

INTERNAL ARBITRATION PROCESS – Merri-bek City Council

In the matter of an Application by Councillor Helen Davidson concerning
Councillor James Conlan
(IAP 2024-18)

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

Applicant: Councillor Helen Davidson

Respondent: Councillor James Conlan

Arbiter: Jo-Anne Mazzeo

DETERMINATION

Pursuant to s147(1) of the *Local Government Act* 2020 (the Act) the Arbiter makes a finding of misconduct against Cr James Conlan.

Pursuant to s147(2)(b) of the Act, Cr Conlan is suspended for a period of one month (commencing the day after this Decision is tabled at the next meeting of the Merri-Bek City Council).

STATEMENT OF REASONS FOR DECISION

The Application

1. The Application dated 15 April 2024 by the applicant sought a finding of misconduct against the respondent relating to a social media post made by the respondent on 14 March 2024 at 10.45am.
2. In the social media post the respondent outlined the outcomes of a recent Council Meeting which considered items relating to politically sensitive issues.
3. The Facebook post read as follows:

“Last night Merri-bek City Council voted in support of Sue Bolton – Socialist Alliance Councillor for Merri-bek’s pro Palestine motion to stop doing business with companies profiting from war/weapons, to continue flying the Palestinian flag, and create a \$10k support fund for local Palestinian asylum seekers and families.

Councillors who voted in favour were myself, Cr Bolton, Adam Pulford, Cr Angelica Panopoulos, Mark Riley Merri-bek City Councillor and Yildiz (he’s blocked me so I can’t tag him). To his credit, Cr Yildiz listened to the community by flipping his previous vote where he voted against a similar motion in November 2023, which shows community pressure on politicians is working!

Shamefully, numerous councillors left the meeting during the Palestine item to avoid voting, including Cr Lambros Tapinos (ALP), Cr Annalivia Carli Hannan (ALP), and Helen Davidson (Ind). Cr Pavlidis and Cr Harte were both on approved leave.”

4. The Application alleged that respondent (in his social media post) had breached Standards 1 (Treatment of Others) and 4 (Councillor must not discredit or mislead Council or public) of the prescribed standards of conduct set out in Schedule 1 to the *Local Government (Governance and Integrity) Regulations 2020* (the Regulations) by:
 - (a) Making disparaging comments and specifically the use of the work **‘shamefully’** which publicly questions the integrity of other councillors;
 - (b) Engaging in a personal attack against the named councillors by accusing them of leaving the meeting to avoid voting, when in fact this was untrue, fails to acknowledge the roles and rights of councillors and leads to misinformation – with the result constituting abusive and potentially threatening behaviour;
 - (c) Failing to uphold the principles of treating fellow councillors with dignity, fairness, objectivity, courtesy and respect;

- (d) Failing to consider the differing opinions or beliefs of fellow councillors, insinuating that those not in attendance at the Council meeting should feel ashamed or be deemed disgraceful;
- (e) Discredited Council and deliberately misled the public about the integrity and actions of the named councillors and Council as a whole; and
- (f) Misled the public about any matter related to the performance of the named councillors related to the performance of their public duties.

Evidence provided

- 5. A Directions Hearing was listed and heard on Thursday 6 June. Both parties agreed that an in-person Arbitration hearing was not required and were satisfied with the Arbiter making a decision based on the written evidence presented.
- 6. The parties both agreed on the facts as presented in the Application regarding the social media post (in that the respondent acknowledged he did create and upload the Facebook post).
- 7. This Statement of Reasons does not summarise all of the information submitted to the Arbiter but refers to the information relied on by the Arbiter to make her decision.

The jurisdiction of the Arbiter in relation to this Application

- 8. Section 143 of the *Local Government Act 2020* (the Act) provides that an Arbiter may hear an Application that alleges misconduct by a Councillor.
- 9. Pursuant to section 147 of the Act an Arbiter may determine whether or not a Councillor has engaged in misconduct.
- 10. "Misconduct" is defined in section 3 of the Act and is defined as follows:
 "... any breach by a Councillor of the prescribed standards of conduct included in the Councillor Code of Conduct."
- 11. The standards of conduct are set out in Schedule 1 to the Local Government (Governance and Integrity) Regulations 2020. The standards relevant to this matter provide as follows:

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.

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 matters 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.

Evidence of the Applicant

- 12. The applicant alleged that the conduct of the respondent has fallen short of that expected of a councillor and required by the prescribed standards of conduct.
- 13. The applicant does not accept the respondents' explanation for the conduct in question and relied on the content of her Application (as outlined above in paragraphs 4(a)-(f), requesting that that Arbiter make a finding of misconduct.

Evidence of the Respondent

- 14. The respondent confirmed the authenticity of the social media post and agreed that there was no factual dispute regarding whether it was the respondent who authored the document and the accuracy of it as provided to the Arbiter.
- 15. The respondent submitted that the social media post "simply reported the factual outcomes of the Council meeting" including the item debated, the division, and Councillors present and not present at the meeting.

16. Furthermore, the respondent submitted that the Application is premised on the use of the word "shamefully", which in the respondent's opinion has been interpreted by the applicant in an inflammatory and deceptive manner.
17. Regarding a social media post being a ground for disciplinary action, the respondent submitted that this would represent a serious threat to free speech and local democracy.

Findings of the Arbiter

18. The Arbiter makes a finding of misconduct against the respondent.

Reasons for the Arbiter's Decision

19. In relation to the social media post reproduced in paragraph 3 above, the Arbiter accepted the submission of the applicant that the post fell below the standard of conduct expected of a Councillor. The post clearly demonstrates a failure to treat the named councillors with dignity, fairness, objectivity and respect and the Arbiter was unable to conclude that the post, and in particular the use of the phrase "**shamefully**" could be read or interpreted as anything other than disrespectful towards the named councillors.
20. The Arbiter also accepted the submission of the applicant that the social media post was misleading to state that "shamefully" councillors left a meeting. Nothing in the relevant legislation or governance framework prohibits councillors from leaving a meeting part way through, and as such leaving a meeting should not be referred to in the manner it was in the social media post, which implies it was an inappropriate course of action by the named councillors.
21. Furthermore, the respondent is not in a position to conclude the rationale for why the named councillors left the meeting and has no factual basis to claim that actions of the named councillors were solely to avoid voting on the particular issue.
22. In the event that the named councillors did excuse themselves so as to avoid voting on a particular issue, there is no prohibition against this course of action, and as such there should not be negative connotations attached to it.
23. The Arbiter was unable to accept the submission of the respondent that a finding of misconduct would represent a serious threat to free speech and local democracy. Free speech, local democracy and even robust political debate does not give free rein for councillors to breach the Standards by which they are bound.
24. Pursuant to s147(2)(b) of the Act, the respondent is suspended for a period of one month (commencing the day after this Decision is tabled at the next

meeting of the Meri-Bek City Council) which will provide an appropriate period of time for the respondent to reflect on the manner in which he uses social media in the context of his council role and responsibilities.

25. The Arbiter has no power to direct the respondent to take down the offending social media post, however whilst the post remains in the public domain, it continues to constitute a breach of the Standards and could form the basis of future allegations of serious misconduct. I therefore recommend that the respondent remove the post from all social media platforms as soon as possible if he has not already done so.

Jo-Anne Mazzeo

Arbiter

Date: 5 August 2024