

**CODE OF CONDUCT PANEL REPORT
CENTRAL HIGHLANDS COUNCIL CODE OF CONDUCT FOR
COUNCILLORS**

Complaint against the Mayor, Loueen Triffitt

Date of Determination: 27 June 2017

Code of Conduct Panel:

Lynn Mason (Chairperson), David Sales, Richard Grueber

Summary of the Complaint

The complaint, submitted on 9 May 2017 by Mesdames Ann Jones and Trudy Murphy, alleged that Mayor Triffitt breached the Central Highlands Council Code of Conduct ('the Code') in a letter written by the Mayor to the complainants on 17 January 2017, by her refusal to meet the complainants when they had requested her to do so, and by forbidding other councillors to raise associated matters with the complainants. These events took place between the council meeting on 6 December 2016 and 21 February 2017. The sections of the Code which Mayor Triffitt was alleged to have breached are

1.1 A councillor must bring an open and unprejudiced mind to all matters being decided upon in the course of his or her duties, including when making planning decisions as part of the council's role as a Planning Authority.

1.2 A councillor must make decisions free from personal bias or prejudgement.

3.1 The actions of a councillor must not bring the council or the office of councillor into disrepute.

7.1 A councillor-

- (a) must treat all persons with courtesy, fairness, dignity and respect; and*
- (b) must not cause any reasonable person offence or embarrassment; and*
- (c) must not bully or harass any person.*

8.5 A councillor's personal views must not be expressed in such a way as to undermine the decisions of the council or bring the council into disrepute.

8.6 A councillor must show respect when expressing personal views publicly.

8.7 The personal conduct of a councillor must not reflect, or have the potential to reflect, adversely on the reputation of the council.

Preliminary Procedure

The complaint was referred to the Code of Conduct Panel (the Panel) on 18 May 2017. The Chairperson of the Panel informed the Respondent on 19 May 2017 that she had assessed the complaint as a whole, and as per section 28ZA (1) (e) of the Act, determined that the complaint was to be investigated and determined by the Code of Conduct Panel for the following reasons:

1. The complaint substantially related to the alleged contraventions of the Central Highlands Council's Code of Conduct;
2. The complaint alleged that in a letter to Mesdames Murphy and Jones after they had complained to the Minister for Planning and Local Government of the Mayor's behaviour during Public Question Time at the council meeting on 6 December 2016, the Mayor accused them of telling outright lies; the Mayor refused to meet with them following these exchanges; and the Mayor wrongfully told councillors that these matters had been resolved.
3. The complaint did not appear to be frivolous or vexatious in nature.

On 25 May 2017, after considering the complaint, the Panel determined under S.28ZG (2) (b) of the Act that it would conduct a hearing into the complaint.

The Panel asked Mayor Triffitt to respond to the complaint by 8 June 2017. On receiving Mayor Triffitt's request for an extension of time, the Panel allowed her until 14 June 2017 to respond to the complaint.

The Hearing

The Panel conducted the hearing in Hobart on 27 June 2017. The hearing was attended by the Mayor, Loueen Triffitt, and her advocate, Ms Angela Triffitt. Mrs Ann Jones and Mrs Trudy Murphy also attended. Mrs Jones acted as the principal spokesperson for the complainants. No witnesses were called. Mayor Triffitt, Ms Angela Triffitt, Mrs Jones and Mrs Murphy all took the oath as provided in the *Evidence Act s 21(4)*. The complainants also confirmed under oath that the written

complaint they had submitted was the truth, the whole truth, and nothing but the truth.

A solicitor acting for Mayor Triffitt had previously submitted to the Panel that this complaint, and a further complaint submitted by Mesdames Jones and Murphy regarding events which took place at the council meeting on 6 December 2016, should be dealt with as a single complaint. The Panel considered this request and determined that while the second complaint dealt with events which resulted from the matters raised in the first complaint, the complaints themselves were separate matters and would be heard separately.

Documents submitted to the Panel were:

- The complaint (9 May 2017);
- A letter from the complainants to the Minister for Planning and Local Government (the Minister) (undated);
- Item 6.1 from the minutes of the council meeting of 6 December 2016
- An email from Mrs Murphy to Mrs Jones (18 January 2017);
- A letter from the Mayor to the complainants, copied to the Minister (undated, but agreed by the parties to have been sent by email on 17 January 2017);
- Emails from the Mayor to the complainants, and from Mrs Murphy to Mrs Jones (17 and 18 January 2017);
- A letter from the Acting Deputy Mayor to the Minister (17 January 2017);
- Emails between the complainants and the general manager, requesting a meeting with the Mayor and other attendees (2 February 2017);
- A letter from Mr Peter Joyce, Consultant with Butler McIntyre and Butler, Lawyers, to the Mayor (2 February 2017);
- A letter from the complainants to the Mayor and Councillors (18 February 2017);
- An email from Mrs Jones to the general manager (20 February 2017);
- A letter from the Mayor to the complainants (21 February 2017);
- The Mayor's response to the complaint (14 June 2017);
- The respondent's 'Position Summary' submitted at the hearing (27 June 2017).

Under s 28ZE (4) of the *Local Government Act 1993*, the Panel required the Mayor to provide a copy of the *Independent Internal Review of Council* undertaken in May 2017. The Panel determined that the information contained in the Review was not material to its determination of the complaint and its contents were not taken into consideration in the Panel reaching its determination.

The Complaint and Response

The complainants stated that *following a letter we wrote to Minister Gutwein (the Minister for Planning and Local Government) regarding the treatment of Mrs Dierdre Flint, OAM, at the Central Highlands Council Meeting held on 6th December, 2016,Mayor Triffitt replied on Council letterhead saying she refuted 'our outright lies' and our aggression toward her. After several emails sent to General Manager, Lyn Eyles, requesting a meeting with Gen Mangr (sic), the Mayor, Councillors Bailey and Bowden – which was declined, we then sought legal action which again has been ignored. After the Councillors being told everything had been resolved by the Mayor we wrote/emailed to all Councillors including copies of all emails and letters – all Councillors have been told by Mayor Triffitt not to speak with us.*

The complainants provided evidence in an email to the general manager they had requested a meeting with the Mayor, the general manager, and two councillors on 2 February 2017. The general manager responded to this email on the same day, saying that the Mayor requested that Mrs Jones and Mrs Murphy contact her directly. Later the same day, Mrs Jones emailed the general manager again to request a meeting with the Mayor, and suggesting that the email be forwarded to the Mayor.

Also on 2 February 2017, Mr Peter Joyce, a consultant with Butler McIntyre and Butler, Lawyers, wrote to the Mayor on behalf of the complainants regarding the Mayor's letter to the complainants of 17 January, and the request for the meeting between the complainants and the Mayor, in the presence of two other councillors and the general manager. On 21 February the Mayor replied to the complainants that after she received the correspondence from Mr Joyce, she had sought legal advice herself, and that *as a consequence of that advice I am writing to you to indicate that I now decline to meet with you to discuss the correspondence to the Minister and my response or any other issue that touches and concerns what took place at the Council meeting (of 6 December 2016). This declination includes the General Manager, and Council employees.*

During the hearing the complainants alleged that by her refusal to meet them on their request, the Mayor showed personal bias against them. They considered that the Mayor had breached Parts 7.1, 8.5, 8.6, and 8.7 of the Code in her letter to them of 17 January 2017, where the Mayor stated, in part, that *I refute your accusation of bullying, and your outright lies of the Council meeting you refer*

(sic). *I am disappointed that the aggression toward me is continuing.* The letter was copied to the Minister, Mr Peter Gutwein.

The complainants contended that in refusing to meet with them, and (as they understood the letter) not allowing them to speak to other councillors or staff about their concerns, the Mayor breached Parts 1.1 and 1.2 of the Code, as well as Part 3.1, and Parts 8.5, 8.6, and 8.7

The complainants also alleged that the Mayor had been disrespectful and discourteous, and had exhibited bias against them, when their request for their correspondence to be placed on the council agenda for the February 2017 council meeting was not granted. The Mayor stated in her response that she was unaware of this request, which was put to the general manager. In her response, the Mayor stated that she had not met the complainants because she wanted information about the subject of the meeting, and this had not been provided. She stated that she was willing to meet with them but had not done so. The Mayor stated that she had not directed other councillors to refrain from speaking with the complainants, and that she would never do so. The Mayor contended in hearing that the phrase ‘outright lies’ was not the same as calling the complainants liars, and should not have caused Mrs Jones and Mrs Murphy offence or embarrassment.

Determination of the Code of Conduct Panel

The Code of Conduct Panel dismisses those parts of the complaint which alleged that the Mayor breached Parts 1.1 and 1.2, and Part 3.1, part of Part 7.1 (a), Part 7.1 (c), and Parts 8.5, 8.6, and 8.7.

The Code of Conduct Panel determines that the Mayor breached part of Part 7.1 (a), in that she failed to treat the complainants with courtesy; and the Panel determines that the Mayor breached Part 7.1 (b), in that she caused the complainants offence and embarrassment

Reasons for the Determination: sections dismissed

The Panel concluded that Part 1 of the Code was not enlivened by a relevant decision, and that even if it was, on the evidence presented, the Mayor’s letters to the complainants of 17 January 2017 and 21 February 2017, and her refusal to accede to their request for a meeting, did not indicate that the Mayor had failed to bring an open and unprejudiced mind to a matter being decided in the course of her duties; and that she had not exhibited personal bias or prejudgement.

The Panel determined that no evidence was presented to show that the Mayor had brought the council or the office of Mayor into disrepute. The Panel acknowledged that the complainants had lost respect for the office of Mayor, but did not consider this to be sufficiently widespread to constitute a breach of the Code. The Mayor's actions did not undermine a decision of the council.

The Panel considered the complainants' assertion that the Mayor had forbidden the councillors to discuss any of the matters pertaining to Mrs Flint's questions during Public Question Time at the council meeting on 6 December 2016 with the complainants. This assertion arose from the statement in the Mayor's letter of 21 February 2017, viz.,

as a consequence of that advice I am writing to you to indicate that I now decline to meet with you to discuss the correspondence to the Minister and my response or any other issue that touches and concerns what took place at the Council meeting (of 6 December 2016). This declination includes the General Manager, and Council employees.

Questioning by the Panel revealed that the complainants considered that the reference to council employees included councillors. The Panel explained to the complainants that councillors are not employees of the council, and they were therefore mistaken in their understanding of the content of the letter.

The Panel determined that neither the Mayor's letters, nor her refusal to meet the complainants, constituted bullying or harassment.

Reasons for the Determination: sections upheld

The Panel determined that by refusing to meet the complainants after their initial request on 2 February 2017, the Mayor failed to treat those community members with courtesy. The Panel acknowledges that the Mayor stated that she had sought additional information from the complainants regarding the purpose of the meeting before she would agree to the meeting; however, the Panel considers that by virtue of her office, the Mayor had capacity to mitigate the tension and concern experienced by the complainants by taking a more conciliatory approach.

The Panel determined that in referring to part of the contents of the complainants' letter to the Minister after the council meeting on 6 December 2016 as 'outright lies', the Mayor caused offence to Mrs Jones and Mrs Murphy. In sending a copy of her letter to the complainants containing this phrase to the Minister, the Panel determined that this caused the complainants embarrassment. In both circumstances the Panel considered that the act of accusing the complainants of telling outright lies was of a character such as to cause a reasonable person offence or embarrassment. The Panel therefore found that the Mayor breached Part 7.1 (b) of the Code.

Sanction

Under S. 28ZI (2) of the Act, the Panel imposes the following sanctions on Mayor Triffitt:

- (a) a caution; and
- (b) a requirement to apologise to Mrs Jones and Mrs Murphy for the words used in her letter of 17 January 2017, copied to the Minister, and for her failure to meet with them from the time of their initial request on 2 February until the day of the hearing, 27 June 2017. The apology is to take the form of a private letter to Mrs Jones and to Mrs Murphy.

Right to Review

Under S.28ZJ of the Act, a person aggrieved by the determination of the Panel is entitled to apply to the Magistrates Court (Administrative Appeals Division) for a review of the determination on the ground that the Panel has failed to comply with the rules of natural justice.

Lynn Mason (chairperson)



David Sales



Richard Grueber

