

## **COUNCILLOR CONDUCT PANEL (CCP)**

In the matter of an Application by the Chief Municipal Inspector concerning  
Councillor Jason Modica of Mildura Rural City Council

### **DECISION**

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

Applicant: The Chief Municipal Inspector

Respondent: Councillor Jason Modica

Date of hearing: 18 November 2022

Hearing location: On-line via Microsoft Teams

Date of decision: 14 February 2023

### **FINDINGS & DETERMINATIONS**

By way of findings and determinations, the Panel orders as follows. The Respondent:

1. engaged in serious misconduct;
2. is reprimanded;
3. is directed to make an apology to the Council;
4. is suspended from office (effective from the date of this decision) for two (2) months; and
5. is ineligible to chair a delegated committee of the Council until the end of the financial year (30 June 2023, inclusive).

Diana Price  
Chairperson

Jan Boynton  
Panel Member

### **APPEARANCES**

For the Applicant:  
For the Respondent:

Ulrike Friedrich  
Tinashe Makamure

## STATEMENT OF REASONS FOR DECISION

### The Application

1. By application dated 5 August 2022, the Chief Municipal Inspector (**CMI**), sought a finding of serious misconduct against Councillor Jason Modica pursuant to ss 154(2) and 154(4) of the *Local Government Act 2020* (the **Act**).
2. The grounds of the application are that Cr Modica, of Mildura Rural City Council (the **Council**), failed to declare a conflict of interest on three occasions relating to a planning application for [REDACTED] and that this failure constitutes serious misconduct.

### Jurisdiction of the Panel in relation to the Application

3. An application for a finding of serious misconduct based on an allegation that a councillor failed to disclose a conflict of interest may only be made by the CMI, per s 154(4) of the Act. Section 154(1) provides that the Panel has jurisdiction to hear such an application.
4. Section 163(1) of the Act provides that the Panel must not make a determination against such a councillor until it has conducted a hearing. Following such a hearing, the Panel has the powers outlined in s 167. This includes to make a finding of serious misconduct, a finding of misconduct, a finding that remedial action is required, or it may dismiss the application.
5. If the Panel makes a finding that a councillor engaged in serious misconduct it may impose any one or more of a number of determinations. Section 167(3) provides:

If a Councillor Conduct Panel makes a finding of serious misconduct against a Councillor, the Councillor Conduct Panel may do any one or more of the following—

- (a) reprimand the Councillor;
- (b) direct the Councillor to make an apology in a form or manner determined by the Councillor Conduct Panel;
- (c) suspend the Councillor from office for a period specified by the Councillor Conduct Panel not exceeding 12 months;
- (d) direct that the Councillor is ineligible to chair a delegated committee of the Council for a period specified by the Councillor Conduct Panel not exceeding the remainder of the Council's term.

## Declaration of conflicts of interest under the Act

6. This application relates to conflicts of interest. In s 3 of the Act, serious misconduct is defined to include the failure by a Councillor to disclose a conflict of interest and to exclude themselves from the decision making process when required to do so in accordance with this Act.
7. Part 6 of the Act relates to council integrity and Division 2 concerns conflicts of interest. Section 126 contains various definitions, including that a relevant person has a conflict of interest if he or she has a general conflict of interest within the meaning of s 127 or a material conflict of interest within the meaning of s 128. 'Relevant person' is defined to include a councillor.
8. A general conflict of interest is defined in s 127 as:
  - (1) Subject to section 129, a relevant person has a **general conflict of interest** in a matter if an impartial, fair-minded person would consider that the person's private interests could result in that person acting in a manner that is contrary to their public duty.
  - (2) For the purposes of subsection (1)—

**private interests** means any direct or indirect interest of a relevant person that does not derive from their public duty and does not include an interest that is only a matter of personal opinion or belief;

**public duty** means the responsibilities and obligations that a relevant person has to members of the public in their role as a relevant person.
9. A material conflict of interest is defined in s 128, which relevantly provides:
  - (1) Subject to section 129, a relevant person has a **material conflict of interest** in respect of a matter if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter.
  - (2) The benefit may arise or the loss incurred—
    - (a) directly or indirectly; or
    - (b) in a pecuniary or non-pecuniary form.
  - (3) For the purposes of this section, any of the following is an **affected person**—
    - (a) the relevant person;
    - (b) a family member of the relevant person;
    - (c) a body corporate of which the relevant person or their spouse or domestic partner is a Director or a member of the governing body;
    - (d) an employer of the relevant person, unless the employer is a public body;

- (e) a business partner of the relevant person;
- (f) a person for whom the relevant person is a consultant, contractor or agent;
- (g) a beneficiary under a trust or an object of a discretionary trust of which the relevant person is a trustee;
- (h) a person from whom the relevant person has received a disclosable gift.

...

10. Section 129 contains a number of exemptions. For example, a conflict of interest does not arise if the conflict of interest is so remote or insignificant that it could not be reasonably regarded as capable of influencing the actions or decisions of the relevant person in relation to the matter.
11. Sections 130 and 131 relate to the requirement to disclose conflicts of interests. In respect of a matter being considered at a council meeting or a meeting of a delegated committee, s 130(2) requires that a relevant person who has a conflict of interest in the matter must disclose the conflict in the manner required by the Council's Governance Rules and exclude themselves from the decision making process in relation to the matter, including any discussion, vote or action.
12. Section 131 applies to a conflict of interest in respect of a matter at a meeting conducted under the auspices of the Council that is not a meeting specified in the preceding section. A councillor who has a conflict of interest in respect of such a matter must disclose the conflict of interest in the manner required by the Council's Governance Rules and comply with the procedures outlined in those rules.
13. It is an offence for a relevant person to fail to disclose a material conflict of interest, see s 130(3). Likewise, it is an offence if a person fails to disclose a general conflict of interest if the person has previously been found guilty of a conflict of interest offence or subject to a finding of serious misconduct for a conflict of interest breach, see s 130(4).
14. Where a councillor fails to comply with ss 130 and 131, application may be made to the Panel alleging serious misconduct, see ss 130(5) and 131(3).

## **The Allegation**

15. The application by the CMI outlines the circumstances of the alleged serious misconduct of Cr Modica. It states:

It is alleged that Cr Modica failed to declare a conflict of interest on 20 September 2021, 22 September 2021 and 10 February 2022 in relation to a planning application [REDACTED] for the use of land for rural industry at [REDACTED].

The alleged conflict arises from the fact that Cr Modica's sister... resides opposite the property for which the application was made, and is operating a business without permit similar to the one that was the subject of the planning application.

16. The application is accompanied by Attachment A, being a summary of the circumstances and the evidence relied upon by the CMI. It states that it is alleged that Cr Modica had a material conflict of interest and/or general conflict of interest. An index of evidence was provided in Annexure B, as well as the accompanying attachments.

### **The evidence presented at the hearing**

17. A hearing took place on 18 November 2022, in which both the CMI and Councillor Modica were ably represented. The parties presented a joint position to the Panel, containing agreed facts and proposed findings of serious misconduct. However, the parties diverged on what would be appropriate determinations under s 167(3) of the Act. A statement signed Cr Modica was also presented to the Panel.
18. In other professional disciplinary schemes, the principles concerning the proper approach where the parties have an agreed position is well-established. These authorities recognise that an agreement between the parties is a highly relevant matter.<sup>1</sup> However, it is ultimately for the tribunal to be satisfied that the findings and orders to be made are appropriate. Any agreement between the parties cannot supplant that duty of the tribunal.<sup>2</sup>
19. The Panel has adopted this approach in the present matter. The agreed facts and proposed findings of serious misconduct are highly relevant matters, but it remains the duty of the Panel to satisfy itself of those matters.

### **Findings of fact**

20. Having considered all the material before it, the Panel makes the following findings of fact.

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<sup>1</sup> *Medical Board of Australia v McGrath* [2014] VCAT 641 at [19]-[21].

<sup>2</sup> *Commonwealth of Australia v Director, Fair Work Building Inspectorate* [2015] HCA 46.



21. Cr Modica was first elected to the Council in October 2016. He was re-elected in October 2020 and signed the affirmation of office on 19 November 2020. Cr Modica was elected to the position of Mayor for a one-year term on the same day.
22. Section 18(1) of the Act provides for the role of the mayor which, among others, includes promoting behaviour among Councillors that meets the standards of conduct set out in the Councillor Code of Conduct.
23. On 24 February 2021, the Council adopted a revised Councillor Code of Conduct (the **Code**) under the Act. The values promoted in the Code include honesty and integrity. By signing the Code, councillors undertook to abide by the standards of conduct set out within it.
24. On 23 March 2021, the Council received a planning application. The application was for “use of the land for rural industry (stockyard panelling business)” at [REDACTED]. The planning applicant sought permission for use of the land for the storage, assembly and distribution of stockyard and other pastoral equipment. From the discussions held during the council meeting, it appears that the applicant was already using the land for this purpose and was seeking retrospective approval.
25. The sister of Cr Modica lived across the road from [REDACTED] and was operating a business without permit similar to the one at [REDACTED]. She would gain a benefit or suffer a loss depending on the outcome of the planning application.
26. The application was discussed at the Planning Forum on 20 September 2021. The application was presented for decision at the Council meeting on 22 September 2021. Cr Modica was present at both meetings.
27. The officer report presented to councillors recommended refusing the grant of a permit, due to the intended land use being inconsistent with planning policy frameworks and the zoning of the land as farming land. While the use was sought for ‘rural industry’, the officer determined that the intended use did not fall within the definition of ‘rural industry’ and was instead an industrial activity that should be undertaken in an industrial zone.
28. The officer recommendation to reject the application was not supported by Council. Cr Milne raised an alternative motion to approve the application. After further discussion, councillors decided to “lay on the table” the alternative motion to debate again at the next meeting.

29. The agreed procedure was later found to be incompatible with the Mildura Rural City Council's *Governance Rules 2020* (the **Governance Rules**). It was then referred to the Planning Delegated Committee which was established on 27 October 2021 and of which all councillors became members.
30. The planning application was amended in October 2021 and presented to the Planning Delegated Committee on 10 February 2022 as "[u]se of the land for a warehouse (stockyard panelling business) – [REDACTED]". Council officers again recommended refusal of the application as the proposed use continued to be inconsistent with the planning framework on the use of land in the Farming Zone.
31. Cr Milne moved an alternative motion to grant the permit subject to a number of conditions. This alternative motion was successful on a majority vote of council. Cr Modica both spoke against the alternative motion and voted against it.
32. The planning application was therefore discussed on three occasions, being the planning forum on 20 September 2021, Council meeting on 22 September 2021 and the Planning Delegated Committee on 10 February 2022. At each of these meetings Cr Modica did not disclose that his sister lived across the road from [REDACTED] and was operating a business without permit similar to the one at [REDACTED]. Further, he did not exclude himself from the decision making process.
33. In an interview under caution on 22 March 2022, Cr Modica was asked questions about the matter and the Council meeting on 22 September 2021. Cr Modica made the following statements in relation to this matter:
- a. He has a good relationship with his younger sister;
  - b. She owns and resides at the property across the street from [REDACTED].
  - c. She is a yoga teacher. Her husband is an engineer.
  - d. He read the report prior to the meeting [on 22 September 2021] but did not realise the property at [REDACTED] was across the road from his sister, as [REDACTED] is a long road in rural Mildura.
  - e. He was not aware of any metal fabrication business being run by his sister and her family.
  - f. He walked out of the meeting and "the light struck" him that he probably should not have been in the meeting. He did not think it relevant initially that his sister lived across the road.
  - g. It was a mistake and an oversight that he did not remove himself from the meeting.

34. On the morning of 23 March 2022, Cr Modica contacted the investigator and requested another meeting. A second interview took place that afternoon and Cr Modica was cautioned again. In this interview, he stated the following:
- a. "I have not been honest, and I have given a false statement yesterday."
  - b. "I couldn't sleep and I had to ... I was obliged as an elected official to be honest with my constituents and my colleagues and the Inspectorate."
  - c. He knew of his sister's and her husband's business last year, they had discussed the situation "around the time of the motion coming through and the briefing at the start, that's when we sort of discussed it, that's the point when I really should have stepped out, that's when we sort of got a fuller understanding of what was happening out there".
  - d. He probably realised at the planning forum [on 20 September 2021] that he was doing "the wrong thing". "I thought about my family, my family connections first rather than seeking either advice from my governance officer or going to the source material [the governance rules on declaring conflicts of interest]."
  - e. He did not declare a conflict as he felt the need to protect them, although they did not ask for it. "I didn't want them to get caught once I'd found out."
  - f. His sister's situation was "exactly the same" as the one across the road – they had built a shed years ago (with permit) but were running a business out of it without a permit. His brother-in-law is an engineer, and he makes things such as fish ladders and cultivators for agricultural use. His work broadly related to agriculture but was not allowed [in the area where they live and work].
  - g. "Seriously, I absolutely compartmentalised it out of my head when I sat in those meetings, knowing full well after our discussions [with his sister and brother-in-law] what they were doing there..."
  - h. "I didn't [protect his family by not declaring a conflict of interest] ... I was pretending to be in control, and I had no control at all. ... The only influence I had was to agree to the rules we talked about yesterday, that I HAD read, and I HAD been cognisant of, but I chose to ignore it in that situation, which means I haven't performed my duties to the level I should have at all..."
  - i. Despite the concern for his sister, he voted in support of the officer recommendation to refuse the permit at [REDACTED] because the business activities were against the planning scheme, and he firmly believed the planning scheme should be upheld. "Once my sister and I had understood what they had done, we had that discussion too [that he doesn't believe the activities should be undertaken against the planning scheme] ...but the council could well approve what they're doing against the requirements of our planning department."



*Cr Modica had a material and general conflict of interest*

35. Based on the evidence presented at the hearing, the Panel finds that Cr Modica had a material conflict of interest in respect to the planning application as defined in s 128 of the Act as:
- a. Between 20 September 2021 and 10 February 2022, Cr Modica was a relevant person within the meaning of s 126(1) of the Act.
  - b. Cr Modica's sister is an affected person under s 128(3)(b) of the Act, as s 126(1) specifies that the term 'family member' includes siblings.
  - c. The planning application is a matter within the meaning of s 126(1) of the Act, as it was discussed at a meeting auspiced by Council, a Council meeting and a meeting of a delegated committee.
  - d. The matter required a decision to be made by Council (namely to refuse or grant a planning permit).
  - e. The affected person (his sister) would gain a benefit or suffer a loss depending on the outcome of the matter.
  - f. None of the exemptions available under s 129 of the Act as well as under reg 7 of the *Local Government (Governance and Integrity) Regulations 2020* are applicable to the circumstances.
36. It is noted that both parties agreed that Cr Modica's sister would gain a benefit or suffer a loss depending on the outcome of the planning application, though for different reasons. For example, if the planning application were refused she would benefit in the sense that a business competitor is then deprived of a permit to lawfully conduct that business. Or she would suffer a loss, in the sense that she too would be unlikely to receive a similar planning permit for a similar purpose. The reverse would apply if the application were approved. Considering the facts of this case, Cr Modica's sister would gain a benefit *and* suffer a loss depending on the outcome of the planning application.
37. In addition, Cr Modica had a general conflict of interest in the planning application pursuant to s 127 of the Act, as an impartial, fair-minded person would consider that his private interests could result in him acting in a manner that is contrary to his public duty.
38. Cr Modica admits that he had both a material and general conflict of interest in respect of the planning application.

*Cr Modica failed to disclose his conflict of interest and exclude himself from the decision making process*

39. The Planning Forum on 20 September 2021 was a meeting conducted under the auspices of Council. Therefore, s 131(2) of the Act required Cr Modica, as

a person who had a conflict of interest, to declare that conflict and follow the procedures set out in the Governance Rules. The Governance Rules stated at para 101:

- a. As soon as the matter arises, a Councillor with a conflict of interest must indicate the existence of the conflict of interest and the matter in which the conflict of interest arises; and
  - b. The Councillor will leave the discussion.
40. The Governance Rules further stipulate that any conflict of interest declared must be recorded in the meeting record or minutes.
41. The record of the meeting shows that no conflict of interest was declared by Cr Modica, nor is a declaration recorded in the Conflict of Interest Register. On 22 March 2022 Cr Modica confirmed during the interview that he did not declare a conflict of interest but should have.
42. Cr Modica therefore breached s 131 of the Act by failing to declare his conflict of interest at the Planning Forum meeting on 20 September 2021.
43. The meeting on 22 September 2021 was a Council meeting while the meeting on 10 February 2022 was a meeting of a delegated committee. Therefore, s 130(2) of the Act required Cr Modica to disclose the conflict in the manner required by the Governance Rules and exclude himself from decision making process, including any discussion or vote on the matter.
44. The Governance Rules stated at para 100:
  - a. A councillor with a conflict of interest in an agenda item must make a verbal declaration in respect of each matter;
  - b. The councillor must exclude themselves from the decision-making process;
  - c. The councillor must complete and sign a Conflict-of-Interest Declaration Form.
45. The meeting minutes show that Cr Modica was present at both meetings and did not declare a conflict of interest. No declaration by Cr Modica has been recorded in the Conflict of Interest Register.
46. In the second interview conducted on 23 March 2022, Cr Modica acknowledged that he was aware of the Governance Rules and did not declare a conflict to protect his sister.
47. Cr Modica therefore breached s 130 of the Act by failing to declare his conflict of interest at the meetings on 22 September 2021 and 10 February 2022.

## Determinations

48. The Panel finds pursuant to s 167(1)(a) of the Act that Cr Modica failed to disclose a conflict of interest on three occasions, which constitutes serious misconduct.
49. Having made this finding, s 167(3) provides that the Panel may impose any one or more of a number of determinations, being to reprimand Cr Modica, direct him to make an apology, suspend him from office for a specified period not exceeding 12 months and/or to direct that he is ineligible to chair a delegated committee of the Council for a specified period specified not exceeding the remainder of the Council's term.
50. The parties jointly submitted that a number of mitigatory factors are present, being:
  - a. Contrary to the benefit that would be gained by his sister by granting the application, Cr Modica spoke and voted against the motion;
  - b. Notwithstanding the first interview, as of the second interview, Cr Modica has made candid and helpful admissions as to his conduct;
  - c. Cr Modica has shown significant remorse for his conduct;
  - d. Cr Modica has admitted to his conduct before the Panel; and
  - e. It is the first time that Cr Modica has been before the Panel.
51. The parties, however, did not agree on what would be appropriate determinations.
52. In making their respective submissions, both representatives referred the Panel to other decisions of the Panel and the Victorian Civil and Administrative Tribunal. However, these decisions were of limited assistance as they did not consider conduct sufficiently similar to that engaged in by Cr Modica.

### *Submissions on behalf of the CMI*

53. Ms Friedrich as representative of the CMI submitted that Cr Modica should be:
  - a. Reprimanded;
  - b. Directed to make an apology to the Council;
  - c. Suspended from office for an unspecified period of time; and
  - d. Be made ineligible to chair a delegated committee for the remainder of the Council term (being October 2024).

54. In favour of such a disposition, Ms Friedrich submitted:

- a. At the time of the serious misconduct Cr Modica was mayor, and ought to be held to a high standard of conduct;
- b. His failure to disclose his conflict of interest was a serious breach of his responsibilities as a councillor and mayor;
- c. The penalty for failing to declare conflicts of interest was increased in the Act, as compared to the *Local Government Act 1989*, reflecting the seriousness with which parliament regards such conduct;
- d. His conduct could bring the Council into disrepute and undermine public trust in council decision making and the ability of councillors to make unbiased decisions;
- e. General deterrence is an important consideration, so as to deter other relevant persons from failing to disclose conflicts of interest;
- f. It is difficult to detect failures to declare conflicts of interest;
- g. Cr Modica was untruthful in his response during his first interview;
- h. His decision to vote against the planning application is not necessarily mitigatory, as hampering the business operated at [REDACTED] might benefit his sister;
- i. In addition to the matter before the Panel, Cr Modica failed to declare a general conflict of interest on other occasions during 2021 (for which the Inspectorate issued a reminder of obligations on 30 August 2022);
- j. It is not necessary to direct Cr Modica to participate in further training, as he knew he had a conflict of interest but chose not to declare it in the circumstances, and as additional training has subsequently been provided to him and other councillors.

*Submissions on behalf of Cr Modica*

55. Mr Makamure, as representative for Cr Modica, prepared written submissions, and addressed the Panel orally as to determinations. Mr Makamure submitted that Cr Modica should be:

- a. Reprimanded;
- b. Directed to make an apology to the Council; and
- c. Required to undergo training regarding serious misconduct and the operation of the Act.

56. In favour of such a disposition, he made submissions including:

- a. Cr Modica's actions were out of character and do not reflect his years of faithful and previously unblemished service to the Mildura community;
- b. despite his initial dishonesty, Cr Modica contacted the Inspectorate at his own initiative and without delay (being the following day) to confess to his dishonesty;



- c. during that interview, Cr Modica demonstrated significant remorse and insight into his conduct even breaking down into tears at one point;
- d. he has accepted responsibility for his conduct, for example he immediately admitted to the allegations before the Panel (through his representatives) at the earliest possible point during this process being at the directions hearing of 4 October 2022;
- e. Cr Modica has continued to show significant remorse and insight into his conduct, taking responsibility and demonstrating a willingness to accept the consequences including a willingness to undergo training;
- f. at the time that these matters occurred, Cr Modica was under significant pressure being a first-time mayor dealing with complexities brought about by the Covid-19 pandemic in addition to the ordinary pressures associated with being mayor;
- g. he was motivated to participate in the decision making regarding the planning application not for nefarious reasons, but because planning is an issue which is of particular significance to him;
- h. his passion for representation led to poor decision making;
- i. although approving the planning application would have been of greater benefit to Cr Modica's sister and her husband, Cr Modica voted against its approval;
- j. he had an underdeveloped understanding of the Act and the Code as they relate to conflicts of interest;
- k. He has learnt a hard lesson, such that it is unlikely that he would knowingly engage in similar conduct in the future;
- l. while he has been cautioned previously, which is relevant to specific deterrence, this is Cr Modica's first time before a Panel;
- m. any period of suspension:
  - i. should be reserved for the most 'severe' forms of misconduct;
  - ii. would send the wrong message to councillors, being that if you admit making a mistake you will be severely punished;
  - iii. would deter other councillors from declaring conflicts of interest;
  - iv. would defeat the will of the electors who voted for Cr Modica;
- n. general deterrence can be achieved by the proposed determinations, with the possible addition of an order that he not sit on a delegated committee for the remainder of the Council term.

### *Analysis*

57. The Panel accepts the joint submissions of the parties that it is appropriate to reprimand Cr Modica. A reprimand is a professional censure, signalling that the conduct is condemned. The Panel further directs that he issue an apology to the Council, which is appropriate in all the circumstances. The apology in writing must acknowledge his serious misconduct in not declaring the conflict of



interest and acknowledge the impact on Council's reputation and standing in the eyes of the community.

58. The Panel further determines that Cr Modica should be suspended from office for a period of two (2) months, and further directs that he be ineligible to chair a delegated committee of the Council until the end of the financial year (30 June 2023, inclusive).
59. Failing to declare a conflict of interest is an inherently serious matter, which is often difficult to detect. It is the antithesis of good governance. It is a serious departure from the standards of conduct expected of a councillor and erodes public confidence in the ability of elected representatives to make unbiased decisions for the municipality's benefit. It undermines the system of local government and impacts transparency, accountability and the reputation of the whole council. The criticality of declaring any conflict of interest is reflected in its inclusion in the definition of 'serious misconduct' within the Act, and the increase in possible penalty from 6 to 12 months suspension as compared to *Local Government Act 1989*.
60. In determining the appropriate determinations, the Panel has had regard to the objects and purposes of the Act. The objectives of the Act include ensuring that councils are representative bodies that are accountable, transparent, collaborative, efficient and engaged with their communities. Such transparency demands the disclosure of conflicts of interest.
61. Section 8 of the Act provides that it is the role of a council to provide good governance in its municipal district for the benefit and wellbeing of the municipal community. This requires the council to perform its role in accordance with s 9, and councillors to perform their roles in accordance with s 28. Section 28(1) provides that the role of every councillor includes to represent the interest of the municipal community in the decision making of council. Further, in performing this role, councillors must act lawfully and in accordance with the oath or affirmation of office, act in accordance with the standards of conduct and comply with council procedures required for good governance. In addition, the role of mayor includes to promote behaviour among councillors that meets the standards of conduct set out in the Code.
62. In this instance Cr Modica failed to declare his conflict of interest on three separate occasions, over a period of four and a half months. His reasons for doing so were mixed, in part to 'protect' his sister and also to support council staff who found that the planning application was inconsistent with zoning and planning frameworks. At the time he was mayor, a position which required him to promote behaviour among councillors to meet the required standards of conduct. He had both a material and general conflict of interest. His failure to

declare his conflict of interest was a serious departure from the standards of conduct expected of a mayor and councillor. Furthermore, he was initially untruthful when speaking to investigators.

63. On 30 August 2022 Cr Modica was issued with a reminder of obligations for failing to declare a general conflict of interest on other occasions. This is not a prior finding of misconduct for the purposes of the Act, nor does the Panel treat it as such. It is relevant however to indicate that the three failures to declare conflicts of interest in the present matter were not isolated occurrences.
64. The Panel does not accept the submission made on behalf of Cr Modica that any period of suspension would deter other councillors from declaring conflicts of interest. This cannot be so. Cr Modica does not face censure because he had a conflict of interest, but because he failed to declare it. Nor does the Panel accept that to suspend Cr Modica would thwart the democratic choice of the electorate. The electorate would expect that all elected officials conduct themselves in accordance with the Act, regulations, Code and Governance Rules.
65. Nor does the Panel accept the submission that suspension should be reserved for only the most 'severe' forms of serious misconduct, such as instances of bullying, harassment or the disclosure of confidential information. There is no legislative basis for creating an arbitrary hierarchy of sub-types of 'serious misconduct': each and every one is 'serious misconduct'. What is required, on a case by case basis, is to analyse the facts and circumstances to determine the gravity of the conduct and what is required by way of determinations.
66. The Panel accepts that Cr Modica is otherwise of good character and is genuinely remorseful. In his second interview he was forthcoming with investigators and admitted his conduct. He has since undergone further training relating to the declaration of conflicts of interest. He indicated his acceptance of the allegation at the first directions hearing before the Panel and at the substantive hearing accepted that his conduct constituted serious misconduct. In his statement to the Panel, he expressed much shame and regret. These matters are to his credit and lessen what would otherwise be required to achieve specific deterrence. They also speak to his ongoing ability to continue to serve as a councillor, following a period of suspension.
67. In all the circumstances the Panel determines that given the nature and seriousness of the conduct and the harm that would be suffered if other councillors were not deterred from engaging in similar conduct, a period of suspension is required.

68. In determining the duration of the suspension of two months, the Panel has considered a number of factors, including nature and seriousness of the conduct. Regard has also been had to the maximum possible period of suspension, being 12 months. Further, that pursuant to s 37 of the Act during such period of suspension Cr Modica would cease to be a councillor, not be entitled to receive allowances, and that if the suspension were greater than two months he would be required to return all council equipment and materials. Cr Modica's otherwise good character, genuine remorse and acceptance of responsibility are also relevant considerations.
69. The Panel has also determined to direct that Cr Modica be ineligible to chair a delegated committee of the Council until the end of the financial year (30 June 2023, inclusive). This determination, working together with two months' suspension, best achieves the objects and purposes of the Act. In particular, it will signal the standard of conduct expected of those who assume leadership positions over and above the role of councillor.
70. The Panel does not require Cr Modica to undergo further training or education regarding conflicts of interest. We are satisfied that Cr Modica properly understands his obligations and has benefitted from training subsequent to the conduct considered in this application.