

IN THE MATTER OF AN APPLICATION FOR AN INTERNAL ARBITRATION PROCESS

MERRI-BEK CITY COUNCIL

IAP 2025-20

HEARING PURSUANT TO DIVISION 5 OF PART 6 OF THE *LOCAL GOVERNMENT ACT 2020*

Applicant: Councillor Oscar Yildiz

Respondent: Councillor Jay Iwasaki

Date of hearing: Friday, 6 February 2026

Place of hearing: Brunswick Town Hall (Civic Centre) at 233 Sydney Road, Brunswick

Arbiter: Simon Heath

DETERMINATION:

Councillor Yildiz has made Application for an Internal Arbitration Process seeking a finding of misconduct against Councillor Iwasaki. The finding is sought in relation to three emails sent by Councillor Iwasaki on 4 June 2025.

I determine that the emails collectively constitute a failure by Councillor Iwasaki to comply with the 'Model Councillor Code of Conduct'. As such, I make a finding of misconduct against him.

I direct that Councillor Iwasaki make a written apology to Councillor Yildiz for the emails.

I also direct that Councillor Iwasaki be suspended from the office of Councillor for a period of one month.

STATEMENT OF REASONS

The Application

1. The 'Application for an Internal Arbitration Process' is dated 3 September 2025 (**Application**).
2. In the Application, the Applicant seeks a finding of misconduct against the Respondent in relation to alleged breaches of the 'Model Councillor Code of Conduct' (**Code**).
3. The breaches of the Code are alleged to be contained in three emails sent by the Respondent on 4 June 2025 (**emails**). The emails, sent at 3.36 pm, 3.58 pm, and 4.40 pm, relate to a decision by the Council to resurface the gravel car park at De Chene Reserve in East Coburg (**Reserve**).
4. The Reserve is used by the Brunswick Juventus Football Club (**Club**).

5. The first email was sent by the Respondent on 4 June 2025 at 3.36 pm to the Council's Executive and their Assistants, and to Councillors (**first email**). There were 26 recipients, including the Applicant and the Respondent (**recipients**). The recipients were responsible for the Council's operations.

6. The first email was as follows:

"The fact that this club is so well used and has had one occurrence is really reassuring to me, and frequency of this event shows that the carpark may be relatively safe if people parked correctly and the parking area was enforced properly.

I was under the impression that this had occurred multiple times, but in fact that this was human error only highlights the dangers of cars in general and does not support the idea the carpark is dangerous and in need of urgent resurfacing. I am reassured that this was a one-off incident.

What I am more concerned about is the possibility of corruption in this proposal for resurfacing. It has been brought to my attention from other members in the community that Cr Yildiz has a conflict of interest that may actually be substantive, and as such the carpark resurfacing should never have been proposed in the first place.

This is akin to if I proposed money to fund a research group's project that I was friends or affiliated with and then sat out of the vote. I should never have brought up a proposal that I had a conflict of interest with in the first place, especially that I did not disclose to the other councillors, for them to vote on. And particularly since they may not have known what the conflict was in order to discuss the merits of that proposed use of funding that may benefit me or my friends.

I believe due to concerns of corruption, this should absolutely be deferred to be discussed after more details are discussed and the potential conflicts worked through."

7. At 3.40 pm, the Applicant responded to the first email by sending the recipients the following email:

"I suggest anyone using the term "Corruption" be VERY VERY careful because I won't tolerate any such allegation or accusation and I will take legal action to defend any such assertion/s made by anyone."

8. The second email was sent by the Respondent on 4 June 2025 at 3.58 pm to the recipients (**second email**), and was as follows:

"Cr Yildiz is correct. This is potentially very serious. The stated conflict of interest is public record on a personal interest return, has already been picked up on by a community member, and may very well be picked up wider in the media, especially with this huge amount of money.

It would be prudent to defer this decision to make sure Cr Yildiz' proposal is appropriately vetted and to make sure his name is cleared."

9. In response to the first email and the second email, the Mayor sent the following email to Councillors at 4.35 pm:

"I would like to remind you that our emails should be constructive and respectful and if you have a governance matter, please raise it through the appropriate channels e.g. through the CEO or (Manager Governance and Strategy named)".

10. The Respondent sent the third email at 4.40 pm but only to 17 of the 26 recipients, **(third email)**. That email was as follows:

"I acknowledge that the word corruption was very strong and what I meant was the possibility of conflicts of interest. I did in no way insinuate there was corruption and withdraw the below unconstructive feedback."

11. The Respondent attempted to call that Applicant at 5.02 pm but the call was not answered.
12. In sending the emails, the Applicant alleges that the Respondent has breached the standards of conduct **(Standards)** included in the Code relating to 'Performing the role of a Councillor', 'Behaviours', and 'Integrity'. Details of those standards are set out below.

Arbiter's jurisdiction

13. I was appointed pursuant to sections 144 and 149 of the *Local Government Act 2020 (Act)*.
14. Section 143 of the Act provides that an Arbiter may hear an application that alleges misconduct by a Councillor.
15. Section 143(3) of the Act provides that an Application "must be made within 3 months of the alleged misconduct occurring". The alleged misconduct occurred on 4 June 2025 so this requirement is satisfied.
16. Pursuant to section 147 of the Act, an Arbiter may determine whether or not a Councillor has engaged in misconduct.
17. "Misconduct" is defined in Section 3 of the Act as follows:
"...any breach by a Councillor of the Model Councillor Code of Conduct".
18. Section 139(3)(b) of the Act specifies that the standards of conduct expected to be observed by Councillors in the course of performing their duties and functions are to be included in the Code.
19. The Code is set out in Schedule 1 to the *Local Government (Governance and Integrity) Amendment Regulations 2020*.

20. As required by section 139(4) of the Act, the Code is published on the Council's website, and a copy thereof is attached as Annexure A.

Hearing

21. The internal arbitration process comprised directions made on 12 November 2025, an in-person directions hearing on 20 November 2025, further directions made on 20 November 2025, even further directions made on 3 December 2025, and an in-person hearing on 6 February 2026.

Applicant's evidence

22. The Applicant's evidence comprised the Application, which was comprehensive. The Applicant also made available documents providing context to the matters set out therein.
23. The Applicant gave oral evidence and made submissions at the hearing.

Respondent's evidence

24. The Respondent's evidence comprised an undated written response to the Application as well as documents in support of the submissions in that response.
25. The Respondent also made submissions at the hearing.

Arbiter's findings

26. I determine that the Respondent breached clauses 1, 2 and 4 of the Standards.

Arbiter's reasons

- 25 The Applicant was the honorary number 1 ticket holder (**role**) of the Club (**Club**) for many years.
- 26 Several hours before the Respondent sent the emails, the Applicant voluntarily resigned from the role.
- 27 A letter from the Club dated 2 September 2025 attached to the Application confirms that the Applicant has not benefited "*financially or otherwise*" from the role. I accept that unchallenged evidence.
- 28 The Club is not situated in the Applicant's ward.
- 29 I accept the Applicant's evidence that he had declared the role in Personal Interest Returns, had at appropriate times sought governance advice, and had made conflict of interest declarations in relation to matters involving the Club.

- 30 I also accept the evidence of the Applicant and the Club that in addition to the "occurrence" the Respondent refers to in the first email, (when a car rolled from the carpark onto the pitch in 2018), there have been documented concerns about safety issues in relation to the carpark at the Reserve since 2012 and that the first request for resurfacing was made about 2013. In this regard, Council's Director of Community confirmed in an email on 3 April 2025 to Councillors that the Council had received "a range of complaints over a number of years about the car park" at the Reserve. This was the day before the emails.
- 31 The Applicant did not debate or vote on the Council's decision on 11 June 2025 to fund the resurfacing at the Reserve.
- 32 Despite the Respondent's contentions to the contrary, I accept that the emails have caused the Applicant considerable distress. The Respondent misguidedly submitted that it was up to the Applicant to prove that the email caused him 'severe psychological injury' rather than addressing the issue of whether the emails to the recipients constituted a breach of the Standards in the Code. In relation to the latter, I record that, at the hearing, the Respondent said the following "I make no defence here of my statements".
- 33 The Respondent submitted that I ought to dismiss the Application because it is "retaliatory or vexatious" and was made in response to a finding of misconduct against the Applicant in an earlier Internal Arbitration Process brought by the Respondent (earlier IAP). The earlier IAP is dated 7 February 2025 and on 30 June 2025 Arbitrator Noel Harvey OAM directed that the Applicant be suspended for one month.
- 34 In addition to the fact that the emails were sent prior to the learned Arbitrator's decision in the earlier IAP, I find that the Application was properly made.
- 35 I was not assisted by both parties raising matters outside the issues in the Application. Clearly the relationship between them is and unfortunately continues to be fractious. I encourage them to avoid personal attacks.
- 36 A significant portion of the Respondent's response material was unrelated to the scope of the Application which was whether or not the emails constituted a breach of the Standards in the Code. The Respondent's material included allegations about conduct of the Applicant after the emails had been sent, including an allegation that the Applicant had colluded with another individual to set up a retaliatory Application, an allegation of the Applicant's poor attendance and inattentiveness at meetings, an allegation of continued bullying and intimidatory behaviour by the Applicant, I advised the Respondent at the directions hearing, and again in the hearing, that these were matters outside the scope of the Application.
- 37 I also advised the Respondent that if he believes that the Applicant's conduct following the emails has been questionable, it is a matter for him as to whether, and where, to pursue those allegations but it was not appropriate to do so in this Application.
- 38 I do not accept the Respondent's contention that the first email was "appropriate to my role as a councillor and acting in the community's interests".

- 39 In the first email, the Respondent uses "*corruption*" twice. This suggests that the use of the word was not merely incidental.
- 40 It is a serious allegation for the Respondent to suggest that the Applicant is potentially or actually "*corrupt*". The word connotes dishonesty or illegality of a trusted public power for private gain. In common parlance, the term is associated with criminal conduct, misuse of public office, receiving undisclosed benefits and the like. Accordingly, it would be highly improper to make such an allegation without having substantiating evidence. Despite being invited to do so, the Respondent has not provided any evidence to support that it was appropriate to use "*corruption*".
- 41 I find that the Respondent's use "*corruption*" in the first email to be unnecessary, inappropriate, inflammatory and damaging.
- 42 I have taken into account that the first email refers to the "*possibility*" of corruption and "*concerns*" of corruption but note the Respondent's concession in the third email that he meant to refer to the "*possibility of conflicts of interest*".
- 43 In view of the evidence that the Applicant had declared the role, and in view that the resurfacing at the Reserve will benefit the community, the Respondent's analogy in the first email is not 'on all fours'.
- 44 The second email contains a clear acknowledgment by the Respondent that the Applicant's "*stated conflict of interest is public record on a personal interest return*". Given the Applicant's caution about repeating an insinuation of "*corruption*", instead of clarifying the first email, the Respondent 'doubles down' by not only maintaining that the resurfacing issue is "*potentially very serious*", but also noting that it has been picked up by an unidentified "*community member*" and may "*very well be picked up wider in media*".
- 45 Additionally, the Respondent states in the second email that the Applicant still needed to be "*appropriately vetted*". I accept the Applicant's submission that, in the absence of any supporting details to support the "*possibility of corruption*", the second email improperly invites speculation about the Applicant's conduct and, indeed, constitutes an implied threat on the Respondent's part that he might involve the media.
- 46 I do not accept the Respondent's assertion that the second email was an "*apology and an immediate retraction*". It was nothing of the sort. In any event, the supposed retraction was not sent to all of the recipients.
- 47 The Respondent's claim in the third email that "*I did in no way insinuate there was corruption*" beggar's belief. That is exactly what the Respondent did in the first email and then repeated the insinuation in the second email.
- 48 While acknowledging that the word "*corruption*" was "*very strong*", the Respondent did not apologise for using it. Further, not all of the recipients were informed that the Respondent had intended to refer to a possible conflict of interest and not corruption on the Applicant's part.

49 Clause 1 of the Standards relates to 'Performing the role of a Councillor' and requires that:

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

- (a) ...*
- (b) being fit to perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and*
- (c) diligently using Council processes to become informed about matters which are subject to Council decisions; and*
- (d) ...*
- (e) ...*
- (f) ... "*

50 I find that the emails constitute a failure by the Respondent to do "everything reasonably necessary" to perform the role of a Councillor "effectively and responsibly" as well as a failure to "diligently use council processes". As the Mayor appropriately pointed out to the Councillors, emails are not an appropriate channel to raise governance issues. The issue should have been raised privately with Council's governance officer and not in an email to the recipients. The Respondent failed to use 'council processes' and, as such, the emails are a breach of Clause 1 of the Standards.

51 Clause 2 of the Standards relates to 'Behaviours' and requires that:

"(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 by-

- (a) not engaging in demeaning, abusive, obscene or threatening behaviour...*
- (b) not engaging in behaviour that intentionally causes or perpetuates stigma, stereotyping, prejudice or aggression against a person or class of persons; and*
- (c) ...*
- (d) ...*
- (e) ...*
- (f) ...*

(2) A Councillor, as an individual at the workplace, must take reasonable care for their own health and safety and take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons by-

(a) adhering to applicable systems and policies put in place by the Chief Executive Officer to manage risks to health and safety in the workplace; and

(b) ...

(3) A Councillor must act in accordance with any policies, practices and protocols developed and implemented under section 46 of the Act that support arrangements for interactions between members of Council staff and Councillors".

52 I find that the Respondent's references in the first email to the resurfacing of the Reserve raised "the possibility of corruption" and "concerns of corruption", was a failure by the Respondent to treat the Applicant with "dignity, fairness, objectivity, courtesy and respect". The evidence confirms that the Respondent knew that the Applicant had previously declared

the role and conflicts of interest yet chose to insinuate to the recipients, absent any details or information, that the Applicant was corrupt. The Respondent has breached Clause 2 of the Standards.

53 Clause 4 of the Standards relates to 'Integrity' and includes the following:

"(1) A Councillor must act with integrity, exercise reasonable care and diligence and take reasonable care 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; and*
- (c) ..."*

54 I also find that the Respondent has breached Clause 4 of the Standards. The first email was unnecessarily sent to 26 recipients. Asserting in emails that a Councillor may have acted corruptly, without providing any supporting details, the Respondent's implication of improper motives on the Applicant's part is a failure to take "reasonable care to avoid any action which may diminish the public's trust and integrity of local government". The Respondent's failure to advise the recipients that he unconditionally withdrew his unsubstantiated insinuations that a Councillor may have been involved in corrupt conduct does not assist in restoring the public's "trust and confidence" in relation to the integrity of Council. Also, in the absence of supporting details, I remain unconvinced that the Respondent has not deliberately misled the Council.

55 Pursuant to section 147(2)(a) of the Act, I direct that the Respondent provide a written apology to the Applicant which acknowledges and apologizes for the emails which failed to treat him with "dignity, fairness, objectivity, courtesy and respect" and that the Respondent regrets any distressed caused (**apology**). The apology is to be emailed to the recipients by 6 March 2026.

56 Pursuant to section 147(2)(b) of the Act, I also direct that the Respondent be suspended from the office of Councillor for a period of one month (**suspension**). While that section provides for a suspension for a period "not exceeding 3 months", I have taken into account the fact that the Respondent has undertaken governance training since sending the emails. The suspension is to take effect the day after this determination is tabled at the next Council meeting, (presently scheduled for 11 March 2026), or from 12 March 2026, whichever is sooner.

Simon Heath

Arbiter

Dated: 26 February 2026

Model Councillor Code of Conduct

Schedule 1 of the Local Government (Governance and Integrity) Amendment Regulations 2024

Definitions

In this Schedule—

discrimination means unfair or unfavourable treatment of a person on the grounds of an attribute specified in section 6 of the **Equal Opportunity Act 2010**.

Standards of Conduct

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—

- (a) representing the interests of the municipal community by considering and being responsive to the diversity of interests and needs of the municipal community; and
- (b) being fit to perform the role of a Councillor when acting in that capacity or purporting to act in that capacity; and
- (c) diligently using Council processes to become informed about matters which are subject to Council decisions; and
- (d) not performing or purporting to perform any responsibilities or functions of the Chief Executive Officer; and
- (e) acknowledging and supporting the Mayor in the performance of the role of the Mayor, including by—
 - (i) respecting and complying with a ruling of the Mayor as the chair of Council meetings (unless dissenting from the ruling in accordance with the Council's Governance Rules); and
 - (ii) refraining from making public comment, including to the media, that could reasonably be perceived to be an official comment on behalf of the Council where the Councillor has not been authorised by the Mayor to make such a comment.

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—

- (a) not engaging in demeaning, abusive, obscene or threatening behaviour, including where the behaviour is of a sexual nature; and
 - (b) not engaging in behaviour that intentionally causes or perpetuates stigma, stereotyping, prejudice or aggression against a person or class of persons; and
 - (c) not engaging in discrimination or vilification; and
 - (d) supporting the Council, when applying the Council's community engagement policy, to develop respectful relationships and partnerships with Traditional Owners, Aboriginal community controlled organisations and the Aboriginal community; and
 - (e) supporting the Council in fulfilling its obligation under the Act or any other Act (including the **Gender Equality Act 2020**) to achieve and promote gender equality; and
 - (f) ensuring their behaviours and interactions with children are in line with the Council's policies and procedures as a child safe organisation and obligations under the **Child Wellbeing and Safety Act 2005** to the extent that they apply to Councillors.
- (2) A Councillor, as an individual at the workplace, must take reasonable care for their own health and safety and take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons by—
- (a) adhering to applicable systems and policies put in place by the Chief Executive Officer to manage risks to health and safety in the workplace; and
 - (b) complying, so far as the Councillor is reasonably able, with any reasonable instruction that is given by the Chief Executive Officer to manage risks to health and safety.
- (3) A Councillor must act in accordance with any policies, practices and protocols developed and implemented under section 46 of the Act that support arrangements for interactions between members of Council staff and Councillors.

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—

- (a) the Council's expenses policy adopted and maintained under section 41 of the Act;

- (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; and
 - (ii) requesting and approval of attendance at Council meetings and meetings of delegated committees by electronic means of communication; and
 - (iii) the Council's election period policy included in the Council's Governance Rules under section 69 of the Act, including in ensuring that Council resources are not used in a way that is intended to influence, or is likely to influence, voting at a general election or by-election;
- (c) the Council's Councillor gift policy adopted under section 138 of the Act;
- (d) any direction of the Minister given under section 175 of the Act.

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; and
 - (c) not making Council information publicly available where public availability of the information would be contrary to the public interest.

Note

See the public transparency principles set out in section 58 of the Act.

- (2) A Councillor must not, in their personal dealings with the Council (for example as a ratepayer, recipient of a Council service or planning applicant), expressly or impliedly request preferential treatment for themselves or a related person or entity.

5. The Model Councillor Code of Conduct does not limit robust public debate

Nothing in the Model Councillor Code of Conduct is intended to limit, restrict or detract from robust public debate of issues in a democracy.