and/or explanation regarding the Allegations. This is detailed throughout this Decision, where appropriate.
9. It became apparent from the Respondent's written response and during discussions at the hearing that the Applicants had originally made an application regarding the alleged misconduct of two Councillors in one application but had been informed by the Principal Councillor Conduct Registrar that the applications would need to be separated. This may in part explain the disarray of the Application and why it took some untangling during the Arbitration process.

Arbitration Process

10. I was appointed as arbiter to this matter by the Principal Councillor Conduct Registrar on 2 April 2024, and introduced to Brimbank City Council's Councillor Conduct Officer via Teams on 8 April 2024. At this handover meeting, I requested additional information from the Applicants, namely:
 - a. the email from the Respondent to the CEO dated 18 November 2023 (referenced in **Allegation 2**); and
 - b. the initial posts and full comments thread for the social media comments which form the substance of **Allegations 3, 4, 5 and 10**.
11. I met with Cr Rasic and the Respondent separately via Teams on the 23 and 24 April 2024, respectively to outline the arbitration process and provide them with an opportunity to ask any questions prior to the Directions Hearing. At that stage, I repeated my request to Cr Rasic to provide the additional information detailed in paragraph 10 above.
12. Cr Rasic provided the email requested in paragraph 10 on 29 April 2024 and stated she was still compiling the social media threads.
13. The Directions Hearing for the Application was held online on 29 April 2024. The resulting Directions were as follows.
 - a. *The hearing was scheduled for Monday 13 May 2024 at Keilor Community Hub.*
 - b. *The Applicants were asked to provide the following information to the Councillor Conduct Officer (for provision to the Arbiter and Respondent) by Monday 6 May 2024.*
 - i. *Regarding Allegation 1, the timings in the Channel 31 recording where the Respondent was alleged to have made the comments referenced in Allegation 1.*
 - ii. *Regarding Allegations 3, 4, 5 and 10, the initial Facebook posts and all relevant commentary to the posts.*
 - c. *The Respondent was asked to provide the following information to the Councillor Conduct Officer (for provision to the Arbiter and Applicants) by Monday 6 May 2024.*
 - i. *A written response to each Allegation in the Application.*

- ii. *Any supporting documentation to her written response, including any witness statements.*
 - d. *The Applicants and Respondent were both asked to provide the following information to the Councillor Conduct Officer (for provision to the Arbiter and other party) by Monday 6 May 2024.*
 - a. *The names and contact details for any witnesses they intended to call at the hearing, and a summary of the evidence the witness will provide.*
 - b. *The names and contact details for the support person they intend to accompany them to the hearing (if any).*
14. On 7 May 2024, the Councillor Conduct Officer forwarded me the Respondent's written response which included the following attachments:
 - a. witness statements from Neil Hunichen, Bruce Lancashire, Maria Kerr, Victoria Borg, Dianne Cappelli, Jenny Isa and Mark Jekic; and
 - b. various emails between the Respondent and Council officers, including the CEO and Councillor Conduct Officer.
 15. The Respondent indicated she did not intend to call any witnesses at the hearing and nominated a support person.
 16. On the same day, the Councillor Conduct Officer also forwarded me the following additional information provided by the Applicants:
 - a. a Facebook post by Maria Kerr dated 18 November 2023 and its comments thread;
 - b. a Facebook post by Brimbank Community Action Group dated 21 November 2023 and its comments thread;
 - c. witness statements from Rebecca Plieger, Uros Rasic and Cr Jae Papalia;
 - d. emails relating to a variety of different issues including reminders of Councillor Code of Conduct obligations, media protocols and a "Working Together" workshop; and
 - e. various screenshots of social media posts titled "Cr Tachos performing duties".
 17. The Applicants did not provide the timings in the Channel 31 recording of the Council meeting as directed (see paragraph 13(b)(i)).
 18. Cr Rasic indicated she intended to call Rebecca Plieger, Uros Rasic, Jae Papalia and Georgina Papafotiou as witnesses at the hearing.
 19. The hearing was held on 13 May 2024 as scheduled. Only Cr Jae Papalia was called as a witness by Cr Rasic.
 20. The hearing was conducted in three parts.
 - a. **Allegations 1, 6 and 9** relating to the events at the Council Meeting on 17 November were heard together first. Cr Rasic made oral submissions on behalf of the Applicants and called Jae Papalia as a witness. The Respondent cross-examined Cr Papalia. The Respondent then provided her oral response to these Allegations and Cr Rasic exercised her right of reply.

- b. **Allegation 2** relating to an email sent by the Respondent to the CEO and all Councillors on 18 November 2023 was heard next, with both parties providing oral submissions.
 - c. The remainder of the allegations - **Allegations 3-5, 7,8 and 10** - were then heard together as they all relate to alleged comments by the Respondent in social media or the local newspaper, Star Weekly.
- 21. As will be elaborated on in the discussion of **Allegations 7 and 8** below, there was some confusion regarding the substance of these two allegations. At the hearing, I asked Cr Rasic to clarify them. Cr Rasic took my questions on notice and on 14 May 2024 provided additional supporting evidence in the form of screenshots from a Facebook comments thread (undated). These were provided to the Respondent and her response to them was provided to me via the Councillor Conduct Officer.
- 22. Further, during the hearing, Cr Rasic stated there were Council officers present at the Council Meeting who witnessed the comments in **Allegations 1, 6 and 9**, but she had been told by the CEO that she could not call them as witnesses as they need to remain impartial. On 15 May 2024, I submitted a request to the CEO (via the Councillor Conduct Officer) for any contemporaneous notes or records made by the CEO or other Council staff regarding the Council Meeting on 17 November 2023, in particular any notes or records relating to the conduct of the Respondent.
- 23. On 22 May 2024, the CEO responded denying my request for these documents. I responded to her email on 23 May 2024 explaining that my request would not impact the impartiality of Council officers as the documents were being requested by me as the arbiter, and not either party to support their arguments. I asked whether this would change her mind on providing the documents. She responded on 30 May 2024, maintaining her position and denying my request.

Allegations 1, 6 and 9 – Council Meeting on 17 November 2023 (the Council Meeting)

- 24. **Allegations 1, 6 and 9** allege breaches of the sections 3.1 and 3.4 of the Councillor Code of Conduct by the Respondent during, and following, the mayoral vote at the Council Meeting on 17 November 2023 (the Council Meeting).

Allegation 1

- 25. In **Allegation 1**, the Applicants allege the Respondent breached section 3.1 of the Councillor Code of Conduct by making comments during the Council Meeting including:
 - a. “scraping the bottom of the barrel”, “getting desperate”, “betrayal”; and
 - b. comments alleged to be “unkind and unprofessional” references to Cr Branton’s extended absence due to illness, such as “not turning up all year”.
- 26. The Applicants provided the following supporting evidence:
 - a. a Channel 31 recording of the Council Meeting; and
 - b. witness statements by a former Council officer, Rebecca Pielger, and Cr Jae Papalia.
- 27. Cr Papalia was also called as a witness at the hearing.

28. I have viewed the Channel 31 recording of the Council Meeting. The Councillors microphones were muted unless activated by a speaker, so I was unable to make out any comments by the Respondent. I watched her closely in the video and could see she was speaking in the direction of Cr Kerr while Cr Rasic was changing into the mayoral robes following her election as Mayor, but as there was no audio, I could not discern what she was saying.
29. Cr Rasic concedes she did not hear any of the alleged comments personally. She says the comments were overheard by Council officers but that she could not call them as witnesses as the CEO had advised her that attending an arbitration as witnesses would jeopardise their impartiality.
30. Rebecca Pielger, a former Council staff member, provided a written statement saying she “felt uncomfortable” at the Council Meeting because of comments being made by the Respondent and Cr Kerr. She stated that the Respondent and Cr Kerr were “mumbling under their breath and making glances to other Councillors during the meeting” and that she found the behaviour to be “disrespectful”. She says she could not recall the exact comments but that “they were suggesting the election was a farce and they were singling out Councillors for how they voted”.
31. Cr Papalia testified that the Respondent specifically made comments across the room to Cr Kerr regarding “rats in the ranks” and Councillors “needing RATs tests”.
32. At the hearing, the Respondent admitted she made comments about “rats” but said she was referring to a film called “Rats in the Ranks” and in a separate discussion, expressed concern about whether Cr David had taken a Rapid Antigen Test (RAT) as he wore a mask to the meeting, and she suspected he may have Covid-19. Cr Papalia maintained that that was not her interpretation of the Respondent’s comments about “rats”.
33. Otherwise, the Respondent denies making any of the alleged comments. In her written response she noted this Allegation “has also been used in another Arbitration for another Councillor Colleague” (presumably the Councillor included on the initial joint Application before it was separated out, as discussed in paragraph 9). This was supported by the witness statement of Bruce Lancashire who stated that the allegation was a “cut and paste” of an allegation against another Councillor.
34. Crs Lancashire, Borg and Kerr all provided written statements that they were present at the Council Meeting and did not hear the Respondent make the alleged comments.
35. As Cr Rasic did not personally hear any of the comments, she conceded she could not say which of the alleged comments the Applicants submit were made by the Respondent and which were made by the “other Councillor”. Similarly, the witness statement provided by Rebecca Pielger does not specifically attribute comments to the Respondent. This is where the contemporaneous notes of Council officers could have been helpful.
36. For the most part, **Allegation 1** is denied by the Respondent and not supported by the Applicants’ evidence.
37. The only evidence regarding specific comments made by the Respondent came from Cr Papalia regarding Councillors being “rats”, during the hearing. These comments were not referenced in the Application, and do not fit within the initial scope of **Allegation 1** as they are quite distinct from the alleged comments, namely:

c. “scraping the bottom of the barrel”, “getting desperate”, “betrayal”; and

- d. comments alleged to be “unkind and unprofessional” references to Cr Branton’s extended absence due to illness, such as “not turning up all year”.
- 38. However, I cannot disregard this evidence – particularly as Cr Papalia is one of the Applicants. I found Cr Papalia to be credible and measured in providing her evidence. Further, I find it implausible that the Respondent was making innocent and unrelated comments about “rats” in the politically-charged context of the Council Meeting.
- 39. I think it is more likely than not the Respondent did make comments implying some of her fellow Councillors were “rats”. In doing so, she failed to treat her fellow Councillors with dignity, fairness, objectivity, courtesy and respect and therefore breached section 3.1 of the Councillor Code of Conduct.

Allegations 6 and 9

- 40. In **Allegation 6**, the Applicants allege the Respondent breached section 3.1 of the Councillors Code of Conduct when she “verbally abused” Cr Rasic at the Council Meeting calling her “fake”, “shallow”, “hiding under the robes” amongst other “nasty comments”, resulting in the Respondent being “whisked away by her supporters”.
- 41. In **Allegation 9**, the Applicants allege the Respondent breached sections 3.1 and 3.4 of the Councillor Code of Conduct when she made “multiple unfounded accusations... implying improper interference by external parties” in the election of the Mayor, including:
 - a. “Oh, I bet Natalie Hutchins is really happy, isn’t she?”;
 - b. “Why don’t you go lap it up with your Labor buddies?”; and
 - c. “I’m not scared of you and what you’re hiding behind those robes... Yeah Suleyman team and Hutchins.... they must be happy. I’ll take you to the inspectorate.”
- 42. I have decided to consider these allegations together as it became apparent at the hearing that these comments were all made in the same context, with the comments in **Allegation 9** leading to the comments in **Allegation 6**.
- 43. The Applicants provided the following supporting evidence:
 - a. a mobile phone video recording of an exchange between Cr Rasic and the Respondent at the Council Meeting; and
 - b. witness statements by Cr Jae Papalia and Cr Rasic’s son, Uros Rasic.
- 44. Cr Papalia was also called as a witness for this Allegation.
- 45. The mobile phone video recording runs for 35 seconds and includes the following.
 - a. The Respondent can be seen in the public gallery pointing and speaking in a fast-paced, elevated tone to Cr Rasic (who was on the other side of the red rope) saying something indiscernible followed by “and respect other Councillors”.
 - b. Cr Rasic responds by saying “You’ve put your hand up for 8 years and no one wants to vote for you, you should tap out of it.”
 - c. The Respondent then responds, “is that the best you can do? Come on, Ranka”
 - d. Cr Rasic says, “I can do much better than that, trust me. You are terrible.” She is then led away by another Councillor.
 - e. The Respondent then says, “Behind that veneer, you are shallow”.

- f. Another person (not on camera) says, “Good on you, Virginia. Stand up for yourself.”
 - g. The Respondent then says loudly and in an agitated tone, “I am going to stand up for myself. This is bullshit, and let the Inspectorate decide. Nice deal in the background. Good job.”
 - h. Cr Rasic then yells back to the Respondent from the other side of the room, “I am so happy that I am Mayor right now.”
 - i. The Respondent says, “yeah, twice Mayor but what have you done in last 12 months, Ranka? What have you done?”
46. In her oral submission at the hearing, Cr Rasic said that leading up to this video recording, the Respondent was shouting in the public gallery in her direction “about Hutchins and Suleyman being happy”. Cr Rasic approached her to ask if she was “OK”, and the Respondent kept “shouting” at her. She admits she said words to the effect, “You have put your hand up for 8 years and did not get support”. She said she was “regretful” and “apologetic” about this comment as it was “not normally something [she] would do”.
47. Cr Papalia’s evidence, provided in her witness statement and orally at hearing, is that while speaking to people in the public gallery, the Respondent started shouting at Cr Rasic about “being a Hutchins supporter” and “something about Hutchins being happy”. She says Cr Rasic approached the Respondent to ask if she was “OK” but that the Respondent kept shouting at her. She said Cr Rasic said words to the effect, “you have put your hand up so many times” and the Respondent kept shouting at her. Cr Papalia says she walked Cr Rasic away from the Respondent but the Respondent “continued to abuse” Cr Rasic yelling words to the effect, “you are shallow”, “fake”, “you’ve got no respect” and “what have you achieved” and “is that all you got”.
48. Uros Rasic was not present at the Council Meeting and his statement does not include any direct evidence of what occurred in these Allegations. He only attested to Cr Rasic being “visibly shaken and distressed” after the Council Meeting.
49. The Respondent says she was “taunted, insulted and provoked” by Cr Rasic. She alleges Cr Rasic walked towards her when she was in the gallery talking with her supporters and said, “how does it feel to be a loser?” The Respondent admits she reacted emotionally to this, but that she cannot recall what she said as it was “highly charged and stressful after the mayoral vote”.
50. When asked directly by me whether she said any of the comments in **Allegation 9**, the Respondent denied the first two comments but said she “could have said something similar” to the comment:

I’m not scared of you and what you’re hiding behind those robes... Yeah Suleyman team and Hutchins.... they must be happy. I’ll take you to the inspectorate

but she was “not sure” as she could not recall what she said.

51. The Respondent provided the following supporting evidence:
- a. witness statements from Maria Kerr, Neil Hunichen, Victoria Borg and Mark Jekic; and
 - b. emails from Dianne Chappelli to CEO dated 23 November 2023 and Jenny Isa to Cr Tachos dated 24 November 2023.
52. The following is a summary of their evidence as it relates to **Allegation 6**.

- a. Cr Kerr stated that she heard Cr Rasic say “How does it feel to be a loser” to the Respondent but that she then left the chamber and did not hear the Respondent’s words after this.
 - b. Neil Hunichen stated that he heard Cr Rasic say to the Respondent, “I’ve now been the Mayor twice and you will never be a Brimbank Mayor” and that the Respondent “was then extremely frustrated and angry and responded with comments that I’m sure she now regrets”.
 - c. Mark Jekic stated that the Respondent “only became upset after Mayor Rasic taunted her after the meeting, saying that Cr Tachos would never become Mayor”.
 - d. Jenny Isa stated in an email to the Respondent that Cr Rasic “took aim” at the Respondent and said, “you have run for Mayor so many times, and that you will never be Mayor”.
 - e. Cr Borg and Dianne Chapelli did not directly witness the interaction between Cr Rasic and the Respondent but says the Respondent told them later that Cr Rasic had said words to the effect “I’ve been a Councillor for 4 years and I’ve been Mayor twice and Deputy Mayor and you will never be Mayor.”
53. None of the Respondent’s supporting witness statements said anything relevant to **Allegation 9**.
54. At the hearing, I asked the Respondent whether Cr Rasic’s comment discernible on the mobile phone video recording - “You’ve put your hand up for 8 years and no one wants to vote for you” - could be the comment she alluded to when she said Cr Rasic said “how does it feel to be a loser” and/or words to the effect “I’ve been a Councillor for 4 years and I’ve been Mayor twice and Deputy Mayor and you will never be Mayor.” The Respondent maintains they were separate and additional comments.
55. There is insufficient evidence to determine whether Cr Rasic called the Respondent “a loser”. The only witness to support this is Cr Kerr who is closely aligned with the Respondent and therefore not a reliable witness. None of the other witnesses referred to this statement.
56. It is more likely than not that all the various recollections of Cr Rasic commenting on the Respondent “never being Mayor” relate to the same comment captured on the mobile phone recording (ie. “You’ve put your hand up for 8 years and no one wants to vote for you”). This comment is certainly provocative, but the Respondent is responsible for her own behaviour, regardless of provocation. Further, the video recording shows that the Respondent was already pointing at Cr Rasic and speaking in a loud and agitated tone prior to this. Her behaviour then escalated into shouting and swearing from the gallery. She did call Cr Rasic “shallow” as alleged.
57. It is also more likely than not that the Respondent made comments regarding “Hutchins and Suleyman being happy” or some reference to an alleged deal being made between ALP-aligned Councillors and their supporters prior to the mayoral vote, because:
- a. this aligns with her comment on social media in **Allegation 8**;
 - b. it is a dominant theme in her written response; and
 - c. she admitted at the hearing that she “she may have said something similar”.
58. Generally, I consider comments regarding alleged “backroom deals” and political or factional alliances to constitute “robust political debate” and, as noted in section 3.5 of the Councillor Code of Conduct, the Standards are not intended to limit this. However, it was not appropriate

or respectful to shout these comments across a Council chamber directly at Cr Rasic, in a manner which made those present “uncomfortable” and escalated to a personal attack.

59. By shouting at Cr Rasic, calling her “shallow” and swearing in such an open and public forum, the Respondent breached section 3.1 of the Councillor Code of Conduct in that she was not treating Cr Rasic with dignity, courtesy or respect. However, I do not find that this behaviour breached section 3.4 as it did not bring discredit on Council, only on the Respondent herself.
60. At the hearing, Cr Rasic and the Respondent agreed to – and did – apologise to one another for their behaviour in **Allegation 6**. The Respondent also owes the Council a formal apology for her behaviour at the Council Meeting, as I have directed above.

Allegation 2 – the Respondent’s email on 18 November 2023 (the email)

61. In **Allegation 2**, the Applicants allege the Respondent breached section 3.1 of the Councillor Code of Conduct in an email she sent to the CEO (cc-ed to all Councillors and some Council officers) on 18 November 2023 (the email). Both parties provided the email as evidence. The email reads:

Dear CEO

Could governance procedures please be provided around Formal apologies for illness being relinquished and procedural motions to extend time for the mayoral that was in everyone’s diary to start at 6pm.

Kind regards

62. The Applicants allege the email was referring to Cr Sarah Branton, who was initially an apology for the meeting but ultimately did attend the meeting. The Applicants stated in the Application, “it was discriminatory that a Councillor would attempt to use illness as a reason for another Cr may have not performed my duties correctly [sic]”. Cr Rasic clarified in her oral submissions that the Applicants allege that by sending this email, the Respondent was not treating Cr Branton with dignity and respect.
63. The Respondent says she was seeking clarification following two perceived procedural irregularities at the previous evening’s Council meeting, namely:
 - a. Councillors were advised via email from the CEO at 4pm that Cr Branton was an apology for the meeting, however she attended the meeting (email provided by the Respondent in support); and
 - a. Cr David was late for the meeting and the mayoral vote was delayed to wait for him notwithstanding quorum had been reached.
64. The Applicants also provided the CEO’s response to this email dated 21 November 2023 in which the CEO stated she was satisfied “the meeting was conducted in accordance with Governance Rules 2023”. At the hearing, the Respondent said she was “wholly satisfied” with the CEO’s response.
65. The email does not breach section 3.1 of the Councillor Code of Conduct. It is reasonable for a Councillor to seek clarification regarding perceived procedural irregularities from the chair of the meeting, in this case, the CEO. The motivation for sending the email may not have been as pure in intent as the Respondent contends but there is nothing in the content or wording of

the email which indicates the Respondent was treating Cr Branton with a lack of dignity or or respect.

Allegations 3 to 5, 7, 8 and 10 – comments in media/ social media

66. The remaining Allegations all relate to comments made by the Respondent on social media and/or in the local newspaper, the Star Weekly.

67. In her written response, the Respondent submitted the following:

We were given legal advice briefing by Maddocks solicitors by former Brimbank CEO Helen Morrissey that social media posts are not covered by either the LG Act or Councillors Code of Conduct and are civil matters.

68. This view was reflected in the witness statement of Bruce Lancashire appended to the Respondent's written response, in which he said:

I can state that in the previous term of Council we were advised by the then CEO Helen Morrissey that in accordance with legal advice from Maddocks solicitors made in social media are not covered by either the LG Act or Councillors Code of Conduct.

69. I interrogated this notion with the Respondent at the hearing. She conceded that she does not interpret this as meaning Councillors "have latitude to say whatever they want" on social media; that "the Standards have to be adhered to" but gave a confounding explanation that there was "no mechanism in the Act to raise issues about social media".

70. I have not seen the advice provided by Maddocks so I cannot comment on whether this is an accurate representation of the advice they provided, an oversimplification or a complete misrepresentation. Regardless, this interpretation of the Act is incorrect, no matter how it originated. Put simply, comments on social media can breach the Standards and clearly and unambiguously come within the purview of the Act and the Councillor Code of Conduct. I therefore intend to pay this argument no further heed in this Decision.

71. The Council is encouraged to provide a supplementary briefing to all Councillors on the expectations of their conduct online and on social media.

Allegations 3 and 4

72. **Allegations 3 and 4** relate to Comments the Respondent made in the thread to a Facebook post by Cr Maria Kerr dated 18 November 2023 expressing her discontent regarding the outcome of the mayoral vote at the Council Meeting.

73. In **Allegation 3**, the Applicants allege the Respondent breached sections 3.1 and 3.4 of the Councillor Code of Conduct by commenting that "bullying is getting worse with the same labor [sic] identities, ex councillors, ex MP staff". In the Application, the Applicants say the Respondent "is attacking and making false allegations that are baseless and defamatory".

74. In **Allegation 4**, the Applicants allege the Respondent breached sections 3.1 and 3.4 of the Councillor Code of Conduct by commenting that "governance and management turn a blind eye" and say that this provides "another example of [the Respondent] making false allegations against, staff, management and councillors at Brimbank on a public platform."

75. The Respondent's written response was that she was tagged in comments from a former Councillor and Mayor and was responding with her own "private opinion based on my own lived experience" and as a "private citizen". She maintains she was "experiencing significant bullying and harassment both leading up to, during and post Mayoral election" and that when she tried to raise concerns with Council she was told "they cannot get involved with political dynamics or issues of Councillors".
76. As noted by the Respondent in her written response, the Application only appended extracts of the social media feed to the Application which made it difficult to determine the context of these comments. After reviewing the full post and comments thread, the following depicts more accurately how these comments unfolded.

[former Councillor and Mayor]:.... Virginia Tachos continues to be a councillor "mobbed" by a political grouping with actors inside and outside Council. It hasn't changed in 8 years.

*Virginia Tachos: **[former Councillor and Mayor]** nothings changed and the governance and management turn a blind eye*

...

[former Councillor and Mayor]: Virginia Tachos it's an absolute disgrace that it has been allowed fester this long

*Virginia Tachos: **[former Councillor and Mayor]** the bullying is getting worse with same labor identities, ex councillors, ex MP staff. Needs a full investigation*

[former Councillor and Mayor]: Virginia Tachos it needs full exposure if it is ever to be sorted

77. It is curious that the allegations are not presented in the order they appear in the social media feed. It is also interesting that they are presented as two separate allegations when they relate to the same conduct on the same comments thread. Where it makes sense to do so, I have considered these allegations together.
78. The Respondent did make the comments "bullying is getting worse with the same labor [sic] identities, ex councillors, ex MP staff" (**Allegation 3**) and "nothings changed and the governance and management turn a blind eye" (**Allegation 4**) as alleged.
79. The Respondent said she was commenting in her capacity as a "private citizen". I do not accept this argument. The Respondent is identified as a Councillor in the comment that prompted her comment, and her subsequent comments relate directly to her experience of being a Councillor. However, the question I need to consider for the purpose of determining whether the Standards have been breached is whether the Respondent was "performing the role of a Councillor" when making these comments. In *Lew v Blanche* [2023] VSC 604, Gray J concluded that:

"performing the role of a Councillor" is capable of applying to behaviour of a Councillor in communicating with members of the public about matters for decision before Council",

including via social media.

80. The Respondent's comments do not relate directly to a "decision before Council" but rather to her alleged experience of "bullying" and the perceived failure of "governance and management" to deal with it. However, the comments do appear in the comments thread to a post by another Councillor who was communicating with members of the public about the outcome of the mayoral election. The election of a mayor is a Council decision. I am satisfied that given this context (and my observation above that the Respondent was commenting on her experience of being a Councillor) that the Respondent was "performing the role of a Councillor" when making these comments.
81. The question then turns to whether the comments breach sections 3.1 and/ or 3.4 of the Councillor Code of Conduct. When asked how the Applicants allege the Respondent breached section 3.1, Cr Rasic said they were "not true" and "disrespectful". She added that by not naming anyone in the comments, the Respondent was "bringing discredit" on the Council as a whole and therefore breaching section 3.4.
82. The Respondent stated that she did not name anyone in the comments; that they were "general comments", reflect the truth" and she was describing her own "lived experiences".
83. I am not satisfied that the comment in **Allegation 3** breaches section 3.1 of the Councillor Code of Conduct. On my reading, Section 3.1 requires some level of specificity in identifying to whom the alleged mistreatment has been directed. The Respondent did not name anyone directly, or otherwise identify them. The expression "same labor identities, ex councillors, ex MP staff" is broad and vague. Admittedly, those close to the sordid history of infighting on the Council may be able to identify these players, but most readers would not.
84. I am also not satisfied that the comment in **Allegation 3** breaches section 3.4 of the Councillor Code of Conduct as the allegation of "bullying" is broad and not directly (and exclusively) directed at Council. The Oxford English Dictionary defines "discredit" as "loss or lack of reputation or respect". I do not accept that such a broad comment results in a loss or lack of reputation or respect for Council.
85. I will now turn to considering the comment in **Allegation 4**. In response to her comment that "management and governance turn a blind eye", the Respondent said she had raised her concerns regarding "bullying" with the CEO and Council officers and been told:
- a. they could not get involved with disputes between Councillors; and
 - b. her only option for addressing her concerns was through formal mediation or internal arbitration.
- She says no informal resolution mechanisms were offered to her. The Respondent provided a series of emails to support this claim.
86. She said at the hearing that she did not want to make an application alleging a breach of the Standards under section 7 of the Councillor Code of Conduct because:
- a. she had seen the "obscene" expense associated with "consultants", mediators and arbiters and did not want to "waste Council money" for this purpose; and
 - b. she "did not have the emotional capital" for a "combative" process.
87. She said she resorted to using social media to air her grievances because she "had no one to talk to" and was quite "unwell" at the time.

88. On the evidence provided by the Respondent, she alerted the CEO and former Manager, Governance and Risk to her concerns regarding the conduct of Cr Rasic and “threatening behaviours” directed towards her and other Councillors by email on 31 October 2023. The Respondent did not provide any evidence of a response to this email and when asked about this at the hearing, said “nothing was followed through”. The remainder of the emails provided by the Respondent are dated after she made the comment on Facebook on 18 November 2023.
89. If the Respondent’s evidence is to be accepted, the CEO and Council officers did not respond to her concerns raised by email dated 31 October 2023 or take any action. I acknowledge that in subsequent responses to the Respondent’s emails *after* the date of this comment, the Councillor Conduct Officer (on 21 November 2023) and the CEO (on 23 November 2023):
- a. informed the Respondent that the CEO has limited powers to intervene in disputes between Councillors;
 - b. provided information regarding the requisite pathway for alleging a breach of the Standards (Section 7 of the Councillor Code of Conduct);
 - c. offered support to the Respondent through the Employee Assistance Program; and
 - d. made arrangements to enable the Respondent to attend future Council meetings online.

However, no evidence was provided to indicate that any action had been taken by “management and governance” at the time she made the comment. The question is: does this constitute turning a “blind eye”?

90. I am not satisfied that the comment “nothings changed and the governance and management turn a blind eye” breaches section 3.1 of Councillor Code of Conduct. The comment is not inherently disrespectful or discourteous. However, I do find it to be a breach of section 3.4 in that it “brings discredit upon Council”.
91. The comment implies that Council wilfully tolerates inappropriate behaviours such as “bullying” and could result in a loss or lack of reputation or respect for Council. Arguably, the CEO and Council officers could have done more to respond to the Respondent’s email of 31 October 2023, however this does not necessarily mean Council generally tolerates these behaviours and “turn[s] a blind eye”. It is clear on the evidence that efforts were taken to respond to the Respondent’s concerns as those concerns escalated after the Council Meeting. Further, the Councillor Code of Conduct makes it clear that the onus is on a Councillor to seek resolution of their concerns, either:
- a. informally through direct discussion with the other Councillor or a discussion facilitated by another Councillor (Section 6); and/or
 - b. by making allegations regarding a breach of the Standards (Section 7).

Both processes require the Councillor to initiate the action. By her own admission, it was the Respondent’s choice not to.

92. At the hearing, the Respondent said – “I apologise if I have in any way put Council in disrepute”. As noted above, I have directed the Respondent to make a formal apology to Council for all proven misconduct in this Decision.

Allegations 5 and 7

93. **Allegations 5 and 7** relate to a Comment made by the Respondent in the comment thread to a Facebook post by Brimbank Community Action Group on 21 November 2023 regarding the outcome of the mayoral election at the Council Meeting.
94. In **Allegation 5**, the Applicants allege the Respondent breached sections 3.1 and 3.4 of the Councillor Code of Conduct by stating she “experienced, intimidations and discrimination” noting that these are “more false allegations posted to the general public.”
95. In **Allegation 7**, the Applicants allege the Respondent breached sections 3.1 and 3.4 by making “comments which spread negative rumours and defame Councillors on social media”, specifically in the following alleged quote from the Respondent.

I missed those two meetings because I've experienced bullying, intimidation and discrimination – it's not a safe workplace for me to attend in person anymore.

96. Confusingly, the Application included links to two articles in the local newspaper, Star Weekly, as “supporting evidence” for **Allegation 7**. On review of the Star Weekly articles, one titled “Council Forum Fiasco” dated 23 October 2023 did not mention the Respondent at all. Further, neither article can be said to be “social media”. Both of these issues were raised with Cr Rasic at the hearing. She took the questions on notice and in an email dated 17 May 2024, confirmed **Allegation 7** related to the above comment on social media (in paragraph 95). She also noted the following regarding the second Star Weekly article titled “Councillors feel unsafe” dated 28 November 2023.

The article quotes Cr tachos "not feeling safe on council" and the social media post screenshots I provided is where I presume the journalist had picked up the quote from and to provide more context on what Cr Tachos was alleging.

97. Cr Rasic did not address the question of why the article titled “Council Forum Fiasco” (23 October 2023) was included as supporting evidence when it does not mention the Respondent.
98. On reviewing the social media feeds provided as supporting evidence by the Applicants it soon became apparent that **Allegations 5 and 7** relate to the same comment by the Respondent in the comments thread to a post by Brimbank Community Action Group on 21 November 2023. Part of this comment was quoted in **Allegation 7** (see paragraph 95). The full comment was in response to a resident’s comment and said:

[Resident's name] well I absolutely support it and really appalled that what was posted here initially which I consider not only untrue but defamatory. I missed those two meetings because I've experienced bullying, intimidation and discrimination – it's not a safe workplace for me to attend in person anymore. I have now made alternative arrangements to ensure I do feel safe and can participate and represent my community. That's my context for non-attendance. I apologize to my community for not attending but they were the instructions of my doctor and I do have a certificate. Thank you.

99. The Respondent says this comment was made in response to a resident’s comments that the Respondent was not present to discuss or vote on a particular decision. She says she was explaining why she had not been present at those meetings and pointed to her apology to the community in the post for not attending. She said she was “experiencing illness caused by not feeling safe and extreme stress from the harassment and bullying and intimidation”.

100. By making this comment the Respondent is clearly “performing the role of a Councillor” as she is “communicating with members of the public about matters for decision before Council” (*Lew v Blancher* [2023] VSC 60, see paragraph 79 above). However, I am not satisfied this comment breaches section 3.1 of the Councillor Code of Conduct as the Respondent does not specifically name or otherwise identify the alleged perpetrators of the alleged “bullying, intimidation and discrimination”. In other words, it is not clear to whom the alleged mistreatment is directed.
101. For similar reasons to those I applied when deciding **Allegation 4**, I find the Respondent has breached section 3.4 of the Councillor Code of Conduct in that by making sweeping statements about experiencing “bullying, intimidation and discrimination” and Council not being “a safe workplace”, she is bringing “discredit upon Council”. These comments harm the reputation of Council, particularly as the Respondent has elected not to pursue the avenues available to her to seek resolution of her concerns.

Allegation 8

102. In **Allegation 8**, the Applicants allege the Respondent breaches sections 3.1 and 3.4 of the Councillor Code of Conduct by saying:

Last Mayoral election was a farce... I was told ALP were in overdrive ringing and talking people out of running – so that they were cleared the path for an ALP member Mayor. It came as a surprise to many who felt we’d been lied to and mocked through a fake process and on the day of the Mayoral vote a surprise to some, the person who said they were not interested – suddenly puts their hand up and gets elected/ appointed.

103. The Application referred to the same two Star Weekly articles referred to in **Allegation 7** as supporting evidence. The above quote does not appear in either of the Star Weekly articles. This was raised with Cr Rasic at the hearing. Again, she took this question on notice and in an email dated 14 May 2024, sent through some extracted social media posts (not previously provided). In response to a follow up query from me asking whether the Star Weekly articles are relevant to this Allegation, she responded via email on 17 May 2024 to say that the supporting evidence to **Allegation 8** was an “administrative error” and “should have had the link to the two attached screenshots I sent as that is where the allegation came from”.
104. The Respondent was “performing the role of a Councillor” in commenting on a Council decision, namely the election of the mayor. However, in all but one respect, I consider this comment constitutes “robust political debate”.
105. The exception is that I find the statement that Council ran a “fake process” breaches section 3.4 of the Councillor Code of Conduct. There is nothing to indicate the mayoral election was “fake”. In an email to the Respondent (and all Councillors) dated 21 November 2023, the CEO expressed her satisfaction that the mayoral vote was conducted in accordance with the Governance Rules 2023, and I accept that it was. It brings discredit on Council to state otherwise.

Allegation 10

106. In **Allegation 10**, the Applicants allege the Respondent has breached sections 3.1 and 3.4 of the Councillor Code of Conduct by posting the following on the Councillor Virginia Tachos Facebook page on 29 November 2023:

Zero tolerance for bullying, harassment, intimidation, defamation, nepotism, coercion discrimination and undue influence. Thank you to all who have reached out to me – im holding up because of your support and kindness. Everyone deserves to feel safe in their workplace. I will continue to do my job to represent you and fight for the best outcomes for this municipality. #communityfirst

Adversity is the first path to Truth

107. The Respondent says these are her “personal views” and she “stands by them”.
108. Similar to my reasons regarding **Allegation 3**, I find this comment to be too broad to fall within the scope of section 3.1 of the Councillor Code of Conduct. It is not clear on the face of it to whom the Respondent’s alleged mistreatment is being directed. However, in line with my reasoning regarding **Allegations 4** and **5/7**, I do find this comment to constitute a breach of section 3.4. The sweeping accusation of “bullying, harassment, intimidation, defamation, nepotism, coercion, discrimination and undue influence” brings discredit upon Council, especially as the Respondent elected not to take the resolution pathways available to her.
109. As a general comment, I note the Respondent says she was “under a lot of stress” and “unwell” during the period of these allegations (17 November to 29 November 2023) and that she is now benefitting from counselling provided through the Council’s Employee Assistance Program. She apologised to Cr Rasic directly regarding her behaviour in **Allegation 6** and expressed remorse for anything she may have done to bring discredit on Council. It is for these reasons I have not contemplated more punitive sanctions. It is my sincere hope the Respondent will reflect on her actions and consider more productive ways to raise her concerns in the future than via social media, including through accessing the informal (and where appropriate, formal) resolution pathways available to her in the Councillor Code of Conduct.

Sarah Fowler
Arbiter