

INTERNAL ARBITRATION PROCESS - IAP 2022-32

Applicant: Councillor Gavin Gamble
Respondent: Councillor Les Rowe
Council: Golden Plains Shire Council
Date of Hearing: 4 April 2023
Arbiter: Louise Hill

DETERMINATION

The Arbiter has determined that there has been a breach of the prescribed standards of conduct by the Respondent, Cr Les Rowe in that he failed to show courtesy and respect to the Golden Plains Shire Council CEO and therefore a finding of misconduct is made.

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

STATEMENT OF REASONS FOR DECISION

Application and Response

The Application from Councillor Gavin Gamble alleges that Councillor Les Rowe has breached the following prescribed standards of conduct set out in Schedule 1 to the Local Government (Governance and Integrity) Regulations 2020.

1. Treatment of Others

A Councillor must, in performing the role of a Councillor, treat other Councillors, members of Council staff, the municipal community and members of the public with dignity, fairness, objectivity, courtesy and respect, including by ensuring that the Councillor –

- (c) does not engage in abusive, obscene or threatening behaviour in their dealings with members of the public, Council staff and Councillors;
- (d) in considering the diversity of interests and needs of the municipal community, treats all persons with respect and has due regard for their opinions, beliefs, rights and responsibilities.

2. Performing the role of Councillor

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

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

3. Compliance with good governance measures

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

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

In support of his application, Cr Gamble has outlined six incidents where he alleges Cr Rowe breached one or more of the above standards. Following the directions hearing on 6 March 2023, Cr Gamble advised that he was withdrawing one of the incidents of alleged misconduct. Cr Rowe provided his response to each of the remaining items on 27 March 2023.

Item 1

Cr Rowe sent a reply email to the Golden Plains Shire Council CEO about the election of the Deputy Mayor in Ballarat, cc'ed to Councillors. The email concludes with the following "So please keep your snout out of the trough and concentrate on fixing customer service."

Cr Gamble states that Cr Rowe has behaved belligerently towards the CEO, has not offered an apology and that the CEO was simply informing councillors about other councils' actions in relation to the position of Deputy Mayor. Cr Gamble contends that Cr Rowe's behaviour in this instance was rude and disrespectful.

Cr Rowe has confirmed that he sent the email and his response is that this is the 'blunt farmer manner' in which he speaks, using metaphors to explain himself. He considers that the CEO oversteps boundaries and should remain "concerned about his own affairs." Cr Rowe stated that he believes the term 'snouts in the trough' to mean 'mind your own business.'

Item 2

Cr Gamble cites a conversation with Cr Rowe prior to the mayoral election during which Cr Rowe stated that he would pursue and contact other party members or supporters to ensure that Cr Gamble would be dis-endorsed if he didn't do what Cr Rowe wanted.

Cr Gamble contends that Cr Rowe's behaviour was threatening and disrespectful to him. Cr Rowe disputes Cr Gamble's account of the conversation and states that he offered to assist Cr Gamble with votes to have him elected as Mayor if he supported Cr Rowe the following year.

Cr Gamble provided two statements from others who were not witness to the conversation; each highlighted the impact of the conversation on Cr Gamble, rather than the content of the conversation. These are therefore not considered witness statements.

Item 3

At the conclusion of the 2022 election of Deputy Mayor, Cr Gamble claims that Cr Rowe displayed a petulant and disrespectful attitude by not clapping nor congratulating him for being elected.

Cr Rowe considers that Cr Gamble's claim to be frivolous.

Item 4

Withdrawn.

Item 5

Cr Gamble alleges that during a break in a Council briefing session, in a conversation between himself and Cr Rowe about deferring a decision on a tender to repair or replace a bridge, Cr Rowe asserted that if Cr Gamble were to pursue a deferral, he could "kiss goodbye to any cycling projects you want." Cr Gamble proposed that Council to defer the bridge contract to enable drainage works to be undertaken after recent flooding.

Cr Rowe agrees the conversation took place but that he was commenting that if Cr Gamble was not going to 'be negotiable' the group would most likely not endorse things like cycling projects. He disputes that the conversation was threatening or bullying in manner.

Item 6

Cr Gamble claims that Cr Rowe has breached standards 1a) and 3 a) by sending a 'reply all' email to all councillors, the CEO, senior management team and a council officer expressing his view on a drainage proposal that he considered to be "a band-aid solution that hasn't been thought through". The CEO had previously underscored to councillors that they were to comply with the Councillor/staff interaction policy and not engage directly with council staff other than the CEO and senior management team.

Cr Gamble alleges that the inclusion of an officer in the email response by Cr Rowe was non-compliant with this direction and that the tone of the email was disrespectful.

Cr Rowe's response is that he inadvertently included the council officer in his 'reply all' response. He believes that his view was subsequently proved to be correct as the solution proposed was finally modified.

Findings and Reasoning

Item 1

Cr Rowe's use of the term 'snout in the trough' in writing by email to the CEO is in my view derogatory and disrespectful. Cr Rowe has justified the use of this term as his normal way of communication. This may be an explanation of Cr Rowe's style, but it does not meet the required standards of code. The CEO was rightly providing information to all councillors about what other councils were doing, to assist them in the decision making process about whether a deputy mayor role was required.

Cr Rowe believes the term 'snout in the trough' to mean 'mind your own business' or 'stay out of it.' The usual and more frequently defined definitions of the term is to:

"have or get a share of money or some other advantage that people eagerly and sometimes dishonestly take" (Cambridge Dictionary available at <https://dictionary.cambridge.org/dictionary/english/have-get-snout-in-the-trough> Accessed 21 April 2023)

"make ample use of opportunities afforded by one's position in order to benefit oneself, especially financially." (Oxford Languages Dictionary, available at https://www.google.com/search?rlz=1C1GCEA_enAU857AU857&q=trough&si=AMnBZoEP2Yu kYW07_nAjizsjQPEkUIDCnkWpMyai1f3hQUSr9DaRs_g0sHHzx4Q9VHdS6q7VqKqLfrsjb-kfHoTjBGBOh3gwIA%3D%3D&expnd=1&biw=1920&bih=929&dpr=1 Accessed 21 April 2023)

There is another definition which is closer to Cr Rowe's use of the term:

"have/get one's (own) way" (Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/have%2Fget%20one%27s%20nose%2Fsnout%20in%20the%20trough>. Accessed 3 May. 2023)

Irrespective of which definition was intended, I find that Cr Rowe has failed to treat the CEO with courtesy and respect. Cr Rowe was given the opportunity to reconsider his use of the phrase and offer an apology to the CEO before this determination and it is regrettable that he has chosen not to do so. I therefore make a finding of misconduct by Cr Rowe in relation to a breach of Standard of Conduct 1.

Item 2

The recollection and understanding of the conversation between Cr Gamble and Cr Rowe about the mayoral election differs. There are no witnesses to the conversation although Cr Gamble asserts that he felt threatened about political payback if he did not agree with Cr Rowe. Cr Rowe considers that he was seeking to determine Cr Gamble's interest in getting an agreement about support and that he could gain the necessary votes from other councillors.

Both councillors accept that it is part of the political process where deals are done, agreements are made and sometimes those agreements are not always acted on; such is the nature of politics at all levels of government.

Notwithstanding Cr Gamble's version of events, there is no evidence to suggest that Cr Rowe breached the standard of code by being disrespectful to Cr Gamble.

Item 3

At the conclusion of the deputy mayoral election, Cr Rowe is observed on the video recording as gathering his papers and laptop placing these into his bag. He did not clap or congratulate Cr Gamble and was, I consider, undemonstrative of his feelings in his demeanour. As far as I can ascertain from the recording, several councillors clapped as the result of election of Cr Gamble as Deputy Mayor was announced, while others refrained. I do not believe that Cr Rowe's lack of congratulations to Cr Gamble is disrespectful and constitutes a breach of the standards.

Item 4

Withdrawn

Item 5

The conversation between Cr Gamble and Cr Rowe about deferring a bridge tender is a further example of a disputed conversation between the two councillors with no witnesses.

Cr Rowe may well have been assertive and direct about how he thought the Council should vote on the matter.

Cr Gamble considers that Cr Rowe's behaviour went beyond this and was threatening, coercive and working against community members' interests.

There is no evidence from Cr Gamble that Cr Rowe was physically or verbally threatening and therefore I find that there is no breach of the standards.

Item 6

The final item concerns an email which Cr Rowe sent to all Councillors, the CEO, senior management and a council officer in which he refers to the senior officers' solution for a drainage issue as a 'bandaid solution'. The CEO responded that Cr Rowe's comments were inappropriate and inconsistent with the previously issued instruction not to include officers in interactions.

In relation to the potential non-compliance of a policy, practice or protocol issues by the CEO, I accept Cr Rowe's explanation that he inadvertently 'replied all' to the email, not realising that it included a council officer. Cr Rowe asserts that he was expressing his view that the solution proposed was costly and not going to achieve the desired drainage results. Whilst Cr Rowe's view was expressed in blunt language, I do not consider that he overstepped the boundary of appropriate behaviour into disrespect. Presumably the email was sent to councillors to advise them of what was being considered and in that sense, councillors' comments on the proposed solution were warranted.

Other Observations

Cr Rowe may like to consider pulling back on his forthright manner and seek to understand others' views by asking questions and being more constructive in his interactions with councillors, the CEO and senior management.

Cr Gamble equally may like to consider how he can play a greater role in this term as Deputy Mayor in improving his relationship with Cr Rowe and facilitating positive relationships across the councillor

group. This may involve speaking up about his concerns, asking questions and building towards positive outcomes.

Both councillors are passionate and focused on making a positive difference for their communities and as such their overall intent is a strong point of agreement.

It is far preferable that councillors resolve their differences and disagreements directly with each other or with the mayor or other councillors' assistance, to avoid escalation to arbitration which is costly and time consuming.

The community expects their elected council representatives to uphold high standards of behaviour and without this, trust and confidence in them is diminished unnecessarily.

Sanction

Cr Rowe is required to provide a written apology on or before 23 May 2023 to the Golden Plains Shire Council CEO acknowledging that his language and the implication of his terminology was inappropriate and regrettable. The apology must include an assurance to the CEO that he will strive for a more constructive and positive discourse with the CEO, all councillors and senior management in their formal and informal interactions. The apology must be tabled at the next Council meeting on 23 May 2023.

Louise Hill
Arbiter

8 May 2023