

INTERNAL ARBITRATION PROCESS – MOONEE VALLEY CITY COUNCIL

In the matter of an Application by Councillor Rose Iser concerning Councillor Samantha Byrne

INTERNAL ARBITRATION PROCESS PURSUANT TO PART 6 OF THE  
*LOCAL GOVERNMENT ACT 2020*

Application Number:	IAP 2024-33
Applicants:	Cr Rose Iser
Respondent:	Cr Samantha Byrne
Hearing Dates:	29 August and 5 September 2024
Before:	Louise Martin
Date of Decision & Reasons:	9 September 2024 (Revised version 10 September 2024)

DETERMINATION

The Arbiter finds that Cr Byrne is in breach of Standards 1(d), 3(c) and 4(1).

## STATEMENT OF REASONS FOR DECISION

### The Application

1. In this application for internal arbitration, Councillor Rose Iser of the Moonee Valley City Council (the **Council**) alleges that Councillor Samantha Byrne has breached clauses 1(d), 2(b), 3(c) and (d), clause 3(a) and (c), and 4(1) and (2) of the Standards of Conduct (the **Standards**).
2. Cr Iser contends that Cr Byrne breached the Standards through her conduct at a Council meeting held on 25 June 2024, which was debating the Council's 2024/25 annual budget.

### Jurisdiction of the Arbiter in relation to this application

3. On 24 July 2024, I was appointed by the Principal Councillor Conduct Registrar under sections 144 and 149 of the *Local Government Act 2020* (the **Act**) to hear Cr Iser's application for internal arbitration. Under s 143 of the Act, an Arbiter may hear an application that alleges misconduct by a Councillor and determine whether a Councillor has engaged in misconduct (s 147).
4. "Misconduct" is defined in section 3 of the Act as "any breach by a Councillor of the standards of conduct". The Standards are set out in Schedule 1 to the *Local Government (Government and Integrity) Regulations 2020* (the **Regulations**), a copy of which is included below at Appendix A.
5. The issue for my determination in this internal arbitration is whether Cr Byrne's conduct at the 25 June 2024 meeting was in breach of the relevant parts of the Standards as alleged by Cr Iser.

### Hearings in this matter

6. The arbitration included a directions hearing, which was held on 30 July 2024. A substantive hearing was then scheduled to occur at the Djerring Flemington Hub on 15 August 2024. However, when the transcription service was unable to attend, a further directions hearing was held that day instead.
7. The substantive hearing began at the Moonee Valley City Council offices on 29 August 2024 but it was unable to conclude in the single day that had been allocated to it. The hearing then resumed and finished on 5 September 2024. The hearings were conducted

privately between the parties and myself with the attendance of the Council's Councillor Conduct Officer.

8. During the substantive hearing, Cr Iser made opening and closing submissions, gave oral evidence and called evidence from Cr Ava Adams, Cr Katrina Hodgson, Mayor Cr Pierce Tyson. In response, Cr Byrne also made opening and closing submissions, gave oral evidence and called evidence from Cr Jacob Bettio. Both Cr Iser and Cr Byrne had the opportunity to question each other and the other party's witnesses.

## **Standards of Conduct**

9. Relevantly, clause 1(d) of the Standards provides as follows:

“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.”

10. Clause 2(b) provides:

“Performing the role of Councillor

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

(b) diligently uses Council processes to become informed about matters which are subject to Council decisions.”

11. Clause 3(c) provides:

“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—

...

(c) the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act.”

12. Clause 4 provides:

“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.”

13. Clause 5 states:

“Nothing in these standards is intended to limit, restrict or detract from robust public debate in a democracy.”

### **F J Davies Reserve playground**

14. Much of the arbitration was concerned with Cr Byrne’s language during a debate at the Council meeting on 25 June 2024 in respect of the F J Davies Reserve (the **Reserve**). The Reserve is located in Keilor East, which is the Council ward that Cr Byrne represents. It is a local park within the Centreway shopping precinct. Due to its location, the Reserve is sometimes referred to as the Centreway Park or the Centreway Reserve.
15. To make sense of the language used by Cr Byrne, it is necessary to have some understanding of the background to the issue. As it was not extensively discussed in either party’s written materials, both Cr Iser and Cr Byrne gave evidence about it at the hearing. In her evidence in chief, Cr Iser described how, in May and June 2023, funds had been provided for in the 2023/24 budget specifically for some playground equipment at the FJ Davies reserve. The proposal was for \$200,000 of funding for the Centreway Aviation-Themed Playground.
16. At the same time, there was also a notice of motion before the Council to start a Landscape Concept Plan for the Reserve. At a pre-budget Council meeting, which was held on 23 April 2024, Cr Iser moved a motion to pause the \$200,000 funding for the playground equipment for the Centreway Aviation Themed Playground.
17. Cr Iser said her motion reflected advice that had been received from the Council officers. The advice was that it was preferable that Council undertook community consultation for

the draft Landscape Concept Plan for the Reserve before spending the money on the playground equipment.

18. Cr Iser said that she had moved the motion because, if the Council spent money on some playground equipment, and then subsequently undertook the process for the Landscape Concept Plan, it wasn't clear how the playground equipment, which would already have been purchased, would then fit with the Landscape Concept Plan for the same area.
19. At the Council meeting of 23 April 2024, Cr Byrne had first used the phrase "playground killers", stating: "I don't want to be a playground killer here, um, because that's what I feel like we're doing." Cr Iser said that the phrase was then repeated by community members in an uncomplimentary Facebook post, which stated:

"[Councillors] Hodgson, Iser, Sharpe, Adams and Tyson are the playground killers."

20. In reply, Cr Byrne said that, back in 2018, the Council had asked the community and traders for ideas to inform the future of the Reserve. Cr Byrne said that there had been tents set up within the Reserve. Cr Byrne said that she and Cr Sipek had spent time in those tents listening to the community share their thoughts and about how the Centreway area could be improved.
21. Cr Byrne said that one of the items that came up regularly was the playground in the Reserve. Cr Byrne said that COVID had halted the plans for the site, arising out of the 2018 community consultation, and so they had looked at more immediate ways to refresh the Reserve. They had done this by undertaking smaller projects, such as landscaping some of its corners and providing tables. Cr Byrne said: "We still didn't have this endorsed plan and the thought was that we had to keep chipping away at little things."
22. Cr Byrne said that the playground at the Reserve was continually brought up as an issue by the community. Cr Byrne said as late as in March this year, when a capital works report came through, the plan to purchase playground equipment was still going to go ahead, assuming that there was more money added within the budget for it.
23. However, Cr Byrne said that the day before the draft budget meeting in April 2024, she and Cr Sipek found out that the money for the playground equipment, which was \$200,000 by that stage, was going to be removed. Cr Byrne said that the Centreway traders found out and were very disappointed.
24. After the draft budget passed, Cr Byrne said that some of the Centreway traders decided to start a petition to get the money reinstated for the playground. She said that the petition amassed 800 signatures over the next few weeks.

25. Cr Byrne said:

“It was very hotly debated on social media and what-not. And when I spoke to particular traders or community members, I sort of felt that the crux of it was that they weren't attached to an aviation-themed playground but they really wanted to make sure that the money stayed within the area, even though that wasn't the actual wording of what their petition was. And so I felt, ‘Well, that's a happy compromise that we could sort of - the money was already there and if we could just change the wording that, instead of it being \$200,000 for aviation-themed playground, the exact same dollar amount could be spent on the detailed design of the concept plan of the Centreway with \$200,000’ ...”

26. Cr Byrne said that she didn't disagree that the timing of the purchase of the playground equipment and the Landscape Concept Plan had eventually aligned. But she stressed that, given that the community had been waiting since 2018 for the Reserve to be upgraded, “then you'd go ahead with the playground because you've got a bit of a general idea of where it's going to go”.

#### **Cr Byrne's conduct at the Council meeting of 25 June 2024**

27. At the Council meeting on 25 June 2024, Cr Iser moved a motion containing a series of amendments to the 2024/25 annual budget. In her internal arbitration application, Cr Iser said that all the amendments in her motion had been checked by the Council's CEO and finance team for accuracy and deliverability and were based on the advice of Council officers.

28. Cr Iser said that her motion had been circulated to councillors and officers three days prior to the meeting. An invitation had been extended to all councillors for any queries or feedback. The two most relevant amendments to the 2024/24 budget for the purposes of Cr Iser's internal arbitration application are contained at (a)(i) and (a)(ii) of the motion. They are as follows:

“(a)(i) Reallocate \$250,000 of the planning and feasibility funding to the Community Carbon Emissions Reduction Reserve

(a)(ii) “Remove \$200,000 for the Centreway Aviation Themed Playground Project noting the officer's advice that Council could resolve during the year to allocate some funding for design development of an endorsed concept plan, and that the community engagement process will help determine the level of funding required and timing.”

29. At the Council meeting, Cr Byrne put forward two amendments to Cr Iser's motion. The first amendment proposed to replace point (a)(ii) of Cr Iser's motion with:

“reallocate \$200,000 from the Centreway Aviation Themed Playground Project to detailed design for the Landscape Concept Plan for F J Davies Reserve in Keilor East.”

30. Cr Byrne’s motion was circulated ahead of the meeting. It failed to pass by four votes to five. The second amendment moved by Cr Byrne was to remove the point (a)(i) from Cr Iser’s motion. This motion was not circulated ahead of the meeting. It also failed to pass by the same margin. Following the failure of these two motions, another Councillor, Cr Bettio moved an amendment, which was:

“Allocate \$50,000 towards detailed design for the landscape concept plan for the FJ Davies Reserve in Keilor East.”

31. This motion also failed to pass by four votes to five. Cr Iser’s substantive motion was ultimately carried by seven votes to two.
32. I will now turn to consider some of the specific actions taken by Cr Byrne at the meeting which Cr Iser alleges were in breach of the Standards. Cr Iser has raised what she describes as nine allegations in respect of Cr Byrne, although, at the hearing, she withdrew the sixth allegation. I propose to address the complaints raised by Cr Iser with respect to Cr Byrne’s conduct thematically. For instance, I will consider the complaints that relate to the repeated use of the term “playground killers” first, even though they are contained at allegations 1, 5 and 7.
33. Because these arbitrations are conducted with as little formality and technicality as a proper consideration of the matters permits,<sup>1</sup> at times, the evidence from Cr Iser, Cr Byrne and their witnesses strayed into areas that went beyond the allegations contained in the application. If the evidence did not go directly to an allegation made by Cr Iser in her application, I have not included any discussion of it in these reasons.
34. I have also not given any consideration to evidence of any allegations in respect of Cr Byrne that preceded the Council meeting on 25 June 2024 as it is beyond the scope of the arbitration. Further, to the extent that witnesses have provided their views as to whether certain conduct was in breach of the Standards, I have not set it out in these reasons as I do not consider it to be permissible for lay witnesses to offer these types of opinions.

## **Consideration of alleged breaches of Standards**

### Repeated use of the phrase “playground killers”: allegations 1, 5 and 7

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<sup>1</sup> *Local Government Act 2020*, s 141(2)(d).

35. The first complaint raised by Cr Iser is in respect of Cr Byrne's repeated use of the term "playground killers" during the debate on 25 June 2024. Cr Iser contends that the use of this term is in breach of standards 1(d), 3(c) and 4(1) and (2). It is necessary to provide a summary of what was said during the relevant part of the meeting. In part, this summary is based on what is set out in Cr Iser's application, which both quotes from and summarises parts of the Council debate, which was video-taped and is available to watch via the Council's website and on YouTube.
36. Having closely watched the recording a number of times, I have formed the view that Cr Iser's summary was accurate. However, for some parts of the meeting, which became the subject of extended discussion at the arbitration hearing, I have inserted direct quotes, rather than the paraphrasing that Cr Iser provided in her application. I have also underlined the term "playground killers" when it is used in the debate.
37. The relevant part of the meeting starts at 2:17:33 of the recording, when Cr Byrne, who is speaking to Cr Bettio's amendment, which is discussed above at paragraph [30], states:

"Like .... I don't ... We don't want one of our, you know, the big debates, what the, what the story that will come out of tonight being the fact, you know, the term playground "playground killers" was used – you know - are we going to be 'Centreway killers'? Are we going to be unsupportive to our businesses? It's basically what's happening in this space. It doesn't need to happen."

38. At 2:17:50 of the recording, Cr Adams then moved a Point of Order, stating:

"Governance Rule 3.1.1 [sic], making comments that are defamatory, malicious or offensive. I would like the statement 'playground killers' withdrawn please."

39. Mayor Tyson then said:

"In considering your point of order, I would probably find the comments objectionable, and bringing Council into disrepute, Cr Byrne, so I would just ask you to withdraw that comment."

40. At 2:18:36, Cr Byrne asked to have a moment. The Mayor said: "Aah, Cr Byrne, I have asked you to withdraw the statement." At 2:18:43 Cr Byrne asked 'what would you like me to withdraw Mayor'. The Mayor responded: "the term playground killers".

41. At 2:19:00, Cr Byrne withdrew the comment: "I will withdraw it. What was I withdrawing Mayor?" The Mayor replied: "The term 'playground killers' with reference to Council."



42. Cr Sipek then said that he wanted to challenge the Mayor's decision on the point of order. A three-minute adjournment was called so that Cr Sipek could be guided in his request to move a motion of dissent against the Mayor's ruling. During the debate on Cr Sipek's dissent motion, the Mayor later stated:

"Thank you chair, I feel that the .... upholding the point of order from Cr Adams was warranted as under our governance rules ... they make reference to the Councillor Code of Conduct and I believe that ... through that, a statement of, aah, Council, aah, being "playground killers" was bringing Council into disrepute. I did agree with Cr Adam on that as well as the fact that it was a generally objectionable statement as referenced in our Governance Rules and Code of Conduct."

43. Cr Sipek's dissent motion was moved and lost, with only Cr Sipek and Cr Byrne voting in support of it. At 2:27:56, the debate resumed, and Cr Byrne said: "In regards to playground killers, it was something that was used at a previous Council meeting and it hadn't been ... So it was something that had been used ..."

44. At 2:28:22, the Mayor interrupted Cr Byrne and told her that the Governance Rules require the withdrawal of statements, when ordered, without explanation or condition. Cr Byrne said: "I did that, Mayor." The Mayor replied: "But explaining your reasoning after withdrawing a statement is putting conditions on withdrawal so I would ask you to refer to your amendment."

45. At 2:28:48, Cr Byrne recommenced debate, stating:

"Well, I appreciate robust debate, and I will continue to use robust debate. Obviously, everyone has a varying line in terms of where that occurs, and I suppose that can happen across a variety of different motions. But there have been many different words that have been used in regards to the Centreway Playground and the removal of \$200,000. Obviously ... you don't want me to use the words 'playground killers' and I'm not going to use that."

46. At 2:29:22, Cr Narelle Sharpe raised her voice to state that Cr Byrne had again said the words she had been asked to withdraw. Cr Byrne shouted across the Chamber at Cr Sharpe: "I just said I wasn't going to use it." While it not filmed on the video, as the camera is on Cr Byrne, the sound of the gavel being used by the Mayor can be clearly heard. In her witness statement, Cr Katrina Hodgson described how the Mayor had to bang the gavel with such vigour that the head of the gavel flew off behind him.

47. The Mayor intervened and told Cr Sharpe that he did not appreciate the interjection. At 2:29:43, the Mayor asked Cr Byrne to stop referring to the remark that she had to

withdraw. He said: “I believe that you are being deliberately mischievous there and I will give you a warning for that.”

48. The Mayor then asked Cr Byrne to continue what she was saying in response to Cr Bettio’s amendment. Cr Byrne then stated:

“Well, I won’t use those words anymore but what I can say is that, even if I am not using them, I can guarantee that the community will be using a lot of different things because it is really disappointed, over 800 people in the community, that money was taken out of such a precious space. So, if you don’t want to hear words from me, so be it, I am sure that we will hear them from the community, going forward if this amendment doesn’t get up.”

Allegation 1: Repeated use of term “playground killers” in breach of Standard 1(d)

49. Cr Iser argues that Cr Byrne treated the Mayor and other Councillors with disrespect when she “intentionally and wilfully” repeated the phrase “playground killers” despite being asked by the Mayor to withdraw it. Cr Iser highlighted how, after the Mayor had ruled on the point of order that had been moved by Cr Adams, and had asked Cr Byrne to withdraw the phrase, Cr Byrne then twice repeated the phrase during the subsequent debate.

50. Further, in seeking clarification from the Mayor as to what she needed to withdraw, Cr Byrne twice made the Mayor say the phrase, which, Cr Iser contends, was disrespectful to him. Cr Iser noted that, when Cr Byrne had first used the phrase “playground killers” at the Council meeting of 23 April 2024, Cr Byrne wasn’t required to withdraw it. But Cr Iser said that that did not mean that other Councillors were comfortable with Cr Byrne using the phrase. Cr Iser told the hearing:

“That the phrase was picked up by community members and used in a denigrating way to describe Councillors gave greater weight to the need to withdraw the phrase on 25 June.”

51. Cr Iser argues that the phrase “playground killers” was a reference to her fellow Councillors. At the hearing, the Mayor gave evidence as to the events on that night. In respect of the use of the phrase, “playground killers”, the Mayor was asked by Cr Iser how it compared to other language used in Council chambers. He stated:

“Well, I think it was designed to deliberately provoke Councillors as well as potentially inflame community angst that had been stirred on this issue.”

52. Cr Iser asked the Mayor what he meant when Cr Byrne asked him the second time what she was withdrawing, and he had said “the term playground killers with reference to

Council”. The Mayor stated: “Well, in that, she was impugning, I support, that all of Council ie Councillors were playground killers.”

53. In his statement, the Mayor describes how, after the meeting had been stood down to allow Cr Sipek to draft his dissent motion, he resumed the chair and asked Cr Byrne to continue speaking.

“...[s]he immediately repeated the phrase I had asked her to withdraw. Cr Byrne attempted to continually speak about the ‘playground killers’ phrase and imply I opposed robust debate. She then repeated the phrase once more where Deputy Mayor Sharpe interjected in debate to call out Cr Byrne’s behaviour. The meeting descended into disorder with councillors yelling at each other, and I had to use my gavel to bring the meeting to order. I instructed Cr Byrne to cease using the phrase, that I believed she was being deliberately mischievous and warned her for her behaviour.”

54. In respect of this allegation, Cr Byrne stated that she had never said “Council being playground killers” and she was offended that the Mayor had said this when he had asked her to withdraw the phrase. Cr Byrne expanded on this contention at the hearing, when she said that she had used the term “playground killers” in the context of quoting the concerns of many members of the community. She said: “It was not a label that [I] assigned to anyone on Council.”
55. Cr Byrne said that the first time she used the words, after having been told to withdraw the phrase, the Mayor had seemingly allowed her to do so as the words were not being used in the same context. Cr Byrne said:

“He reminded me that a withdrawal of a remark was required without explanation or condition. The Mayor did not advise that withdrawal of a remark was required that I was not to repeat it, nor did he request at this time that I not repeat it. There was no point of order called by any of the Councillors questioning the ruling. I therefore deemed the words, when used without substance, acceptable to repeat.”

56. Cr Byrne said that, after she then used the words a second time and the Mayor asked her to stop referring to something that she had been asked to withdraw, she did not use the words “playground killers” again during the debate. She said that, although allowable through the Governance Rules, the Mayor did not ask for an apology.
57. Cr Byrne said that she considered that her use of the words was robust debate. In addition, Cr Byrne said that the Governance Rules that relate to withdrawing a remark do not make an express reference to not repeating it.

58. Later in her evidence at the hearing, Cr Byrne stated that she had been confused at the Council meeting about what she had been asked to do by the Mayor. She said that she was confused about the basis of the point of order brought by Cr Adams because Cr Adams had cited the incorrect number of the Governance Rule.
59. Cr Byrne also said that the Mayor's language had further contributed to her confusion. Cr Byrne said that, when she was Mayor, and she had ruled on a point of order, she had always used the words that it was upheld or not upheld while the Mayor did not do so. She said:
- “When the mayor initially requested that I withdraw the phrase I complied. However, there was some ambiguity in the guidance provided. After the first instance of the mayor addressing the phrase I did not receive a clear direction that repeating a phrase, even in a different context, would be considered out of order. This led me to believe that a rephrasing or a restating of the term devoid of any defamatory or offensive context was within the bounds of robust debate, a principle that is fundamental to our role as Councillors. As mentioned in the opening, the standard of conduct, specifically clause 5, emphasises that nothing in these standards is intended to limit, restrict or detract from robust public debate in a democracy.”
60. I have watched the video of the relevant part of the meeting several times and given much consideration to both Cr Iser's and Cr Byrne's views on the language used by Cr Byrne. I have formed the view that the only sensible interpretation of Cr Byrne's use of the phrase “playground killers” is that Cr Byrne was saying that Councillors who voted on Cr Iser's amendment to remove the \$200,000 in funds for playground equipment were “playground killers” and that they would be viewed as such by the community.
61. This is clear when, in asking what the story will be to come out of the Council's annual budget meeting, Cr Byrne notes that the term “playground killers” had been previously used. This is a reference both to her use of the term at the Council meeting on 23 April 2024, and the subsequent Facebook posts, which named particular Councillors as being “playground killers”. Cr Byrne then poses the question, “are we [meaning herself and fellow Councillors] going to be Centreway killers?”
62. I do not accept Cr Byrne's argument that she was merely quoting the concerns of members of the community and not assigning a label to her fellow Councillors. This is clear from her final comment on the term, which is set out in full at paragraph [48] above. There, Cr Byrne highlights that, while she will not continue to repeat the phrase at the Council meeting, the community will be repeating both that phrase and similar words because of their disappointment that money has been taken out of the Reserve. From these final comments, I consider that, rather than simply quoting a label that the community has applied to certain Councillors, Cr Byrne both embraced the phrase and intended it to apply to her fellow Councillors if they supported Cr Iser's amendment.

63. In her witness statement, Cr Adams makes the following observation with respect to Cr Byrne's remarks:

“As Councillors, we are constantly making contentious decisions and it is unhelpful, and can potentially incite anger amongst community members, when comments like these are made in the Chamber. The negative mental health impact of these statements on us as decision makers should not be underestimated. We have a responsibility in the Chamber to have respectful debate and not weaponise decisions to inflame existing community angst. Cr Byrne's comments were, in my view, out of line and unacceptable. It went beyond healthy debate to being antagonist and harmful. The mood in the Chamber felt extremely tense and it derailed what should have been a well-informed and thought-out budget.”

64. I agree that Cr Byrne's use of the phrase “playground killers” did not constitute respectful debate and that it instead served to inflame existing community angst. In my view, even the single use of the phrase at the Council meeting was disrespectful to the Council and the Councillors who comprise it.
65. I do not accept, as Cr Byrne contends, that she was confused as to whether the Mayor had initially upheld the point of order and whether she was permitted to repeat the phrase. As Cr Iser has noted, Cr Byrne is a two-time former Mayor and experienced Councillor, who made rulings on points of order when she was mayor.
66. I do not consider that the Mayor is required to state expressly, simply because Cr Byrne did so when she was in his position, that he is upholding or not upholding a point of order. I am satisfied that Cr Byrne understood, when she was told to withdraw the phrase “playground killers”, having twice sought clarification that that was what she was being asked to withdraw, that she was to withdraw that phrase and not to say it again.
67. While I accept that debate at Council meetings is permitted to be robust, the right of a Councillor to engage in “robust political debate” is not so broad so as to deprive the other Standards of utility or provide a respondent with a free rein to breach the first four Standards.<sup>2</sup>
68. I accept that some debate of Council will be protected by Standard 5 even though it may convey some disrespect. It is a question of degree. I consider that the phrase “playground killers”, given it was a description intended to be applied to her colleagues, crossed the line. The lack of respect conveyed by Cr Byrne to her colleagues through her use of the words was too great.

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<sup>2</sup> *Briffer v Kellander* IAP 2023-20, [13]. See also *Newton & Laurence* (IAP 2022-5 and IAP 2022-6).

69. Cr Byrne's repetition of the phrase, when she had been told to withdraw it by the Mayor, was disrespectful to the Mayor as it sought to undermine his authority. Her repetition of the phrase was clearly troubling to the other Councillors as is clear from the video footage and the Mayor's description of the meeting as descending into disorder.
70. At least one Councillor yelled across the table at Cr Byrne during the meeting and none of them supported the dissent motion that had been called by Cr Sipek against the Mayor's ruling on the issue (even though I note that Cr Bettio's evidence was that he chose not to support the dissent motion for different reasons).
71. Contrary to what Cr Byrne asserts, I do not consider that it was incumbent on other Councillors to raise points of order with respect to her repeated use of the phrase, to ask her to apologise or to take other actions to police her behaviour. I consider that Cr Byrne has a positive obligation to abide by the Standards and Governance Rules. This obligation exists irrespective of whether her colleagues chose to bring points of order against her in response to her behaviour. This is particularly the case when they are focussed on passing the annual budget and are being scrutinised by the public and Council monitors. In these circumstances, they should not have to be preoccupied with strategies to control Cr Byrne's behaviour.
72. Lastly, I consider that it was not respectful to the Mayor for Cr Byrne to make him twice repeat the words "playground killers". From the video, he does not appear comfortable using the term on either occasion and clearly did not wish to do so. I do not accept that Cr Byrne was confused about what she had been asked to withdraw and needed to seek clarification from the Mayor. To me, it appeared that she wished to have the Mayor repeat an inflammatory phrase knowing that he would find it unpalatable to have to do so. I consider Cr Byrne's actions here showed a lack of respect to the Mayor as a colleague and to his authority as the chair of the meeting.

Allegation 5: Failure to comply with the Governance Rules in breach of Standard 3(c)

73. Cr Iser contends that, in continuing to repeat the phrase "playground killers", after having been asked to withdraw it, Cr Byrne was not complying with the Council's Governance Rules. In her application, Cr Byrne states the following with respect to this part of the application:

"In continuing to repeat the phrase 'playground killers' after having been asked to withdraw the statement, Cr Byrne was not complying with the Governance Rules. The continued use of the phrase was described at the time [by the Mayor] as 'deliberately mischievous' and bringing the Council into disrepute, and contravened Governance Rules requiring Councillors not to engage in offensive language or an act of disorder."

74. In her submissions in support of her application, Cr Iser then relied on the following Governance Rules:

- Governance Rule 59.1: If the Chair rules in favour of the point of order, no Councillor must do or say anything which would cause another like point of order to be raised;
- Governance Rule 3.4: Councillors contribute to good governance and decision-making by demonstrating respect for the role of Chairperson;
- Governance Rule 3.5: Councillors contribute to good governance and decision-making by being courteous and orderly.<sup>3</sup>

75. At the directions hearing, I told Cr Iser that I provisionally considered that her submissions were enlarging her application, which I had understood sought only to rely on Governance Rule 3.5. However, Cr Iser provided me with further written submissions, which stated that the second sentence in the application, which is set out above at paragraph 73, was not intended to limit the Governance Rules that were relied upon but to point to additional Governance Rules.

76. In the light of the wording of the application, I accept that Cr Iser is permitted to rely on the Governance Rules set out above. However, I note that both Cr Iser and Cr Byrne largely confined their written and oral arguments to whether Cr Byrne's conduct at the hearing was in breach of Governance Rule 59.1. I surmise that they did so because of the overlap between the remaining two rules and the matters that had been dealt with directly above in respect of standard 1(d).

77. As such, given that I have already made rulings with respect to the discourtesy shown to the Mayor, I intend to confine my analysis of allegation 5 to Governance Rule 59.1.

78. During the arbitration, Cr Byrne stressed a number of times that the Governance Rules do not expressly state that, when words are asked to be withdrawn, they cannot be repeated. Cr Byrne said that, whilst she acknowledged that the Mayor had asked her to withdraw the phrase "playground killers", she did not understand that the phrase could not be repeated again by her during the Council meeting. Cr Byrne said that she believed that the issue was with the context in which the words had been used and not the words themselves.

79. Cr Iser said that she does not believe that a fair-minded person in Councillor Byrne's position, having listened to the mayor's rulings and his explanations, could have reasonably drawn this conclusion and not understood that it was the use of the words

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<sup>3</sup> I note that Cr Iser also relied on Governance Rule Chapter 3, Rule 3 – Definitions and Notes: "Disorder means any disorderly conduct of a ... Councillor and includes making comments that are defamatory, malicious, abusive or offensive." As this is a definitions section, while I accept that Cr Iser seeks to place reliance on it, Cr Byrne cannot directly be in breach of it.

themselves that were objectionable. Contrary to Cr Byrne's assertions, Cr Iser submitted that Governance Rule 59 prohibited Cr Byrne from repeating the phrase as the act of doing so would cause another like point of order to be raised.

80. I accept Cr Iser's contention that Cr Byrne is in breach of this Governance Rule and that she is not permitted to repeat words that she has been told to withdraw. Doing so provides a basis for another like point of order being brought against Cr Byrne, which is contrary to Governance Rule 59.1. I reject Cr Byrne's contention that it was the context in which the words had been used that was objectionable and not the words themselves.
81. While I accept that the Mayor told her that she was required to withdraw "the term 'playground killers' with reference Council", given that the words described Councillors, I do not consider that there was a permissible way in which Cr Byrne could have used the words again at the Council meeting.
82. Further, if I am wrong in my conclusion that I am not required to rule on whether Cr Byrne is also in breach of Governance Rules 3.4 and 3.5, on the basis of my reasoning that is set out above with respect to allegation 1, I would hold that Cr Byrne is also in breach of these Governance Rules through the disrespect that she showed to the Mayor and her fellow councillors in the ways that I have set out above at paragraphs [60] to [72]. Further, on the basis of the reasoning contained in those same paragraphs, I accept that her statements were offensive and that it was disorderly conduct.

#### Allegation 7: Use of phrase discredited council in breach of Standard 4(1)

83. In terms of standard 4(1), Cr Iser contends that by repeatedly using the phrase "playground killers", in the manner set out above, Cr Byrne damaged the reputation of council and brought discredit upon council particularly following the community's negative use of the phrase. Cr Iser contends that the phrase inaccurately described the motion that had been put forward because the issue being debated was not whether or not to fund the playground but when to do so.
84. In her oral and written material, Cr Byrne maintains that the words were used in robust debate and, in the first instance, referencing what a community member had said. At the hearing, Cr Byrne elaborated on this contention:

"The Mayor's assertion that my use of the phrase was bringing the council into disrepute is, I believe, a misrepresentation of the context and intent of my words. I was not discrediting the council; rather I was emphasising the importance of understanding and addressing the concerns of our community in a manner that is transparent and reflective of the diverse views that we represent.

I stand by my actions and assert that my use of the phrase 'playground killers' was not intended to discredit council, and I ask this allegation be



reconsidered with recognition of the context, intent and the principles of robust democratic debate.”

85. In response, Cr Iser argued that, whether or not Cr Byrne shared the view of the community, it is the use of the phrase in a meeting to publicly describe colleagues that discredits council. Cr Iser said that a reasonable person would be likely to think less of council after hearing councillors described as being “playground killers” as evidenced by the use of this phrase by community members to negatively describe councillors. Cr Iser said that Cr Byrne’s view that Council should fund the playground design at the budget meeting of 25 June 2024 did not need to be expressed in a way that described the Council and her colleagues as “playground killers”.
86. I agree that, whether or not Cr Byrne shared the view of the community, she should not have used the phrase “playground killers” in a public meeting to describe her colleagues. The term is clearly intended to engender strong emotions and to be pejorative to her fellow Councillors.
87. Further, it does not represent the effect of the motion proposed by Cr Iser, which was not to “kill” the playground but to develop a Landscape Concept Plan, and then purchase playground equipment, in an orderly fashion. However, a reasonable person upon hearing the term “playground killers”, as it was used by Cr Byrne at the Council meeting, would be likely to think less of the Council and the Councillors who voted for Cr Iser’s amendment.

Allegation 2: Repeated points of order in breach of Standard 1(d)

88. During the hearing, Cr Iser was the subject to a number of points of order that were called by Cr Byrne. At 2:30:56 of the meeting, in response to the amendment that had been put forward by Cr Bettio without notice, Cr Iser said:

“There was a comment earlier about the process that councillors were asked to follow in order to come to this meeting fully prepared to make a really informed decision about our \$230 million budget on behalf of our community. And that process was agreed to by all councillors where we agreed to flag any amendments by Monday and we agreed to also ask any questions of our officers by ... several meetings ago to give officers enough time and that has all been followed with respect to everything in this motion except for the last two amendments that were moved.”

89. Cr Iser continued:

“And the reasons that we agreed to this process were so that we didn’t put forward things that weren’t informed by officers’ comments about scope, costings and deliverability. One of the problems with this amendment that has just been moved is that we have no advice on the

scope and costings. And, in fact, the advice that we have for other questions that has been raised indicates that the amount of money that has been put forward would be insufficient to deliver what has then been put forward in the rest of the motion, the rest of the amendment.

Look, I can only just repeat what I said earlier in terms of, our community deserves us to provide informed, factual, helpful, constructive, collaborative information that is based on officer advice and doesn't confuse people and doesn't seek to undermine confidence in council's decision-making. So I guess that I would just hope that, for the rest of the debate tonight, councillors consider it our duty to make sure that we are providing confidence in the work of our officers, confidence in the budget that we have worked for almost six months on, and had a good process around, a good robust process for making sure that it is an informed process."

90. At that stage, Cr Byrne interjected to raise a Point of Order pursuant to Rule 55.2 of the Governance Rules. She alleged that Cr Iser's remarks were not relevant to the matter under consideration. Cr Byrne stated:

"Cr Iser is talking about the past six months of working towards the budget and why this shouldn't be in there and I don't think that that is actually relevant to this amendment."

91. The point of order was not upheld by the Mayor. He said that he had been giving councillors a wide berth in terms of speaking to topics in this budget. The Mayor said that Cr Iser was talking generally about the budget process, and that he had allowed other councillors to do the same thing. Cr Iser then resumed speaking, stating:

"The point I was making goes back to the process, which is that this amendment wasn't flagged with us, and that process has gone back ... for the past six months, it has been a continuous process."

92. At the conclusion of her statement, Cr Byrne raised a further point of order in respect of Cr Iser's remarks based again on Rule 55.2. Cr Byrne stated: "Cr Bettio didn't know that my [first] amendment, which was circulated, wouldn't have gotten up." When asked by the Mayor what Cr Byrne was contending (in respect of Cr Iser's comments) was irrelevant to the matter under consideration, Cr Byrne replied:

"We are debating whether or not we allocate \$50,000 towards a detailed design for the F J Davies Reserve in Keilor East. We are not debating whether someone has put forward an amendment in time."

93. The point of order was again not upheld by the Mayor, who said that Cr Iser was talking about the amendment that was being considered by the Councillors. He stated: "I think

process can be spoken about in a proposed amendment. I do not uphold your point of order.”

94. In her application, Cr Iser contends that Cr Byrne repeated the same point of order that the Mayor had already ruled on. In doing so, Cr Iser says that Cr Byrne was in breach of Standard 1(d) as she was treating both herself and the Mayor with disrespect.
95. Cr Iser said that, if Cr Byrne wished to disagree with the Mayor’s ruling, this can be done through a motion of dissent. She said that arguing against a mayor’s ruling by repeating a point of order demonstrated disrespect for the mayor’s ruling and her efforts in speaking during the debate.
96. In the materials, both Cr Iser and the Mayor make reference to the fact that, during the council meeting, Cr Iser experienced a panic attack. At 1:45:25 of the recording of the meeting, the meeting was stood down for around 15 minutes while Cr Iser recovered from the attack. At 2:00:23, the meeting resumed and, some 30 minutes later, Cr Iser made the contributions to the debate that are set out above at paragraphs [88] and [89]. Cr Byrne then brought the two points of order against her in quick succession.
97. In her evidence to the hearing, Cr Iser said:
- “It was the first time I have spoken since experiencing a panic attack. Look, some of my panic attacks are mild and some of them are more moderate, and that was a more moderate one that seemed to affect me a little bit more. As stated in both my own and the mayor’s witness statements, I felt that there was an intent to unnerve me further, and the Mayor perceived the repeated points of order to be premediated attempts to derail the meeting and provoke a panic attack.”
98. In his witness statement, the Mayor stated that he believed that the subsequent points of order by Cr Byrne were attempts to derail the meeting, provoke him, or to cause Cr Iser to suffer another panic attack.
99. He said:
- “Cr Iser has long suffered panic attacks and we had developed a clear system to pause meetings where required, clear the council chamber and move her to a quiet space to recover. I took Cr Iser to my office for her to recover and consume sugar to increase [her] blood pressure.”
100. Cr Byrne denied that she had targeted Cr Iser due to her having had a panic attack. In her witness statement, Cr Byrne stated that to the best of her recollections, the Mayor has never had a one-on-one discussion with her in regards to her behaviour or conduct or treatment of other councillors. When questioned by Cr Iser about this issue at the

hearing, Cr Byrne stated:

CR ISER: And you were aware that - and, look, you were aware that it was the first time I had spoken since having quite a bad panic attack 20 minutes earlier or half an hour earlier?

CR BYRNE: I - well, when you have a panic attack, which has been a few times in the chamber, I generally do the same thing, which is once I realise what's occurring I stand up and we normally come out here. And then ... we get called by someone we go back in and we continue with debate. Sometimes when you have panic attacks it really affects the way that I debate and I very significantly don't say things, or I don't debate the way I normally would, or I don't put my hand up for anything... But then sometimes, like, I will, you know, also just get in the zone and be like, "I have to - we have to get on with the budget."

CR ISER: Do you think that panic attacks affect the way I debate?

CR BYRNE: That would --

CR ISER: After I've had a panic attack?

CR BYRNE: That would be something for you. We haven't discussed - like, I don't - I don't know how I can answer that. I would - I wouldn't have a clue. I don't know how a panic attack would affect you after recovering from a panic attack.

CR ISER: Would you think it might be a little bit more challenging for me to contribute to debate after having a panic attack?

CR BYRNE: You've said in these arbitrations that you don't want to be treated any differently or be given concession for panic attacks; is that right?

CR ISER: I'm cross-examining you. Do you think that a panic attack might make it a little bit for me to contribute to debate?

CR BYRNE: I would say that if you walk back into the chamber, you're back in debate. So you're ready to, like, go. I don't think there's ever been a time limit on your panic attacks. And so, no, I would say that if you're coming back in, you're willing to debate.

101. In her submissions, Cr Byrne argued that what she had done represented robust debate, which was allowable. She said that the first point of order had been interrupted by Cr Bettio, which had made her lose her train of thought. The first point of order concerned how Cr Iser was talking about the past six months working towards the budget, and why Cr Bettio's amendment "shouldn't be in there". Cr Byrne said that she did not consider what Cr Iser had said that to be relevant to the amendment that was before Council.

102. Cr Byrne said that, while the second point of order was again brought under Governance Rule 55.2, she had explained it by saying: “we are not debating whether or not someone has put forward an amendment in time. Cr Byrne said that, while both her points of order fell under Governance Rule 55.2, there is a difference between working towards a budget for six months and not putting forward an amendment in time.

103. Cr Byrne said that councillors have the ability to call a point of order at any point during debate when they are of the opinion that a councillor has contravened one or more of the Governance Rules. She said that the Mayor had admitted to giving councillors “a wide berth” with respect to the budget debate. Cr Byrne said that that statement implied that the Mayor had allowed for debate, which would ordinarily contravene Governance Rule 55.2. Cr Byrne said:

“I don’t believe it is up to the Mayor’s discretion as to whether or not the Governance Rules are to be followed. In the instance where the Mayor has made a determination that he would allow debate in contravention of cl 55.2, as was admitted, a Councillor still maintains the right to call upon a point of order for any subsequent debate that they believe to be in contravention of that rule – as the Governance Rules are paramount and do not fail to have effect even if the Mayor makes comment or implied that he will not enforce them.”

104. I do not consider that, when the Mayor stated that he was giving the councillors a wide berth, he was not enforcing Governance Rule 55.2. In my view, the Mayor was instead saying that, as he had given some latitude to councillors, in terms of what fell within the parameters of relevant debate, he intended to do the same for Cr Iser.

105. I am satisfied that the two points of order brought by Cr Byrne concerned the same issue. That issue being Cr Byrne’s view that Cr Iser’s consideration that Cr Bettio should not have brought an amendment without notice, given all the work that had gone into the budget for the last six months, was irrelevant to the debate.

106. I agree that it is both disrespectful to Cr Iser and the Mayor for Cr Byrne to call the same point of order in quick succession in response to Cr Iser’s contribution. It signalled to both the Mayor and other councillors that Cr Byrne did not respect the authority of the Mayor and that she knew better than him as to what constituted relevant debate. It appeared to me to be behaviour designed to deter Cr Iser from speaking further and to denigrate Cr Iser’s contribution. As such, I also consider that it was disrespectful to Cr Iser.

107. Watching the video with the knowledge of why the adjournment was held, it is concerning to see Cr Iser being subject to the two points of order in quick succession 30 minutes after the hearing had resumed. This is because she had recently experienced a significantly severe panic attack, which had resulted in the Council meeting being

adjourned for around 15 minutes, and this was her first contribution to the debate following the panic attack.

108. However, I note that Cr Iser has not claimed that she was being targeted by Cr Byrne due to her health issues. Instead, both she and the Mayor raised the issue to contextualise the points of order brought by Cr Byrne. As such, it would not be proper for me to make a ruling on this discrete issue.

109. I do not consider Cr Byrne's bringing of the two points of order to constitute robust debate. Cr Byrne did not expand on how it would fall within Standard 5 and I cannot see how it does. To the contrary, the bringing of two points of order, within quick succession, over the same issue against a fellow councillor appeared designed to quash debate. I agree with Cr Iser's submission that, if Cr Byrne considers that the Mayor's rulings are incorrect or harsh, the appropriate way of dealing with them is through a dissent motion.

#### Allegation 3: Comments in respect of robust debate in breach of Standard 1(d)

110. As set out above at paragraph 45, during the debate, at 2:28:48 Cr Byrne said:

“Well, I appreciate robust debate, and I will continue to use robust debate. Obviously, everyone has a varying line in terms of where that occurs ... You don't want me to use the words 'playground killers' and I'm not going to use that ...”

111. Cr Byrne made this statement shortly after being told by the Mayor that she was required to withdraw her statement without explanation or condition and could not explain her reasoning with respect to her use of the phrase “playground killers”. Cr Iser claims that, in making this statement, Cr Byrne was implying that the Mayor and Councillors did not appreciate robust debate. In so doing, Cr Iser argues that Cr Byrne was treating the Mayor and Councillors with disrespect, which is in breach of Standard 1(d).

112. In reply, Cr Byrne contends that she did not imply that the Mayor and Councillors did not appreciate robust debate. She said that the Mayor had advised her that she could not provide an explanation for her withdrawal of words, which is why she had made the statement in question. Cr Byrne said that her intention was to acknowledge that individuals may have different thresholds for what constitutes robust debate. She did not intend to suggest that the Mayor and Councillors do not appreciate robust debate.

113. While I consider the issue to be finely balanced, having watched this part of the Council meeting several times, I am satisfied that Cr Byrne's remarks were intended to challenge the Mayor's authority. This is clear from the fact that Cr Byrne's statement about robust debate follows the Mayor asking Cr Byrne to refrain from using the term “playground

killers”, when she had repeated it the first time after the Mayor’s ruling that she was to withdraw it.

114. After stating that she appreciates robust debate, Cr Byrne then goes on to use, for a second time, the exact phrase that she has been asked to withdraw and not repeat further. In my view, in making her comments about robust debate, Cr Byrne was protesting against the Mayor’s ruling that she is not permitted to continue to use the phrase and suggesting that she would not have made a similar ruling.

115. In so doing, I consider that she was being disrespectful to the Mayor and impugning his authority. However, I do not agree with Cr Iser’s submission that Cr Byrne was also showing disrespect to her fellow councillors, when she made the statement about robust debate. I consider the jibe to be squarely aimed at the Mayor in response to his ruling that she withdraw the phrase and his subsequent direction that she not put conditions on its withdrawal.

Allegation 4: Circulation of amendment without notice and asking for advice from officers during meeting in breach of Standard 2(b)

116. Cr Iser contends that Cr Byrne was not diligently using Council processes to become informed about matters which are subject to Council decisions, which is in breach of Standard 2(b), when she:

- circulated an amendment to the budget during the meeting and not prior to it as had been requested by the Deputy Mayor, Cr Sharpe, at the previous strategic briefing; and
- sought advice from Council officers by email during the meeting when councillors had been provided with several weeks to ask questions of officers and a specific briefing designated for this purpose had been held on 11 June 2024.

117. As these are two separate actions from Cr Byrne that took place during the meeting, I intend to consider them separately.

*The amendment*

118. As noted above at paragraphs [29] and [30], Cr Byrne advanced two amendments to the budget at the meeting, which both failed to pass. One amendment was circulated ahead of the Council meeting and another amendment was not.

119. In her written submissions in support of her application, Cr Iser described how, in an effort to ensure robust and diligent governance with respect to the approval of the 2024/25 annual budget, councillors had been asked to adhere to a number of timelines

with respect to lodging questions for officers about the budget and potential amendments to the officers' recommendations for the budget.

120. Cr Iser said that councillors had been asked to lodge any further questions on the budget, and public submissions, by 11 June 2024, so that Council officers could respond to them by the briefing on 18 June 2024, with the information, in consequence, being available to all Councillors.

121. At the briefing on 18 June 2024, Councillors were asked by the Deputy Mayor, who was chairing the meeting, to circulate any potential amendments to the officers' recommendation by Monday 24 June 2024, prior to the Council meeting on Tuesday 25 June.

122. Cr Iser noted that she circulated amendments on 22 June 2024 after first sharing them with the CEO and taking on board small editorial changes suggested by officers. Cr Byrne circulated an amendment on 20 June 2024. Cr Iser continued:

“The long-standing governance practice is for Councillors to lodge with the Governance team any proposed amendments or motions, and for these to be included in a ‘Further Information Pack (FIP)’ with officers’ response to any questions asked by Councillors of reports. This is to ensure all Councillors have access to the same information for decision-making. My amendments were the only budget amendments lodged in the FIP ...

The pre-meeting briefing is an opportunity for Councillors to ask any final questions, so all Councillors have access to information provided. At the pre-meeting briefing on Tuesday 25 June, no questions were raised by any Councillors with respect to the Budget. No further amendments were proposed.”

123. The amendment that Cr Byrne proposed during the meeting without advance notice is set out above at paragraph [30]. It was to remove point (a)(i) from Cr Iser’s motion to reallocate \$250,000 of the planning and feasibility funding to the Community Carbon Emissions Reduction Reserve.

124. During the arbitration hearing, Cr Iser stated that the particular proposal to reallocate the \$250,000 to the carbon emissions reduction fund had been part of the draft budget, which had been released on 23 April 2023. Cr Iser said that Cr Byrne didn't use the council processes to seek information from officers that could be shared with all councillors about the motion to remove it.

125. Cr Iser said that there was time between 23 April and 25 June 2024 to raise any concerns with colleagues about it and to ask questions of colleagues as to how it might have impacted projects. Cr Iser said that not complying with processes put at risk the extensive



work that had gone into preparing the budget for approval and created a risk that councillors might not make informed decisions.

126. Cr Iser said that things needed to be done in an orderly fashion when it concerned the annual budget. She said that, even if someone has a last-minute idea, they are not really entitled to raise it because of the sums that are at stake. Cr Iser said that in the last three budgets there had been last-minute additions and changes and that they were trying hard to make sure, for this year's budget, that everything was raised well before the night.

127. Cr Iser said that when Cr Byrne moved to remove (a)(i) on 25 June, that was the first time that there had been any indication of any unhappiness with it. There had been no questions about the amendment despite there being multiple opportunities for Cr Byrne to do so.

128. In her closing submissions, Cr Iser told the hearing:

“Of course, governance rules allow amendments to be made. The process that had been put in place was to make sure that we didn't have ... as has happened at previous budgets, [a] succession of amendments unflagged that have required officers to provide immediate advice, which is completely unfair and lacking in good governance in terms of the decision-making.”

129. In reply, Cr Byrne said that there was a request from the Deputy Mayor to circulate amendments to councillors prior to the budget meeting. Cr Byrne said that she was not of the understanding that amendments also needed to be circulated to officers for further advice if they did not require any.

130. Cr Byrne said that her amendment, which was not circulated ahead of the meeting, was only proposing to remove a point from Cr Iser's amendments. She said that she was not adding in anything new that her colleagues were not properly briefed on. Cr Byrne said that she never believed that there was an expectation that they should be advising, in writing to other councillors, if they were planning on disagreeing with proposed amendments. If that were to be the case, Cr Byrne said that she would consider such a process to be highly inappropriate.

131. Cr Byrne highlighted that Governance Rule 32.1 allows for amendments to be made to motions.

132. I agree that it would be frustrating for the Mayor, the Deputy Mayor and other councillors, if having arranged this process for the budget night for the reasons set out above, a councillor, knowing that they wished to bring an amendment, did not circulate it ahead if it was an amendment that they planned to bring. However, at the same time, there will be occasions, even on budget night, when councillors wish to bring

amendments to motions that they had not thought about ahead of the meeting and Governance Rule 32.1 allows for this to happen.

133. I note that Cr Iser submits that, given the sums of money involved and the pressure that it puts on Council officers, last-minute amendments should not be brought on budget night. Her approach may be preferable, where feasible, but it cannot be mandatory in the light of Governance Rule 32.1. While I accept that Cr Byrne did not take advantage of the pre-meeting procedures, this appears to have been because the amendment she wished to raise was not in her mind at this stage.

134. As such, I do not consider Cr Byrne to be in breach of Standard 2(b) in bringing her amendment without notice to the meeting.

*Seeking of advice from Council officers during the meeting*

135. Cr Iser noted that, at the draft budget, it had been suggested halving the \$500,000 worth of planning and feasibility funding and putting \$250,000 into the Community Carbon Emissions Reduction Reserve.

136. In her evidence to the arbitration, Cr Hodgson, gave evidence that, after the 6 pm pre-meeting, before the Council meeting on 25 June 2024, there was some spare time before the meeting started at 6.30 pm. Cr Hodgson said that Cr Byrne had leaned over to ask her whether she knew when they had been briefed on the detail of which projects were planned for the \$500,000 feasibility and planning item in the budget.

137. Cr Hodgson said:

“This had been flagged to be reduced to \$250K in the draft budget and at some point, we had received officers’ advice on what impacts this would have to the planned program of works for that item. I couldn’t recall the date to be able to pull up the advice, so Cr Byrne approached the officers table to ask the question.

When Cr Byrne was speaking to officers, Cr Iser asked whether the content of that request, and the answer from officers, could be shared with all councillors. This was agreed to. We waited for all councillors to be present before Cr Byrne shared her question and officers provided a response to all councillors.”

138. At Cr Byrne’s request, an email was sent to all Councillors by the Chief Financial Officer. The email listed projects to be funded by the \$250,000 that was to remain in the Budget. It stated:

“Dear Mayor Tyson,

Please find the list of projects as requested.

Council funding is dedicated to exploring existing and new priorities for community infrastructure and park planning. The planning and feasibility priority list of \$250K in the draft budget is listed below:

....

[The email then listed five projects and their budgets.]”

139. However, Cr Byrne said that she has asked for a list of the projects that were affected by the amendment to reallocate \$250,000 of the planning and feasibility funding to the Community Carbon Emissions Reduction Reserve. Because this was the case, Cr Byrne said that, when she received the list, she had assumed that it was a list of the projects that were not being funded by the planning and feasibility funding.
140. Cr Byrne said that, after she received the list of projects from the council officer, she responded by saying: “Thank you – can we please have the officers [sic] advice in regards to removing these.”
141. Cr Byrne said that she had sent this email privately to the council officer, for the same reason that she had wanted to ask the initial question privately to the same council officer, “being that it was a psychologically safer option for me”. Cr Byrne said that the Council officer had responded at 6.47 pm requesting that she ask the question by replying to all recipients of the last email.
142. Cr Byrne said that she agreed to do this at 6.48 and, at 6.50 pm, she resent the email, stating: “Thank you – can we please have the officers [sic] advice in regards to removing these.” At 6.51 pm, Cr Iser sent an email, stating: “Can I please register my concern that a question of this nature be put to officers during the meeting. We have had ample time to ask questions of officers.”
143. At the hearing, Cr Iser said that, following the distribution of the Council officer’s email, at Cr Byrne’s request, confusion arose because a list had suddenly been produced and it was unclear what the list meant, whether the list of projects was confidential, and what the Council officer’s advice was in respect of them. Cr Iser said that, if Cr Byrne had raised her question at the pre-meeting, then “we could have clarified the reason for the confidentiality”.
144. However, Cr Byrne said that she considers herself as someone who crams information. She said that, whilst she does adequate preparation leading up to a meeting, she uses the final minutes to consolidate her thinking so that it’s fresh in her mind what she needs in debate. Cr Byrne said that Cr Iser had also asked a question seeking information once the

meeting on 25 June 2024 had started. Cr Byrne said that she had no concerns with this but it shows that it is not just her who has done this.

145. While I agree that Cr Byrne did not follow the special processes that had been put in place for the annual budget meeting, and that it ultimately led to confusion, I again do not consider that what she did was in breach of Standard 2(b). I can understand how the situation came about, when a person has a thought at the last minute, and wishes to receive information in respect of it. While I accept that it is not ideal that this occurs, particularly with respect to the annual budget meeting, I do not consider it to be a breach of Standard 2(b).

Allegation 6: shouting across the chamber at Cr Sharpe during the meeting in breach of Standard 3(c)

146. This allegation was withdrawn by Cr Iser.

Allegation 8: Implying Council lacked transparency in breach of Standard 4(1)

147. Cr Iser alleges that Cr Byrne then implied that Council was lacking in transparency in outlining projects to be removed from further planning. This occurred shortly after Cr Byrne proposed her second motion to remove point (a)(i) from Cr Iser's motion.

148. On the materials that are before me, it appears that Cr Byrne sought this amendment because of her concern that the projects in the email, which is discussed at paragraph [138], would not be going ahead, even though this was not in fact the case. However, I note that, at the hearing, Cr Byrne suggested that she was in fact referring to another list.

149. During the meeting on 25 June 2024, the CEO had confirmed that the list of projects that were contained in the email that was provided by the Council officer was confidential.

150. Cr Byrne then made the following statements, which Cr Iser alleges are in breach of Standard 4(1):

“As the CEO has answered, I'm not allowed to say what the projects may or may not be [going ahead] and it does make it obviously difficult to debate this. But just in a very open-minded sort of thinking, if you think of potentially things that have been wanted in the community and have potentially been discussed prior that you're thinking are taking the next step with planning and feasibility or may be brand new projects, whatever it might be, we are potentially reallocating that funding.

If this does occur, sorry, if this amendment doesn't pass and we do

reallocate the \$250,000, I would hope that the councillors and the community will have a very open list in terms of what money, what planning and feasibility, has been scrapped from the budget for this year because I think the community does deserve to know what is on that list and that's why I am moving this amendment to not have this go forward because I don't think that it's good."

151. Cr Byrne further states:

"I think that when it's decided which projects are getting pushed down the line again and are not going to be shovel ready, or potentially won't be shovel ready at state or federal elections, and won't be used for advocacy work, whatever it might be, whatever the actual effect of not having this \$250,000 in the budget is, I think that it could have really unfortunate consequences and ... but if this stays in the budget as it, I'm really hoping that we are open and transparent with the community very soon in regard to what has actually been taken out as a result of this point."

152. Cr Iser contends that Cr Byrne was discrediting Council by implying that the Council was lacking in transparency. She says that councils are under a requirement to maintain and promote transparency.

153. Section 9 of the *Local Government Act 2020* requires that a Council must, in the performance of its role, give effect to the overarching governance principles, which include ensuring the transparency of Council's decisions, actions and information. Cr Iser contends that an accusation that Council is lacking in transparency harms Council's reputation as it suggests that the Council is in breach of its overarching governance principles.

154. Cr Byrne states that she does not consider that she was implying that the Council lacked transparency. She says that she was expressing her wish for the community to have access to a clear and transparent list of the projects that would be impacted by the decision to reallocate \$250,000 from the planning and feasibility fund.

155. Cr Byrne said that she did not intend to say that a confidential list would need to be provided to the community immediately. But she said that it was her hope that, at the end of the 12-month period, when it was decided which projects were affected, as a result of taking \$250,000 out of the planning and feasibility fund, their names would be available.

156. At the hearing, for the first time, Cr Iser stated that the allegation that Council was being non-transparent by not revealing a list was bringing discredit upon Council because there is no such list of projects. Cr Iser said that it was, in effect, a false claim that was being made by Cr Byrne against the council as all of the projects that were to be funded by

\$500,000 from the planning and feasibility were going ahead, it was just that some of them would be “covered operationally”.

157. Ultimately, it appears to me that there was a misunderstanding on the part of Cr Byrne. It was not addressed before the Council meeting because Cr Byrne became interested in exploring the issue after the pre-meeting had concluded. This would appear to be consistent with what she describes as her tendency to “cram”. However, as is the case here, it can result in confusion and misinformation.

158. While Cr Byrne may have implied that there is a lack of transparency on the part of the Council in relation to which projects were not going ahead, I do not consider her language to be sufficiently precise and forceful such that she is in breach of Standard 4(1).

Allegation 9: Deliberately misleading the public by stating that items in the Budget resolution were undeliverable in breach of Standard 4(2).

159. Cr Iser says that Cr Byrne made comments that led the public to believe that a number of projects would be at risk of funding as a result of Cr Iser’s motion. However, Cr Iser says that only one project was ultimately removed from the priority planning and feasibility fund for 2024/25.

160. Cr Byrne made the comments that Cr Iser impugns during the debate on the amendment proposed by Cr Byrne to reallocate \$200,000 from the Centreway Aviation Themed Playground Project to detailed design for the Landscape Concept Plan for the Reserve.

161. Cr Byrne said:

“Now depending on what the consultation comes back with I do note that there is a chance potentially that it wouldn’t go out for, that we might not get the detailed design done within the next financial year, but that is only a really small risk.

You could probably say this for quite a few of our projects. I think that it will and I think that the idea of determining the level of funding required and timing ... if we want to be looking for reasons to not fund things, sure, we could put that in, but I could probably pick our four or five other ones that we could, we could put that very similar reasoning towards.”

162. Cr Iser said that the projects being funded through the planning and feasibility fund are always subject to change depending on changes to prioritisation of Council. She contends that in stating that four or five items in the resolution were undeliverable, Cr Byrne was misleading the public.

163. However, at the hearing, Cr Byrne categorically rejected that she was deliberately misleading the public. Rather, she says that she was raising a broader point about the realities of project deliverabilities within the constraints that Council faces. She said that it was a well-known fact that, in any given financial year, not all capital works will be delivered as had been initially planned. This was due to a variety of factors, many of which are beyond the control of Council.

164. I accept Cr Byrne's explanation as to what she intended to convey and agree that there was no attempt, deliberate or otherwise, on her part to mislead through her comments. As such, I do not consider her to be in breach of Standard 4(2).

### **Sanction**

165. I have found allegations 1, 2, 3, 5 and 7 to be proven. Cr Iser contended at the hearing that Cr Byrne should be suspended for the current maximum period of one month due to the lack of remorse she had shown at the hearing and her actions in stalling and delaying the arbitration from proceeding. At the outset, I note that I do not consider the delays in the matter being heard to be due to Cr Byrne.

166. The reason that the hearing was unable to proceed on 15 August 2024 was due to the transcription service that had been booked by the Council cancelling at the last minute. I do not consider that Cr Byrne should be penalised for not agreeing to have the hearing heard in Council chambers, when she had initially been advised that it would not be going ahead.

167. While the first day of the hearing was not able to run until its scheduled time of 4.30 pm, and concluded instead at 4 pm, I consider that this was both due to a miscommunication and Cr Byrne's parenting obligations. These are matters which I am not, of course, going to penalise Cr Byrne for.

168. At the final hearing on 5 September 2024, both Cr Iser and Cr Byrne did their utmost to have the hearing concluded within the scheduled time, which allowed for the decision to be completed before the Council went into its caretaker period.

169. As such, I reject Cr Iser's submissions that Cr Byrne was attempting to delay and stall the hearing. However, I agree that Cr Byrne showed a lack of remorse. Many of her arguments, which sought to explain her behaviour, particularly with respect to her repeated use of the phrase "playground killers", did not withstand close or any scrutiny.

170. Cr Byrne noted that, at the next Council meeting after the 25 June 2024 meeting, she had apologised to her fellow councillors if they had been offended by her conduct. While she

did not accept that any of the allegations against her should be upheld, if they were, she thought that her conduct should only warrant a further apology.

171. While I note that the allegations revolve around Cr Byrne's conduct at a single Council meeting, her behaviour at the meeting was relentlessly disruptive. She aggravated her colleagues and made it very hard for the Mayor to keep control of the meeting. While I have not upheld the allegations 4, 8 and 9, I consider the impugned behaviour of Cr Byrne, while not in breach of the Standards, to be less than satisfactory.

172. In respect of the five breaches of the Standards, I direct that Cr Byrne:

- is suspended from Council for a period of 14 days following the tabling of these reasons pursuant to sub-s 147(2)(b) of the Act; and
- provides a verbal apology to her fellow councillors at the next Council meeting at which she is in attendance following the tabling of these reasons pursuant to sub-s 147(2)(a) of the Act. The apology is to be to the satisfaction of Cr Iser and the Mayor.

Louise Martin  
Arbiter

9 September 2024



## APPENDIX A

### Standards of conduct

#### 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.

#### 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—

(a) undertakes any training or professional development activities the Council decides it is necessary for all Councillors to undertake in order to effectively perform the role of a Councillor; and

(b) diligently uses Council processes to become informed about matters which are subject to Council decisions; and

(c) is fit to conscientiously perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and

(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 Council staff and Councillors;

(b) the Council expenses policy adopted and maintained by the Council under section 41 of the Act;

(c) the Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act;

(d) any directions of the Minister issued under section 175 of the Act.

#### 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.

#### 5 Standards do not limit robust political debate

Nothing in these standards is intended to limit, restrict or detract from robust public debate in a democracy.