

**CODE OF CONDUCT PANEL REPORT
GLAMORGAN SPRING BAY COUNCIL COUNCILLOR CODE OF CONDUCT**

Complaint brought by Ms Anne Held against Cr Cheryl Arnol

Date of Determination: 4 September 2019

Code of Conduct Panel:

Lynn Mason (Chairperson), Liz Gillam (community member with experience in local government), Rob Winter (legal member)

Summary of the Complaint

The complaint from Ms Held was submitted to the Executive Officer of the Code of Conduct Panel (the Panel) on 4 May 2019.

The Chairperson of the Panel undertook an initial assessment of the complaint and advised on 12 June 2019 that part of it should be referred for further investigation. The Panel investigated that part of the complaint in accordance with the Code of Conduct (the Code) adopted by Council on 24 May 2016, which was in force at the time of the alleged breaches.

The sections of the Code which Ms Held alleged Cr Arnol breached are:

PART 1 - Decision making

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.*
2. *A councillor must make decisions free from personal bias or prejudgement.*
4. *A councillor must make decisions solely on merit and must not take irrelevant matters or circumstances into account when making decisions.*

PART 2 - Conflict of interest

2. *A councillor must act openly and honestly in the public interest.*

- Section 28ZK (7) of the *Local Government Act 1993* requires that any person who receives a determination report must keep the determination report confidential until the report is included within an item on the agenda for a meeting of the relevant council. Failure to do so may result in a fine of up to 50 penalty units.

3. *A councillor must uphold the principles of transparency and honesty and declare actual, potential or perceived conflicts of interest at any meeting of the Council and at any workshop or any meeting of a body to which the councillor is appointed or nominated by the Council.*

6. *A councillor who has an actual, potential or perceived conflict of interest in a matter before the Council must –*
 - (a) *declare the conflict of interest and the nature of the interest before discussion of the matter begins; and*
 - (b) *act in good faith and exercise reasonable judgement to determine whether the conflict of interest is so material that it requires removing himself or herself physically from any Council discussion and remain out of the room until the matter is decided by the Council.*

Part 7 - Relationships with community, councillors, and council employees

2. *A councillor must listen to, and respect, the views of other councillors in Council and committee meetings and any other proceedings of the Council, and endeavour to ensure that issues, not personalities, are the focus of debate.*

The alleged breach of Part 7, clause 2, was dismissed on initial assessment in accordance with s28ZB (1) (b) of the Act, on the grounds that no evidence was provided to support the allegation that Cr Arnol failed to listen to, and respect, the views of other Councillors in Council and committee meetings and other proceedings of the Council; nor was evidence provided to support the allegation that Cr Arnol failed to ensure that issues, not personalities, were the focus of debate.

The Complaint

Specifically the complaint alleged:

- That in an email dated 24 April 2018 from Cr Arnol to Ms Irene Duckett, of Ireneinc Planning and Urban Design, Cr Arnol clearly ‘states her support for the Cambria Green planning amendment, and offers her support to the proponents going forward.’ (The Amendment referred to is an amendment to the Glamorgan Spring Bay Council Planning Scheme (the Planning Scheme)); and

- That Cr Arnol should have declared a conflict of interest in agenda item 3.7 *Planning Scheme Amendment AM2018/03, Cambria Estate* at the ordinary council meeting of 27 November 2018 because of her ‘established and comfortable relationship’ with Ms Duckett, and therefore should have removed herself from the council chamber during debate and vote on that item; and

- That Cr Arnol’s decision on how to vote on Item 3.7 at that meeting was not made solely on the merit of the Section 39 Report provided to Council, and was not made as part of a due planning process; and
- That emails sent by Cr Arnol to Ms Duckett and to the complainant did not demonstrate respect for fellow Councillors or consideration of their views.

Procedure

The Panel met on 1 July 2019 to consider the complaint and Cr Arnol ‘s response to it. After receiving further material from both Ms Held and Cr Arnol, the Panel determined to conduct a hearing as part of its investigation of the complaint. The hearing was held on 23 August 2019. The Panel agreed to allow both Ms Held and Cr Arnol to have support persons present at the hearing. Evidence at the hearing was given on affirmation, in accordance with s28ZH (4)(a) of the *Local Government Act 1993* (the Act).

At the conclusion of the hearing, both Ms Held and Cr Arnol were asked to make submission on sanction, in the event that the Panel upheld part or all of the complaint. Neither party made submission on sanction.

Material considered by the Panel:

- Complaint submitted by Ms Held, dated 4 May 2019, 14pp, with attachments:
 - Emails to and from Cr Arnol and Ms Irene Duckett, April 24 -26 2018; and
 - Emails to and from Cr Arnol and Ms Anne Held, 24 July 2018; and
 - Email from Cr Arnol to Ms Anne Held, 26 July 2018.
- Response to the complaint from Cr Arnol, 19 June 2019, 7pp, with attachments:
 - Letter to the editor, Great Oyster Bay News, 12 June 2018, from Cr Arnol, 2 pp; and
 - Annexure B, undated, by Cr Arnol when she held the position of Deputy Mayor, entitled *The Deputy Mayor and that SAP!*, 1pp.
- Response from Ms Held to Cr Arnol’s reply, 2 July 2019, 3pp, with attachments:
 - Schematic representation of the process for approving Planning Scheme Amendments; and
 - Planning Authority Statement of Opinion as to the merit of each representation, 13pp; and
 - A list of some of the representations received regarding the proposed Planning Scheme Amendment, 2pp.
- Letter from Cr Arnol to the Panel, 11 July 2019, 2pp;
- Spreadsheet by Cr Arnol, categorizing all 623 representations received by Council in response to the public display of the Specific Area Plan;

- Agendas and Minutes of council meetings of 24 April 2018 and 27 November 2018; and
- Audio recordings of the council meetings of 24 April 2018 and 27 November 2018.

Determination

The Code of Conduct Panel determines that Cr Arnol breached Part 1(1) and Part 1(4) of the Code of Conduct, and dismisses the remainder of the complaint.

Reasons for the Determination

Alleged breaches of *PART 1 - Decision making*:

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.*

The Panel upholds this part of the complaint.

Ms Held stated that prior to the council meeting on 27 November 2018, Cr Arnol had resolved to vote in favour of the Planning Officer's recommendation on Item 3.7, viz:

That:

- A. *Council resolves that a copy of the representations be forwarded to the Tasmanian Planning Commission in accordance with Section 39(2)(a) of the Land Use Planning and Approvals Act 1993.*
- B. *Council resolves that the attached report be forwarded to the Tasmanian Planning Commission in accordance with Section 39(2)(b) of the Land Use Planning and Approvals Act 1993 that outlines its opinion of the merits of each representation and the need to modify the amendment pursuant to section 39(2)(b) (i), 39(2)(b) (ii) and 39(2)(c).*

The Panel finds that Cr Arnol failed to bring an open mind to the matter being decided in resolution 129/18. Cr Arnol told the Panel that in her view, the only decision she had to make at the meeting on 27 November 2018 (Item 3.7) was about the process of sending the Section 39 Report and the 623 submissions to the Tasmanian Planning Commission (TPC). She did not believe that she had to decide on the merits of the Report or whether Councillors should provide additional advice to the Commission. Cr Arnol closed her mind to the possibility of other courses of action because she misunderstood her role as a member of the Planning Authority.

Cr Arnol failed to understand that once the process to amend the Planning Scheme was initiated by Council in April 2018, the Council had to send the Section 39 Report and the submissions to the TPC following a period of public display. No Council decision was

required to make this happen. The decision Council was required to make on 27 November 2018 was whether or not to provide any further advice to the TPC as to whether the Amendment should proceed, given the quantity and nature of the representations received. By voting in favour of motion 129/18, Cr Arnol (and other Councillors who voted for the motion) tacitly supported the Amendment with the proposed modifications contained in the Section 39 Report.

This obligation on the part of the Council acting as the Planning Authority was made clear in the Planning Assessment Report provided to Council in its meeting agenda as part of Item 3.7, *Planning Scheme Amendment AM2018/03, Cambria Estate*, which stated:

B. OPTIONS AND IMPLICATIONS

*The Planning Authority must resolve to make a decision in order to meet its obligations under section 39. That decision can involve the Planning Authority forming any opinion on one or more representations and may receive, note, refute or endorse each or all representations. The Planning Authority may also proposed (sic) any modification to the amendment or outline the type of amendments that it considers appropriate but it does not necessarily need to proposed (sic) particular solutions or outcomes to issues raised. **The Planning Authority may also form a view that the amendment should not be approved.**¹*

In mitigation, the Panel notes that a number of Councillors failed to address the contents of the Section 39 Report in the debate on motions 128/18 and 129/18, which may indicate that further and ongoing training in acting as a Planning Authority may be necessary for all Councillors. In addition, consideration of a Special Area Plan and the resultant proposed Amendment to the Planning Scheme are rare occurrences for Tasmanian Councils, including Glamorgan Spring Bay, and place additional stress onto elected representatives unaccustomed to dealing with such matters. Finally, the Panel noted that Councillors received the agenda and associated reports within the legislated timeframes, but that the length and complexity of the agenda and reports, coupled with the inexperience of some of the Councillors who were attending their first local government meeting, may have made it desirable to make at least some of the reports available earlier than prescribed.

4. *A councillor must make decisions solely on merit and must not take irrelevant matters or circumstances into account when making decisions.*

The Panel upholds this part of the complaint. The Panel finds that in her contribution to the debate on Item 3.7, Cr Arnol dwelt primarily on the contents of one of the 623 submissions received, and in particular, dwelt on what she considered to be the offensive and personal nature of that submission. The Panel determines that the

¹ Panel's emphasis.

nature of this submission was an irrelevant matter which should not have been cited to validate her vote in favour of motion 129/18.

While Cr Arnol had consulted the Council's Planning Officer regarding some of her concerns with the Specific Area Plan before the meeting, the Panel finds that Cr Arnol failed to fulfil her obligation as a member of the Glamorgan Spring Bay Planning Authority by failing to address in debate the merits or otherwise of the Section 39 Report provided to Council.

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

The Panel dismisses this part of the complaint. While Cr Arnol tendered in evidence a spreadsheet she had created to categorise the submissions received, casting some as 'emotive/nimby' and some as 'racist based', her response to the complaint consistently maintained her belief that the only decision she was able to make on Item 3.7 on 27 November 2018, was to send the section 39 Report as tabled, and the submissions received by Council, to the TPC, to allow the Commission to determine the final provisions of the Special Area Plan.

Alleged breaches of *PART 2 - Conflict of interest*:

2. *A councillor must act openly and honestly in the public interest.*

The Panel dismisses this part of the complaint. The Panel accepts that Cr Arnol acted openly and honestly within her understanding of her role, and her belief that it was in the public interest for the Tasmanian Planning Commission to determine the outcome of the proposed Amendment to the Planning Scheme.

3. *A councillor must uphold the principles of transparency and honesty and declare actual, potential or perceived conflicts of interest at any meeting of the Council and at any workshop or any meeting of a body to which the councillor is appointed or nominated by the Council.*

6. *A councillor who has an actual, potential or perceived conflict of interest in a matter before the Council must –*
(a) declare the conflict of interest and the nature of the interest before discussion of the matter begins; and
(b) act in good faith and exercise reasonable judgement to determine whether the conflict of interest is so material that it requires removing himself or herself physically from any Council discussion and remain out of the room until the matter is decided by the Council.

The Panel dismisses this part of the complaint. The Panel was not persuaded that Cr Arnol had a conflict of interest in this matter, either actual, perceived, or potential. The complainant considered that an email sent by Cr Arnol to Ms Duckett following the

council meeting held on 24 April 2018 supported her allegation that Cr Arnol had a conflict of interest in Item 3.7 at the meeting of 27 November 2018, because the email 'demonstrates both an established and comfortable relationship, as well as demonstrating support for the application'. The Panel found that an email sent from Cr Arnol to the complainant on 24 July 2018 (tendered as evidence by Ms Held) was similar in style to the email to Ms Duckett, and accepted Cr Arnol's statement that this was her habitual style in emails, and did not disclose an 'established and comfortable relationship' which could result in a conflict of interest.

Sanction

The Panel imposes a caution on Cr Arnol.

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)



Liz Gillam
(Community Member with
experience in local government)



Rob Winter
(Legal Member)