IN AN INTERNAL ARBITRATION PROCESS FOR GOLDEN PLAINS SHIRE COUNCIL UNDER SECTION 143 OF THE *LOCAL GOVERNMENT ACT* 2020

LGA IAP REF:	IAP 2026-12
APPLICANT:	Crs Owen Sharkey (representative), Emma Robbins
RESPONDENT:	Cr Helena Kirby
BEFORE:	Arbiter J Silver
HEARING DATE:	20 August 2026 at Bannockburn
REASONS DATE:	15 September 2026

FINDINGS:

1. I find that Cr Kirby has engaged in misconduct.

2. Under sub-s 147(2)(a) of the *Local Government Act* 2020, on the tabling of these reasons, I direct Cr Kirby to make an apology in the following words, with no additional commentary:

   "I acknowledge the findings of Arbiter Silver that I engaged in misconduct at the Council meeting of 24 March 2026. I accept that statements I made about the sale of land in the Bannockburn Recreation Precinct were not true, and were not true on the information I was provided with. I apologise to my fellow Councillors and to Council staff for suggesting the decision-making process was being run improperly, or without following legal requirements. I apologise for suggesting that persons in the chamber stood to profit from the sale of the land, I accept that was not true, and I had no grounds to state it. "

3. Under sub-s 147(2)(f) of the *Local Government Act* 2020, I direct that Cr Kirby is not to attend or participate in all future Council meetings in which the sale or development of the land is to be considered, limited to that part of the meeting dealing with that item. This applies to any Council meetings this Council term at which the item is listed for consideration.

STATEMENT OF REASONS (LIABILITY AND SANCTION)

1. This application (allocated reference number IAP 2026-12) was made on about 12 May 2026, and on 16 June 2026, the Principal Councillor Conduct Registrar appointed me to hear the application.

2. I heard the matter at Council premises at Bannockburn on 20 August 2026, and made an oral direction at the conclusion that the parties may provide me with any further material they wish within 7 days, after which I would finalise my reasons.

3. The Council has owned 13.2 hectares of land since 2009. The land was named the Bannockburn Recreation Precinct.

4. In 2021, Council determined that 3.5 hectares of the Precinct was surplus to its requirements (about the size of an AFL oval), and in the ensuing years, the usual steps to rezone, subdivide, and sell the land were undertaken, culminating in the Council meeting of 24 March 2026, at which Council resolved to sell. Each step I have described was public, and community consultation was involved: as is usual for a contentious decision, some ratepayers were vociferously opposed.

5. I need not state more than that high-level timeline, which I gleaned from reviewing the briefing and meeting papers in relation to Council's decisions.

6. The application made (on my reading) 10 allegations against Cr Kirby, which I set out in a spreadsheet and circulated to the parties ahead of the hearing, but at the hearing, Cr Sharkey did not press three (3). The allegations concerned statements Cr Kirby made at the 24 March 2026 Council meeting.

7. Due to a technical issue, the meeting was only recorded partially, however, Cr Kirby did not dispute the substance of what she was alleged to have said in the unrecorded part of the meeting.

8. Although I find the allegations proven, and am directing a sanction, I do so with a caveat: from the outset of this application, which should have been resolved without

the need for a hearing (through dialogue among Councillors), and on reviewing the meeting footage, I held concerns that the alleged conduct was part of broader conduct issues within the Councillor group. My observations at the hearing did not abate those concerns, and I expressed as much to the parties. While Cr Sharkey explained that Council has gone some lengths to build good working relationships within Council, through ongoing policy work (to which I will refer later) and a workshop in September 2025, I am not confident those efforts have been effective.

9. Although those concerns form no part of my reasons, I express them to avoid being read as more critical of Cr Kirby than intended. As my statutory role is limited, others will decide if my concerns were warranted.

10. Equally, I am not cutting across my finding that Cr Kirby has breached the Model Code: whatever the situation within the Councillor group, she fell short of the standards expected of a Councillor, only she is to blame for that, and she cannot justify that she made several assertions that no Councillor acting diligently would make.

11. The applicants alleged that at the meeting, Cr Kirby engaged in misconduct as follows:
    (a) she stated that the Bannockburn Recreation Precinct had been gifted to Council, that it was not purchased by Council, and that Cr Kirby was not present when Bannockburn Recreation Precinct was acquired;
    (b) she stated that someone in the Council chamber stood to profit from the sale of the land;
    (c) she stated that Council had failed to follow the appropriate provisions of the *Planning and Environment Act* 1987 in deciding to sell;
    (d) she stated that the public had not been given an opportunity to provide feedback in relation to the sale of the land;
    (e) she failed to show respect to the Meeting Chair (in that case, the Mayor, who is Cr Sharkey), when told she was not speaking to the motion;
    (f) that during Cr Robbins summing up, Cr Kirby raised a point of order that Cr Robbins was "being misleading" concerning what other Councillors had said, and was being "defamatory" to other Councillors;

(g) after the Bannockburn Recreation Precinct item, during her "delegate's report" (in which Councillors give an overview of their activities in the community since the last Council meeting), Cr Kirby was disrespectful to the Mayor and Deputy Mayor in stating it had been a shame other Councillors had not attended a particular community event, and that she was not the Mayor or Deputy Mayor.

In these reasons, I will refer to each allegation by its letter above.

12. The applicants contended the allegations breached one or more of the following clauses of the Model Code, which I extract below:

1. Performing the role of a Councillor

A Councillor must do everything reasonably necessary to ensure that they perform the role of a Councillor effectively and responsibly, including by—

…

(c) diligently using Council processes to become informed about matters which are subject to Council decisions…

2. Behaviours

(1) A Councillor must treat others, including other Councillors, members of Council staff and members of the public, with dignity, fairness, objectivity, courtesy and respect, including by [**examples omitted**]

3. Good governance

A Councillor must comply with the following Council policies and procedures required for delivering good governance for the benefit and wellbeing of the municipal community—

…

(b) the Council's Governance Rules developed, adopted and kept in force by the Council under section 60 of the Act, including in relation to—

(i) conduct in Council meetings or meetings of delegated committees…

4. Integrity

(1) A Councillor must act with integrity, exercise reasonable care and diligence and take reasonable steps to avoid any action which may diminish the public's trust and confidence in the integrity of local government, including by—
   (a) ensuring that their behaviour does not bring discredit upon the Council; and
   (b) not deliberately misleading the Council or the public about any matter related to the performance of their public duties[]

13. **I find allegation (a) proven**, and that Cr Kirby breached cl 1(c) of the Model Code.

14. It was uncontested that Cr Kirby had questioned the background to the acquisition of Bannockburn Recreation Precinct in a briefing session shortly before the public Council meeting, and that the evening before the 24 March 2026 meeting, the CEO sent an email confirming Council had purchased the land. Cr Kirby conceded she had not read that email, and in details I will not publish, explained she did not have capacity to adequately prepare for the meeting.

15. I also note, however, that Council's ownership of the land was referred to in Council meeting papers from 2021, 2023, and 2025.

16. Cr Kirby explained that she had relied on what she had been told by a third party (who is a former Councillor), but also conceded she should apologise. I agree that she should, and the form of apology I am directing addresses that.

17. **I find allegation (b) proven**, and that Cr Kirby breached sub-cls 2(1), 4(1)(a) and 4(1)(b) of the Model Code.

18. Without Cr Kirby identifying who she was referring to, the statement implies corrupt decision-making within Council, whether among Councillors or Council staff. It is a serious matter to allege corrupt conduct, and under the *Local Government Act* 2020, that is to be done by raising a formal complaint with the Chief Municipal Inspector, instead of making a bare allegation in public at a Council meeting.

19. Cr Kirby conceded that, without naming him, she was repeating allegations in public feedback to Council, in which one or two residents alleged that Cr Sharkey stood to

profit, as he is a local real estate agent). I suspect that other than those residents, few would have understood Cr Kirby's statement in that manner.

20. Although Cr Kirby argued – not particularly enthusiastically, I might add, but argued nevertheless – that Cr Sharkey had a conflict of interest, she could not explain to me the circumstances in which that arose (eg. as a general or material conflict of interest within the meaning of the *Local Government Act* 2020).

21. Nothing that Cr Kirby identified even supports the beginnings of an argument that Cr Sharkey had a conflict of interest. Further, she misconstrues the decision before Council, which was merely to resolve to take steps to sell the land, with a further report to return to Council in relation to "*the proposed approach to developing and selling the lots, including governance arrangements and financial and risk management considerations*." Perhaps then, Cr Sharkey may need to recuse himself, but with no disrespect to him, the sale of land for the development of housing estates of several tens (instead of two to four lots, even ten lots) is often handled by agents with a commercial real estate practice (usually after a public tender) whose practice tends to cover slightly higher value transactions than many local estate agents undertake. It is far too remote to contend that, because Cr Sharkey may be a selling agent in 10 or 30 years' time when some of the lots come up for resale, he somehow has a conflict. Material conflicts require an immediate gain or loss to occur as a result of a decision (I cannot see that one would occur here), and the potential for a gain or loss is far too remote for a general conflict to arise.

22. **I find allegation (c) proven**, and that Cr Kirby breached sub-cls 1(c), 4(1)(a) and 4(1)(b) of the Model Code.

23. Again, Cr Kirby's explanation of the statement was that she was repeating (it seems without much thought) an allegation in the public feedback, however she also contended that in relation to the sale of another piece of Council land, she recalled that a different process was followed, but could not identify any particular legal requirement that had been followed previously, but was not being followed in this case. I did not really understand what Cr Kirby was attempting to argue.

24. I asked Cr Kirby if she had raised her concern with Council staff before expressing it, she confirmed she did not. Therein lies much of the problem.

25. It is a serious matter for a Councillor to argue that a decision has not been made, or will not be made, in accordance with the legal requirements. It should not happen unless a Councillor has identified a basis for alleging as much, it should not be a statement simply stated on the spur of the moment.

26. Having reviewed Council's decision-making process (including all relevant papers since 2021), there is nothing that suggests any deficiency. If it had been arguable that a specific legal requirement had been missed (regrettably, that is not unheard of in the sector, in which Council staff are sometimes dealing with an unfamiliar process, or act on professional advice that unexpectedly turns out to have been wrong), I would have given Cr Kirby the benefit of the doubt.[1]

27. **I find allegation (d) proven**, and that Cr Kirby breached sub-cls 4(1)(a) and 4(1)(b) of the Model Code.

28. Cr Kirby was wrong. Council undertook public consultation in January and February 2026 in relation to the land sale. The meeting papers for 24 March 2026 should have reminded her of as much (it was also stated in earlier briefing papers), and there had also been consultation through the Ministerial Panel tasked with the rezoning application in about September 2023.

29. Cr Kirby contended that her statement should instead be construed as inarticulate, as what she was seeking to convey was that the community had not been presented with

[1] While only the Supreme Court of Victoria can finally decide if a decision has not followed the legal requirements on a judicial review application (a power neither the Arbiter Panel List nor Councillor Conduct Panel has), it would be wrong to suggest that unless the Councillor is prepared to go the Supreme Court, they cannot impeach a decision-making process without engaging in misconduct. The Councillor Conduct Framework is not concerned with the legal consequences of a decision, or the private rights of an individual which might follow, but the conduct of decision-makers in decision-making. As decision-making must occur according to law under sub-s 28(2)(d) of the Act, it would not be correct to read the Model Code as restricting Councillors expressing a genuine view founded in fact that a decision-making process has not followed all the legal requirements, or did not follow sector "best practice". Given the effort Council staff across the sector put into ensuring that Council decisions are made correctly, I imagine there will be very few applications in which the kind of finding I have described will be warranted.

other options for the use of the land (ie. other than the original intention of an AFL field, or community sport). Putting to one side that this ignores the disclosed context in which Council was taking the decision (ie. to offload surplus land, in order to use the proceeds to invest in recreational facilities it could not otherwise afford to invest in, in the Bannockburn area), Cr Kirby herself did not suggest she had taken any steps to have Council staff present those proposals, such as requesting the same in writing, or presenting a formal notice of motion that had been rejected. I certainly do not consider her alternate motion earlier in the consideration of the item, which was lost without attracting the support of other Councillors, to amount to such a step.

30. In the circumstances, I do not accept that Cr Kirby's words were chosen poorly, they were designed to undermine confidence in Council's decision, albeit I doubt persons other than those already lacking confidence in Council would have been persuaded.

31. **I reject allegation (e)**.

32. While it is true the Mayor, Cr Sharkey, called Cr Kirby to order for not speaking to the motion, and she responded briefly instead of moving on immediately, I don't consider that that amounts to misconduct, or a breach of the obligation in cl 14.1(d) of the Governance Rules, which requires a Councillor to show respect for the role of the Chairperson. Cr Kirby had a normal reaction to being interrupted, the fact that she briefly responded by itself is not disrespectful, nor did she do so in a manner that showed active or persistent dissent. I also note that Cr Sharkey was not at the stage of "warning" Cr Kirby that he considered that she was engaged in dissent.

33. In the application, and at the hearing, Cr Sharkey also referred to certain Council documents, including a document apparently called "*Working Together in Council – Statement of Intent*" and "*Working Better Together – Ground Rules*", and by a submission the week after the hearing, referred to various values the Councillors had agreed to. I indicated to Cr Sharkey that while the documents were not part of the Governance Rules, I would consider if they were relevant on a similar basis to the Council documents Gray J considered in *Lew v Blacher* [2023] VSC 604, which I considered in my reasons at paragraphs 35-42 in *Colwell & Ors v McLindon* (IAP 2025-2, IAP 2025-4, IAP-2025-5, and IAP 2025-7). Having done so, and with no

disrespect, I don't think the policies Cr Sharkey provided me do anything more than re-state, in a slightly different manner, the provisions of the Model Code.

34. Cr Sharkey's email also sought to contend that Cr Kirby was engaged in an ongoing pattern of behaviour: putting to one side he did not identify other examples, I made clear in the hearing that matters outside the application (and in any event, occurring more than 3 months before the hearing date, other than as noted in ruling of another arbiter or of a Councillor Conduct Panel) are not matters I can consider.

35. **I reject allegation (f)**.

36. Cr Kirby raised a valid point of order, after Cr Robbins stated that other Councillors were "trying to inflame tension"; earlier in the meeting, Cr Robbins had also stated that other Councillors were "blindly following" the opposing argument.

37. Cr Robbins was unnecessarily provocative. If an application for misconduct had been brought against her, it would quite probably have succeeded, albeit the finding would be on the lower end of the scale. It is unfortunate that Cr Sharkey failed to call Cr Robbins to order at the time, despite Cr Kirby's effective invitation, regardless of his justified view about how Cr Kirby was conducting herself.

38. **I find allegation (g) proven**, and that Cr Kirby breached sub-cl 2(1) of the Model Code.

39. Councillors (including the Mayor and Deputy Mayor) cannot be expected to attend all community events, particularly not in a geographic area as large as the Golden Plains Shire. As a veteran Councillor, Cr Kirby would understand that. Her statement implied that other Councillors were instead neglecting their duties. I have no doubt that was Cr Kirby's intention.

40. It may well be a "shame" that a Councillor does not attend an event, but it is not a respectful public statement. Such petty, personal bickering is inconsistent with both the Model Code, and with performing the role of a Councillor. Much as some participants in the sector may contend that elected Councillors are not bound to be

civil, and should have more flexibility to "point score" without consequence (as if participating in some kind of backroads local parliament), local government in 2026 has moved on.

41. Having made those findings, I am comfortable finding that Cr Kirby has engaged in misconduct.

42. I do not consider that my findings warrant a significant sanction, such as suspension, training, or a direction of ineligibility to serve in a leadership role: the misconduct was limited to one issue, in one meeting. If Cr Kirby were to repeat her behaviour, an application to a Councillor Conduct Panel for a finding of serious conduct could be made, and would probably succeed. Based on what I observed at the hearing, Cr Kirby takes her role as a Councillor very seriously; given the sanction I am imposing, I have no reason to think she will not correct her behaviour to avoid further embarrassment.

43. In my view, an apology and direction removing Cr Kirby from participating in the matter of the land's future is proportionate to the misconduct.

44. I will accordingly impose two sanctions under sub-ss 147(2)(a) and (f):

    (a) first, on the tabling of these reasons, I direct Cr Kirby to make an apology in the following words, with no additional commentary:

        > "I acknowledge the findings of Arbiter Silver that I engaged in misconduct at the Council meeting of 24 March 2026. I accept that statements I made about the sale of land in the Bannockburn Recreation Precinct were not true, and were not true on the information I was provided with. I apologise to my fellow Councillors and to Council staff for suggesting the decision-making process was being run improperly, or without following legal requirements. I apologise for suggesting that persons in the chamber stood to profit from the sale of the land, I accept that was not true, and I had no grounds to state it. "

(b) second, I direct that Cr Kirby is not to attend or participate in all future Council meetings in which the sale or development of the land is to be considered, limited to that part of the meeting dealing with that item. This applies to any Council meetings this Council term at which the item is listed for consideration.

45. The second sanction is made under sub-s 147(2)(f). I am not aware of other arbiters having used this provision since it was enacted. The provision does not limit an arbiter to directing non-participation in one meeting only, or state that the direction must only be in respect of consecutive meetings. I also consider that the words "a Council meeting specified by the arbiter" allow me to specify part of a meeting, if I consider that appropriate (as I do here), and to identify the meeting concerned by an item of business, rather than by a date or dates, which seems consistent with the Act empowering arbiters to adapt sanctions to the misconduct concerned.

46. I also encourage the Councillor group to engage an external facilitator or mediator with conflict management experience who may assist the group to reframe their responses to disagreements in meetings.

J A SILVER
ARBITER