



Minutes Council Meeting

Tuesday 7 February 2023 at 6:00 pm

**Council Chambers (and by video conferencing)
East Gippsland Shire Council Corporate Centre
273 Main Street, Bairnsdale 3875**

Councillors

Crs Mark Reeves (Mayor), Arthur Allen (Deputy Mayor),
Sonia Buckley (Online), Tom Crook, Jane Greacen OAM, Trevor Stow,
Mendy Urie (Online), and Kirsten Van Diggele.

Attachments referenced in these minutes can be located in the meeting agenda on [East Gippsland Shire Council's website](#).

Vision

East Gippsland is an inclusive and innovative community that values our natural environment, puts community at the centre of Council decision-making, and creates the conditions in which communities can thrive.

Our Strategic Objectives

1. An inclusive and caring community that respects and celebrates diversity.
2. Planning and infrastructure that enriches the environment, lifestyle, and character of our communities.
3. A natural environment that is managed and enhanced.
4. A thriving and diverse economy that attracts investment and generates inclusive local employment.
5. A transparent organisation that listens and delivers effective, engaging and responsive services.

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1 Procedural

1.1 Recognition of Traditional Custodians

The Mayor, Cr Mark Reeves welcomed all to the Council meeting and acknowledged the traditional owners.

East Gippsland Shire Council acknowledges the Gunaikurnai, Monero and the Bidawal people as the Traditional Custodians of this land that encompasses East Gippsland Shire, and their enduring relationship with country. The Traditional Custodians have cared and nurtured East Gippsland for tens of thousands of years.

Council value their living culture and practices and their right to self-determination. Council pays respect to all Aboriginal and Torres Strait Islander people living in East Gippsland, their Elders, past, present, and future.

1.2 Apologies

Cr John White

1.3 Declaration of Conflict of Interest

Nil

1.4 Confirmation of Minutes

Motion

That the minutes of the Council meeting held 13 December 2022 be confirmed.

Moved: Cr Arthur Allen

Seconded: Cr Kirsten Van Diggele

CARRIED

1.5 Next Meeting

The next Council of 28 February 2023 to be held at the Corporate Centre, 273 Main Street Bairnsdale commencing at 6.00 pm.

1.6 Requests for Leave of Absence

Nil

1.7 Open Forum

1.7.1 Petitions

1.7.1.1 Proposed Toilet Block - Raymond Island Koala Park

Authorised by Chief Executive Officer

Public Submission

Mr John Leaver

Motion

That Council:

- 1. receives and notes this report;***
- 2. receives the petition lodged by John Leaver objecting to the plan to build a toilet block within the Koala Park at Raymond Island;***
- 3. refers the petition to the Chief Executive Officer for a report to a future Council meeting; and***
- 4. notes that Council Officers will write to the head petitioner advising them of these actions.***

Moved: Cr Tom Crook

Seconded: Cr Kirsten Van Diggele

CARRIED

1.7.2 Questions of Council

1.7.2.1 Walking Path

Mr John Miller submitted the following question:

“Could a walking path be provided for those walkers that walk along Metung Road between Stirling Road and Chinaman’s creek?”.

Fiona Weigall General Manager Assets and Environment provided a response which is summarised below:

Council receives a large number of requests for new footpaths each year across East Gippsland and with limitations on budget these must be prioritised. Prioritisation is given to high traffic urban areas, and direct routes between essential services such as schools.

Having said that, the road section referred to by Mr Miller is the responsibility of the Victorian Department of Transport and Planning (DoTP) not Council. Our preliminary review of the road alignment and topography suggest that it would be very difficult to place a footpath in this section of road given the inability to provide separation between any future path and the road itself.

This advice has previously been provided to members of the Metung community. But Council will investigate again and raise with DoTP.

Given that the speed limit in this area is 80km per hour, coupled with the lack of a wide road shoulder, we would encourage walkers to utilise another route if at all possible.

1.7.3 Public Submissions

Mr John Leaver spoke on the proposed toilet block at Raymond Island Koala Park and spoke at item 1.7.2.1.

Mr Richard Hoxley spoke on Planning Permit Application 219/2022/P and spoke at item 5.1.1

1.8 Items to be tabled

In accordance with section 147(4) of the *Local Governance Act* 2020, a copy of the arbiter's decision and statement of reasons on the matter of the Internal Arbitration Process (IAP) application (IAP 2022-24, 2022-25 and 2022-26) by Councillors Sonia Buckley and John White concerning Councillors Arthur Allen, Mendy Urie and Mark Reeves are tabled and subsequently recorded in the minutes of the meeting.

Attachments

1. Arbiter Decision and Statement of Reasons [**1.8.0.1** - 6 pages]

2 Notices of Motion

Nil

3 Deferred Business

Nil

4 Councillor and Delegate Reports

4.1 Cr Jane Greacen OAM

Cr Jane Greacen OAM spoke to her written report at page 9.

4.2 Cr Sonia Buckley

Cr Sonia Buckley provided a verbal update.

4.3 Cr Mendy Urie

Cr Mendy Urie spoke to her written report at page 10.

4.4 Cr Kirsten Van Diggele

Cr Kirsten Van Diggele spoke to her written report at page 10.

4.5 Cr Tom Crook

Cr Tom Crook provided a verbal update.

4.6 Cr Trevor Stow

Cr Trevor Stow provided a verbal update.

4.7 Cr Arthur Allen

Cr Arthur Allen spoke to his written report at page 11.

4.8 Cr Mark Reeves

Cr Mark Reeves spoke to his written report at page 11.

Councillor Reports

Cr Jane Greacen OAM

December 2022

Bairnsdale Rowing Club - I was invited by Ivan Knight to come and talk about the boat launch landing and the need for it to be replaced. It was under water and covered with debris due to the floods at that time, and slippery. There had already been a number of falls when children were attempting to launch their boats, and so it was a place of risk of injury.

Ivan told me that this site was one of the best in Victoria for rowing, as the Mitchell River is wide and straight for a kilometre. Also, there are not a lot of motorboats using it when the club uses it. The response by Council is that further investigation is required to assess if a floating dock would be effective during times of flood and high water-flow and debris. Council will consider options.

Paynesville Fireworks. - This was a great event with many people lining the foreshore as well as attending by boat. These fireworks never fail to inspire awe and wonder and delight.

January 2023

On New Year's Day, I went to the Ice works Market on Carpenter Street. I am so impressed with the energy, creativity and enthusiasm of the people associated with Ice works and Float. They keep creating, developing and delivering new events and activities in arts and culture. This market is held every Sunday morning for the next couple of months.

I have participated in the Gippsland Forest Management Planning Workshops this January, which are a part of a comprehensive package of work by Department of Energy, Environment and Climate Action (DEECA) develop the Victorian Forest Management Plan for the next decade. These were very well-run events with 50% DEECA staff, and the rest of us representing expertise from various perspectives as well as community input. DEECA has 12 months to complete this work.

I attended the Draft Culture and Creativity Strategy Forum which was held online and had a good representation from the arts and culture sector. Since then, I have spoken with a number of others who were not able to attend. The story is the same from everyone – they want Council to be involved, and to be actively supporting, promoting and advocating for them. And of course, they want funding – and, reaching for the sky, they want a similar level of engagement by Council that is provided for sports and other outdoor physical activities. They point out the economic drivers provided by this sector, and the number of people throughout East Gippsland who are actively engaged in this sector.

I was absolutely delighted to attend the formal opening of the International Art Textile Biennale on 20 January 2023. This is the second of these shows created by Glenys Mann who is the Exhibition Curator and Fibre Arts Australia Chief Executive Officer, and proudly supported by the East Gippsland Art Gallery. The exhibition had work of 35 artists from nine countries, which were selected from 270 entries from 183 artists from 25 countries. It is a fascinating and beautiful exhibition and I strongly recommend that people go and have a look. It is here in Bairnsdale until 18 March 2023. The top prize went to Josephine Jakobi for her work.

The Council Australia Day Awards ceremony was held at Newlands Arm Community Hall and paddock. This was special. I had friends visiting from out of the area, who attended with me, and they were so impressed with the program, the people nominated, the Scouts, the flag raising, the brass band, and the Newlands Arm Residents & Ratepayers Association Inc BBQ.

I was invited by the Gippsland Agriculture Group to attend the Wilandra Farms Smart Farm Power conference and field day. Wilco and Sandra found their power bills to be prohibitive, and so undertook an intensive review of their irrigation and farm management processes. They instituted a number of significant changes that meant their power bill dropped from \$80,000 to \$1,000 per annum. They have solar panels and wind turbines, they automated their central pivots, their energy management systems and they now use electric farm vehicles and a hydrogen generator. They refer to their dams as a battery for their irrigation. Spectacular success.

Cr Mendy Urie

Council's Australia Day Awards Newlands Arm - very special day in perfect weather to gather and acknowledge the extraordinary work done by so many people in our community, often without fanfare and celebration. Perfect setting and wonderfully organised by our Council Staff. Thank you for your attention to detail and for making this event happen. Thank you to those who put in the nominations. Congratulations to the nominees and the winners.

Follow-up session on Eco-Anxiety with psychologist Dr Jarrod White at Lakes Entrance Fisherman's club. These have been open sessions sponsored and organised by Land Care. The people who participate have appreciated having a 'safe space' to discuss and share some of the deep and personal reactions to the damage which is being observed and experienced in the natural world all around us, which we are not separate from. The sessions will be rolled out to a number of other communities in East Gippsland.

International Art Textile Biennale 2023 – Free exhibition at the East Gippsland Art Gallery (EGAG), running from 20 January – 18 March 2023. This is quite an amazing exhibition, hosted so professionally by EGAG and the caliber of the works from local, national, and international artists is quite extraordinary. Winner of the major prize is our illustrious local artist, Josephine Jakobi with a piece called 'the huntsman and I', using spider egg cases, cotton, and Perspex. Glenys Mann is to be commended as the main driver behind this exhibition as the founder of Fibre Arts Australia. After EGAG, the exhibition will travel to seven other galleries around Australia. Proud of our Artists. Proud of our Gallery.

Cr Kirsten Van Diggele

I attended the Disability Advisory Committee (DAC) on the 6 of February 2023.

Council engaged a disability consultant to work with the DAC to identify and prioritise actions that will influence the improvement of inclusion and accessibility across East Gippsland Shire.

This was done in consultation with DAC and feedback was sought from community and relevant community groups.

Currently in the draft phases, some of the actions that DAC have identified include, but not limited to:

- utilise significant days such as International Day of Disabled Persons (IDPWD), International Wheelchair Day, World Down Syndrome Day, International Guide Dogs Day to educate the wider community about people with disability living in East Gippsland;
- advocate for a more collaborative approach to emergency management;
- provide advice to Council on how they can make their events more accessible, eg. purchasing accessible seating and companion tickets at the Forge Theatre;
- Write to Public Transport Victoria, State Government representative to advocate for better access to public transport in Victoria; and
- encourage Council to identify and prioritise upgrades to footpaths and public spaces.

Cr Arthur Allen

The Christmas holiday period has been very busy at Lakes Entrance, with good number of people in town right up until Sunday 29 January 2023. Business in town has been very busy but some have been curtailed by lack of staff. However, most have enjoyed a very good January.

Australia Day awards at Newlands Arm was a great celebration of those who make our community the great place that it is. Congratulations to all nominations, to be nominated is a great vote of appreciation from those in your community who obviously value the work you do in the community. Thank you for our Staff who made the day a reality.

On Australia Day I attended the event at Nicholson organised by Twin Rivers Lions Club. It was a great community gathering and the crew who maintain The Harry Clues Reserve at Johnsonville were recognised as community group of the year. Trevor Clues and Marion Dawson were recognised for their many years of dedicated work in their community.

On a happy note, congratulations to our very own Cr Kirsten Van Diggele who was married at Maffra on 14 January 2023. Congratulations Kirsten and Dan, best wishes for a long and happy life together.

Cr Mark Reeves

Wunman njinde

It seems amazing that my last reported commitments were at end of the year and attending school end of year assembly and award nights. That was at Orbost and I congratulate the people who graduated and were recipients of awards.

It was a wonderful and vibrant summer. I hope everyone across the Shire enjoyed themselves and had a profitable and enjoyable festive period.

We recently celebrated the Shire Citizenship awards at Newlands Arm. Well done to the Newlands Arm Residents & Ratepayers Association Inc at Newlands Arm. A great day.

We congratulate the following; Simon Hoff citizen of the year, Tillyrose Hambling Young Citizen of the year and Event of the year, National Tree Planting Day. Congratulations to all especially those shortlisted.

We acknowledge Australia Day and the work of the Bairnsdale Classic Car Club for hosting the breakfast and event. While we celebrate Australia Day, I recognise the ongoing challenge Australia Day represents to many indigenous and non-indigenous Australians. I'm sure this will be an ongoing discussion in future.

We also welcomed 32 new Australian Citizens at a Citizenship event. Well done to the staff who make these events and ceremonies memorable. This ceremony is a great celebration and recognised the diversity of the community. We acknowledged at that ceremony that in taking citizenship, these people do not have to renounce their original cultural or national identity, and we welcome that cultural diversity and the benefits that diversity brings to our community.

5 Officer Reports

5.1 Place and Community

5.1.1 Planning Permit Application 219/2022/P - Two Lot Subdivision - 29 Carpenter Street Lakes Entrance

Authorised by General Manager Place and Community

Public Submission

Mr Richard Hoxley

Attendance

Cr Kirsten Van Diggele left the Chamber at 6.34 pm and returned at 6.36 pm.

Motion

That Council:

- 1. receives and notes this report and all attachments pertaining to this report; and**
- 2. being the Responsible Authority and having considered all the relevant planning matters, determines that Planning Permit Application 219/2022/P for a two-lot subdivision at 29 Carpenter Street, Lakes Entrance is consistent with the requirements and objectives of the East Gippsland Planning Scheme and therefore resolves to issue a Notice of Decision to Grant a Planning Permit in accordance with the following conditions:**

1. The subdivision as shown on the endorsed plan(s) must not be altered without the prior written consent of the Responsible Authority.
2. The owner of the land must enter into an agreement with:

A telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and

A suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

3. Before issue of a Statement of Compliance for any stage of the subdivision under the *Subdivision Act* 1988, the owner of the land must provide written confirmation from:

A telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and

A suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

4. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities, electricity and gas services to each lot shown on the endorsed plan in accordance with the authority's requirements and relevant legislation at the time.

All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside on the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.

The plan of subdivision submitted for certification under the *Subdivision Act* 1988 must be referred to the relevant authority in accordance with Section 8 of that Act.

5. Before a statement of compliance is issued, the owner must enter into an agreement with the Responsible Authority under section 173 of the *Planning and Environment Act* 1987 to provide for the following:
 - a) Lot 2 may only be developed for a single dwelling, subject to planning approval;
 - b) A dwelling must be constructed on footings/stumps allowing for free flow of water and the finished floor level must be at or above the nominal flood protection level of the site;
 - c) The undercroft of the main dwelling must not be used for storage of goods and must not be clad in a way that prevents the free flow of water;
 - d) Outbuildings must be designed to allow for the free flow of water. Chemical storage and power points must only be located above the nominal flood protection level; and
 - e) No fill is to be imported to the land.

The owner must pay the costs of the preparing, lodging, and registering the agreement and any subsequent amendment, removal or other dealing associated with the agreement. The agreement must be registered on the certificate of title for the land.

6. Time Limit condition

This permit will expire if any of the following circumstances applies:

- The plan of subdivision is not certified within two years; and
- A Statement of Compliance is not issued within five years of the date of the plan of subdivision being certified.

In accordance with section 69 of the *Planning and Environment Act* 1987, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

Notes

The declared 1% Annual Exceedance Probability (AEP) flood level for this location is 1.8 metres AHD. In a 1% AEP flood event, Lot 2 is likely to be subject to inundation greater than 0.5m depth and development of the lot is likely to expose people and property to risk of flooding.

Moved: *Cr Trevor Stow*

Seconded: *Cr Jane Greacen OAM*

CARRIED

5.1.2 Economic Development Advisory Committee Appointment of Members

Authorised by General Manager Place and Community

Motion

That the report be deferred to the next Council meeting of 28 February 2023 to allow Councillor's time to further consider the recommendations proposed.

Moved: Cr Trevor Stow

Seconded: Cr Arthur Allen

CARRIED

5.2 Assets and Environment

5.2.1 Capital Works and Major Projects - Quarter Two 2022-23

Authorised by General Manager Assets and Environment

Motion

That Council receives and notes the Capital Works and Major Projects Report 2022-23 for Quarter Two ending 31 December 2022 and all attachments pertaining to this report.

Moved: Cr Mendy Urie

Seconded: Cr Jane Greacen OAM

CARRIED

5.2.2

CON2023 1473 Cleaning of Nominated Buildings

Authorised by General Manager Assets and Environment

Motion

That Council:

- 1. receives and notes this report and all attachments pertaining to this report;*
- 2. accepts the tender submitted by Almere Pty Ltd ATF Vellios Family Trust for CON2023 1473 Cleaning of Nominated Buildings for all areas 1,2,3,4 and 5 for the contract amount of \$485,159.77 exclusive of GST;*
- 3. authorises the Chief Executive Officer or delegate to finalise the terms and to sign and seal the contract in the form proposed; and*
- 4. resolves that the confidential attachments to this report and all discussions relating to these attachments remain confidential.*

Moved: Cr Jane Greacen OAM

Seconded: Cr Sonia Buckley

CARRIED

5.2.3

CON2023 1520 Club Terrace Community Facility

Authorised by General Manager Assets and Environment

Motion

That Council:

- 1. receives and notes this report and all attachments pertaining to this report;***
- 2. accepts the tender submitted by Design Co Builders Pty Ltd for CON2023 1520 Club Terrace Community Facility for the contract amount of \$705,028.00 exclusive of GST;***
- 3. authorises the Chief Executive Officer or delegate to finalise the terms and to sign and seal the contract in the form presented; and***
- 4. resolves that the confidential attachment to this report and all discussions relating to the attachment remain confidential.***

Moved: Cr Tom Crook

Seconded: Cr Sonia Buckley

CARRIED

5.3 Business Excellence

5.3.1 Finance Report period ending 31 December 2022

Authorised by General Manager Business Excellence

Motion

That Council:

- 1. receives and notes this report and all attachments pertaining to this report;***
- 2. notes that the Chief Executive Officer has determined that no revised budget is required for the 2022-23 financial year; and***
- 3. adopts the Finance Report for the six-month period ended 31 December 2022, as outlined in Attachments 1 to 7.***

Moved: Cr Arthur Allen

Seconded: Cr Trevor Stow

CARRIED

5.3.2

Council Meeting Resolution Register

Authorised by General Manager Business Excellence

Motion

That Council receives and notes this report and all attachments pertaining to this report.

Moved: Cr Mendy Urie

Seconded: Cr Jane Greacen OAM

CARRIED

6 Urgent and Other Business

Nil

Motion

That Council resolves to move into confidential business pursuant to section 66(2) of the Local Government Act 2020.

Moved: Cr Arthur Allen

Seconded: Cr Jane Greacen OAM

CARRIED

7 Confidential Business

The meeting was closed to the public at 8.02 pm.

Consideration of confidential matters under section 66(2) of the *Local Government Act 2020*.

The meeting was re-opened to the public at 8.11 pm.

7.1 Property Matter (1)

Under section 66(2) of the *Local Government Act 2020* a meeting considering confidential information may be closed to the public. Pursuant to sections 3(1) and 66(5) of the *Local Government Act 2020*, the information contained in this report is confidential because it contains personal information that would, if released, result in the unreasonable disclosure of information about personal affairs.

7.2 Property Matter (2)

Under section 66(2) of the *Local Government Act 2020* a meeting considering confidential information may be closed to the public. Pursuant to sections 3(1) and 66(5) of the *Local Government Act 2020*, the information contained in this report is confidential because it contains personal information that would, if released, result in the unreasonable disclosure of information about personal affairs.

8 Close of Meeting

Cr Mark Reeves declared the Council Meeting closed at 8.12 pm.

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.