

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

Internal Arbitration Process – Wyndham City Council

(IAP 2026-8)

Applicant: Cr Robert Szatkowski
Respondent: Cr Josh Gilligan
Arbiter: Dr Meredith Gibbs
Hearing: On the papers

DETERMINATION

Pursuant to section 147(1) of the *Local Government Act 2020* (**Act**) the Arbiter makes a finding of misconduct against Cr Josh Gilligan.

STATEMENT OF REASONS FOR DETERMINATION

INTRODUCTION

1. On 10 March 2026, the Applicant made Application IAP 2026-8 (**Application**) seeking a finding of misconduct against the Respondent.
2. A Directions Hearing was held online on 26 May 2026 at which the Arbiter heard submissions from the parties on various procedural matters including whether the matter should be heard ‘on the papers’ or in person. Both parties agreed that no in-person hearing was required.
3. The Arbiter determined that the matter would be heard on the papers.
4. Following the Directions Hearing, the Arbiter issued a series of Directions consistent with the matters discussed at the Directions Hearing and set out the timetable for the tabling and exchange of information by the parties. The parties adhered to the required dates.

THE APPLICATION

Allegation 1

5. The Applicant alleged the Respondent breached the Model Councillor Code of Conduct (**Model Code**) by making a public representation of an unadopted Council position.
6. On 4 February 2026 the Respondent was quoted in *The Age* newspaper in an article regarding the proposed sale of Commonwealth defence land at RAAF Base Point Cook (**Site**) and its possible conversion into residential housing:
We’re prepared to go to DEFCON 1 to protect our city from this housing incursion because we’re sick of housing and no jobs and services for people who move into them.
7. The Applicant alleged that at the time the comments were made:
 - a. Council had not received a briefing on the matter.
 - b. Council had not considered the proposal at a Council Meeting.
 - c. No Council resolution had been adopted.

- d. No formal Council position had been determined.
 - e. The language used created a reasonable impression the Respondent was expressing an official Council position.
8. The Applicant submitted:
- a. The conduct was misleading and undermines collective decision-making.
 - b. The conduct risked bringing discredit on the Council and undermined the public's confidence in Council processes.

Allegation 2

9. The Applicant further alleged the Respondent failed to adhere to the Model Code by engaging in abusive and demeaning correspondence when responding to the Applicant's email dated 9 February 2026 to the Respondent about the comments in *The Age*. In that email the Respondent:
- a. suggested the Applicant required education or further training;
 - b. stated "*The cheek of you*";
 - c. referenced unrelated matters; and
 - d. suggested pursuing arbitration would be contrary to the interests of ratepayers.
10. The Applicant alleged the tone and content of the Respondent's email were dismissive and belittling and did not treat him with the required standard of dignity, fairness and respect required under the Model Code. This behaviour was also said to risk bringing discredit on the Council and undermining the public's confidence in Council processes.
11. The Application set out the relevant clauses of the Model Code alleged to be breached, as follows:

Clause 2(1)	A Councillor must treat others, including other Councillors, members of Council staff and members of the public, with dignity, fairness, objectivity, courtesy and respect, including by- <ul style="list-style-type: none"> (a) not engaging in demeaning, abusive, obscene or threatening behaviour ...
Clause 4(1)	A Councillor must act with integrity, exercise reasonable care and diligence and take reasonable steps to avoid any action which may diminish the public's trust and confidence in the integrity of local government, including by- <ul style="list-style-type: none"> (a) ensuring that their behaviour does not bring discredit upon the Council; (b) not deliberately misleading the Council or the public about any matter related to the performance of their public duties ...

THE RESPONDENT'S SUBMISSIONS

12. The Respondent denied the allegations.
13. In relation to **Allegation 1**, the Respondent submitted his behaviour did not constitute misconduct because:
- a. Section 18(1)(g) of the Act explicitly provides that a function of the Mayor is to "*be the principal spokesperson for the Council*".
 - b. Council's Media Policy (October 2024) (**Media Policy**) expressly empowers the Mayor to act as the primary spokesperson for Council on matters of public interest. It allows the Mayor to comment on emerging issues of significance to the municipality without requiring a specific resolution, provided those comments are consistent with Council's adopted strategic direction.
 - c. The comments made in *The Age* are consistent with adopted positions of Council, namely:

- i. Wyndham Advocacy Strategy 2024–2026: "Securing Wyndham's Future" (*Advocacy Policy*); and
 - ii. Wyndham Planning Scheme — Clause 02.03 (**Strategic Direction**).
 - d. The comments did not deliberately mislead the public.
- 14. In relation to **Allegation 2**, the Respondent submitted his behaviour did not constitute misconduct because:
 - a. The suggestion that Cr Szatkowski should consider further education and training was:
 - i. in response to correspondence that demonstrated a misunderstanding of the Mayor's statutory media role;
 - ii. done in exercise of the Respondent's role as Mayor; and
 - iii. not an attack on the Applicant and fell well short of abusive conduct.
 - b. The phrase "*The cheek of you*" is a colloquial expression of political indignation made in direct response to Cr Szatkowski's email which was widely distributed by Cr Szatkowski to publicly embarrass the Respondent. Expressing indignation in response to conduct perceived as an affront is not abusive, obscene or threatening but rather a forthright political reaction. It does not approach the threshold of misconduct.
 - c. The email assessed as a whole is a "*frank, direct and at times pointed political response*" to a communication the Respondent considered improper. It does not contain language that is abusive, obscene or threatening but instead reflects robust disagreement between elected colleagues, protected by Clause 5 of the Model Code.
 - d. The email correspondence did not bring discredit on the Council and the Applicant has not identified any specific reputational harm to Council arising from the Respondent's behaviour.

FINDINGS AND REASONS - ALLEGATION 1

- 15. The Arbiter finds that Cr Josh Gilligan breached Clause 4(1) of the Model Code.
- 16. The Respondent did not deny that, at the time of the newspaper article, Council had not considered or reached a formal position on the matter or that he was expressing an official Council position. Rather, the Respondent's defence was that his role as Mayor allowed him to make comments on the matter provided they were consistent with existing Council policy.
- 17. The Respondent referred to the Media Policy, the Advocacy Policy and the Strategic Direction.

Media Policy

- 18. The Media Policy sets out Council's framework for the external communication of Council decisions, policies, strategies and events using a range of media platforms including print and online. It applies to Councillors.
- 19. It acknowledges the role of the Mayor as principal spokesperson of Council in line with section 18 of the Act. The Mayor is to be quoted in "*reactive or proactive engagement with Media*".
- 20. The Media Policy provides, amongst other things:
 - If a Councillor wishes to express a personal view which differs from an adopted position, the Councillor is obliged to identify the opinion or view as their own and not an endorsed position of Council.*
- 21. Authorised media statements must not commit Council or its resources to a course of action without prior Council discussion and/or resolution. They must not be in breach of any laws or the Model Code.
- 22. *The Age* newspaper article reported that the Site is one of 67 pieces of surplus defence-owned land that are to be sold by the Commonwealth Government at market value. The article said the Site could be sold to developers and "*carved up for thousands of new homes*". The

Commonwealth Government is entitled to sell surplus government-owned land. There are detailed processes in place to ensure that this is done fairly and properly.

23. Speaking as Mayor, the Respondent's reference to "we" are prepared to go to "DEFCON 1 to protect our city from this housing incursion" created a clear impression that:
 - a. Council had a settled position to oppose the future use of the Site for new homes; and
 - b. the matter was of the utmost emergency and importance, similar to that of defending the country against a nuclear attack.
24. On its face, the statement created the impression that the Respondent was speaking in his official capacity and representing the position of Council. There was no suggestion that he was speaking in his personal capacity and he did not make any submission to this effect.
25. In my view, the Respondent's statement falls just short of a breach of the Media Policy's requirement that authorised media statements must not commit Council or its resources to a course of action without prior Council discussion and/or resolution. This is because it did not commit Council to a course of action; rather it indicated that Council was "prepared" to go to extreme lengths to oppose the use of the Site for residential purposes. However, the statement created the impression that there was a settled Council position. This is likely to have misled the public.
26. The Mayor, as principal spokesperson of Council, whether speaking proactively or reactively, must fairly represent the position of Council. The Respondent did not do so because there was, at the time of his comments, no position on the sale and potential redevelopment of the Site in place.

The Advocacy Strategy

27. The Advocacy Strategy sets out Council's advocacy objectives, how Council will advocate and who will advocate on behalf of the Council. The Strategy acknowledges the role of the Mayor as principal spokesperson of Council in line with section 18 of the Act and Council's Media Policy.
28. The Strategy states:

Wyndham is one of the fastest growing communities in Australia ... This rapid growth has created many opportunities but also places significant pressure on existing infrastructure and services. To ensure that services and infrastructure is delivered in a timely manner and enhances the lives of the community, Wyndham City Council actively engages with all levels of Government.

The Wyndham Advocacy Strategy will strengthen the planning, implementation, coordination and efficiency of advocacy activities to maximise success and deliver better outcomes for the Wyndham Community. The strategy provides a framework for assessing advocacy issues and opportunities in a way that is community focused and evidence based.

Wyndham advocates to ensure the needs and priorities of a fast-growing community are well understood at all levels of Government and by decision makers.

29. Council's advocacy objectives include to:
 - a. Identify and build strong strategic relationships with stakeholders.
 - b. Influence decision makers to improve outcomes for the Wyndham community.
 - c. Secure funding for Council projects and services.
 - d. Build community trust and confidence in Council and its activities.
30. The Respondent submitted his media statement had a "sufficient nexus" with the Advocacy Policy and therefore, no formal Council position on the matter was required. He said:

The strategy expressly defines Council's advocacy role as securing "infrastructure and services before the land changes hands" and establishes an "Evidence-based Advocacy" framework directed at preventing out-of-sequence development.

31. I disagree. In my view, the Advocacy Strategy is primarily a document that sets out how Council will advocate to achieve its policy aims. It is about how Council will engage with relevant stakeholders to achieve its vision for the municipality. That vision and relevant strategy and policy objectives are set out in other relevant documentation, including in the Wyndham Planning Scheme in relation to the use and development of land within the municipality. Council's vision and the way in which Council intends to achieve that vision may change over time.
32. The Advocacy Strategy references the current key municipal strategies but, in my view, the Strategy itself:
 - a. is not directed at preventing out-of-sequence development; or
 - b. does not define Council's advocacy role as securing infrastructure and services before the Site changes hands.
33. In any case, in my view, making a media statement that indicates that Council is prepared to go to "DEFCON1" to stop the use of the Site for residential development is not effective or useful advocacy. It does nothing to advance the goal of securing infrastructure and services at an appropriate time in any future development scenario; it is more likely to work against that goal. It does not build constructive partnerships with relevant stakeholders. The media statement is, therefore, not aligned with the Council's advocacy objectives.

Strategic Direction

34. Clause 02.03 (Strategic Direction) of the Wyndham Planning Scheme sets out the overall strategic direction of the municipality for the purposes of the *Planning and Environment Act 1987* and decisions made under that Act.
35. It states, relevantly:

Population growth in Wyndham is a significant issue requiring careful planning and management to ensure equitable and timely delivery of services, jobs and infrastructure to support a liveable community.
36. Council's strategic directions for urban growth include to prioritise and encourage development in locations that are supported by infrastructure and services.
37. The Strategic Direction does not state that redevelopment of large sites will never be appropriate and must be stopped at all costs; rather it states that population growth in Wyndham must be carefully managed.
38. The Planning Scheme and the *Planning and Environment Act 1987* set out clear processes for the use and development of land to be managed in line with this policy aim.
39. The Respondent's media comments assume that the Site will eventually be developed for residential use without the necessary infrastructure, services and jobs being in place. However, such a scenario is just one of many possibilities for what will happen on the Site. Although the Site may be earmarked for divestment by the Commonwealth, there is no guarantee that the divestment will in fact go ahead and no guarantee that the Site would be purchased by a developer with the intention of redeveloping it for residential housing. Even if that occurred, the Site would then need to be rezoned for residential purposes in accordance with the *Planning and Environment Act 1987* before any residential development could occur. That process would take into account the requirement for infrastructure and services for residents in line with the Council's Strategic Direction, other aspects of the Planning Scheme and the usual subdivision requirements. Council itself would be involved in that process.

40. In this context, the Respondent's comments were inflammatory and created an impression of an immediate threat where there was none. There was no actual development proposal on the table. By creating an impression of a settled Council position to oppose the use of the Site for residential development, the Respondent has created a public policy position which Council may need to recant from in the future, for example, where a future development proposes to deliver appropriate infrastructure and service to support the level of residential population proposed for the Site. In colloquial terms, the Respondent 'jumped the gun'.
41. This type of behaviour diminishes the public's trust and confidence in local government because it has the potential to make Council look inept. The Respondent did not exercise reasonable care and diligence to avoid this, in breach of Clause 4(1) of the Model Code. In this respect I agree with the Applicant's view that the Respondent's comments "*risk undermining the Council's credibility as a serious and constructive stakeholder in what will inevitably be an intergovernmental process*".
42. The Respondent could have expressed his concerns about "*out-of-sequence development*" and confirm that the municipal strategy is to ensure that appropriate supporting infrastructure and services are in place before land is developed for residential purposes. He could have indicated that if an actual proposal for the development of the Site, once sold, was to come before Council the matter would need to be considered on its merits and would need to align with Council's strategy, or something similar. In other words, the Respondent could have stated the Council's general strategy in this respect in a manner consistent with the Model Code.

FINDINGS AND REASONS - ALLEGATION 2

43. The Arbiter finds that Cr Josh Gilligan breached Clause 2(1) of the Model Code.
44. The tone of the Applicant's email dated 9 February 2026 to the Respondent expressing his concern over the Respondent's media comments was respectful. It politely set out the Applicant's concerns.
45. However, the general tone of the Respondents' response was disrespectful to the Applicant. The Applicant's email to the Respondent was not offensive and there was no reason for the Respondent to be affronted. The Respondent could have politely disagreed with the Applicant. There was no need for him to use the phrase "*The cheek of you*". His indignity at being accused of inappropriate behaviour was misplaced. It is the Respondent who has misunderstood the role of Mayor, rather than the Applicant, and it is the Respondent who would have benefitted from training on the scope of the role of Mayor.
46. The Applicant was using an appropriate process to deal with an allegation of inappropriate behaviour.
47. This was not a matter of robust political debate about an issue.
48. The Respondent failed to treat the Applicant with courtesy and respect as required by Clause 2(1) of the Model Code.

SANCTIONS

49. Pursuant to s147(2)(b) of the Act Cr Gilligan is suspended for a period of two weeks commencing on the day after this Determination (and Statement of Reasons) is tabled in accordance with s147(4) of the Act. For the purposes of s147(4) the Arbiter specifies that the tabelling occur at the next full Council meeting after the Council receives a copy of this Determination.
50. Pursuant to s147(2)(a) of the Act the Arbiter directs Cr Gilligan to make a verbal apology for the disrespect he showed to Cr Szatkowski in his email to Cr Szatkowski dated 9 February 2026. The apology:

- a. must be spoken by him in person at the next full Council meeting following the Council meeting at which this Determination is tabled in accordance with paragraph 49 above; and
 - b. must be unreserved and reference that Cr Gilligan has engaged in misconduct by communicating disrespectfully and discourteously to Cr Szatkowski in breach of clause 2 of the Model Councillor Code of Conduct set out Schedule 1 of the *Local Government (Governance and Integrity) Regulations 2020*.
51. Pursuant to s147(e) of the Act the Arbiter directs that Cr Gilligan attend training to be organised by Council's Chief Executive Officer. The training must:
- a. cover the appropriate scope of the role of the Mayor in making media statements, both proactive and reactive, and both where Council has a formal position on an issue and where the matter relates to the general vision, strategy and/or policy objectives of Council;
 - b. include active exercises to be completed by Cr Gilligan that demonstrate a proper understanding the scope of the role of Mayor when making media statements; and
 - c. be not less than 90 minutes in duration (in one or more sessions).

Reasons

52. At the Directions Hearings the parties were advised that they could make submissions on appropriate sanctions should a finding of misconduct be made. The parties made no such submissions.
53. I consider a public apology and a suspension of two weeks to be commensurate with the level of misconduct and provide sufficient time for the Respondent to reflect on his behaviour in breach of the Model Code.
54. I consider the training I have directed under s147(e) of the Act will directly address the Respondent's misunderstandings about the scope of the role of Mayor when making media statements. This training could be open to other Councillors to attend, at the discretion of Council's Chief Executive Officer.
55. I do not consider a sanction under s147(2)(g) to be warranted in this case.
56. I have no power to direct Cr Gilligan to retract or clarify his media statement made on 4 February 2026.

Dr Meredith Gibbs

Legal Member

Date: 16 June 2026