

IN THE MATTER OF AN APPLICATION FOR AN INTERNAL ARBITRATION PROCESS (IAP)

EAST GIPPSLAND SHIRE COUNCIL (COUNCIL)

IAP 2022-24, IAP 2022-25, and IAP 2022-26

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

Applicants: Cr Sonia Buckley and Cr John White
Respondents: Cr Arthur Allen, Cr Mendy Urie and Cr Mark Reeves
Date of hearing: Wednesday, 18 January 2023
Place of hearing: East Gippsland Shire Council, Corporate Centre, 273 Main Street, Bairnsdale
Arbiter: Simon Heath

DETERMINATION:

The Arbiter finds that Cr Allen, Cr Urie and Cr Reeves did not breach the Standards in the “Councillor only time” meeting held on 3 May 2022 and, as such, no findings of misconduct are made against them.

The Arbiter therefore dismisses the Application.

STATEMENT OF REASONS

The Application

1. The ‘Application for an Internal Arbitration Process’ is dated 3 August 2022 (**Application**).
2. As the Application named three Respondents, a separate IAP number was allocated for each.
3. The Applicants seek a finding of misconduct against each Respondent in relation to alleged breaches of the standards of conduct during a “Councillor only time” meeting held on 3 May 2022 (**COT meeting**).

Arbiter’s jurisdiction

4. Section 143 of the *Local Government Act 2020* (**Act**) provides that an Arbiter may hear an Application that alleges misconduct by a Councillor.
5. Importantly, sub-section 143(3) of the Act provides that the Application “must be made within 3 months of the alleged misconduct occurring”.
6. I was appointed as Arbiter pursuant to sections 144 and 149 of the Act.

7. Pursuant to section 147 of the Act, I may determine whether or not a Councillor has engaged in misconduct.
8. "Misconduct" is defined in Section 3 of the Act which, at the relevant time, was as follows:
"...any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct".
9. The "standards of conduct" are set out in Schedule I to *Local Government (Governance and Integrity) Regulations 2020 (Standards)*. A copy thereof is attached as Annexure A.
10. The Standards have been adopted by the Council and are contained in its 'Councillor Code of Conduct' (**Code**).
11. The Applicants allege each Respondent breached the following Standards in the Code:
 - Clause 6: Treatment of others; and,
 - Clause 7: Performing the role of Councillor.

Hearings

12. The Internal Arbitration Process comprised Directions dated 7 November 2022, a Directions hearing on Wednesday, 23 November 2022, Directions dated 23 November 2022, Directions dated 13 January 2023, and a hearing on 18 January 2023.

Applicant's evidence

13. The Applicants' evidence comprised the Application (which attached an undated letter from Cr White to Cr Allen and a letter from Cr Buckley to the Council's CEO dated 16 May 2022), a written submission from Cr White dated 19 December 2022, a written submission from Cr Buckley dated 20 December 2022, as well as oral evidence given by each at the hearing.

Respondents' evidence

14. The Respondents' evidence comprised a written submission from Cr Allen dated 11 January 2023, a written submission from Cr Urie dated 10 January 2023, a written submission from Cr Reeves dated 11 January 2023 and their oral evidence at the hearing.

Arbiter's findings

15. I find that Cr Allen, Cr Urie and Cr Reeves did not breach the Standards during the COT meeting and, as such, no finding of misconduct is made against them.
16. I therefore dismiss the Application.

Arbiter's Reasons

17. The alleged breaches of the Standards by the Respondents in the Application were confined to the COT meeting on 3 May 2022.
18. Despite this, the Applicants provided a significant amount of material relating to alleged incidents and cultural issues which occurred more than three months before they made their Application. These issues were not only historical but included alleged conduct involving Councillors other than the Respondents.
19. Although the Applicants indicated this material was provided by way of background, the Respondents understandably felt it necessary to respond to the matters raised by denying any misconduct.
20. Putting aside the fact that sub-section 143(3) of the Act prevented me from considering these historical matters, I note they are being addressed in an inquiry currently being conducted by the Council (**Inquiry**). Raising those matters again in this process was unhelpful.
21. The Application and supporting material refer to another IAP arising from an earlier "Councillor only time" meeting on 19 April 2022. That meeting occurred more than three months before the Application but, in any event, I also note that Arbiter J Silver dismissed that IAP on 6 December 2022.
22. The nub of the Application was that Cr Buckley said she felt bullied and intimidated during the COT meeting. This was said to arise from the following factors:
 - (a) The matters discussed were not appropriate for a Councillor only time meeting;
 - (b) Cr Reeves should not have chaired the meeting; and,
 - (c) The behaviour of the Respondents during the meeting.
23. Cr Reeves advised that "Councillor only time" meetings were initiated in 2012 and were an effective way of enabling councillors to meet to discuss and clarify matters of concern. Meetings are held weekly.
24. During the COT meeting, one topic for discussion was the possibility of resolving a complaint involving Cr Buckley (**Complaint**). (Cr Buckley and Cr White questioned the existence of the Complaint, but the Respondents' evidence was that one had been submitted to the CEO).
25. All Councillors were present at the COT meeting, except for Cr Buckley who participated by telephone.
26. At the COT meeting, all Councillors had the opportunity to participate in the discussion and to explore the possibility of resolving the Complaint.
27. Cr Buckley alleged that it was improper for Cr Reeves to chair the COT meeting, because he was part of the Inquiry.
28. I do not accept Cr Buckley's submission. As Mayor, it was appropriate for Cr. Reeves to have chaired the COT meeting initially before handing the role to Cr Allen, the Deputy Mayor, to avoid a perceived conflict of interest when the Inquiry was discussed.
29. I also do not accept Cr Buckley's submission that being chair allowed Cr Reeves and Cr Urie to intimidate her.

30. Cr Buckley alleged that it was improper for Cr Urie to return to discussing the Complaint later in the COT meeting which resulted in Cr Allen becoming “angry” and Cr Reeves becoming “loud and aggressive”. I find that there was nothing inappropriate about having further discussions on the matter.
31. Cr Buckley and Cr White alleged that the Respondents had breached the Standards because their “body language” and “tone of voice” during the COT meeting was evident of “bullying behaviour”. I disagree and find that the evidence does not support their contention.
32. As mentioned, Cr Buckley attended the COT meeting by telephone. Cr Buckley therefore could not see the Respondents’ “body language” and relied on what Cr White told her when he contacted her afterwards.
33. I accept the Respondents’ evidence that Councillors remained seated during the COT meeting except when they were required to access a portable microphone being used to assist Cr Buckley who, as mentioned, was attending remotely.
34. Cr White’s evidence in relation to inappropriate body language simply that Cr Allen was “red faced” and that Cr Urie was “on the edge of her seat”. I find that neither constitutes a breach of the Standards.
35. As Cr Buckley could not see the COT meeting, I asked her to explain the basis for alleging that the Respondents’ behaviour was “abusive, obscene or threatening” to constitute a breach of the Standards, Cr Buckley responded that, while there was no swearing, she detected a “raise in tone and verbal intent” as well “anger and frustration” in Cr Allen’s voice and that he spoke in an “authoritarian and condescending” tone.
36. I accept the Respondents’ evidence that they did not raise their voices during the COT meeting and that any apparent frustration was the result of Cr Buckley speaking over them.
37. The Standards are not intended to limit, restrict or detract from robust debate between Councillors.
38. While discussions at the COT meeting may have been robust, the evidence does not support Cr Buckley’s and Cr White’s allegations that the behaviour of Cr Allen, Cr Urie and Cr Reeves comprised bullying. Nothing the Respondents did or said during that meeting was “abusive” or “obscene” or “threatening” or was it unfair or disrespectful.
39. I find that the Respondents did not breach the Standards at the COT meeting as alleged or at all and I dismiss the Application.

Simon Heath

Arbiter

Dated: 3 February 2023

Appendix A

Schedule 1—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.