

COUNCILLOR CONDUCT PANEL

In the matter of an Application by Councillor Jim Doukas
concerning Councillor Damian Gleeson
of the Moyne Shire Council (CCP 2022-13)

HEARING PURSUANT PART 6 OF THE *LOCAL GOVERNMENT ACT 2020*

Applicant: Councillor Jim Doukas
Respondent: Councillor Damian Gleeson
Date of Hearing: 31 January 2023
Panel Members: Ms Jo-Anne Mazzeo (Chairperson)
Mr Matt Evans

DETERMINATION

Pursuant to section 167 (1)(d) of the *Local Government Act 2020* the Councillor Conduct Panel dismisses the Application.

Jo-Anne Mazzeo
Chairperson

Matt Evans
Panel Member

1 March 2023

STATEMENT OF REASONS FOR DECISION

The Application

1. The Application received by the Principal Councillor Conduct Registrar on 10 June 2022 was made by the applicant seeking a finding of serious misconduct against the respondent relating to multiple allegations which are summarised below.
2. The ground of the Application was listed as "the disclosure by a Councillor of information the Councillor knows, or should reasonably know, is confidential information".

Evidence provided at hearing

3. Written evidence was submitted by both the applicant and the respondent prior to the hearing and oral evidence was given at the hearing by both the applicant and the respondent.

The jurisdiction of the Panel in relation to this Application

4. Section 154 of the *Local Government Act 2020* (the Act) provides that a Panel may hear an application that alleges serious misconduct by a Councillor.

Evidence of the Applicant

5. The applicant provided the Panel with an overview of the events that led to the Application being made. He did this by way of submission of written material that supplemented his Application, and oral evidence given at the Panel Hearing.
6. In the Application, the applicant alleged that the joint statement issued by the respondent and another Councillor in the Warrnambool Standard on Monday, 15 November 2021 "released significant confidential details to the public about the code of conduct allegations made against me ..." and that the information in the statement constituted "personal information, being information which if released would result in the unreasonable disclosure of information about his personal affairs."
7. The particular paragraph of the article dated 15 November 2021 that the applicant submits is a breach of confidential information is as follows:

"In our view, Cr Doukas breached the Code of Conduct in his verbal exchange with a female staff member at an open council meeting which resulted in a formal complaint to the CEO from the staff member concerned."

8. Furthermore, the applicant submitted that the statement made was "... in an attempt to publicly discredit me when they had both indicated they were interested in being Mayor."
9. When asked by the Panel as to the context of the statement made in the Warrnambool Standard, the applicant confirmed that he himself had made a statement to the Warrnambool Standard on 12 November 2021, telling the Warrnambool Standard the two candidates for mayor, Cr Jordan Lockett and Cr Damian Gleeson, had made code of conduct allegations against him and he was refusing to vote for either of them on principle."

Evidence of the Respondent

10. The respondent provided the Panel with a copy of an email dated Friday, 12 November 2021 from himself to the then Director of Community and Corporate Services where he indicated that he was "most disappointed that the Code of Conduct matter had been made public ..." and that he "... thought it was confidential and that the issue had been finalised." In the same email, the respondent indicated that he would like a "right of reply" and asked for advice as to whether this was appropriate.
11. At the Panel Hearing, the respondent confirmed he had been given verbal advice from the then Director of Community and Corporate Services that there had been verbal discussions between the Council Chief Executive Officer and Maddocks Lawyers where the substance of the proposed article (which was ultimately published on 15 November 2021) had been discussed and Maddocks Lawyers had verbally indicated that the article was not in breach of the Act in any way.
12. The respondent also provided an email dated 27 December 2022 from the then Director of Community and Corporate Services confirming that he gave the respondent advice (as stated in the paragraph directly above) confirming that Council had sought legal advice from Maddocks Lawyers and had "cleared the article" that the respondent sought to provide to the Warrnambool Standard.
13. The respondent submitted that he provided the statement to the Warrnambool Standard based on the advice received from the relevant Council Officer and with the permission of the Chief Executive Officer.

Findings of the Panel

14. Pursuant to s167(1)(d) of the Act the Panel dismissed the Application.

Reasons for the Panel's Decision

15. The Panel accepted the submission of the respondent that his joint statement made to the Warrnambool standard published on 15 November 2021 did not amount to a disclosure of confidential information pursuant to the Act, in that it did not disclose personal information that if disclosed would result in the *unreasonable* disclosure of information about any person or their personal affairs.
16. The article published in the Warrnambool Standard included comments made in response to a statement made by the applicant himself (on 12 November 2021) disclosing his own personal affairs (in relation to the code of conduct matter) and as such was not unreasonable. The Panel also notes that the article of 12 November 2021 also clearly confirmed that the Code of Conduct matter had been withdrawn and that when approached by the Warrnambool Standard for a comment regarding the matter, the respondent declined to comment on the allegations "saying they considered the matter resolved".
17. The article does not disclose the name of the Council staff member involved in the verbal exchange and does not even identify the Council meeting in which the exchange took place.
18. The Panel also notes the restraint used by the respondent in his statement published in the Warrnambool Standard on 15 November 2021, focusing only on the Code of Conduct matter disclosed by the applicant in the article of 12 November 2021 and not responding to the personal attack that was also made by the applicant (in reference to the mayoral election) in that same article where, when referring to the respondent, he stated that "You're meant to pick the best person for mayor and neither of them qualify ...".
19. Accordingly, the Panel dismisses the Application.
20. The dismissal of the Application does not mean that the decision of the Registrar to form a Panel under s 156 of the Act was not appropriate. On the face of the application, it was open to the Registrar to form the view that the application was not lacking in substance and that there was sufficient evidence to support the allegations made - see s 155 (1) of the Act. Ultimately, the Panel had the benefit of the allegations being tested by competing evidence and did not find them made out on the totality of all the evidence before the Panel.

APPENDIX: Definitions

Misconduct is defined in s 3 of the Act as:

“misconduct by a Councillor means any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct”.

Serious misconduct by a Councillor is defined in the Act and means any of the following—

- “(a) the failure by a Councillor to comply with the Council's internal arbitration process;
- (b) the failure by a Councillor to comply with a direction given to the Councillor by an arbiter under section 147;
- (c) the failure of a Councillor to attend a Councillor Conduct Panel hearing in respect of that Councillor;
- (d) the failure of a Councillor to comply with a direction of a Councillor Conduct Panel;
- (e) continued or repeated misconduct by a Councillor after a finding of misconduct has already been made in respect of the Councillor by an arbiter or by a Councillor Conduct Panel under section 167(1)(b);
- (f) bullying by a Councillor of another Councillor or a member of Council staff;
- (g) conduct by a Councillor that is conduct of the type that is sexual harassment of a Councillor or a member of Council staff;
- (h) the disclosure by a Councillor of information the Councillor knows, or should reasonably know, is confidential information;
- (i) conduct by a Councillor that contravenes the requirement that a Councillor must not direct, or seek to direct, a member of Council staff;
- (j) the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision making process when required to do so in accordance with this Act”.

Confidential information is defined in s 3 of the Act as:

“confidential information means the following information—

- (a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released;
- (b) security information, being information that if released is likely to endanger the security of Council property or the safety of any person;
- (c) land use planning information, being information that if prematurely released is likely to encourage speculation in land values;

- (d) law enforcement information, being information which if released would be reasonably likely to prejudice the investigation into an alleged breach of the law or the fair trial or hearing of any person;
- (e) legal privileged information, being information to which legal professional privilege or client legal privilege applies;
- (f) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;
- (g) private commercial information, being information provided by a business, commercial or financial undertaking that—
 - (i) relates to trade secrets; or
 - (ii) if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage;
- (h) confidential meeting information, being the records of meetings closed to the public under section 66(2)(a);
- (i) internal arbitration information, being information specified in section 145;
- (j) Councillor Conduct Panel confidential information, being information specified in section 169;
- (k) information prescribed by the regulations to be confidential information for the purposes of this definition;
- (l) information that was confidential information for the purposes of section 77 of the Local Government Act 1989”.