

COUNCILLOR CONDUCT PANEL

In the matter of an Application by  
Councillor Punarji Nandaruchi Hewa Gunaratne  
concerning Councillor Danny Claridge  
of Benalla Rural City Council (CCP 2022-5}

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

Applicant: Councillor Punarji Nandaruchi Hewa Gunaratne  
Respondent: Councillor Danny Claridge  
Date of Hearing: 13 December 2022  
Panel Members: Dr Lily O'Neill (Chairperson)  
Mr Matt Evans

**DETERMINATION**

Pursuant to section 167(1)(d) of the *Local Government Act 2020* the Councillor Conduct Panel dismisses the Application having made no findings of serious misconduct against Councillor Claridge in relation to any of the 12 allegations contained therein.

Lily O'Neill  
**Chairperson**

Matt Evans  
**Panel Member**

3 March 2023

## STATEMENT OF REASONS FOR DECISION

### Introduction

1. The matters before the Panel are 12 allegations by Councillor Punarji Nandaruchi Hewa Gunaratne of Benalla Rural City Council ('Council') against Councillor Danny Claridge, of the same Council. At the heart of these 12 allegations is an allegation that Cr Claridge engaged in serious misconduct against Cr Gunaratne by bullying him, including allegations of bullying motivated by racism.
2. Section 154 of the *Local Government Act 2020* ('the Act') allows an application to be made to the Councillor Conduct Panel for allegations of serious misconduct against a Councillor.
3. In s3 of the Act, "serious misconduct" is defined to include in paragraph (f) of the definition:

"bullying by a Councillor of another Councillor or member of council staff."
4. "Bullying" is also defined in s 3 of the Act as:

"bullying by a Councillor means the Councillor repeatedly behaves unreasonably towards another Councillor or a member of Council staff and that behaviour creates a risk to the health and safety of that other Councillor or member of Council staff."
5. Clause 5 of Schedule 1 to the Local Government (Governance and Integrity) Regulations 2020 ('the Regulations') provides that "(n)othing in these standards is intended to limit, restrict or detract from robust public debate in a democracy."
6. From the tenor of the standards of conduct provided for by the Act and Regulations, robust political debate about issues is to be engaged in, but not insulting, threatening or humiliating behaviour.
7. During the hearing, it became clear that the central issue at the heart of the 12 allegations is a disagreement between the Applicant and Respondent about Council's role in the development of a new community cinema precinct ('proposed Benalla cinema') and their subsequent interactions, primarily via email and Facebook, but also at various Council meetings. During the hearing it also became apparent that as well as complaints initiated against Cr Claridge, Cr Gunaratne feels ostracised by several other councillors at the Council.
8. Relevantly, Cr Gunaratne was during the relevant period one of the administrators of the 'Benalla Community Noticeboard' Facebook page, a position that appears to have made several other councillors uncomfortable because of perceptions that this may be a conflict with Cr Gunaratne's role as a local councillor.
9. Councillor Gunaratne stated he is currently not attending Councillor Only Time (COT) meetings because of "continuous exclusion" and "ongoing harassment" from several councillors.

10. It was submitted by the Respondent during the hearing, and accepted by the Panel, that he did not realise that Cr Gunaratne felt bullied by him until he received copies of the Application for Formation of Councillor Conduct Panel.
11. Councillor Claridge stated that he believed that Cr Gunaratne's allegations stem from the disagreement about the proposed Benalla cinema and denied the allegations of bullying and racism, as well as describing these allegations as a real worry to him.
12. Both the Applicant and Respondent provided material in relation to each of the 12 allegations of serious misconduct which the Panel read and considered both before the hearing, and in writing up this Decision.

### **The Hearing**

13. The matter was heard in person at the Benalla Rural City Council office on 13 December 2022. Present were the Panel, Dr Lily O'Neill and Mr Matt Evans, Councillors Punarji Nandaruchi Hewa Gunaratne and Danny Claridge, and Benalla General Manager Corporate Robert Barber who was performing the role as Council's Conduct Officer pursuant to section 150 of the Act.
14. The Panel heard opening statements from both the Applicant and the Respondent, and then dealt with the relevant aspects of each allegation in turn.

### **The Allegations**

#### Allegation 1

15. Allegation 1 is that two emails sent by Cr Claridge to Cr Gunaratne on 26 March 2022 regarding a Facebook post about the proposed cinema development, asking that the Facebook post be removed. Councillor Gunaratne in his application states: "He has accused me of being an administrator of a Facebook group I have nothing to do with, and copied all other Councillors into the email." Councillor Gunaratne contacted the mayor, Cr Bernie Hearn, about these emails describing them as 'consistent harassment' and seeking her mediation. During the hearing, the evidence was that this email was not remembered by Cr Hearn, and she did not act on it.
16. Councillor Claridge stated that "ccing" all councillors was his usual practice, he did not mean it to harass Cr Gunaratne, "it's not done with any malice".
17. Having read the relevant material, and after listening to the oral evidence, the Panel finds that Cr Claridge's emails were not considered to be unreasonable behaviour in the circumstances, and there is no evidence of serious misconduct in relation to this allegation.

## Allegation 2

18. Allegation 2 relates to a 1 February 2022 email string sent by Cr Gunaratne and replied to by Cr Claridge in relation to Facebook posts about the proposed Benalla cinema. Councillor Gunaratne alleges that “He accused me of condoning ... [certain] information by allowing it on my group, which was incorrect” and “I felt from the tone and content of Cr Claridge’s reply email, he was trying to bully and silence me.”
19. During the hearing, Cr Gunaratne stated that he believed that if Cr Claridge had an issue with a Facebook page, he should have raised this through the page’s administrators. Councillor Claridge’s evidence was that he finds it hard to distinguish between different Benalla community-type Facebook pages and didn’t see an issue with raising it via email. At some point around this time, Cr Gunaratne blocked Cr Claridge from one of the community Facebook pages for violating rules which say you cannot discuss matters on the Facebook page outside of Facebook.
20. The Panel notes that there appears to be a disconnect in expectations between Cr Gunaratne and Cr Claridge in relation to responsibilities as a ‘member’ of a Facebook group. This appears to have resulted in some consternation for Cr Gunaratne, but the Panel does not accept that this exchange in the circumstances amounts to bullying.
21. Having read the relevant material, and listened to the oral evidence, the Panel finds there is no evidence of serious misconduct in relation to this allegation.

## Allegation 3

22. Allegation 3 relates to media training conducted at Council on 13 December 2021. According to Cr Gunaratne’s Application, Cr Claridge brought up the issue of a ‘GoFundMe’ campaign posted on a Facebook page. This ‘GoFundMe’ campaign was to raise money to take Council to VCAT over the proposed Benalla cinema. Councillor Gunaratne alleges that Cr Claridge was mixing up Facebook pages, and that the GoFundMe page was not on a page he administered, and “this was an attempt to denigrate and humiliate me in a public forum, and it is part of an on-going campaign by Cr Claridge to isolate me.”
23. The Panel accepts that Cr Claridge’s discussing of this issue in media training was very upsetting for Cr Gunaratne, particularly because it was in relation to a Facebook page he did not administer.
24. In the hearing, Cr Claridge stated that he raised the issue because there: “had been a lot of issues in the press at the time about Facebook administrators so I thought it an appropriate time to warn the other councillors ... [about] social media and how you need to be [careful] ... It wasn’t picking on Puna. It was about the Facebook – didn’t matter which page it was on [it was about whether it was] appropriate or not. I didn’t think I had to qualify that [that I wasn’t picking on Puna] but ... maybe I should have”.

25. The Panel believes that Cr Claridge should have made more of an effort to distinguish between Facebook pages. The Panel also accepts that Cr Claridge should have made it clearer that the discussion in the media training was not an attack on Cr Gunaratne. However, the Panel finds that this did not mean that his behaviour was such that a reasonable person would consider it to be unreasonable.
26. Having read the relevant material, and listened to the oral evidence, the Panel finds there is no evidence of serious misconduct in relation to this allegation.

#### Allegation 4

27. Allegation 4 is that Cr Claridge “spread a rumour through his friends that I wanted to be the mayor at the last mayor’s election in November 2021.” In the hearing, Cr Gunaratne stated that he believed inherent in this alleged rumour was the implication that he shouldn’t be mayor “because I’m not white”. Cr Claridge denied any knowledge or involvement in this alleged rumour, and moreover stated that “I was really amazed” when he read the allegation and “I don’t know what it’s all – what the allegation is about”.
28. The Panel takes allegations of racism very seriously. However, the Panel believes that the evidence in relation to this allegation is very weak as it rests on one Benalla resident’s recollection of a conversation with another resident, as related to Cr Gunaratne (and to the Panel via a written statement). The Panel finds there is no evidence of serious misconduct in relation to this allegation.

#### Allegation 5

29. Allegation 5 is in relation to an email exchange between a community member and Cr Claridge on 11 November 2021. Councillor Gunaratne alleges that this exchange relates to “the image that he has been trying to establish about me based on my racial background and English language being my second language.” Further, “I want to be able to do my job as a councillor well, and part of that role for me is to engage in public discussion on issues that are relevant for the public. I have been left feeling isolated and humiliated by the mayor [referring to then mayor Cr Claridge] discussing, and calling in to question, my ability to “understand.”
30. Councillor Gunaratne submitted a Statement from a community member which the Panel has carefully considered. This includes general observations in relation to a perceived increase in disrespectful behaviour amongst councillors and also specific observations relating to treatment of Cr Gunaratne.
31. In the evidence provided, and in the hearing, it became apparent that a community member had contacted Cr Claridge to state that she was concerned about how Cr Gunaratne was treated in council meetings. Councillor Claridge accepted that this community member had contacted him but disputed the finer points of what she said he had told her in relation to how council decisions were made.

32. It is clear to the Panel that there is frustration on the part of Cr Claridge about how he perceives Cr Gunaratne conducts Council business. However, the Panel does not think that this frustration or its associated behaviours reaches the seriousness required to uphold an allegation of serious misconduct.

#### Allegation 6

33. Allegation 6 is in relation to a voting procedure for the Audit and Risk Committee of the Council which Cr Gunaratne alleges “I have reasonable grounds to believe that Cr Claridge changed the initially planned process to get me out of the audit and risk committee after a conversation with another Councillor.” Further, “I believe that there was an effort made by Cr Claridge ... to isolate me, and to humiliate me by removing me from my role on the Audit and Risk Committee.”

34. In the hearing, Cr Claridge stated that the process he set in place for voting for representatives for committees had been set up on the run, after unexpectedly encountering more than one applicant for the Audit and Risk Committee. He accepted that the process needed to be improved and stated that it had since been improved, but that “it was the most democratic way I could think of doing it”. Councillor Claridge said that the other candidate for the Audit and Risk Committee was also well-qualified for the role because “he runs a very large organisation”. He said that “there’s no ‘Team Other’ and ‘Team Puna’”.

35. Councillor Gunaratne stated that his not being elected to the Audit and Risk Committee was because of a “negative image about me with other councillors” that Cr Claridge had created, including as the chair of meetings.

36. The Panel having read the relevant material, and listened to the oral evidence, finds that in the circumstances there is no evidence that the voting process for the Audit and Risk Committee was conducted in an inappropriate way, and that there is no evidence of serious misconduct in relation to this allegation.

#### Allegation 7

37. Allegation 7 is in relation to a 5 November 2021 photo shoot of Councillors that occurred with the Benalla Ensign local newspaper to promote Covid-19 vaccination. The photo shoot was arranged by Cr Hearn at a time that Cr Gunaratne could not attend. In his Application, Cr Gunaratne states: “My name was mentioned [in the newspaper] as “absent”. Thereafter I received a lot of community inquiries asking whether I was purposely excluded from the photograph. Some community members asked me whether I am an anti-vaxxer ...”. Further, he states “I felt isolated and humiliated by this experience ... [this incident was] as a direct consequence of the isolation the council has created ...”. However, during the hearing, the Panel heard that Cr Claridge was not involved in the organisation of this photo shoot.

38. The Panel accepts that Cr Gunarante received unwarranted negative community comments about his absence from this newspaper photo and believes much more effort should have been made to ensure that the shoot was organised at a time when Cr Gunaratne could attend, particularly because of his parental duties with small children and his desire to be involved in this media event.
39. The Panel finds there is no evidence of serious misconduct in relation to this allegation.

#### Allegation 8

40. Allegation 8 relates to comments made by Cr Claridge at a Councillor Only Time (COT) meeting on 3 November 2021. The allegation is that Cr Claridge both stated that Cr Gunaratne was asking questions of Council staff at inappropriate times, and “[a]dding to this conversation, Cr Claridge said that “Punarji has said before that English is not his first language, he seems to have trouble understanding because English is not his first language”. Councillor Gunaratne states that “I feel that this exchange was racist and an attempt to denigrate, humiliate, and bully me in front of other people.”
41. During the hearing, the accepted evidence is that this exchange did occur. Cr Claridge states however that it was not his intention that his comment be racially construed. He stated that it occurred in the context of another councillor’s frustration at Cr Gunaratne moving a motion against the “fully-funded” art gallery.
42. In the hearing, Cr Claridge said:

“Councillor Davis was getting fairly loud, and to diffuse the situation, I said here in my comments that it was probably very unwise, but I repeated the words that Cr Gunaratne had said [about English not being his first language] but not with any malice ... I only ever said it once ... and I do regret saying it. I said, “Councillor Davis, you have to cut Cr Gunaratne a little bit of slack.”
43. Councillor Claridge added that “And, as I’ve said in my statement, when he first used those words, I was a bit amazed because he has a very good grasp, as you have found today, of English”.
44. The Panel completely accepts that given Cr Gunaratne is the only person of colour on the Council that he would encounter many instances of what he so shrewdly refers to as ‘polite racism’. The Panel has considered these allegations very carefully because the Panel accepts that racism is often subtle, unconscious, and pervasive. However, the Panel also feels that the allegation of racism is an extremely serious one, and one that it will not make a finding on without sufficient evidence. The Panel also accepts the sincerity of Cr Claridge’s rebuttal of this accusation.
45. Having read the relevant material, and listened to the oral evidence, the Panel finds there is not sufficient evidence of serious misconduct in relation to this allegation.

## Allegation 9

46. Allegation 9 relates a request to Cr Claridge in his role as then-mayor to help resolve a dispute between Cr Gunaratne and Cr King. The dispute is in relation to how this request was handled at a COT meeting on 3 November 2021. The Applicant states “I felt he bullied me by passing my complaint to all other councillors and allowing them to comment on my matter at the COT. He violated the complaint handling process and created his own process to shut me down. I felt he misused his position as the mayor to isolate, humiliate, denigrate, and bully me in front of other people.”
47. During the hearing, Cr Claridge said his understanding of the dispute Cr Gunaratne had with Councillors King and O’Brien was that it occurred after a meeting at which:
- “Councillor Gunaratne spoke against adopting the budget, and, once again, this goes back to some – well, not misunderstandings, but the past three meetings prior to that, he had voted for the adoption of the budget. Hadn’t put any recommendations in for changes to the budget. So on the night, I was really surprised. I was ... blindsided”.
48. In the hearing, in relation to voting against adopting the budget, Cr Gunaratne explained that at previous meetings it was not appropriate for him to raise any questions about the budget.
49. After this meeting, Cr Claridge said, Councillors King and O’Brien had expressed frustration with Cr Gunaratne. Cr Claridge said that he felt that Cr Gunaratne’s complaint with the two councillors had “no merit”, and that he was frustrated with him when he (Cr Gunaratne) wanted to take it to external mediation.
50. Having read the relevant material, and listened to the oral evidence, the Panel accepts that there were significant levels of frustration directed at Cr Gunaratne by several councillors, but that this is not sufficient evidence to support a finding of serious misconduct being made against Cr Claridge.

## Allegation 10

51. Allegation 10 relates to a Facebook comment made on 15 September 2021 by Cr Claridge to a comment by Cr Gunaratne’s partner. The allegation is that Cr Claridge’s comment implied that Cr Gunaratne “will give away confidential council information to my partner.” The comment was made on a Facebook page with approximately 8000 members.
52. In the hearing, Cr Claridge clarified that he was not suggesting Cr Gunaratne would give confidential information to his partner, but rather that he had sufficient insight as a councillor from publicly available information to explain the issue.



53. The Panel believes that this comment thread could be interpreted in several different ways, the most negative interpretation being that Cr Claridge suggesting he would leak confidential information, with several members of the Facebook page telling Cr Claridge it was not an appropriate comment. The Panel observes that Cr Claridge's explanation of his comments is also plausible.
54. The Panel finds that there is insufficient evidence to support a finding of serious misconduct against Cr Claridge in relation to this allegation.

#### Allegation 11

55. Allegation 11 relates to Cr Claridge's handling of a complaint by Cr Gunaratne about a statement that Cr Hearn made about who could be running the proposed Benalla cinema in the future. Cr Gunaratne alleges that "Cr Claridge has bullied me by claiming that I do not understand council reports".
56. In the hearing, Cr Claridge's evidence was that Cr Gunaratne was in effect misstating council position about the running of the proposed Benalla cinema and was frustrated with him because of this.
57. The Panel accepts that Cr Claridge was frustrated with Cr Gunaratne over the issue of the proposed Benalla cinema, particularly who will run it, and expressed that frustration to him. Cr Claridge said:
- "That's the frustration we've had all along. We've continually said that to Cr Gunaratne and to the group who are opposed to it but they won't listen. But we've never had any other plans apart from continuing, as we have in the last 10 years, to continue to run the cinema".
58. Having read the relevant material, and listened to the oral evidence, the Panel finds there is no evidence of serious misconduct in relation to this allegation.

#### Allegation 12

59. Allegation 12 relates a COT meeting on 23 June 2021 at which Cr Claridge is alleged to have accused Cr Gunaratne of making a misleading statement that the proposed Benalla cinema would be run by a Melbourne company. Cr Gunaratne disputes that he said that, merely that he didn't want the cinema being run by a Melbourne company. Councillor Gunarante states that Cr Claridge's handling of this dispute created "an intimidating and humiliating situation for me in the COT".
60. During the hearing, Cr Gunaratne explained that his resistance to the Benalla cinema project had been picked up by local newspapers and that this has caused consternation amongst his fellow councillors.

61. Having read the relevant material, listened to the oral evidence and watched the video evidence, the Panel finds there is no evidence of serious misconduct in relation to this allegation. Rather, the panel finds that a reasonable person, assessing all the evidence, would find that what was being engaged in was robust political debate rather than unreasonable behaviour that creates a risk to the health and safety.

## **Discussion**

62. As well as considering each allegation in turn, the Panel has also considered the cumulative nature of these allegations, again finding insufficient evidence to support a finding of serious misconduct. The Panel believes that the reasonable person would not see Cr Claridge's behaviour as constituting either bullying or unreasonable behaviour.

63. Having heard these allegations, particularly the allegations of racism, the Panel recommends that the Council consider additional training in relation to increasing awareness of both racism, as well as anti-racism measures. As well as the discussion in Allegation 8 about the nature of racism, the Panel also observes that it would be understandable that, as the only person of colour on the Council, Cr Gunaratne would be sensitive to any adverse behaviour that could be construed as racist.

64. The dismissal of the Application does not mean that the decision of the Registrar to form a Panel under s 156 of the Act was not appropriate. On the face of the application, it was open to the Registrar to form the view that the application was not lacking in substance and that there was sufficient evidence to support the allegations made, see s 155 (1) of the Act. Ultimately, the Panel had the benefit of the allegations being tested by competing evidence and did not find them made out on the totality of all the evidence before the Panel.