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Local Government Act 1993

CODE OF CONDUCT PANEL DETERMINATION REPORT

BURNIE CITY COUNCILLORS' CODE OF CONDUCT

Complaint brought by Mr Simon Overland APM against the Mayor, Councillor Teeny Brumby

Code of Conduct Panel

- Liz Gillam (Chairperson)
- Philip Cocker (Local Government Member)
- Audrey Mills (Legal Member)

Date of Determination: 23 April 2025

Content Manager Reference: C34632

Summary of the complaint

Mr Simon Overland, (then) General Manager of Burnie City Council, made a complaint against Mayor, Councillor Teeny Brumby (Cr Brumby) dated 27 June 2024 pursuant to section 28V of the *Local Government Act 1993* (the Act).

The complaint alleged that Cr Brumby breached the following clauses of the Burnie City Councillor's Code of Conduct (the Code) (approved 28 February 2023) by a number of actions occurring over the period February 2024 and June 2024:

PART 7 - Relationships with community, councillors and Council employees

1. *A councillor –*
 - a. *must treat all persons fairly; and*
 - b. *must not bully or harass any person.*
4. *A councillor must not contact or issue instructions to any of the Council's contractors or tenderers, without appropriate authorisation.*
5. *A councillor must not contact an employee of the Council in relation to Council matters unless authorised by the General Manager of the Council.*

The Chairperson conducted an initial assessment of the complaint in accordance with the requirements of section 28ZA of the Act and determined that the complaint should be investigated.

That determination was communicated to the parties and the Director of Operations, Burnie City Council, by letter of 16 August 2024.

Efforts to resolve

In the complaint, where asked to make 'a brief statement explaining why (he had) not made any efforts to resolve the situation with the respondent councillor' Mr Overland makes the following statement:

'The reasons are set out in the attached statement to the complaint. In short, Burnie City Council (the elected representatives) has been experiencing significant and on-going dysfunction, including through unacceptable workplace behaviours. All efforts to address and improve the situation, including directly with Councillor Brumby, have to date been unsuccessful and the situation is deteriorating and is now very serious.'

In her initial assessment, the Chair accepted this explanation, noting the details of efforts to address and improve the situation contained in the attachment to the complaint.

In her response to the complaint dated 2 September 2024, Cr Brumby notes that she requested mediation on two occasions:

At a meeting on 4 March 2024, Cr Brumby requested mediation and claims that Mr Overland replied along the lines 'there is nothing to mediate; our relationship is irrevocably changed'.

On 19 June 2024 Cr Brumby emailed Mr Overland *'Despite any disagreements, I value our working relationship and remain dedicated to serving our community to the best of my abilities. I am committed to improvement and constructive dialogue; however, I believe that moving forward, mediation will be essential.'*

In his response dated 30 September 2024, Mr Overland states that *'Mayor Brumby's reference to her two offers of mediation do not negative (the) evidence. I rejected the offers of mediation on the basis that mediation would not have resolved the situation, which was a consequence of Mayor Brumby's lack of capability as a councillor and Mayor'*.

The Panel notes the following extract from Burnie City Councillor's Code of Conduct: *If the informal assistance does not resolve the disagreement, the General Manager may, with the consent of the parties involved, choose to appoint an external mediator to assist in the resolution of the disagreement. If an external mediator is appointed, councillors who are party to the disagreement must strive to cooperate with the mediator and use their best endeavours to assist the mediator and participate in the mediation arranged.*

Having been made aware of Cr Brumby's repeated request for mediation and noting the encouragement for the use of mediation in the Code, the Panel considers that the General Manager could have been more proactive in this regard.

Investigation of the Complaint

On 16 August 2024, the Executive Officer of the Code of Conduct Panel (the Panel) selected Ms Elizabeth Gillam, Mr Philip Cocker and Ms Audrey Mills to constitute the Panel to investigate and determine the complaint.

On 12 February 2025 Panel advised the parties that it was considering whether the complaint may be investigated and determined without a formal hearing, having regard to Section 28ZG (2) (a) and (b) of the Act which states:

- 2. The Code of Conduct Panel may determine that a code of conduct complaint may be investigated without a hearing if it reasonably considers that –*

- a. *neither the complainant nor the councillor against whom the complaint is made will be disadvantaged if a hearing is not held and it is appropriate in the circumstances not to hold a hearing; or*
- b. *a hearing is unnecessary in the circumstances because the investigation can be adequately conducted by means of written submissions or examination of documentary evidence, or both.*

The parties were invited to provide written submissions as to whether they considered they would be disadvantaged should the Panel determine to investigate the complaint without a hearing. Both parties responded, neither considering that they would be so disadvantaged.

The Panel then proceeded to investigate and/or determine the complaint, taking the following documents into account:

- Burnie City Councillor's Code of Conduct (approved 28 February 2023)
- Mr Overland's complaint against Cr Brumby, dated 27 June 2024, with attachments
- Letter to Mr Overland from Sarah Nolan, dated 12 May 2024 (attached to the complaint)
- Letter to Mr Overland from Sarah Nolan, dated 15 June 2024 (attached to the complaint)
- Cr Brumby's response to the complaint, dated 2 September 2024
- Mr Overland's response to Cr Brumby's response of 2 September 2024, dated 30 September 2024
- Statutory Declaration from Damien Aherne, dated 26 September 2024
- Mr Overland's response to the Panel's request for further information, dated 28 October 2024
- Letter from Sarah Nolan to Panel, in response to the Panel's request, dated 15 November 2024
- Cr Brumby's response to Mr Overland's submission of 28 October 2024, undated but received on 30 January 2025.

Determination

As per section 28ZI of the Act, the Panel determines that Cr Brumby has breached Part 7.1(a) (in relation to Ms Nolan), Part 7.4 and Part 7.5 of the Code, and therefore the Panel upholds part of the complaint.

The Panel dismisses the allegations in the complaint that Cr Brumby breached Part 7.1 (a) in relation to the then General Manager, Simon Overland.

The Panel makes no finding on Part 7.1(c) of the Code in relation to Ms Sarah Nolan.

Reasons for Determination

Part 7.1 (a) - a councillor must treat all persons fairly

The Panel notes the following definitions of 'Fair' treatment:

Cambridge Dictionary – 'fair'- treating someone in a way that is right or reasonable, or treating a group of people equally and not allowing personal opinions to influence

Collins Dictionary – something that is fair is reasonable, right and just.

Unfair treatment of Ms Nolan

In the attachment to the complaint Mr Overland notes that his concerns relate to Cr Brumby *'repeatedly engaging in unreasonable behaviour toward a member of Council staff, behaviour which may amount to a breach of Part 7 (1) (a) by not treating staff members fairly.'* The evidence presented related primarily to Ms Nolan. In his letters 30 September 2024 and 28 October 2024, Mr Overland confirmed that the alleged breach relates primarily to treatment of Ms Nolan.

Mr Overland provided the following examples of unfair treatment of Ms Nolan:

Ms Nolan commenced as Executive Assistant to the General Manager and Mayor role in December 2023.

'Mayor Brumby was not particularly receptive...started to raise performance issues directly with Ms Nolan' (no specific details provided).

On 26 February 2024, Mr Overland emailed Cr Brumby (in response to Cr Brumby providing negative feedback directly to Ms Nolan who advised General Manager) – *'if you have any feedback about the performance of a council officer you are to raise your concerns with me. You have no role or authority to provide such feedback directly to any Council officer other than myself.'*

On 19 March 2024 Cr Brumby requested the Acting Chief Technical Officer to restrict Ms Nolan's access to Cr Brumby's email. Cr Brumby sent a text to Ms Nolan *'I've closed down my email now so that only I can access it. Will continue corresponding with you but I'm not keen for my email to be accessed now if that's OK.'*

Mr Overland states in his letter 28 October 2024 that *'The Mayor's reason for requesting this change was her concern that details of her meetings and emails might be 'leaked' to other councillors.'*
'This reflected adversely on Ms Nolan's professionalism.....It is unreasonable to communicate this to Ms Nolan.'

On or about 2 May 2024 – Cr Brumby emailed the General Manager addressing a number of issues arising from a meeting earlier that day, at which it had been intended to discuss her concerns about Ms Nolan's performance. Cr Brumby's email noted that she had spoken with Ms Nolan before she went on leave about her performance *'appointments forgotten or simply not followed up'* and suggested a course of action on Ms Nolan's return.

The General Manager responded by email – *'you have no authority over council staff'*. He referred to previous advice – *'Most recently I told you that you should record any supposed performance failings and raise them with me directly, preferably as soon as practicable'*, noting that their twice weekly meetings provided the opportunity to do so. He directed Cr Brumby not to have any conversations with Council staff without his approval.

On 4 June 2024 Cr Brumby unsuccessfully tried to contact Ms Nolan by phone. Cr Brumby spoke to a junior member of staff and instructed her to compile a list of visitors to facilitate their entry to Council chambers. During the conversation the Mayor expressed her frustration at not being able to contact Ms Nolan. The junior member of staff was uncomfortable about the call from the Mayor and particularly her comments about Ms Nolan and reported this matter to Ms Nolan. Ms Nolan was distressed and reported her distress to the General Manager. The General Manager

'reprimanded,' inter alia, Mayor for making the comments about Ms Nolan and she denied saying such.

Cr Brumby emailed the General Manager later that day, noting her frustration with being unable to contact Ms Nolan and stating she *'did express frustration. Did not intend to disparage. Will be more mindful of tone in future'*

On 5 June 2024 the General Manager emailed Cr Brumby in relation to Ms Nolan's work performance, noting that Cr Brumby had never provided clear instances where Ms Nolan had failed to perform. *'Despite this I am aware that you have constantly criticised Sarah (to others). The manner in which you have treated Sarah amounts to bullying'. She has resigned 'because she can no longer work with you'.*

At a meeting (on or about 12 May 2024) attended by Cr Brumby, the General Manager, the Director of Corporate and Commercial Services and the Director Operations, Cr Brumby was advised that she was to respect Ms Nolan's public reason for leaving Council and that she was not to disparage Ms Nolan any further.

At a councillor workshop 18 June 2024, Mr Overland states that *'the Mayor spoke in disparaging terms of Ms Nolan's work performance'*. He emailed Cr Brumby on 19 June pointing out that despite knowing that she was the reason that Ms Nolan had resigned, she had denied this at the workshop. He advised Cr Brumby that he would need to correct the record with other councillors.

Mr Overland emailed other councillors stating *'there are no legitimate or substantiated concerns' with Sarah's performance. 'Teeny has not once provided me with any substantive example or evidence of a performance issue, despite continuing to make general complaints about Sarah's performance, including inappropriately to her staff and to the public.'*

In his letter of 30 September 2024 (commenting on Cr Brumby's response to the complaint) Mr Overland states *'Cr Brumby continues to make completely unsubstantiated criticisms of Ms Nolan's work performance when none of this detail was ever raised with me. Ms Nolan was aware of the regular conflict and tension between the Mayor and Mrs Kelly (Mayor's former EA) and that the Mayor was difficult.'*

On 28 October 2024, in response to the Panel's question *'When Ms Nolan undertook her role with Mayor Brumby, was she given any written or verbal advice or instructions regarding her interactions with Mayor Brumby?'*, Mr Overland replied *'Ms Nolan was aware that Brumby was difficult to work with, including from her own general knowledge having observed interactions between her and senior executive staff and from matters shared with her by Karen Kelly.Discussions were about Mayor's then established history of being unreasonable and demanding, directive and indiscrete'*. Ms Nolan was advised to document requests and transactions and report concerns.

Ms Nolan provided the following evidence:

Ms Nolan's letter to General Manager 12 May 2024 *'I have...encountered challenges of late in my interactions with a specific individual, which regretfully has made it increasingly difficult to fulfill my role effectively.'*
'...after much reflection of my current circumstances and determining that my highest priority is my own mental health....'

Ms Nolan's to General Manager dated 15 June 2024 *'submitting this complaint and impact statement to formally document the ongoing unprofessional and unwarranted*

behaviour I have experienced from mayor Teeny Brumby in the workplace over the past three to four months.'

'...the Mayor has engaged in the following behaviours that by my definition constitute a form of harassment and bullying:

- *Implications regarding job performance - on at least two occasions.... Concerns about my ability to complete tasks ...”balls dropping they never did before”...(Brumby) Hasn't raised concerns with GM.....yet she consistently makes comments or insinuations that my performance has not been to her standard ...aside from two examples above never directly to me.'* (see below under unwarranted comments)
- *Unwarranted comments – another councillor made reference (to some of her colleagues) to a comment made by Mayor .. to the effect “this is what I have to put up with”. ...this felt like an attack on me.*
(Ms Nolan investigated this and provided Brumby with an explanation that this occurred while she (Nolan) was away)
Second instance – phone call from Brumby to Nolan which she was unable to answer. Brumby directed another staff member to do the task..... this staff member raised her concern with me that Brumby had made a comment along lines of “I can never get hold of my EA”
- *Negative impact on reputation – ‘I am deeply troubled by the potential implications of Mayors remarks. Disparaging comments could influence others. ...if she is making comments such as above to internal staff, can only imagine what she potentially could be saying to others.'*
- *Emotional and psychological impact – the constant scrutiny and disparaging remarks from the Mayor have taken a severe toll on my emotional well being ...the toxic and unrealistic environment created by Mayor's behaviour has significantly intensified my stress levels...constant fear of criticism and hostile environment*
Although I have no kept exact records of these incidents, I have ensured that on all occasions I have made (GM) aware of these situations.....and here needed I believe you have noted these ad raised with her where necessary.'

Ms Nolan's Letter to Panel dated 15 November 2024 in which Ms Nolan confirmed contents of letters to the General Manager dated 12 May and 15 June 2024, the latter intended to formally document experience and express distress caused by Cr Brumby's actions. No details were provided of additional incidents but Ms Nolan refers to '*ongoing nature of behaviour*'.

In response to the allegation of unfair treatment of Ms Nolan, Cr Brumby stated:

I categorically refute this allegation on the grounds that my concerns regarding Sarah Nolan's performance were raised out of a genuine and pressing need to ensure I had adequate support necessary to fulfill my responsibilities as Mayor.
Given numerous errors and missed deadlines I encountered from Sarah, I gradually lost confidence in her ability to provide the reliable support I needed.'

Cr Brumby prepared a list of such issues on 24 April 2024 but it appears that this was never brought to the General Manager's attention.

Cr Brumby agrees that she provided direct feedback to Ms Nolan, even after she had been requested not to do so. She also agreed that her comments to a junior staff member on 4 June 2024 were inappropriate.

The Panel finds that Cr Brumby breached Part 7 1) a) in relation to Ms Sarah Nolan, particularly in respect of commenting to other parties on Ms Nolan's work performance.

In relation to the (then) General Manager, Simon Overland

The complaint alleges that Cr Brumby '*repeatedly engaged in unreasonable behaviour towards the General Manager*', examples given being:

- Attempting to change the colour of the Gateway Project, against his advice.
- Repeatedly ignoring directions from the General Manager with respect to her contact with Council staff.
- Suggesting to the General Manager that he had directed staff to not respond to requests from the Mayor.
- Cr Brumby's behaviour at and following the Council workshop of 18 June 2024.

Mr Overland has extensive experience as a public servant at the highest level, both in Victorian and Tasmanian State Governments and in local government in Victoria and Tasmania. This is reflected in his letter of 30 September 2024 in which he states '*I have always understood and respected that politicians (Ministers, Mayors, councillors) are free to accept or reject the advice of officials and I have generally been sanguine when my advice is not followed, even when contrary to my personal views. However, there are limits to that, including when there are issues of legality, or significant legal, financial, contractual or reputational risks. I have encountered all these situations in a long public sector career and my response has been dictated by nature and the circumstances of the issue*'.

The Panel acknowledges that dealing with Cr Brumby's behaviour as described in these examples would cause frustration, with time and energy necessary to deal with the repercussions of that behaviour. Some of the behaviours e.g. the suggestion by Cr Brumby that she was being deliberately undermined in her role, could also cause offence.

However, it is not unusual in local government for there to be tensions in the relationship between a Mayor/Councillor(s) and General Manager/CEO. Again, in his letter of 30 September 2024, Mr Overland notes the parallels with his experience at the City of Whittlesea and how he dealt professionally with a very difficult dynamic.

It would be expected that Mr Overland would similarly deal professionally with the issues that arose at Burnie City Council. In her response, Cr Brumby quoted extensively from a number of email exchanges with Mr Overland over the period in question. The Panel considers that Mr Overland could have expressed himself in a more appropriate manner in these exchanges.

The Panel considers that, given Mr Overland's position, level of authority and previous experience, his situation is not comparable to that of Ms Nolan, in that he had the capacity to deal with his issues with Cr Brumby.

The Panel finds that Cr Brumby did not breach Part 7 1) a) in relation to the (then) General Manager, Mr Simon Overland.

Part 7.1 (c) - a councillor must not bully or harass any person.

In the complaint, the allegation of bullying is not separately addressed. In the section addressing Cr Brumby's unfair treatment of Ms Nolan, on page 11, Mr Overland quotes from an email sent to Cr Brumby on 5 June 2024 about her behaviour towards Ms Nolan, saying *'the manner with which you have treated Sarah amounts to bullying'*. In the summary of that section on page 13, Mr Overland alleges that Cr Brumby *'has behaved in a manner that amounts to bullying of Ms Nolan.'*

In his letter of 30 September 2024, Mr Overland states that *'complaint provides clear evidence of Mayor Brumby engaging in (repeated unreasonable) behaviours, including disregarding clear directions about whom and how she could deal with Ms Nolan and other staff.'*

In her letter to the General Manager of 15 June 2024 (attached to the complaint), Ms Nolan described a number of incidents that 'by (her) definition constitute(d) a form of harassment and bullying:

'Although I have no kept exact records of these incidents, including dates and times, I have ensured that on all occasions I have made you aware of the situations I have been presented with and where needed I believe you have noted these and raised with her where necessary.'

On the basis of the evidence available to it, being the evidence reviewed in the previous part of this determination in relation to breach of Part 7 1) a), the Panel is of the opinion that Cr Brumby's behaviour toward Ms Nolan was not sufficient to meet the accepted test for bullying behaviour:

WorkSafe Tasmania define bullying as "repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety".

The *Fair Work Act* s 789FD also defines bullying in similar terms, relevantly "an individual or group of individuals repeatedly behaves unreasonably towards the worker or a group of workers and that behaviour creates a risk to health and safety".

The Panel sought more explicit information from both Mr Overland and Ms Nolan, indicating that what had been previously provided was insufficient.

The Panel requested Mr Overland to *'provide more details as to your allegations that Mayor Brumby bullied Ms Nolan other than the information you have already provided to us?'*. Mr Overland's response was *'No, the original submission was quite detailed.'*

The Panel requested Ms Nolan to confirm the contents of her letters to the General Manager dated 12 May and 15 June 2024 and was also invited to provide further information or recollections that might be relevant to the Panel's investigations. In her response to the Panel 15 November 2024, Ms Nolan stated that she *'felt subjected to treatment that I considered both unfair and at times, a form of bullying.'*

Ms Nolan confirmed the contents of the letters but did not provide any additional details but did refer to the *'ongoing nature of the behaviour'*.

In her response to the allegation of bullying, Cr Brumby made this statement:

I categorically reject the claim that I bullied Sarah Nolan. At no point did my actions constitute bullying. The challenges I faced in my working relationship with Sarah stemmed from a lack of adequate support and communications breakdowns. I sought resolution through appropriate channels, including raising my concerns with the General Manager. Despite these efforts, I felt increasingly isolated in my role due to lack of action taken to

address these issues. The suggestion that my feedback or attempts to resolve the situation were bullying is deeply concerning and unfounded.'

In considering whether a hearing might elicit further evidence supporting the allegation of bullying, the Panel acknowledged that Ms Nolan had already experienced significant distress in relation to this matter and that it was unlikely to be in her best interests to expect her to appear at a hearing.

Finding

Having already determined that Ms Nolan had been treated unfairly by Cr Brumby, the Panel determined to not make a finding in relation to the allegation of bullying.

Part 7.4 - A councillor must not contact or issue instructions to any of the Council's contractors or tenderers, without appropriate authorisation.

On 28 November 2023 Council unanimously authorised the General Manager to grant GHD approval to proceed with the installation of a detailed design submission 'Welcome Gesture', a State Government funded project to create a 'gateway' into Burnie City. A design brief was attached to the Council agenda paper that included a detailed explanation of the proposed colour, which was integral and central to the proposed work. The project apparently created a significant response from the public.

Cr Brumby states she cannot be certain of the exact date but thought it was Wednesday 6 December 2023, she passed Mr Damien Aherne, Director Operations and superintendent for the project at Council, in the Council building following a luncheon. Cr Brumby goes on to say '*I inquired whether it would be worthwhile to contact the artists and encourage them, given the immense negative media surrounding the project, Damien nodded in agreement, indicating that it would be beneficial, and gave me verbal consent based on my intentions to provide encouragement*'.

On 6 or 7 December 2023, Cr Brumby contacted Kate (no surname provided) at GHD. On 7 December 2023, Cr Brumby was contacted by Annalise (no surname provided) from GHD '*Kate mentioned you'd like to give Geoff and David a call to have a chat and offer support in light of some negative community chatter....*' with contact details. Cr Brumby states '*from memory I contacted Geoff and shared encouragement with him that as a council were supportive.....I received a voicemail from David along lines "thanks for support"*'.

Cr Brumby also points out that over the previous two years she had been a member of the CBD working group facilitated by GHD and that there was an 'open invitation to members to contact them with ideas, feedback, questions'.

During January 2024 there was continued community unrest about the colour of the Gateway Project. At the Council meeting 30 January 2024, a public question was asked on the issue. Cr Brumby, as Mayor provided an answer, supporting the November Council decision and this was reported in an article in the Advocate newspaper on 2 February 2024.

In his complaint Mr Overland states 'On 22 February 2024, Cr Brumby sent an email to Mr Aherne to which he responded: '*..please take no further action about the colour of the Gateway project, the path you are on risks serious embarrassment for you and legal and reputational risk and reputational damage for Council.*' This advice was confirmed in an email from the General Manager on or about the same date.

'Damien has raised with me two recent communications you have had with him.....the second relates to colour of Gateway Project' Please take no further action about colour of Gateway Project, the path you are on risks serious embarrassment for you and legal and reputational risk for Council'.

Cr Brumby confirms these email exchanges in her response of 30 September 2024.

On 24 February 2024, Cr Brumby made a Facebook post which included a poll relating to the colour of the Gateway project and inviting the community to respond. The Council was due to consider a petition on this matter at its meeting 27 February 2024. Both the General Manager and one of the Directors contacted Cr Brumby on 24 February 2024 asking her to delete the post which she refused to do.

On 26 February 2024 Cr Brumby met with the General Manager and acknowledged that she had been advised not to pursue colour change for the project because of the legal, financial and reputational risks, and that if she continued to do so she was acting with disregard for the Council decision in November 2023. This discussion later was confirmed by email, which Cr Brumby agrees was received.

On 26 and 27 February 2024 Cr Brumby contacted the artists by phone and then by text. GHD advised the Council of these contacts by Cr Brumby. One of the contractors responded on 26 February 2024 by text stating *'We are contractually bound to deliver Welcome Gesture in its current form....'*

At the Council Meeting on 27 February 2024, the project was confirmed as per the existing contract. The General Manager provided the Council with advice about the contractual situation with respect to the colour of the work and the legal and reputational risks in the event that Council sought to change the colour.

On 29 February 2024 Cr Brumby sent an email to GHD staff:
'As Mayor of the City, I would love to catch up with GHD and the Artists on the back of some upheaval on the Gateway project in this last week.'

In response to the allegation of contacting Council contractors without authorisation, Cr Brumby claims that she had permission from Mr Aherne and that the action she took in February was no different from that she took in December.

Mr Damien Aherne was requested by the Panel to provide, under cover of a Statutory Declaration, his *'recollection of the interaction with Cr Brumby, probably on 6 December 2023, and regarding any further interactions you may have had with Cr Brumby in relation to her making contact with contractors for the Burnie Gateway Project.'*

The following is an extract from Mr Aherne's Statutory Declaration.

In relation to the matter I do recall the date of the 6th, this was an annual 25 year club staff luncheon for members of staff whom has served 25+ years. Councillor Brumby did approach me after the luncheon, but this was in relation to another matter which resulted from the dinner and was not in any way related to the gateway project.

I do not recall at any point Councillor Brumby seeking my permission to reach out to the artists. The first situation where I was made aware that this had occurred was when I had received a call from the GHD Project Manager on 27th Feb 2024 where I was informed that Councillor Brumby had been in contact with one of the artists. This was subsequently followed by a text message from the Project manager which consisted of a screenshot of the message sent from Councillor Brumby to the artists. From this conversation I was also made aware by the project manager that Councillor Brumby had attempted to reach out to GHD as well and left a voicemail asking for a call back. The project manager informed me the occurred on Monday 26th February at 10:37am, additionally no permission was sought from me for Councillor Brumby to call the GHD Project Manager.

Even giving Cr Brumby the benefit of the doubt regarding her interpretation of the interaction with Mr Aherne on 6 December 2023, from the date of the email of 22 February 2024 there was explicit advice to take no further action on the Gateway Project which was confirmed on 26 February 2024. A reasonable person would understand this to include any contact with the contractors for this project.

The Panel notes that, as well as arguing that she had permission to contact the contractors, Cr Brumby further justifies her actions on the grounds that her *'intention was always to represent the community's interests and ensure that their voices were heard'*. In an email to the General Manager and Directors on 3 March 2024 Cr Brumby stated: *'The feedback received over this last month is that I have stopped being a voice for the people and instead a bureaucratic robot, that does not heed the listening aspect of my role as Mayor'*.

Whilst councillors' functions include representing the community and facilitating communication by the council with the community, they have a specific duty to represent accurately the policies and decisions of the council. The Mayor, as spokesperson for the Council, has a particular responsibility in this regard. Despite having been warned of the potential legal and reputational risks, in making her Facebook post on 24 February 2024 Cr Brumby appeared to be raising the possibility that an aspect of the Gateway project might be reconsidered i.e. an aspect of the contract that was the subject of a Council decision in November 2023, and she continued to pursue this up until the Council meeting on 27 February.

Finding

The Panel finds that, in making contact with various contractors on the Gateway Project on a number of occasions, despite being advised not to take any further action in relation to the project, Cr Brumby breached Part 7 4) of the Code - A councillor must not contact or issue instructions to any of the Council's contractors or tenderers, without appropriate authorisation.

Part 7.5 - A councillor must not contact an employee of the Council in relation to Council matters unless authorised by the General Manager of the Council.

Mr Overland provided the following examples to support this allegation:

On 22 February 2024, Mr Overland emailed Cr Brumby in relation to two communications she had made with the Director Operations, one about cleaning in CBD and one about Gateway project.

On 19 March 2024 Mr Overland was made aware that Cr Brumby had contacted the Acting Chief Technical Officer requesting that Ms Nolan's access to her emails be removed.

On 4 June 2024 Cr Brumby unsuccessfully tried to contact Ms Nolan by phone. She spoke to a junior member of staff and instructed her to compile a list of visitors to facilitate their entry to Council chambers.

Mr Overland considers that these examples demonstrate Cr Brumby's lack of understanding of her role – *'contacting staff directly when directed not to; seeking to direct staff and providing performance feedback directly to staff'*. Mr Overland had raised this issue with Cr Brumby on a number of occasions:

On 26 February 2024 – Mr Overland's discussion with Cr Brumby was followed by email:

'I remind you that you have no executive function, and the Local Government Act is very clear about the responsibilities of the General Manager for managing staff, to exclusion of councillors.'

On 3 May 2024 Mr Overland emailed Cr Brumby *'you continue to demonstrate a fundamental misunderstanding as to your role.....you have no authority over council staff'*.

On 5 June 2024 Mr Overland emailed Cr *'First, I have repeatedly advised you, including in writing, not to contact any staff of Burnie City Council other than either Director or myself.... This arrangement is in place because of your past behaviours towards staff that have been unreasonable Finally, it is also unacceptable that*

you instructed a junior member of staff. Again, I have repeatedly advised you that you are not to instruct staff.'

The Panel concurs with Mr Overland's view that Cr Brumby has no authority, as a councillor or Mayor, to direct staff of the Council. The role of the General Manager (or his or her delegate) in this regard is stated in Section 63 (1) of the Act:

The General Manager of the Council may –

- a) Appoint persons as employees of the council; and
- b) Allocate duties to employees; and
- c) Control and direct employees; and
- d) Suspend or dismiss employees.

Part 7 5) of the Code reflects this, requiring that *'A councillor must not contact an employee of the Council in relation to Council matters unless authorised by the General Manager of the Council.'*

Cr Brumby noted in her response that prior to the events relating to the Gateway project, her working relationship with Mr Overland was 'exceptional'. She acknowledged the significant support she was given when she became Mayor and expressed appreciation for this. At about the same time as the events relating to the Gateway project were occurring, Cr Brumby was assigned a new Executive Assistant, Sarah Nolan. The issues arising from this have been examined elsewhere in this Determination.

In early March, in response to some of the Cr Brumby's actions in the period to which this complaint relates, the General Manager significantly revised arrangements that had been in place regarding Cr Brumby's access to staff. Cr Brumby was requested to stay out of the executive area of the Council, not to speak to any staff except the General Manager or the Directors and to contact the media staff by email only.

The General Manager reminded Cr Brumby of these arrangements a number of times, including:

19 March 2024, following Cr Brumby making contact with the Acting Chief Technical Officer, *'I want to affirm that the recent change I have made in the manner in which you communicate with staff does not mean that Council officers will not provide appropriate support You can still ask but through the arrangements that are now in place'*.

3 May 2024, following a meeting on 2 May and an email from Cr Brumby, *'you will recall that these safeguards were instituted because of your conduct concerning the Gateway project.'*

5 June 2024, following the incident on 4 June 2024, *'I have repeatedly advised you, including in writing, not to contact any staff of Burnie City Council other than either Director or myself. This arrangement is in place because of your past behaviours toward staff that have been unreasonable, and which constitute a risk to staff safety and to you in that staff might complaint about your conduct given you have repeatedly demonstrated poor behaviour and boundary management, contrary to repeated advice.'*

The Panel notes Cr Brumby's comments that these new arrangements made it very difficult for her to fulfil her role – *'the restrictions placed on my ability to communicate with staff have severely hampered my ability to perform my role, and I have been left with no choice but to*

navigate these limitations as best I could. She attempted to raise these issues and issues relating to Ms Nolan's performance, on a number of occasions.

In response, in his email of 19 March 2024 the General Manager suggested to Cr Brumby was cutting herself off from advice and support. In his email of 5 June, the General Manager suggested to Cr Brumby that the situation that she described as urgent was of her own making because she did not think ahead.

The Panel has some sympathy with Cr Brumby's position. Whilst acknowledging the General Manager's need to address workplace risks, the arrangements that were put in place appear to have exacerbated the situation and could perhaps have been less restrictive.

Nevertheless, these arrangements were in place and were brought to Cr Brumby's attention on a number of occasions. Despite this Cr Brumby made direct contact with staff not in keeping with these arrangements.

Finding

The Panel finds that, in making direct contact with Council employees on a number of occasions, despite being advised not to do so, Cr Brumby breached Part 7 (5) of the Code A councillor must not contact an employee of the Council in relation to Council matters unless authorised by the General Manager of the Council

Sanction

Section 28ZI (2) of the *Local Government Act 1993* provides for the Panel to impose one or more of the following sanctions if it upholds the complaint or part of it-

- a. a caution;
- b. a reprimand;
- c. a requirement to apologise to the complainant or other person affected by the contravention of the code of conduct;
- d. a requirement to attend counselling or a training course; or
- e. a suspension from performing and exercising the functions and powers of his or her office as a councillor for a period not exceeding 3 months.

On 13 March 2025, Cr Brumby was advised that a number of the allegations made in the complaint were likely to be upheld and provided with an overview of how each part of the complaint might be determined by the Panel. Cr Brumby was invited to make a submission as to what, if any, sanction should be applied in the event that parts of the complaint were upheld. Cr Brumby's submission was received on 20 March 2025, which the Panel has duly noted.

The Panel has found that, in relation to her treatment of Ms Nolan and interactions with staff, although having been reminded on a number of occasions of the extent of her authority, Cr Brumby continued to act contrary to this advice. In relation to making contact with Council contractors, Cr Brumby continued to attempt to contact contractors despite having been repeatedly requested not to do so, particularly in light of the contractual risks to Council.

The Panel considers these breaches of such a nature as to justify the imposition of a reprimand.

The Panel also considers that the actions of Cr Brumby indicate that she either misunderstands or disregarded the extent of her authority as a councillor and aspects of her role as Mayor.

The Panel determines that Cr Brumby is to undertake a refresher training course in the role and functions of both councillor and mayor within two months of the tabling of this Determination.

Timing of the Determination

In accordance with section 28ZD (1) a Code of Conduct Panel is to make every endeavour to investigate and determine a code of conduct complaint within 90 days of the Chairperson's determination that the complaint is to be investigated.

The Panel was unable to determine the complaint within 90 days, primarily due to the delay in constituting the Panel and the work and other commitments of Panel members and parties to the complaint.

Right to review

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



Liz Gillam
Chairperson



Philip Cocker
Member



Audrey Mills
Legal Member

DATE – 23 April 2025