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INTERNAL ARBITRATION IAP 2022-27

Applicant: Councillor Gilbert Wilson
Respondent: Councillor Scott Martin
Council: Glenelg Shire Council
Date of Hearing: 12 December 2022
Arbiter: Louise Hill

DETERMINATION

The Arbiter has determined that there has been a breach of the prescribed standards of conduct by the Respondent, Cr Martin in that he failed to show respect to the Applicant and therefore a finding of misconduct is made.

The Arbiter directs that the Respondent make a written apology as outlined in the statement of reasons for decision.

STATEMENT OF REASONS FOR DECISION

Application

The Application from Councillor Gilbert Wilson alleges that Councillor Scott Martin has breached the following prescribed standards of conduct set out in Schedule 1 to the Local Government (Governance and Integrity) Regulations 2020.

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 –

(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.

2. Performing the role of Councillor

A Councillor must, in performing the role of a Councillor, do everything reasonably necessary to ensure that the Councillor performs the role of a Councillor effectively and responsibly, including by ensuring that the Councillor -

(d) represents the interests of the municipal community in performing the role of a Councillor by considering and being responsive to the diversity of interests and needs of the municipal community.

3. Compliance with good governance measures

A Councillor in performing the role of a Councillor, to ensure the good governance of the Council, must diligently and properly comply with the following:

(a) any policy, practice or protocol developed and implemented by the Chief Executive Officer in accordance with Section 46 of the Act for managing interactions between members of the Council staff and Councillors

4. Councillor must not discredit or mislead Council or public

(1) In performing the role of a Councillor, a Councillor must ensure that their behaviour does not bring discredit upon the Council.

(2) In performing the role of a Councillor, a Councillor must not deliberately mislead the Council or the public about any matter related to the performance of their public duties.

In support of his application, Cr Wilson cites comments made by Cr Martin on the Portland Bay Beacon Facebook page on 12 July 2022. The Facebook entry is lengthy and refers to decisions by the Glenelg Shire Council on changes to the rating system.

Cr Wilson has highlighted ten excerpts of the Portland Bay Beacon article from Facebook as evidence of breaches of the standards as shown in the table at Attachment 1. Cr Wilson asserts that Cr Martin has made false statements and accusations against him, and his application provides supporting statements as to why each of the excerpts demonstrate breaches of the standards by Cr Martin.

In summary, Cr Wilson considers that Cr Martin has not:

- treated Cr Wilson with dignity, fairness, objectivity, courtesy and respect by making a comment on attending council meetings in a bathrobe and by naming him and other councillors for voting against the decision to change to the Council's rating process;
- ensured that he responds to the diverse needs of the community, given that some members of the community were adversely affected by the Council's decision on rates;
- complied with good governance for managing the interactions between Councillors by making comment on the way some Councillors voted on the rating decision.

Cr Wilson also alleges breaches of the standards in that he considers that Cr Martin has discredited the Council and misled the public in relation to the rating decision.

A directions hearing was held via Microsoft Teams on 16 November 2022.

Response

Cr Martin as respondent, provided his response on 1 December 2022 together with a letter from the Victorian Ombudsman of 5 October 2022 to the President of the Victorian Farmers Federation responding to a complaint about the Glenelg Shire Council's decision on the rating system.

Cr Martin has acknowledged that he was the author of the Facebook entry for the Portland Bay Beacon, signed by him as Councillor and Deputy Mayor. He considers that the article constitutes robust political debate and that his comments are within the bounds of a Councillor's role and are statements of fact and delivered in a respectful manner.

Cr Martin states that he did not specifically name Cr Wilson as wearing a bathrobe to Council meetings.

A hearing was conducted in person at the offices of Brewster Walsh and Associates in Portland on 12 December 2022. In attendance were Mr David Hol, Council Conduct Officer, Cr Wilson and Cr Martin and Arbiter Louise Hill.

Cr Wilson stated that Cr Martin was attacking him and other Councillors and that Cr Martin should not name them negatively. He was overseas and returned from holiday to be made aware of the Facebook post.

Cr Wilson stated that although the article did not name him as wearing a bathrobe, people who know him believed that it was him who was referred to. He had been ill and was required to attend a confidential Council meeting via Zoom. To get a good digital connection, he had to go to his garage and wore his bathrobe, as it was very cold.

Cr Wilson stated that he found it distasteful and abhorrent that his views on the rating system were about getting votes. Cr Martin's comments about the Council being virtually bankrupt and having to close services was creating fear in the community. He also stated that he considered the article to be "divisive and anti-team" about the cohesiveness of the Councillors. He also questioned whether publishing the article was in breach of the Council's media policy, as it was not authorised or made by the Mayor.

Cr Martin's response is that he had asked the Mayor for permission to make the comments. He considers that the comments in the article are part of "robust political debate" and he was "highlighting the Councillors' decisions". He considers that he is representing the interests of the community who he says wants to hear from all Councillors.

In relation to the bathrobe comment, Cr Martin does not consider this to be disrespectful and conversely that it is disrespectful to attend Council meetings in a bathrobe.

Cr Wilson is keen to have higher standards of trust and confidence in Council and Councillors and that community trust is lost if media releases name councillors as it belittles them. Council decisions should be communicated in a positive way.

Findings and Reasoning

Considerations of findings of misconduct do not extend to the quality or correctness of the decisions made by Council. Central to the Facebook article and the application is the decision taken by the Glenelg Shire Council on the rating system and the associated decision on the Council budget. The Victorian Ombudsman's letter provided as evidence by Cr Martin deals with the rating system and decisions by the current and previous Councils and is therefore not relevant as to whether Cr Martin has breached the Standards of Conduct.

Councillors' voting on specific decisions are recorded by the Council and publicly available. It is therefore within the limits of fairness that Cr Martin has highlighted how Councillors have voted on the rating system recently or historically. Stating the case for change is part of this debate and is not considered to be misleading or not considering the diverse needs of the community. However, it does seem politically motivated given that the Council's decision for rating system change was already made and was not still under consideration by Council.

All Councillors are entitled to vote as they consider is in the best interests of their community. Public discussion of issues and which way Councillors voted is not bringing discredit on the Council nor misleading the public.

The statement about the bathrobe "...one Councillor has been rocking up to Council meetings in a bathrobe of late." is highly personal. Cr Wilson is not directly named but as the article only names two other current Councillors in respect of the rating system decision, it can be reasonably deduced that it is one of them. The statement is without context as it implies multiple meetings and is silent whether these are in person or virtual meetings. It is designed to belittle, embarrass or possibly humiliate a Councillor by implying that the Councillor is not putting sufficient importance on the manner of attending Council meetings.

Cr Martin stated that this is "all part of the theatre of politics." I disagree. Robust political debate is about the contest of ideas, options and impact of Council decisions. Personal attacks are not consistent with the Standard of Conduct 1(d): specifically "A Councillor must...treat other Councillors with dignity, fairness, objectivity, courtesy and respect....."

I therefore make a finding of misconduct by Cr Martin in relation to a breach of Standard of Conduct 1(d).

Sanction

Cr Martin is required to provide an apology on Portland Bay Beacon Facebook page within 14 days of the tabling of this report to Council and to provide a personal written apology to Cr Wilson acknowledging the personal negative impact on him and to provide assurances to Cr Wilson that he will work as Mayor and Councillor to build positive constructive relationships with him and between all Councillors throughout his term(s) on Council.

It is regrettable that the arbitration process is being used in this manner and that Councillors are reluctant to discuss their differences and concerns directly with one another. The community expects their elected representatives to uphold high standards of behaviour and without this, our trust and confidence in them is diminished unnecessarily.

Louise Hill
Arbiter

9 January 2023

Attachment 1

| Excerpt from Facebook page Portland Bay Beacon | Standard |
|--|------------------------------|
| <i>It is disappointing to see all councillors didn't take the opportunity to provide a clear voice to ratepayers on how the rates system works although I wasn't surprised as one councillor has been rocking up to meetings in a bathrobe of late.</i> | 1(d), 2(d), 3(a), 4(1), 4(2) |
| <i>There is a fantastic groundswell of residents that want to see change but have been let down and given the wrong information to make that change possible because of some people's own self-interest.</i> | 4(1), 4(2) |
| <i>There is a clear and precise system that needs to be adhered to that all councillors knew. There was a period where all councillors had direct input into the budget and we all signed off on it. It then went out to community consultation for anyone to have direct input and there was no community feedback to add or take out anything from the budget. It also went through an audit committee unchanged for which Cr Stephens and Cr Carr and the Mayor sit on, they gave it their tick of approval a second time.</i> | 1(d), 2(d), 3(a), 4(1), 4(2) |
| <i>Last year the VFF framed the start of this journey as a farming issue and advocated for no change. I voted for that not to happen as it is a shire-wide issue and a small 5% change last year would have meant roughly 10% increase or none this year instead of what we faced. Cr Wilson and Cr Stephens brought the motion last year supported by Cr Carr that ultimately see a large change this year and the problem was pushed down the road like it has been since 2016.</i> | 1(d), 2(d), 3(a), 4(1), 4(2) |
| <i>Instead on the night, there were 3 councillors that explained what and why it was happening and three that took advantage to win votes at the expense of the correct information getting out and providing the drive for meaningful change at the state government level. In fact, since the rebate system was introduced, around \$30 million of the taxpayer's money was given as discounts to the Primary Industries in the form of these rebates. An industry that contains multinational companies that are beholden to shareholders. In-effect,(sic) our rate money has been given as dividends to shareholders instead of invested in the community which disgusts me no end.</i> | 1(d), 2(d), 3(a), 4(1), 4(2) |
| <i>That is no more evident than what happened in 2010 when a rebate was introduced by then Cr Northcote and Cr Stephens and caused all this problem (Cr Wilson was also on the council at the time). Good governance was not adhered to and no one seems to know why they did it. That decision rests solely with these councillors, yet this council must pick up the pieces.</i> | 1(d), 2(d), 3(a), 4(1), 4(2) |
| <i>In 2016 with the change and implementation of the fair go rates system the writing was on the wall that if a change wasn't made back to a differential system the council would become the equivalent of bankrupt. What that would look like is a severe reduction in all services. Instead, the proverbial can was kicked down the road until now and astonishingly but not surprisingly, was attempted to be kicked down the road again. The decision made by Councillors Carr, Wilson and Stephens would have led to financial issues if allowed to happen. If that had been allowed to happen what that would most likely have looked like is a severe reduction in services and all residents paying the same, like a neighbouring shire, not to mention no more councillors for breaking the legislation.</i> | 1(d), 2(d), 3(a), 4(1), 4(2) |
| <i>There are two points of concern that I would have pointed out on the night.... will no longer be a possibility.</i> | 1(d), 2(d), 3(a), 4(1), 4(2) |

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| <i>So where do I go from here as dwelling on what has been done is not productive</i> | 1(d), 2(d), 3(a), 4(1), 4(2) |
| <i>Part of being a good councillor is that you must make tough decisions at times unpopular decisions. Not to be fearful of the tough decisions because you think more about that next election than the next generation.</i> | 1(d), 2(d), 3(a), 4(1), 4(2) |