

**COUNCILLOR CONDUCT PANEL**

**In the matter of an Application by Councillor Bruce Lancashire  
concerning**

**Councillor John Hedditch of Brimbank City Council**

**DECISION**

**HEARING PURSUANT TO DIVISION 1B OF PART 4 OF  
LOCAL GOVERNMENT ACT (1989)**

Applicant: Cr Bruce Lancashire, in person with a support person  
(Mrs Julie Lancashire)

Respondent: Cr John Hedditch, represented by Ms Corrina Dowling  
of Barry Nilsson Lawyers

Council: Brimbank City Council

Hearing location: Brimbank City Council Offices, Sunshine

Date of Application: 9 September 2018, revised and re-submitted on  
27 November 2018

Date of Hearing: 21 and 22 January 2019

Date of Decision: 13 February 2019

Panel Members: Mrs Jo-Anne Mazzeo (Chairperson)  
Ms Jan Boynton

Principal Conduct Officer: Ms Melanie Flear

**DECISION**

Pursuant to section 81J(1)(e) of the *Local Government Act 1989* the Panel dismisses the Application.

**Jo-Anne Mazzeo**  
Chairperson

**Jan Boynton**  
Panel Member

**COUNCILLOR CONDUCT PANEL**

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**STATEMENT OF REASONS FOR DECISION**

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(Mrs Julie Lancashire)

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Date of Decision: 13 February 2019

Date of Statement of  
Reasons for Decision: 13 February 2019

Panel Members: Mrs Jo-Anne Mazzeo (Chairperson)  
Ms Jan Boynton

Principal Conduct Officer: Ms Melanie Fleer

**STATEMENT OF REASONS FOR DECISION**

**The Application**

1. The Application dated 9 September 2018 and revised on 27 November 2018 was made by Cr Bruce Lancashire seeking a finding of serious misconduct against Cr John Hedditch in relation to the issues outlined in his Application (listed below).

2. In the alternative, if the Panel was not to make a finding of serious misconduct, the Applicant sought a finding of misconduct against Cr John Hedditch in relation to the issues outlined in his Application (listed below).
3. The Application contains 13 allegations relating to the Respondent's conduct as outlined in the Application and extracted below:

*Allegation 1:*

This allegation relates to circumstances surrounding crime in Taylors Ward and the Ward Meeting that took place to discuss the issue.

This ground sought a finding of **serious misconduct** and outlined the following grounds for the allegation:

**Equal opportunity** – we should have equal access to opportunities to support residents in our ward that require immediate attention.

**Discrimination** – not allowing for the protection and safety to support ward residents. Weapons were being sought by residents to defend themselves in relation to the home invasions which were occurring during this time

**Harassment** - intimidating (feeling threatened) and offensive

**Victimisation** – feeling unsupportive, unfavoured and disrespectful.”

In the alternative, if the Panel was not inclined to make a finding of serious misconduct, the Applicant submitted that the Panel make a finding of **misconduct** due to breach of the following sections of the Councillor Conduct Principles as outlined in section 76BA of the *Local Government Act 1989* (the Act):

- (a) avoid conflicts between public duties as councillor and personal interests and obligations;
- (b) act honestly and avoid statements that are likely to mislead or deceive;
- (c) treat all persons with respect and have due regard to opinions, beliefs rights and responsibilities of others;
- (f) act lawfully in accordance with the trust placed in him as an elected representative.

*Allegation 2:*

This allegation relates to the sale of school sites and sought a finding of **serious misconduct**, outlining the following grounds for the allegation:

**Equal opportunity** – Councillors should be recognised and included in processes that they had initiated.

**Discrimination** – not informing or inviting Councillors to participate where they had initiated action and had networked with the community.

**Exclusion** – from meeting and other discussions.

**Harassment**- offensive behaviour.

**Victimisation** - feeling unsupportive, unfavoured and disrespectful and infringement of a Councillors right to be treated with equity, dignity and respect.”

In the alternative, if the Panel was not inclined to make a finding of serious misconduct, the Applicant submitted that the Panel make a finding of **misconduct** due to breach of the following sections of the Councillor Conduct Principles as outlined in section 76BA of the Act:

- (a) avoid conflicts between public duties as councillor and personal interests and obligations;
- (c) treat all persons with respect and have due regard to opinions, beliefs, rights and responsibilities of others;
- (f) act lawfully in accordance with the trust placed in him as an elected representative;
- (g) support and promote the principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

*Allegation 3:*

This allegation relates to the relationship the Respondent had with local Members of Parliament and sought a finding of **serious misconduct**, outlining the following grounds for the allegation:

“**Harassment** – offensive towards Taylors Ward MPs.

**Victimisation** – disrespectful and unfavoured towards Taylors Ward MPs.”

In the alternative, if the Panel was not inclined to make a finding of serious misconduct, the Applicant submitted that the Panel make a finding of **misconduct** due to breach of the following sections of the Councillor Conduct Principles as outlined in section 76BA of the Act:

- (a) avoid conflicts between public duties as councillor and personal interests and obligations;
- (b) act honestly and avoid statements that are likely to mislead or deceive;
- (c) treat all persons with respect and have due regard to opinions, beliefs rights and responsibilities of others;
- (f) act lawfully in accordance with the trust placed in him as an elected representative;
- (g) support and promote the principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor

*Allegation 4:*

This allegation relates to the late filing of Notice of Motions and sought a finding of **serious misconduct**, outlining the following grounds for the allegation:

**“Equal opportunity** – we should have equal access to processes.  
**Discrimination** – different rules.  
**Harassment and Bullying** – of Council staff.”

In the alternative, if the Panel was not inclined to make a finding of serious misconduct, the Applicant submitted that the Panel make a finding of **misconduct** due to breach of the following sections of the Councillor Conduct Principles as outlined in section 76BA of the Act:

- (a) avoid conflicts between public duties as councillor and personal interests and obligations;
- (b) act honestly and avoid statements that are likely to mislead or deceive;
- (c) treat all persons with respect and have due regard to opinions, beliefs, rights and responsibilities of others;
- (f) act lawfully in accordance with the trust placed in him as an elected representative;
- (g) support and promote the principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

*Allegation 5:*

This allegation relates to the conduct of the Respondent when dealing with budgetary matters and sought a finding of **serious misconduct**, outlining the following grounds for the allegation:

“Appalling and domineering behaviour  
Humiliating, intimidating and condescending behaviour  
Failed to conduct himself in a manner that affords fairness, dignity and respect  
Failed to create a good working environment.”

In the alternative, if the Panel was not inclined to make a finding of serious misconduct, the Applicant submitted that the Panel make a finding of **misconduct** due to breach of the following sections of the Councillor Conduct Principles as outlined in section 76BA of the Act:

- (a) avoid conflicts between public duties as councillor and personal interests and obligations;
- (b) act honestly and avoid statements that are likely to mislead or deceive;
- (c) treat all persons with respect and have due regard to opinions, beliefs, rights and responsibilities of others;

- (f) act lawfully in accordance with the trust placed in him as an elected representative;
- (g) support and promote the principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

*Allegation 6:*

This allegation relates to the conduct of the Respondent with regards to the VicRoads Rally that took place within the municipality and sought a finding of **serious misconduct**, outlining the following grounds for the allegation:

**“Harassment** – to get Councillors and staff to support this  
**Inappropriate use of Council resources** – eg. Councillor email addresses, photocopying?, Megaphone?  
**Misuse of his position** – for personal political purposes.”

In the alternative, if the Panel was not inclined to make a finding of serious misconduct, the Applicant submitted that the Panel make a finding of **misconduct** due to breach of the following sections of the Councillor Conduct Principles as outlined in section 76BA of the Act:

- (a) avoid conflicts between public duties as councillor and personal interests and obligations;
- (b) act honestly and avoid statements that are likely to mislead or deceive;
- (c) treat all persons with respect and have due regard to opinions, beliefs rights and responsibilities of others;
- (d) exercise reasonable care and diligence and submit himself to lawful scrutiny that is appropriate to his office;
- (e) ensure that public resources are used prudently and solely in the public interest;
- (f) act lawfully in accordance with the trust placed in him as an elected representative;
- (g) support and promote the principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

*Allegation 7:*

This allegation was made in the context of the Respondent’s behaviour in meetings and sought a finding of **serious misconduct**, outlining the following grounds for the allegation:

**“Equal opportunity** – we did not receive equal access to opportunities  
**Discrimination** – unequal treatment, favouring some Councillors  
**Harassment** – intimidating (feeling threatened), humiliated and offensive

**Victimisation** – feeling unsupportive, unfavoured and disrespectful.”

In the alternative, if the Panel was not inclined to make a finding of serious misconduct, the Applicant submitted that the Panel make a finding of **misconduct** due to breach of the following sections of the Councillor Conduct Principles as outlined in section 76BA of the Act:

- (a) avoid conflicts between public duties as councillor and personal interests and obligations;
- (b) act honestly and avoid statements that are likely to mislead or deceive;
- (c) treat all persons with respect and have due regard to opinions, beliefs, rights and responsibilities of others;
- (f) act lawfully in accordance with the trust placed in him as an elected representative;
- (g) support and promote the principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

*Allegation 8:*

This allegation was made in the context of the Respondent’s handling of a Mayoral election process and alleged lack of consultation and sought a finding of **serious misconduct**, outlining the following grounds for the allegation:

“**Equal opportunity** – failure to communicate and invite participation of other Councillors in the preparation of developing a process for the Mayoral election

**Discrimination and exclusion** – against Taylors Ward Councillors

**Harassment** – Intimidating (feeling threatened), domineering and offensive.

**Victimisation** – feeling unsupportive, unfavoured and disrespectful.”

In the alternative, if the Panel was not inclined to make a finding of serious misconduct, the Applicant submitted that the Panel make a finding of **misconduct** due to breach of the following sections of the Councillor Conduct Principles as outlined in section 76BA of the Act:

- (a) avoid conflicts between public duties as councillor and personal interests and obligations;
- (b) act honestly and avoid statements that are likely to mislead or deceive;
- (c) treat all persons with respect and have due regard to opinions, beliefs, rights and responsibilities of others;
- (f) act lawfully in accordance with the trust placed in him as an elected representative;
- (g) support and promote the principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

*Allegation 9:*

This allegation was made in the context of the Respondent's alleged behaviour in meetings and an alleged conflict of interest in relation to matters regarding Sunvale Park. The Applicant sought a finding of **serious misconduct**, outlining the following grounds for the allegation:

**"Equal Opportunity and Discrimination** – different rules applied with the Mayor chaired, Minimal opportunities for others to chair committee meetings

**Harassment** - offensive and domineering in wanting to chair or have control over who could chair

**Victimisation** – feeling unsupportive, unfavoured and disrespectful."

In the alternative, if the Panel was not inclined to make a finding of serious misconduct, the Applicant submitted that the Panel make a finding of **misconduct** due to breach of the following sections of the Councillor Conduct Principles as outlined in section 76BA of the Act:

- (a) avoid conflicts between public duties as councillor and personal interests and obligations;
- (b) act honestly and avoid statements that are likely to mislead or deceive;
- (c) treat all persons with respect and have due regard to opinions, beliefs, rights and responsibilities of others;
- (d) exercise reasonable care and diligence and submit himself to lawful scrutiny that is appropriate to his office;
- (f) act lawfully in accordance with the trust placed in him as an elected representative;
- (g) support and promote the principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

*Allegation 10:*

This allegation was made in the context of alleged generally unacceptable behaviour by the Respondent and sought a finding of **serious misconduct**, outlining the following grounds for the allegation:

**"Ongoing Bullying and exclusion**

**Discrimination** – favouring other Councillors

**Harassment** – a person feeling intimidated, threatened and offended. Unreasonable interference with a person's work performance, psychological wellbeing and enjoyment of work

**Ongoing and repeated victimisation** – feeling unsupportive, unfavoured and disrespectful".



In the alternative, if the Panel was not inclined to make a finding of serious misconduct, the Applicant submitted that the Panel make a finding of **misconduct** due to breach of the following sections of the Councillor Conduct Principles as outlined in section 76BA of the Act:

- (a) avoid conflicts between public duties as councillor and personal interests and obligations;
- (b) act honestly and avoid statements that are likely to mislead or deceive;
- (c) treat all persons with respect and have due regard to opinions, beliefs, rights and responsibilities of others;
- (f) act lawfully in accordance with the trust placed in him as an elected representative;
- (g) support and promote the principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

*Allegation 11:*

This allegation was made in the context of the Respondent's attendance at conferences and sought a finding of **misconduct**, outlining the following grounds for the allegation:

**"Equal Opportunity and discrimination** - different rules applied for the Mayor (the respondent). Also questioning access to conferences  
**Harassment** – intimidating (feeling threatened) offended and bullied  
**Victimisation** – feeling unsupportive, unfavoured and disrespectful".

This Applicant also submitted that the behaviour in question was a breach of the following sections of the Councillor Conduct Principles as outlined in section 76BA of the Act:

- (a) avoid conflicts between public duties as councillor and personal interests and obligations;
- (b) act honestly and avoid statements that are likely to mislead or deceive;
- (c) treat all persons with respect and have due regard to opinions, beliefs, rights and responsibilities of others;
- (e) ensure that public resources are used prudently and solely in the public interest;
- (f) act lawfully in accordance with the trust placed in him as an elected representative;
- (g) support and promote the principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

*Allegation 12:*

This allegation was made in the context of alleged inaccurate information given by the Respondent to Councillors and staff regarding his qualifications and alleged conflicts of interest the Respondent had with organisations including SunRRA, Sunshine Leisure Centre, Sunshine RSL and Sunvale Park. The Applicant sought a finding of **serious misconduct**, outlining the grounds for the allegation:

**"Equal opportunity and discrimination** – inaccurate qualifications and information supplied to Councillors and staff".

In the alternative, if the Panel was not inclined to make a finding of serious misconduct, the Applicant submitted that the Panel make a finding of **misconduct** due to breach of the following sections of the Councillor Conduct Principles as outlined in section 76BA of the Act:

- (a) avoid conflicts between public duties as councillor and personal interests and obligations;
- (b) act honesty and avoid statements that are likely to mislead or deceive;
- (d) exercise reasonable care and diligence and submit himself to lawful scrutiny that is appropriate to his office;
- (e) ensure that public resources are used prudently and solely in the public interest;
- (f) act lawfully in accordance with the trust placed in him as an elected representative;
- (g) support and promote the principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

*Allegation 13:*

This allegation was made in the context of alleged bullying by the Respondent to gain advantage, and failure to disclose previous activities with other organisations/groups. The Applicant sought a finding of **serious misconduct**, outlining the grounds for the allegation:

"Bullying, aggressive behaviour and potential electoral breaches in failing to acknowledge the assistance provided by various groups and individuals associated with these groups."

In the alternative, if the Panel was not inclined to make a finding of serious misconduct, the Applicant submitted that the Panel make a finding of **misconduct** due to breach of the following sections of the Councillor Conduct Principles as outlined in section 76BA of the Act:

- (a) avoid conflicts between public duties as councillor and personal interests and obligations;
- (b) act honesty and avoid statements that are likely to mislead or deceive;

- (c) treat all persons with respect and have due regard to opinions, beliefs, rights and responsibilities of others;
- (d) exercise reasonable care and diligence and submit himself to lawful scrutiny that is appropriate to his office;
- (e) ensure that public resources are used prudently and solely in the public interest;
- (f) act lawfully in accordance with the trust placed in him as an elected representative;
- (g) support and promote the principles by leadership and example and act in a way that secures and preserves public confidence in the office of Councillor.

### **Evidence provided at hearing**

- 4. Written evidence was submitted by both the Applicant and the Respondent prior to the hearing.
- 5. Oral evidence was given at the hearing by both the Applicant and Respondent.

### **The Panel**

- 6. The Applicant called a number of witnesses to support his case. With the exception of two witnesses, all of the Applicant's potential witnesses declined to participate in the Panel hearing. One subsequent witness become unavailable due to illness and another was deemed not required by the Panel as the evidence the witness was to give was not relevant to the Application.
- 7. The Respondent sought to call a number of witnesses to support his case. All of those witnesses declined to participate in the Panel hearing.
- 8. A Councillor Conduct Panel was formed by the Principal Councillor Conduct Registrar comprising Mrs Jo-Anne Mazzeo (Chairperson) and Ms Jan Boynton with Ms Melanie Fler as the Principal Conduct Officer.

### **The jurisdiction of the Panel in relation to this Application**

- 9. Pursuant to section 81B(1) of the Act the Panel may hear an Application that alleges misconduct or serious misconduct by a Councillor.
- 10. Pursuant to section 81J of the Act, the Panel may determine whether or not a Councillor has engaged in misconduct or serious misconduct.

11. "Misconduct" is defined in section 3 of the Act and includes:
  - (a) failure by a Councillor to comply with the Council's internal resolution procedure; or
  - (b) failure by a Councillor to comply with a written direction given by the Council under section 81AB; or
  - (c) repeated contravention of any of the Councillor Conduct Principles."
12. "Serious misconduct" is defined in section 3 of the Act and includes:
  - (a) the failure of a Councillor to attend a Councillor Conduct Panel hearing formed to make a finding in respect of that Councillor; or
  - (b) the failure of a Councillor to give a Councillor Conduct Panel any information the Councillor Conduct Panel has requested the Councillor to give; or
  - (c) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel; or
  - (d) continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by a Councillor Conduct Panel; or
  - (e) bullying of another Councillor or member of Council staff by a Councillor; or
  - (f) conduct by a Councillor in respect of a member of Council staff in contravention of s76E; or
  - (g) the release of confidential information by a Councillor in contravention of section 77."

### **The Hearing**

13. A joint Application for formation of a Councillor Conduct Panel dated 9 September 2018 was submitted by Councillor Lancashire and Councillor Papafotiou.
14. An initial Directions Hearing took place on 14 November 2018. At this Directions Hearing Councillor Papafotiou formally withdrew as a party to the proceedings. Both the Applicant and the Respondent sought a Direction seeking permission to be legally represented at the substantive hearing. The Panel permitted both parties to be legally represented, however the Applicant elected not to exercise this right at the hearing.
15. Councillor Lancashire as the sole Applicant was required to file an amended Application, which he did on 27 November 2018.
16. The Councillor Conduct Panel conducted the substantive hearing on 21 and 22 January 2019.
17. The Applicant relied on the revised Application lodged with the Panel, the supplementary evidence submitted in writing supporting the Application and oral evidence given at the hearing.

18. The Respondent relied on the Response lodged with the Panel, the supplementary evidence submitted in writing supporting the Response and oral evidence given at the hearing.

### **Evidence and information before the Panel**

19. The Applicant provided an opening statement outlining the Application and submitted that he would be relying on the written material contained in the Application, along with his oral evidence at hearing. No specific submissions were made by the Applicant in relation to penalty in the event that the Panel were to make a finding of misconduct or serious misconduct.
20. Due to the volume of information lodged with the Panel in the Application and the themes that were consistent across multiple allegations, it was agreed that allegations alleging similar conduct would be grouped together and dealt with accordingly. As such, the decision reflects this in outlining the evidence before the Panel and the reasons for the Panel's Decision.
21. Ms Dowling provided an opening statement and made submissions on behalf of the Respondent. Ms Dowling submitted that the Application in and of itself was hard to understand, unclear as to how it applied to the definitions of both misconduct and serious misconduct and was so voluminous and inclusive of irrelevant information that it was almost impossible to respond to.
22. Ms Dowling submitted that there had been no steps taken (save appointing an Arbiter) to resolve the allegations prior to the initiation of the Councillor Conduct Panel process, further submitting that the Respondent was only aware of many of the allegations because of the Councillor Conduct Panel process.
23. In response to claims made by the Applicant that he had met with the previous and the current Chief Executive Officer, Ms Dowling submitted that the Respondent did not recall any formal complaint having been made, nor any action taken by Council to resolve such complaints.
24. Ms Dowling further contended that the Respondent had no knowledge of formal complaints being raised with the Director of Governance, and that the facilitation process that was arranged did not proceed due to the lack of engagement by the Applicant and Councillor Papafotiou.
25. The Applicant had met with the Respondent prior to the Councillor Conduct Panel hearing to resolve matters but would only accept a blanket apology from the Respondent, with no explanation of what the Respondent had done to cause an apology to be given.

26. Regarding the allegations that allege bullying behaviour by Councillor Hedditch, Ms Dowling submitted that the Act defines bullying in section 3, and further guidance could be obtained from the fair work jurisdiction, citing [2016] FWC2559. Ms Dowling submitted that the assessment of unreasonable behaviour is an objective test, and that feeling hurt does not constitute bullying; refusing to follow another person's preference about how things should be done does not constitute bullying; a suggestion not being accepted does not constitute bullying; and failing to give praise or recognition does not constitute bullying.

### **Evidence of the Applicant**

#### *Allegations 1, 6, 8, 10 and 11:*

27. The Applicant submitted that the Respondent bullied Council staff and Councillors, that his behaviour significantly impacted on the ability of other Councillors to effectively participate in Council matters and that he created tension between Councillors and Council staff. The Applicant submitted that the Respondent's behaviour equated to serious misconduct and gave various examples of why he formed that view.
28. The Applicant spoke of a neighbourhood meeting in Taylors Ward in relation to the level of crime occurring in the community. The Applicant explained that constituents had requested a community meeting and that the Taylors Ward Councillors had set up a meeting at the Keilor Community Hub. They arranged for police to be in attendance and also contacted local Members of Parliament to establish their availability to attend.
29. At a Councillor Only Time meeting the neighbourhood meeting was raised by Taylors Ward Councillors and the Applicant submitted that it was at this meeting that the Respondent (in his capacity as Mayor at the time) "shut down" the Taylors Ward Councillors and was "abrupt and threatening." At a subsequent "Hot topics" session in chambers, the Applicant alleged the Respondent verbally attacked the Taylors Ward Councillors. On that same day the Applicant alleges the Respondent sent inappropriate emails to Councillors reminding them "of section Four of the Code of Conduct, which was intimidating and undermining instead of being supportive."
30. The Applicant further contended that the Respondent's failure to attend the neighbourhood meeting and to seek feedback from the Taylors Ward Councillors regarding the meeting amounted to conduct defined as serious misconduct.

31. The Applicant also relied on the conduct of the Respondent at a protest rally at the local VicRoads office to demonstrate his poor behaviour, submitting that he harassed Council staff and Councillors to attend the Rally, that he inappropriately used Council resources such as email addresses, photocopy machines and a megaphone and finally that he misused his position for his own political purposes. When questioned by the Panel regarding the VicRoads rally, the Applicant confirmed that he too had in fact attended a VicRoads rally of the same nature. When asked to explain why the Respondent's conduct in attending equated to serious misconduct but his did not, the Applicant replied that "it is different, I only went to one."
32. The Applicant also relied on the conduct of the Respondent in dealing with the Mayoral election process as evidence of serious misconduct on the part of the Respondent. The Applicant submitted that the Respondent failed to communicate and invite the participation of other Councillors in the preparation of developing a process for the Mayoral election and that he was discriminatory and exclusionary towards Taylors Ward Councillors. The Applicant submitted the he felt unsupported, victimised and disrespected and that the Respondent's behaviour was threatening and domineering. The Applicant provided copies of emails between the Councillors to support his contentions.
33. The Applicant also submitted that the Respondent was continually and repeatedly threatening, undermining, excluding, intimidating and offensive towards the Deputy Mayor at the time that he was Mayor. Examples of this behaviour as alleged by the Applicant in his Application include:
- selecting a photo for display in the Councillors staff room that did not have all Councillors in the photo;
  - asking a fellow Councillor to speak at a Council event instead of the Deputy Mayor;
  - holding informal discussions about business cards for Councillors without all Councillors in attendance;
  - in arranging Councillor planning days, the Respondent arranged for weekend dates and when emailed by another Councillor about this with a request that the planning days not fall on a weekend, the Respondent chose to email and not call the Councillor, and copied in all other Councillors;
  - the Respondent chose another Councillor to offer condolences to a fellow Councillor after the loss of a family member instead of the Deputy Mayor, who expressed a wish to offer the condolences;
  - a media release being issued relating to positive achievements in managing the Dumping of Rubbish along Sydenham Road which included a picture of the Respondent (as Mayor) and failed to acknowledge the Applicant and a fellow Taylors Ward Councillor who "spent hours advocating on this matter";
  - the tone of the Respondents emails was inappropriate and "he would not listen to others, not recognise work of others, he had favourites and demonstrated minimal empathy to others".

34. Finally, the Applicant submitted that the Respondent's conduct when dealing with attending conferences also amounted to serious misconduct. The Applicant contended that the Respondent cancelled his attendance at a conference without notifying his fellow Councillors, and did so because he "had no confidence in his fellow ward Councillors". Furthermore the Respondent questioned particular Councillors about their attendance at conferences but did not question other Councillors who were attending the same conferences.
35. In summarising the overall impact of the effect the Respondent's behaviour has had on him, the Applicant submitted that he had lost a significant amount of weight, and had developed a serious tremor.

*Allegation 2:*

36. Allegation two related to the sale of school sites in the Brimbank municipality and contended that the Respondent failed to recognise and include the Councillors in processes that they initiated, excluded them from meetings and failed to inform them of opportunities where they had initiated actions and networked with the community.
37. The Applicant submitted that the Respondent "took the credit" for the process and failed to report back to other Councillors when he met with the Minister for Education. The Applicant also took issue with the fact that no other Councillors were invited to attend the meeting with the Minister, and submitted that the Respondent's behaviour left him feeling worthless, incompetent, bullied, harassed and undermined.

*Allegation 3:*

38. The Applicant submitted that the Respondent's relationship with local Members of Parliament amounted to serious misconduct. He alleged that the Respondent falsely represented and bullied the local Members of Parliament in Taylors Ward and harassed Taylors Ward Councillors about having any contact with Members of Parliament, whilst at the same time allowing other Councillors to have preferential treatment in making contact with any Members of Parliament. The Applicant provided copies of emails to the Panel to support his allegation, citing the fact that the Respondent "provided no formal greeting" in his email to Members of Parliament, demonstrating what the Applicant contends is behaviour that equates to serious misconduct.



*Allegation 4:*

39. Allegation four related to the Respondent's conduct in the late filing of Notices of Motions. The Applicant submitted that the Respondent submitted three Notices of Motions between 17 and 21 March 2017 where he did not follow due process. The Notices of Motions were submitted 2 days after the due date for filing and "Councillors were not formally notified. This should not have been accepted by the Chief Executive Officer." The Applicant further submitted that when he himself lodged a late Notice of Motion (which was lodged an hour after the deadline) it was not accepted, replied to, or followed up at a subsequent meeting by the Chief Executive Officer.
40. When asked by the Panel why the Respondent's late filing amounted to serious misconduct and his did not, the Applicant said that his Notice of Motion "was only an hour late, not two days."
41. When asked by the Panel as to how the conduct of the Chief Executive Officer in applying their discretion to accept or reject late Notices of Motion equated to serious misconduct by the Respondent, the Applicant was not able to provide an answer but again reiterated the "double standards" in treatment. The Applicant did concede that the Respondent in his capacity as Mayor "played no role in accepting the Notices", but when invited to reconsider seeking a finding of serious misconduct against the Respondent in relation to this allegation vehemently refused to withdraw or revise his allegation.

*Allegation 5:*

42. This allegation related to the Respondent's conduct in dealing with budgetary matters. The Applicant alleged that he felt humiliated and intimidated by the behaviour of the Respondent, that the Respondent was domineering and failed to conduct himself in a manner that afforded fairness, dignity and respect.
43. In his application, the Applicant stated that the Respondent "perceived that Councillors were not supporting most of the items he had suggested" and that in subsequent weeks the Respondent sought to change the process by which budget discussions took place.
44. The Applicant further alleged that the Respondent was "quite negative and abrupt in a meeting towards the CEO and the Directors" and that the Respondent's feedback "did not represent that of the majority of the other Councillors".
45. The Applicant also relied on events that occurred at a workshop held on 21 April 2017 dealing with budget issues. The Applicant contends that the Respondent was inappropriate in the way that he treated a fellow Councillor, but that "not one Councillor spoke to support her ..." and the Applicant "... believed they felt bullied."

46. The Applicant alleged that a second Councillor was also bullied by the Respondent, smirking and using power and control which resulted in other Councillors feeling uneasy and unable to fully contribute to the meeting.

*Allegation 7:*

47. Allegation seven related to the conduct of the Respondent in meetings. The Applicant submitted that he did not receive equal access to opportunities, that the Respondent favoured some Councillors over others in his capacity as Mayor and that the Respondent demonstrated unfair treatment towards Taylors Ward Councillors. When asked to give examples, the Applicant said the Respondent manipulated others, made decisions to suit his own needs and that he pushed boundaries by insulting, belittling and criticising others. The Applicant provided emails to support his contentions.
48. The Applicant also raised the issue of the minutes taken by the Respondent at the Council Only Time meeting, submitting that the minutes failed to make reference to a presentation that was delivered by the Taylors Ward Councillors.
49. When asked by the Panel as to why no-one sought correction to the minutes to reflect this, the Applicant said he "went along with them because everyone else did, and because there was no process for amending them."
50. When pressed by the Panel regarding the role of a Councillor and the responsibility to ensure meeting minutes are correct, to challenge inaccuracies or failure to comply with process, the Applicant agreed with this contention but said the behaviour of the Respondent made it very hard for Councillors to participate as they should.

*Allegation 9:*

51. This allegation touched on the behaviour of the Respondent in meetings, but also made allegations regarding "conflicts of interests in previous and current issues before Council". The Applicant provided emails to support his assertions regarding both the behaviour of the Respondent and alleged conflicts of interest.
52. The Applicant alleged the Respondent had different rules when conducting meetings that he chaired in his capacity as Mayor and provided minimal opportunities for others to chair committee meetings. The Applicant submitted that this constituted harassment, was offensive and domineering and left him feeling victimised, unsupported and disrespected.
53. Furthermore, in his oral evidence before the Panel, the Applicant submitted that the Respondent failed to stand when addressing other Councillors who were chairing committee meetings, a process that he himself introduced. When questioned as to how the Respondent 'bullied' councillors, the Applicant submitted that when he referred to "the old ways of prior Councils" it left Councillors feeling bullied".

54. The Applicant alleged a conflict of interest that the Respondent failed to declare regarding Sunvale Park in that he participated in budget discussions and briefings before finally declaring a conflict of interest near the end of the Council process.

*Allegation 12:*

55. This allegation related to alleged conflicts of interest regarding the following community organisations due to prior and current involvement:

- Sunshine Residents and Ratepayers Association;
- Sunshine Leisure Centre
- Sunshine RSL;
- the multideck car park; and
- Sunvale Park

56. The Applicant submitted that the Respondent participated in briefing sessions and Council Meetings where the above items were discussed, which equates to continued failure to declare a conflict of interest.

57. This allegation also referred to the Respondent "claiming to have qualifications that don't exist" and that he supplied inaccurate information to Councillors and staff.

58. The Applicant submitted that the above actions constituted serious misconduct but did not articulate which subsection of the section 3 definition of serious misconduct the behaviour fell under.

*Allegation 13:*

59. This allegation alleged bullying and aggressive behaviour by the Respondent, with "potential electoral breaches for failing to acknowledge the assistance provide by various groups and individuals associated with these groups". The Applicant also submitted that the Respondent posted an unauthorised social media post to Facebook after he was elected as Mayor which was derogatory in nature towards fellow Councillors, a local Member of Parliament and a fellow constituent who had himself been a candidate for the same ward as the Respondent.

60. The Applicant lodged a significant amount of material to support his claims including draft Council Minutes, webpage extracts from local community organisations, media articles and social media posts.

61. The Applicant contended that the above actions constitute serious misconduct but did not articulate which subsection of the section 3 definition of serious misconduct the behaviour fell under.

## Evidence of the Respondent

62. The Respondent provided a detailed response in relation to the allegations made against him and contextualised his response by providing background information regarding the deterioration in the relationship between himself and the Applicant. The Respondent told the Panel that prior to being elected to Council he had actively advocated for the Sunshine community, and it was on this basis that he ran for and was elected to Council.
63. Once elected to Council, both the Applicant and the Respondent ran for the position of Mayor, with the Respondent the successful candidate. Once elected, "Councillor Hedditch approached the role of 'transition' Mayor after such a long period of administration on the basis that a largely inexperienced Council would require a great deal of support and guidance." The Respondent told the Panel of the extensive range of professional development sessions that Councillors had been involved in to try and assist Council to build a more effective team.
64. In July 2017, the Respondent (who was Mayor at the time) was approached by the Deputy Mayor and called a bully in front of other Councillors and staff. This interaction was the subject of media reporting and significantly impacted the Respondent for a long period of time both personally and professionally.
65. The Chief Executive Officer advised of a facilitated conciliation that was arranged by Council in an attempt to remedy the damaged relationship between the Respondent and the Deputy Mayor. At this point the Applicant "insisted on being involved" in the conciliation process. The process was subsequently abandoned as the Deputy Mayor and the Applicant refused to participate in individual sessions and subsequently lodged individual complaints with the Local Government Inspectorate. The complaints were referred back to Council to be dealt with pursuant to the processes availed in the Code of Conduct.
66. At this point, both the Applicant and the Deputy Mayor requested their complaints be referred to arbitration, and they have remained in abeyance since that time as the Applicant and the Deputy Mayor have not progressed the matters.
67. The Respondent submitted that the Application made to the Councillor Conduct Panel was a "joint campaign" by two Councillors that has lasted two years and has "undermined the role of the Mayor, the Respondent's work, reputation and self-esteem both on Council and in the broader community. Shortly after the Application was lodged, the Respondent met with both Applicants (before Cr Papafotiou formally withdrew as an Applicant) in an attempt to resolve the matters before them amicably and informally. A further meeting was held, facilitated by the current Mayor, where the Applicant insisted the Respondent provide "a wholesale apology for all issues raised..." The Respondent advised that he needed to understand "what he was apologising for, and if he could, then he would make such an apology. No explanation was forthcoming and the meeting ended."

68. When asked about the impact the events have had on his own health, the Respondent submitted that both his own health, and that of his family had been significantly affected, and that it had caused him significant anguish.
69. When asked about his own style and approach in dealing with other Councillors, the Respondent acknowledged that there are a range of different styles and approaches that people have, and that he tries to understand and use various methods as required. The Respondent said he was an ongoing learner whose style is mainly one of a collaborative team approach to work, with a shared leadership style. He said he was a continuous communicator who understands the value of connecting with others. The allegations as put by the Applicant are foreign to him, and although he "calls a spade a spade and has honest and frank conversations to get to the nub of things" he is not a bully and does not harass nor victimise anyone. The Respondent submitted that he himself had been victimised, demonised and trivially picked apart over a two year period as outlined above.
70. When asked for his opinion on the Applicant's approach to his role on Council, the Respondent submitted that the applicant "was obsessive, guards the rules and has worn everyone out."
71. In relation to all allegations contained in the Application, the Respondent strenuously denied the behaviours alleged. Through his lawyer he also submitted that insufficient particulars had been provided in relation to the allegations, and that largely the emails relied upon by the Applicant in support of the Application actually demonstrate the respectful and appropriate way he communicated with Councillors and Council staff. Furthermore, the Respondent denied that he had acted in breach of any of the Councillor Conduct Principles and said that he himself had been the victim of inappropriate behaviour, and that moving forward he would hold those accountable who acted outside the spirit of the Act and the principles contained within it.
72. Regarding the various allegations asserting potential conflicts of interest the Respondent submitted that he ceased all active involvement in the relevant community groups as soon as he was elected to Council. During his time on Council the Respondent has "remained at arms lengths from the various groups and when matters came to Council he was signing off like any other Councillor." The Respondent also provided the Panel with a detailed explanation of the involvement he had with each of the groups as identified in the Application, and where appropriate provided written evidence to support this.
73. In his oral evidence before the Panel, the Respondent provided further details regarding specific allegations as listed below:

*Allegation 2:*

74. Specifically in relation to allegation two (the sale of school sites), the Respondent submitted that it is the role of the Mayor to act as the principal spokesperson for Council pursuant to section 73AA of the Act, and that notwithstanding this, he was always conscious of ensuring that appropriate persons were recognised and included in the planning process as appropriate. He supported this contention with evidence in the form of emails.

*Allegation 3:*

75. The Respondent denied that he harassed the Taylors Ward Councillors and victimised the Taylors Ward Members of Parliament. He said there was nothing inappropriate about his emails to the Members of Parliament (as contained in the Application), and that he required all Councillors to declare meetings they were having with Members of Parliament consistent with the requirements of the Code of Conduct (at clause 4.2).

*Allegation 4:*

76. Regarding the filing of Notices of Motion, the Respondent submitted that the Chief Executive Officer manages this process, and that as such this allegation should be struck out.

*Allegation 7:*

77. The Respondent submitted that this allegation contained generalised accusations of conduct targeting the Taylors Ward Councillors but provided no evidence to support the contentions and also included concerns that did not relate to the Respondent. Furthermore, the Respondent submitted that reference had been made to breaches of the Code of Conduct, with no indication as to how the behaviour alleged related to the principles in the Code of Conduct.

*Allegation 8:*

78. The Respondent submitted that it was agreed between himself (as Mayor) and the Chief Executive Officer that a Mayoral Election Process document would be created to assist Councillors to make a considered choice about the new Mayor. The Governance team drafted the document and the Respondent provided the Panel with a copy of an email he sent to all Councillors on 9 October 2017 attaching the draft for consideration and discussion at an upcoming Councillor Only Time meeting.

*Allegation 9:*

79. The Respondent submitted that he had stood down from his position as co-convenor of the Friends of Sunvale Community Park advocacy group once elected to Council, and that he declared a conflict of interest in relation to the naming of the park on the basis that his son had made a submission on the matter.

*Allegation 12:*

80. In addition to his general submission regarding all allegations of potential conflicts of interest (where he denied any such conflict), the Respondent submitted that the issue of whether or not he had a conflict of interest in relation to the multi deck carpark was raised with Local Government Victoria for clarification. He submitted that Local Government Victoria advised that there was no conflict of interest, and that it was up to individual Councillors to subjectively determine whether they had a conflict of interest.

*Allegation 13:*

81. The Respondent submitted that the social media post referred to in the Application was not authorised by him, stating that it was "made by an unknown person, who unlawfully gained access to Cr Hedditch's social media account". This matter is subject to ongoing investigation, including a complaint to Victoria Police.

**Finding of the Panel**

82. The Panel dismisses the Application pursuant to section 81J(1)(e).

**Reasons for the Panel's Decision**

83. The Panel is of the view that the Application largely includes grounds which do not fall within the definition of serious misconduct, including allegations concerning:
- equal opportunity;
  - discrimination;
  - victimisation;
  - inappropriate use of Council resources; and
  - misuse of position.
84. Despite relying on serious misconduct as the relevant ground for each allegation (other than allegation 11, where he sought a finding of misconduct), the Applicant also referenced the Councillor Conduct Principles contained in section 76BA of the Act as relevant yet failed to identify how the alleged conduct breaches all (or any) of the principles he articulated.
85. Insufficient evidence has been provided to the Panel to support the allegations made. The emails relied upon do not support the allegations made, in some instances were irrelevant and in fact demonstrate respectful and appropriate communication from the Respondent (refer to email of 4 April 2017 for example).

86. Regarding allegations made that the Respondent failed to include other Councillors in matters that they had initiated, had excluded others and failed to recognise the work of the Applicant and other Councillors, the Panel is of the view that the Applicant's own evidence demonstrated that the respondent was consistent in his communication style, that he had specifically praised the Applicant for work he done on Council (in an open email to all Councillors) and that he had given other Councillors the opportunity to be involved in various Council processes and engagements. For example, the Panel was persuaded by the emails written by the Respondent to all Councillors seeking input into in the Mayoral election process.
87. Whilst the Respondent's communication style was direct and to the point, and sometimes without greeting, this does not amount to misconduct or serious misconduct. The Panel has not been provided with evidence of victimisation or harassment by the Respondent (in either written form or verbal interactions). With specific regard to the way in which the respondent wrote his emails, the Panel notes that on review of all the evidence provided the Applicant himself also wrote emails without greetings, wrote emails that were direct and somewhat abrupt and of the same tone as that of the Respondent.
88. The Applicant failed to particularise how the Respondent was negative and abrupt in meetings, made assertions regarding the perceptions of the Respondent and provided opinions with no evidence or witnesses to support those opinions regarding tension between Councillors. Instead, the Applicant relied solely on his own perception and interpretation of exchanges that had taken place.
89. The Panel is not persuaded by the evidence of the Applicant that the conduct of the Respondent in meetings amounts to serious misconduct, or in the alternative, misconduct. The Applicant was unable to provide any evidence or witnesses to support his claims of conduct targeted at Taylors Ward Councillors and provided largely speculation and opinions as to how the behaviour of the Respondent impacted on other Councillors.
90. Furthermore, the Panel observed that the tone of the Taylors Ward Councillors (refer to email sent by the Applicant to the Respondent dated Thursday 19 January 2017 8:45pm) in and of itself had been aggressive and not in the spirit of teamwork.
91. The Applicant alleged that the Respondent failed to invite and communicate with Councillors in developing a process for the Mayoral election and that this amounted to serious misconduct.
92. The Panel accepts the evidence of the Respondent that the Chief Executive Officer had asked the governance team to prepare a draft document for Councillor consideration regarding the Mayoral Election Process, and that in an email sent by the Respondent on 9 October 2017 he provided a draft of the above document to Councillors for consideration and further discussion at the next Councillor Only Time meeting.



93. The Panel accepts the evidence of the Respondent that he had stood down from his position as co-convenor of the Friends of Sunvale Community Park advocacy group once elected to Council, and that he declared a conflict of interest in relation to the naming of the park on the basis that his son had made a submission on the matter.
94. Whilst the Panel heard and considered the submissions made regarding the alleged conflicts of interest of the Respondent, the Panel recognises that the Act clearly defines Conflict of Interest in sections 77A to 80A and makes provision for the issuance of penalty units in the case of non-disclosure where a conflict exists. It is recognised that generally Conflict of Interest issues are reported to the Local Government Inspectorate for investigation. However, the Applicant has not taken that course of action in this case.
95. The Panel accepts that the Respondent clearly understands his obligations to self-disclose a direct or indirect conflict of interest. Based on the information presented, the Panel believes that the Respondent's actions are in keeping with the Councillor Conduct Principle to "avoid conflicts between public duties as Councillor and their personal interests and obligations".
96. In relation to allegation four dealing with the acceptance or rejection of Notices of Motions, the conduct in question is that of the Chief Executive Officer in managing the process. As this is unrelated to the conduct of the Respondent, the Panel has not made a finding against the Respondent on this ground.
97. Allegation six related to participation by the Respondent in a community campaign (the VicRoads Rally) which the Applicant said amounts to serious misconduct.
98. Councillors have the right to participate in community activism and support the community in doing so. The Respondent provided evidence that the issue was the subject of a Notice of Motion approved by Council and that the megaphone used was the property of the campaign organiser.
99. The Panel notes that regarding the alleged use of Council resources, clause 3.1 of the Code of Conduct expressly allows Councillors to use resources and facilities to support them in fulfilling their Council Role. The Panel also notes the contradictory view held by the Applicant that he himself could attend a VicRoads rally and not be engaging in conduct that amounts to misconduct or serious misconduct, but that the Respondent's attendance at a VicRoads rally amounted to serious misconduct.
100. The Panel accepts the submissions of the Respondent and accordingly, determines that the Respondent had not engaged in conduct defined as misconduct or serious misconduct pursuant to the Act.
101. The Panel strongly encourages the Applicant and the Respondent to work towards establishing a professional working relationship for the remainder of their term as Councillors.

**Direction from the Panel pursuant to section 81J(1)(d) of the Act:**

102. The Panel both acknowledges and commends Council for proactively and positively attempting to ameliorate the tensions that were evident between Councillors by way of engaging various external consultants. However, it is clear to the Panel both in the written material before it and in oral evidence provided at the hearing that the current internal dispute resolution process dealing with alleged contravention of the Councillor Code of Conduct lacks clarity and specificity around required process steps and timelines. The Panel is of the view that had the Code of Conduct been more directive and specific in relation to contravention of the Councillor Code of Conduct, this matter could have been responded to and addressed in a more timely manner.

103. The Panel directs the Council to revise its Code of Conduct pursuant to section 81J(1)(d) of the Act to be more specific in relation to both the process for internal dispute resolution and the timelines involved in each step of the process.

**Jo-Anne Mazzeo**  
Chairperson

**Jan Boynton**  
Panel Member