

CODE OF CONDUCT PANEL REPORT
CENTRAL COAST COUNCIL CODE OF CONDUCT FOR COUNCILLORS

Complaint against Cr Philip Viney

Date of Determination: 21 October 2016

Code of Conduct Panel:
Lynn Mason (Chairperson), Christine Fraser, Ketrina Clarke

Summary of the Complaint

The complaint was brought against Cr. Viney (the Respondent) in a letter to the General Manager dated 7 July 2016. The Complainant was Mr. Les Ranson.

Mr. Ranson alleged that at the Central Coast Council Special Council Meeting held on 30 May 2016, in the debate on Item 153/2016 *General retail and hire (adult clothing, adult interior design items and adult novelties) - variation to standards for car parking, provision for one small rigid truck space, passenger vehicle pick-up and set-down facility, and length of building wall at 21 Reibey Street, Ulverstone - Application No. DA215189*, Cr. Viney did not adequately address the fact that the adjoining shop had been granted variations to its parking requirements, as had the previous tenant of the premises on which the application was based. The Complainant alleged that this demonstrated a lack of fairness to the applicant, and a lack of respect for Council's planning officers in dealing with what he described as a *legitimate, permitted and recognised retail business purpose*.

The Complainant alleged that, in his conduct at the meeting, Cr. Viney breached:

- Section 1 of the Council's Code of Conduct (the Code), viz., *Councillors are expected to familiarise themselves with, and conduct themselves in accordance with, the principles and values outlined in the Code of Conduct. A Councillor has an obligation at all times to comply with the spirit, as well as the letter, of the law;*
- Section 8 of the Code, viz., *a Councillor must not direct or attempt to direct an employee of the Council in relation to the discharge of the employee's duties. A Councillor must show respect, courtesy, fairness and dignity when dealing with other Councillors, Council employees and the public.*

Investigation

As the alleged breach occurred on 30 May 2016, the Panel considered the complaint against the provisions of the Code of Conduct of Councillors (the Code) which was in effect at Central Coast Council, viz, the Code dated 12 December 2011.

Under section 28Z(1)(b) of the *Local Government Act 1993* (the Act), the complaint was referred to the Director of Local Government, as it alleged breaches of the Code by more than half the councillors. The Director refused to accept the complaint under section 28Z(5) of the Act and the matter was referred to the Code of Conduct Panel.

The complaint was referred to the Code of Conduct Panel (the Panel) on 1 August 2016. The Chairperson of the Panel informed the Respondent on 16 August 2016 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 Coast Council's Code of Conduct;
2. The complaint alleged that at the Special Council Meeting on 30 May 2016, Cr. Viney breached Clauses 1 and 8 of the Code;
3. The complaint did not appear to be frivolous or vexatious in nature.

The Panel met on 19 September 2016 to consider the statutory declarations provided by Crs. Viney, Bloomfield, Bonde, van Rooyen, and Howard, and to determine whether or not to conduct a hearing. The Panel determined that as there was no audio recording of the meeting of 30 May 2016, the Panel requested that the General Manager and the Central Coast Council Director of Community Services provide the Panel with statements detailing their recollections of the debate on the planning item 153/2016 (General Retail and Hire). The Panel sought information on issues that were raised during the debate and the matters raised by the individual speakers who participated, and any other details of the conduct of the meeting during discussion of this item.

The Panel met again on 7 October 2016 to consider the statements provided by the General Manager and the Central Coast Council Director of Community Services. The Panel determined under section 28ZG (2) (b) of the Act, that no hearing would be required.

Determination of the Code of Conduct Panel

The Code of Conduct Panel dismisses the complaint the Cr. Viney breached section 1 and section 8 of the Code.

Reasons for the Determination

The Panel considered the following section from the *Land Use Planning and Approvals Act 1993*:

Section 51

(2) In determining an application for a permit, a planning authority –

(b) must take into consideration such of the prescribed matters as are relevant to the use or development the subject of the application; and

(c) must take into consideration the matters set out in representations relating to the application that were made during the period referred to in section 57(5);

(3) The decision of a planning authority on an application referred to in subsection (1A) or (1B) is to be made by reference –

(a) to the provisions of the planning scheme as in force at the date of that decision.

In his evidence to the Panel provided under section 28ZE (3) of the Act, Cr. Viney stated that the development proposed in the application was *not compliant with the relevant applicable provisions of the Interim Central Coast Planning Scheme 2013*, and that he had considered both the application and the report prepared by the Central Coast Council Director of Community Development.

Cr. Viney stated that he *agreed with the Report in that the representation (the 23 representations received by Council regarding the application) raised no matters relevant to the exercise of the Council's discretion in respect of the Application.*

Cr. Viney stated that it was his genuinely held belief that, contrary to the recommendation in the Director of Community Development's report, *the applicant had not shown that the proposed development was able to satisfy relevant performance criteria in respect of matters of non-compliance. On the basis of that genuinely held belief, I voted against the motion to approve the Application and voted for a motion to refuse the Application.*

No evidence was provided to the Panel that Cr. Viney made his decision on the application on any matters other than the provisions of the Planning Scheme. Evidence was provided that he had considered all of the relevant standards to be considered in approving the application.

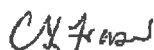
While the Panel dismisses the complaint against Cr. Viney, it strongly recommends that he undertakes a training course on his duties when undertaking his role as a member of a Planning Authority under the *Land Use Planning and Approvals Act 1993*. The Panel provides this recommendation on the basis that those who voted against approving the application included Cr. Viney, and none of them, including Cr. Viney, had prepared an alternative motion which would satisfy the requirements of the *Local Government (Meeting Procedures) Regulations 2015*, section 25 (2), viz., *The General Manager is to ensure that the reasons for a decision by a council or council committee acting as a planning authority are recorded in the minutes of the meeting.*

Right to Review

Under S28ZJ 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



Christine Fraser
Member



Ketrina Clarke
Member

CODE OF CONDUCT PANEL REPORT
CENTRAL COAST COUNCIL CODE OF CONDUCT FOR COUNCILLORS

Complaint against Cr. J. Bonde (Mayor)

Date of Determination: 21 October 2016

Code of Conduct Panel:
Lynn Mason (Chairperson), Christine Fraser, Ketrina Clarke

Summary of the Complaint

The complaint was brought against Mayor Bonde (the Respondent) in a letter to the General Manager dated 7 July 2016. The Complainant was Mr. Les Ranson. Mr. Ranson alleged that at the Central Coast Council Special Council Meeting held on 30 May 2016, in the debate on Item 153/2016 *General retail and hire (adult clothing, adult interior design items and adult novelties) variation to standards for car parking, provision for one small rigid truck space, passenger vehicle pick-up and set-down facility, and length of building wall at 21 Reibey Street, Ulverstone - Application No. DA215189*, the Mayor failed to be diligent in carrying out her functions as mayor by allowing debate on the planning matter to include discussion of alleged moral issues which arose from the nature of the items to be sold on the premises.

The Complainant alleged that, in her conduct of the meeting, Mayor Bonde breached section 6 of the Code of Conduct (the Code), viz., *a Councillor, Mayor or Deputy Mayor has a duty to use due care and diligence in fulfilling the functions of office and exercising the powers attached to their office.*

Investigation

As the alleged breach occurred on 30 May 2016, the Panel considered the complaint against the provisions of the Code of Conduct of Councillors, 12 December 2011 which was in effect at Central Coast Council at that time.

Under section 28Z (1) (b) of the *Local Government Act 1993* (the Act), the complaint was referred to the Director of Local Government, as it alleged breaches of the Code of Conduct by more than half the councillors. The Director refused to accept the complaint under section 28Z(5) of the Act and the matter was referred to the Code of Conduct Panel.

The complaint was referred to the Code of Conduct Panel (the Panel) on 1 August 2016. The Chairperson of the Panel informed the Respondent on 16 August 2016 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 Coast Council's Code of Conduct;
2. The complaint alleged that at the Special Council Meeting on 30 May 2016, Cr Bonde breached Clause 6 of the Code;
3. The complaint did not appear to be frivolous or vexatious in nature.

The Panel met on 19 September 2016 to consider the statutory declarations provided by Crs. Bonde, Bloomfield, Howard, Viney, and van Rooyen, and to determine whether or not to conduct a hearing. The Panel determined that, as there was no audio recording of the meeting of 30 May 2016, the Panel requested that the General Manager and the Central Coast Council Director of Community Services provide the Panel with statements detailing their recollections of the debate on the planning item 153/2016 (General Retail and Hire). The Panel sought information on issues that were raised during the debate and the matters raised by the individual speakers who participated, and any other details of the conduct of the meeting during discussion of this item.

The Panel met again on 7 October 2016 to consider the statements provided by the General Manager and the Council's Director of Community Services. The Panel determined under section 28ZG (2) (b) of the Act, that no hearing would be required.

Determination of the Code of Conduct Panel

The Code of Conduct Panel dismisses the complaint.

Reasons for the Determination

The Panel considered the following section from the *Land Use Planning and Approvals Act 1993*:

Section 51

(2) In determining an application for a permit, a planning authority –

(b) must take into consideration such of the prescribed matters as are relevant to the use or development the subject of the application; and

(c) must take into consideration the matters set out in representations relating to the application that were made during the period referred to in section 57(5);

(3) The decision of a planning authority on an application referred to in subsection (1A) or (1B) is to be made by reference –

(a) to the provisions of the planning scheme as in force at the date of that decision.

The Panel received evidence from a number of sources that the Mayor allowed councillors to take into consideration matters set out in representations relating to the application, but that she also reminded councillors that their decision had to be made by reference to the provisions

of the Planning Scheme. The complaint noted that *the Mayor had earlier directed all councillors to deal with the 'legal' requirements*, confirming that the Mayor had acted in accordance with the provisions of the *Land Use Planning and Approvals Act 1993*.

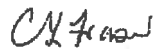
The Panel therefore dismissed the complaint that Cr Bonde had breached section 6 of the Code, on the grounds that the Mayor exercised due care and diligence in fulfilling the functions of office and exercising the powers attached to her office.

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



Christine Fraser
Member



Ketrina Clarke
Member

CODE OF CONDUCT PANEL REPORT
CENTRAL COAST COUNCIL CODE OF CONDUCT FOR COUNCILLORS

Complaint against Cr. John Bloomfield

Date of Determination: 21 October 2016

Code of Conduct Panel:
Lynn Mason (Chairperson), Christine Fraser, Ketrina Clarke

Summary of the Complaint

The complaint was brought against Cr. Bloomfield (the Respondent) in a letter to the General Manager dated 7 July 2016. The Complainant was Mr. Les Ranson.

Mr. Ranson alleged that, at the Central Coast Council Special Council Meeting held on 30 May 2016, in the debate on Item 153/2016 *General retail and hire (adult clothing, adult interior design items and adult novelties) - variation to standards for car parking, provision for one small rigid truck space, passenger vehicle pick-up and set-down facility, and length of building wall at 21 Reibey Street, Ulverstone - Application No. DA215189*, Cr. Bloomfield did not adequately address the fact that the adjoining shop had been granted variations to its parking requirements, as had the previous tenant of the premises on which the application was based. The Complainant alleged that this demonstrated a lack of fairness to the applicant, and a lack of respect for Council's planning officers.

The Complainant alleged that Cr. Bloomfield spoke emotively about moral issues, and that Cr. Bloomfield had drawn a connection between the adult merchandise to be retailed at the premises and domestic violence against women. He alleged that Cr. Bloomfield made no reference to the officer's report which recommended approval of the application.

The Complainant alleged that, in his conduct at the meeting, Cr. Bloomfield breached:

- Section 1 of the Council's Code of Conduct (the Code), viz., *Councillors are expected to familiarise themselves with, and conduct themselves in accordance with, the principles and values outlined in the Code of Conduct. A Councillor has an obligation at all times to comply with the spirit, as well as the letter, of the law;*
- Section 7 of the Code, viz., *a Councillor has an obligation to ensure that he or she brings an impartial and unprejudiced mind to all matters decided upon in the course of Council duties.*
- Section 8 of the Code, viz., *a Councillor must not direct or attempt to direct an employee of the Council in relation to the discharge of the employee's duties. A Councillor must show respect, courtesy, fairness and dignity when dealing with other Councillors, Council employees and the public.*

Investigation

As the alleged breach occurred on May 30 2016, the Panel considered the complaint against the provisions of the Code of Conduct of Councillors, 12 December 2011 (the Code) which was in effect at Central Coast Council at that time.

Under section 28Z(1)(b) of the *Local Government Act 1993* (the Act), the complaint was referred to the Director of Local Government, as it alleged breaches of the Code by more than half the councillors. The Director refused to accept the complaint under section 28Z(5) of the Act and the matter was referred to the Code of Conduct Panel.

The complaint was referred to the Code of Conduct Panel (the Panel) on 1 August 2016. The Chairperson of the Panel informed the Respondent on 16 August 2016 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 Coast Council's Code of Conduct;
2. The complaint alleged that, at the Special Council Meeting on 30 May 2016, Cr Bloomfield breached Clauses 1, 7, and 8 of the Code;
3. The complaint did not appear to be frivolous or vexatious in nature.

The Panel met on 19 September 2016 to consider the statutory declarations provided by Crs. Bloomfield, Bonde, Howard, Viney, and van Rooyen, and to determine whether or not to conduct a hearing. The Panel determined that, as there was no audio recording of the meeting of 30 May 2016, the Panel requested that the General Manager and the Central Coast Council Director of Community Services provide the Panel with statements detailing their recollections of the debate on the planning item 153/2016 (General Retail and Hire). The Panel sought information on issues that were raised during the debate and the matters raised by the individual speakers who participated, and any other details of the conduct of the meeting during discussion of this item.

The Panel met again on 7 October 2016 to consider the statements provided by the General Manager and the Central Coast Council Director of Community Services. The Panel determined, under section 28ZG (2) (b) of the Act, that no hearing would be required.

Determination of the Code of Conduct Panel

The Code of Conduct Panel upholds the complaint.

Reasons for the Determination

In his evidence to the Panel provided under section 28ZE (3) of the Act, Cr Bloomfield stated:

- *I believe that the majority of the electors whom I represent would be opposed to the proposed development. I considered that the development was inappropriate for the heart of the town because of the nature of the business that was proposed, that is an adult shop. I spoke against the application at the Meeting on that basis;*

and

- *I repeat that I brought what I believed to be the wishes of the majority of the electors whom I represent to mind in speaking against the development and in making the relevant decision, as well as my considered view that the acceptable solution in respect of parking had not been met.*

Cr Bloomfield also stated that he 'very much turned his mind to the issue of parking, but admitted that he *did not articulate it during the debate*'.

The Panel considered the following section from the *Land Use Planning and Approvals Act 1993*:

Section 51

(2) In determining an application for a permit, a planning authority –

(b) must take into consideration such of the prescribed matters as are relevant to the use or development the subject of the application; and

(c) must take into consideration the matters set out in representations relating to the application that were made during the period referred to in section 57(5);

(3) The decision of a planning authority on an application referred to in subsection (1A) or (1B) is to be made by reference –

(a) to the provisions of the planning scheme as in force at the date of that decision.

The Panel determined that, on the evidence provided by Cr Bloomfield, he breached section 1 of the Code, viz., *A Councillor has an obligation at all times to comply with the spirit, as well as the letter, of the law.* By making his decision on the basis of matters outside the provisions of the planning scheme in force at the date of the decision, he failed to comply with the spirit and the letter of the law.

The Panel determined that, on the evidence provided by Cr Bloomfield, he breached section 7 of the Code, viz., *a Councillor has an obligation to ensure that he or she brings an impartial and unprejudiced mind to all matters decided upon in the course of Council duties.* Cr Bloomfield noted in his evidence to the Panel that he had considered the planning application and the report provided to council by the Council's Director of Community Services. However, he did not provide any evidence that he took the advice of the planning officers into account in making his decision, nor that he took into account the advice of the Mayor, that the decision had to be made in accordance with the provisions of the Planning Scheme. The Panel determined that Cr

Bloomfield did not bring an impartial mind to this matter on which he decided in the course of his Council duties.

The Panel determined that, on the evidence provided by Cr Bloomfield, he breached section 8 of the Code, viz., *A Councillor must showfairness.....when dealing with ... the public*. His vote on the basis of the parking variation shows a lack of fairness in dealing with this application, given the history of Council permitting parking variations in similar circumstances, including the premises on which the application was based when used by the previous tenant. Cr Bloomfield stated in his evidence to the Panel that he did not raise the issue of parking in his debate on the motion to approve the application.

Sanction

Under section 28Z1(2) of the Act, the Panel imposes the following sanctions on Cr Bloomfield:

- (a) a reprimand; and
- (b) a requirement to attend a training course on his duties when undertaking his role as a member of a Planning Authority under the *Land Use Planning and Approvals Act 1993*.

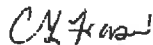
The training imposed in (b) is to be undertaken within 120 days of this determination.

Right to Review

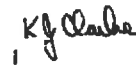
Under section 28ZJ of the Act, a person aggrieved by the determination of the Panel is entitled to apply to the Magistrates Court (Administrative Appeals Division) for a review of the determination on the ground that the Panel has failed to comply with the rules of natural justice.



Lynn Mason
Chairperson



Christine Fraser
Member



Ketrina Clarke
Member

CODE OF CONDUCT PANEL REPORT
CENTRAL COAST COUNCIL CODE OF CONDUCT FOR COUNCILLORS

Complaint against Cr Gerry Howard

Date of Determination: 21 October 2016

Code of Conduct Panel:
Lynn Mason (Chairperson), Christine Fraser, Ketrina Clarke

Summary of the Complaint

The complaint was brought against Cr. Howard (the Respondent) in a letter to the General Manager dated 7 July 2016. The Complainant was Mr. Les Ranson.

Mr. Ranson alleged that at the Central Coast Council Special Council Meeting held on 30 May 2016, in the debate on Item 153/2016 *General retail and hire (adult clothing, adult interior design items and adult novelties) - variation to standards for car parking, provision for one small rigid truck space, passenger vehicle pick-up and set-down facility, and length of building wall at 21 Reibey Street, Ulverstone - Application No. DA215189*, Cr. Howard did not adequately address the fact that the adjoining shop had been granted variations to its parking requirements, as had the previous tenant of the premises on which the application was based. The Complainant alleged that this demonstrated a lack of fairness to the applicant, and a lack of respect for Council's planning officers in dealing with what he described as a *legitimate, permitted and recognised retail business purpose*.

The Complainant alleged that in his conduct at the meeting, Cr. Howard breached:

- *Section 1 of the Council's Code of Conduct (the Code), viz, Councillors are expected to familiarise themselves with, and conduct themselves in accordance with, the principles and values outlined in the Code of Conduct. A Councillor has an obligation at all times to comply with the spirit, as well as the letter, of the law;*
- *Section 8 of the Code, viz, a Councillor must not direct or attempt to direct an employee of the Council in relation to the discharge of the employee's duties. A Councillor must show respect, courtesy, fairness and dignity when dealing with other Councillors, Council employees and the public.*

Investigation

As the alleged breach occurred on 30 May 2016, the Panel considered the complaint against the provisions of the Code of Conduct of Councillors (the Code) which was in effect at Central Coast Council, viz., the Code dated 12 December 2011.

Under section 28Z(1)(b) of the *Local Government Act* (the Act), the complaint was referred to the Director of Local Government, as it alleged breaches of the Code by more than half the councillors. The Director refused to accept the complaint under section 28Z(5) of the Act and the matter was referred to the Code of Conduct Panel.

The complaint was referred to the Code of Conduct Panel (the Panel) on 1 August 2016. The Chairperson of the Panel informed the Respondent on 16 August 2016 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 Coast Council's Code of Conduct;
2. The complaint alleged that, at the Special Council Meeting on 30 May 2016, Cr. Howard breached Clauses 1 and 8 of the Code;
3. The complaint did not appear to be frivolous or vexatious in nature.

The Panel met on 19 September 2016 to consider the statutory declarations provided by Crs. Howard, Bloomfield, Bonde, van Rooyen, and Viney, and to determine whether or not to conduct a hearing. The Panel determined that as there was no audio recording of the meeting of 30 May 2016, the Panel requested that the General Manager and the Central Coast Council Director of Community Services provide the Panel with statements detailing their recollections of the debate on the planning item 153/2016 (General Retail and Hire). The Panel sought information on issues that were raised during the debate and the matters raised by the individual speakers who participated, and any other details of the conduct of the meeting during discussion of this item.

The Panel met again on 7 October 2016 to consider the statements provided by the General Manager and the Central Coast Council Director of Community Services. The Panel determined under section 28ZG (2) (b) of the Act, that no hearing would be required.

Determination of the Code of Conduct Panel

The Code of Conduct Panel dismisses the complaint that Cr. Howard breached section 1 of the Code.

The Code of Conduct Panel upholds the complaint that Cr. Howard breached section 8 of the Code.

Reasons for the Determination

Alleged Breach of Section 1 of the Code

(A Councillor has an obligation at all times to comply with the spirit, as well as the letter, of the law.)

The Panel considered the following section from the *Land Use Planning and Approvals Act 1993*:

Section 51

(2) In determining an application for a permit, a planning authority –

(b) must take into consideration such of the prescribed matters as are relevant to the use or development the subject of the application; and

(c) must take into consideration the matters set out in representations relating to the application that were made during the period referred to in section 57(5);

(3) The decision of a planning authority on an application referred to in subsection (1A) or (1B) is to be made by reference –

(a) to the provisions of the planning scheme as in force at the date of that decision.

In his evidence to the Panel provided under section 28ZE (3) of the Act, Cr. Howard stated:

- *In surveying the matter it was acknowledged Councils (sic) Staff report was clear and accurate. For a long period of time parking etc. concerns have promoted much lengthy discussion and in this regard my caution was exercised.*
- *Comments made by me at the council Meeting although not relevant to planning were forthcoming in support of those who elected me as their representative.*

No evidence was provided to the Panel that Cr. Howard made his decision on the application on any matters other than the provisions of the Planning Scheme. The Panel did not determine that his acknowledgement that he spoke in debate of matters *not relevant to planning* indicated a breach of section 1 of the Code.

Alleged Breach of Section 8 of the Code

(A Councillor must show ...fairness...when dealing with ... the public.)

The Panel determined that, on the evidence provided by Cr Howard, he breached section 8 of the Code. His vote on the basis of the parking variation shows a lack of fairness in dealing with this application, given the history of Council permitting parking variations in similar circumstances, including the premises on which the application was based when used by the previous tenant. No evidence was provided to the Panel to indicate that Cr Howard had provided an explanation for his refusal to allow the variation on this occasion when it had been allowed on many previous occasions for local retail businesses.

Sanction

Under section 28ZJ (2) of the Act, the Panel imposes the following sanction on Cr Howard:

- (a) a requirement to attend a training course on his duties when undertaking his role as a member of a Planning Authority under the *Land Use Planning and Approvals Act 1993*.

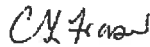
The training imposed in (a) is to be undertaken within 120 days of this determination.

Right to Review

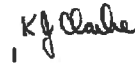
Under section 28ZJ of the Act, a person aggrieved by the determination of the Panel is entitled to apply to the Magistrates Court (Administrative Appeals Division) for a review of the determination on the ground that the Panel has failed to comply with the rules of natural justice.



Lynn Mason
Chairperson



Christine Fraser
Member



Ketrina Clarke
Member

CODE OF CONDUCT PANEL REPORT
CENTRAL COAST COUNCIL CODE OF CONDUCT FOR COUNCILLORS

Complaint against Cr. Teunis van Rooyen

Date of Determination: 21 October 2016

Code of Conduct Panel:
Lynn Mason (Chairperson), Christine Fraser, Ketrina Clarke

Summary of the Complaint

The complaint was brought against Cr. van Rooyen (the Respondent) in a letter to the General Manager dated 7 July 2016. The Complainant was Mr. Les Ranson.

Mr. Ranson alleged that at the Central Coast Council Special Council Meeting held on 30 May 2016, in the debate on Item 153/2016 *General retail and hire (adult clothing, adult interior design items and adult novelties) - variation to standards for car parking, provision for one small rigid truck space, passenger vehicle pick-up and set-down facility, and length of building wall at 21 Reibey Street, Ulverstone - Application No. DA215189*, Cr. van Rooyen did not adequately address the fact that the adjoining shop had been granted variations to its parking requirements, as had the previous tenant of the premises on which the application was based. The Complainant alleged that this demonstrated a lack of fairness to the applicant, and a lack of respect for Council's planning officers.

The Complainant alleged that Cr. van Rooyen spoke emotively about moral issues, and that Cr. van Rooyen had referred to his perception of the proposed shop front as *there it will be right in front of you, in your face*. He alleged that Cr. van Rooyen made no reference to the officer's report which recommended approval of the application. He alleged that Cr. van Rooyen stated in debate on the item that in the event that the application was refused, *"I will be able to sleep peacefully tonight"*.

The Complainant alleged that in his conduct at the meeting, Cr. van Rooyen breached:

- Section 1 of the Council's Code of Conduct (the Code), viz, *Councillors are expected to familiarise themselves with, and conduct themselves in accordance with, the principles and values outlined in the Code of Conduct. A Councillor has an obligation at all times to comply with the spirit, as well as the letter, of the law;*
- Section 7 of the Code, viz, *a Councillor has an obligation to ensure that he or she brings an impartial and unprejudiced mind to all matters decided upon in the course of Council duties;*

- Section 8 of the Code, viz., *a Councillor must not direct or attempt to direct an employee of the Council in relation to the discharge of the employee's duties. A Councillor must show respect, courtesy, fairness and dignity when dealing with other Councillors, Council employees and the public.*

Investigation

As the alleged breach occurred on 30 May 2016, the Panel considered the complaint against the provisions of the Code of Conduct of Councillors (the Code) which was in effect at Central Coast Council, viz., the Code dated 12 December 2011.

Under section 28Z(1)(b) of the *Local Government Act* (the Act), the complaint was referred to the Director of Local Government, as it alleged breaches of the Code by more than half the councillors. The Director refused to accept the complaint under section 8Z(5) of the Act and the matter was referred to the Code of Conduct Panel.

The complaint was referred to the Code of Conduct Panel (the Panel) on 1 August 2016. The Chairperson of the Panel informed the Respondent on 16 August 2016 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 Coast Council's Code of Conduct;
2. The complaint alleged that at the Special Council Meeting on 30 May 2016, Cr van Rooyen breached Clauses 1, 7, and 8 of the Code;
3. The complaint did not appear to be frivolous or vexatious in nature.

The Panel met on 19 September 2016 to consider the statutory declarations provided by Crs. van Rooyen, Bloomfield, Bonde, Howard, and Viney, and to determine whether or not to conduct a hearing. The Panel determined that, as there was no audio recording of the meeting of 30 May 2016, the Panel requested that the General Manager and the Central Coast Council Director of Community Services provide the Panel with statements detailing their recollections of the debate on the planning item 153/2016 (General Retail and Hire). The Panel sought information on issues that were raised during the debate and the matters raised by the individual speakers who participated, and any other details of the conduct of the meeting during discussion of this item.

The Panel met again on 7 October 2016 to consider the statements provided by the General Manager and the Central Coast Council Director of Community Services. The Panel determined under section 28ZG (2) (b) of the Act, that no hearing would be required.

Determination of the Code of Conduct Panel

The Code of Conduct Panel upholds the complaint.

Reasons for the Determination

In his evidence to the Panel provided under section 28ZE (3) of the Act, Cr van Rooyen stated:

- *I considered the application and a report prepared by the council's Director of Community Services in relation to it.*
- *I spoke against granting the Application. I did that because I believe that the majority of people in the town, do not want an adult shop in the main street, the surrounding business owners are of the same view and because having an adult shop near to other businesses will negatively affect those businesses.*
- *I voted against a motion to approve the Application, and moved and voted for a motion to refuse the Application on the basis that it fails to provide sufficient parking, truck space and passenger vehicle pick-up and set-down facilities. I did that because I believe that if the majority of the people were against the proposed development, the majority of the people would be against the council allowing a variation to those standards for that particular development.*

The Panel considered the following section from the *Land Use Planning and Approvals Act 1993*:

Section 51

(2) In determining an application for a permit, a planning authority –

(b) must take into consideration such of the prescribed matters as are relevant to the use or development the subject of the application; and

(c) must take into consideration the matters set out in representations relating to the application that were made during the period referred to in section 57(5);

(3) The decision of a planning authority on an application referred to in subsection (1A) or (1B) is to be made by reference –

(a) to the provisions of the planning scheme as in force at the date of that decision.

The Panel determined that, on the evidence provided by Cr van Rooyen, he breached section 1 of the Code, viz., *A Councillor has an obligation at all times to comply with the spirit, as well as the letter, of the law.* By making his decision on the basis of matters outside the provisions of the planning scheme in force at the date of the decision, he failed to comply with the spirit and the letter of the law.

The Panel determined that, on the evidence provided by Cr van Rooyen, he breached section 7 of the Code, viz., *a Councillor has an obligation to ensure that he or she brings an impartial and unprejudiced mind to all matters decided upon in the course of Council duties.* Cr van Rooyen noted in his evidence to the Panel that he had considered the planning application and the report provided to council by the Council's Director of Community Services. However, he did not provide any evidence that he took the advice of the planning officers into account in making his decision, nor that he took into account the advice of the Mayor, that the decision had to be made in accordance with the provisions of the Planning Scheme. Cr van Rooyen did

not refute Mr Ranson's complaint regarding the statements alleged to have been made during the debate, nor did he provide any evidence that those statements were not made by him. The Panel determined that Cr van Rooyen did not bring an impartial mind to this matter on which he decided in the course of his Council duties.

The Panel determined that, on the evidence provided by Cr van Rooyen, he breached section 8 of the Code, viz., *A Councillor must showfairness.....when dealing with ... the public.* His vote on the basis of the parking variation shows a lack of fairness in dealing with this application, given the history of Council permitting parking variations in similar circumstances, including the premises on which the application was based when used by the previous tenant.

Sanction

Under section 28Z1(2) of the Act, the Panel imposes the following sanctions on Cr van Rooyen:

- (a) a reprimand; and
- (b) a requirement to attend a training course on his duties when undertaking his role as a member of a Planning Authority under the *Land Use Planning and Approvals Act 1993*.

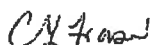
The training imposed in (b) is to be undertaken within 120 days of this determination.

Right to Review

Under section 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



Christine Fraser
Member



Ketrina Clarke
Member