

INTERNAL ARBITRATION PROCESS – MANSFIELD SHIRE COUNCIL

In the matter of an Application by Councillor Paul Sladdin concerning Councillor Steven Rabie.

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

Applicant: Councillor Paul Sladdin

Respondent: Councillor Steven Rabie

Arbiter: Noel Harvey OAM

DETERMINATION

The Arbiter determined that there has been no breach of the prescribed standards of conduct, and as such no findings of misconduct have been made.

As there have been no breaches of the prescribed standards of conduct, the Arbiter has dismissed the Application.

STATEMENT OF REASONS FOR DECISION

The Application

The Application dated 1st September 2021 by Councillor Sladdin was seeking a finding of misconduct against the respondent relating to two allegations which are summarised below.

The Application alleged that Cr Rabie had breached the following standards:

- Clause 1(c) of Schedule 1 to the Local Government (Governance and Integrity) Regulations 2020 (the Regulations) in that he deliberately stated a falsehood in an attempt to mislead fellow councillors and to discredit the applicant, he further attempted to discredit the applicant in an email dated August 5th, 2021.

The applicant claims comments contained in the email were abusive and threatening.

The applicant further alleged that Cr Rabie breached - Clause 4(c) of Schedule 1 to the Local Government (Governance and Integrity) Regulations 2020 (the Regulations).

The Arbiter pointed out to the applicant that clause 4(c) does not exist.

The applicant amended this to Part 4 of the adopted Council Code of Conduct, however this breach remains unclear to the Arbiter.

Hearings

A Directions Hearing was conducted via council's TEAMS platform on Tuesday 16th November. The hearing was attended by the applicant Cr. Paul Sladdin, the respondent Cr. Steven Rabie and Councillor Conduct Officer, Mr. Kurt Heidecker.

The formal hearing was conducted in the Mansfield Shire Council Chamber on Monday 13th December. The hearing was attended by the applicant Cr. Paul Sladdin, the respondent Cr. Steven Rabie, Councillor Conduct Officer, Mr. Kurt Heidecker and Mr. Adrian Kelly of Transcripts Plus.

Cr. Mark Holcombe appeared for a period as a witness for the respondent.

Evidence provided

Written evidence was submitted by both the applicant and the respondent to assist the Arbiter to make a decision in relation to this matter.

Both parties provided further oral evidence and information to support their documentation and assist the Arbiter to understand the context of the allegation.

The respondent called Cr Holcombe as a witness to support his defence.

The applicant alleged that Cr. Rabie incorrectly claimed that he, Cr. Sladdin stated during a council briefing "I will never vote for a heated pool while I'm on council".

This claim was repeated by Cr. Rabie in an email to all councillors on 5th August 2021. The applicant responded to the email asking Cr Rabie to retract the offending statement and should he fail to do so “legal action will be taken”

The respondent called Cr Holcombe (who held the office of Mayor at the time), as a witness to these comments.

The jurisdiction of the Arbiter in relation to this Application

Section 143 of the Local Government Act 2020 (the Act) provides that an Arbiter may hear an Application that alleges misconduct by a Councillor.

Pursuant to section 147 of the Act an Arbiter may determine whether or not a Councillor has engaged in misconduct.

“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.”

The standards of conduct are set out in Schedule 1 to the Local Government (Governance and Integrity) Regulations 2020 and are 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.

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 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

Supporting the statement made in his application, the applicant was clearly of the view that the alleged comment regarding his position on the heated pool were false and a deliberate attempt mislead councillors and to discredit him.

The applicant outlined his long council service and previous activities and decisions which demonstrate his support for the pool project as contained in council's Sports Facilities Strategy. Cr. Sladdin explained he was certainly concerned about the financial impact of planning, building and running a heated pool as Mansfield Shire is a small municipality with limited resources.

The applicant stated he was aware of the Supreme Court - Winky Pop decision and would never make the alleged statement.

The applicant made no submission regarding the allegation of abuse or threatening behaviour and explained that the reference to legal action was a reference to the current Councillor Conduct process.

Evidence of the Respondent

The respondent apologised for the confusion regarding the meeting dates. The Arbiter is of the view the error has no impact on the matter being considered.

Speaking to the documents provided which included the respondent's meeting notes from the council briefing, Cr Rabie restated his belief that the applicant had clearly made the statement but added "or words to that effect". The respondent expressed surprise at Cr. Sladdin's comment given the recent briefing councillors had received on the Winky Pop decision.

The respondent acknowledged that Cr Sladdin supported the project being included in the Council Plan when the matter came to council for decision. Both the applicant and the respondent acknowledged the project has a long way to go and may not be affordable. Neither committed to supporting the final project if that was the case.

The respondent called Cr. Holcombe as a witness. Cr. Holcombe was the Mayor at the time and chaired the meeting in which the comment is alleged to have been made. Cr. Holcombe stated he believed that Cr. Sladdin held the claimed position but was unable to confirm the exact words used as he had no notes from the meeting and preferred to say, "I wasn't sure".

Cr. Holcombe was also unsure of the exact meeting date the alleged comment was made.

The respondent stated that he believed the comment was a "throw away line" at the end of the meeting.

Findings of the Arbiter

The Arbiter determined that there has been no breach of the prescribed standards of conduct, and as such no findings of misconduct have been made.

As there have been no breaches of the prescribed standards of conduct, the Arbiter dismissed the Application.

Reasons for the Arbiters Decision

In relation to the first allegation that respondent deliberately stated a falsehood in an attempt to mislead fellow councillors and to discredit the applicant.

The Arbiter is of the view,

- a) that there was no evidence provided that supported the claim that the comment was motivated by a desire to discredit or mislead,
- b) the alleged comments were made during a councillor briefing and could readily have been challenged at the time,
- c) it was not possible to determine the exact words used,
- d) the information provided suggest the comments were part of a robust debate/discussion.

In relation to the second allegation that the comments contained in the email were abusive and threatening. No evidence was provided to the Arbiter to support this claim.

Noel Harvey OAM
Arbiter

14th December 2021.