

**CODE OF CONDUCT PANEL DETERMINATION REPORT \***  
**CITY OF HOBART ELECTED MEMBER CODE OF CONDUCT**

**Complaint brought by Mr Brian Corr against Ald Simon Behrakis**

Date of Determination: 5 August 2020

Content Manager Reference: 20/75579

Code of Conduct Panel: Lynn Mason (Chairperson), David Sales (community member with experience in local government), Anthony Mihal (legal member)

**Summary of the Complaint**

The complaint from Mr Corr was submitted to the Executive Officer of the Code of Conduct Panel (the Panel) on 23 December 2019.

The Chairperson of the Panel undertook an initial assessment of the complaint and determined on 17 January 2020 that it should be investigated and determined by the Panel.

The City of Hobart Elected Member Code of Conduct (the Code) in force at the time of the alleged breaches was approved by Council in February 2019. The sections of the Code which Mr Corr alleged Ald Behrakis breached are:

***Part 1 – Decision Making***

*3. In making decisions, an Elected Member must give genuine and impartial consideration to all relevant information known to them, or of which they should have reasonably been aware.*

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

***Part 3 – Use of Office***

*1. The actions of an Elected Member must not bring the Council or the office of Elected Member into disrepute.*

***Part 7 – Relationships with community, councillors, and council employees***

*1. An Elected Member –*

*(a) must treat all persons fairly; and*

*(b) must not cause any reasonable person offence or embarrassment; and*

*(c) must not bully or harass any person.*

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\* 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.

## **Part 8 – Representation**

2. An Elected Member must not knowingly misrepresent information that they have obtained in the course of their duties.

6. An Elected Member must show respect when expressing personal views publicly.

7. The personal conduct of an Elected Member must not reflect, or have the potential to reflect, adversely on the reputation of the Council.

### **The Complaint**

The Complainant alleged that between 1 July 2019 and 9 July 2019, Ald Behrakis was responsible for a number of statements which were *deliberate, defamatory, and improper, designed to ruin the reputation of both Hobart Not Highrise Inc. and its President, Brian Corr*. It was alleged that this was done by posts on Ald Behrakis's Facebook page, emails to various people including his fellow Aldermen, a speech made in debate at the Hobart City Council meeting on 8 July 2019, and a media release on 9 July 2019.

Ald Behrakis's communications that the Complainant seeks to impugn were made in connection with a planning application that was before the Council called the "Welcome Stranger Development".

Mr Corr alleged that he had not said nor done anything that was racist, or fascist, or bullying or harassing, but that he had been accused of these things in what he described as a *vicious deliberate campaign* against him and others.

### **Procedure**

The parties were notified on 20 January 2020 that the complaint was to be investigated, and on 30 January 2020 the Panel met to commence its investigation. On 5 February 2020 the Panel received a letter from Ald Behrakis requesting greater detail of the matters constituting the complaint.

The Panel subsequently wrote to Mr Corr and asked him to particularise the alleged breaches of the Code in six sections of the material he originally provided. These were the sections in Mr Corr's complaint which cited statements made by Ald Behrakis, either in debate or through various media. Mr Corr was invited to provide further particulars of any actions by Ald Behrakis which were not part of the six items listed, if he wished to do so. Mr Corr was also asked to provide copies of emails he had referred to in his complaint, but which had not been included in attachments to that complaint. Mr Corr provided his response on 25 February 2020. He was unable to provide copies of the emails requested by the Panel.

On 11 March 2020 the Panel asked Ald Behrakis to respond to the allegations as detailed in Mr Corr's document of 25 February 2020, and this was received by the Panel on 30 March 2020. The Panel met again on 8 April 2020, and on the same day, the Panel received a further response from Mr Corr in answer to Ald Behrakis's response of 25 March 2020 (received by the Panel on 30 March).

On 16 April the Panel wrote to Mr Corr, seeking his submission on whether he would be disadvantaged if the Panel were to reach its determination by examination of the material provided or available to it, rather than by conduct of a hearing, and if it was appropriate in the circumstances not to hold a hearing. Similarly, the Panel wrote to Ald Behrakis to seek his submission on whether a hearing needed to be held. The Panel also asked Ald Behrakis to make submission on what he considered would be an appropriate sanction, should the Panel determine to uphold part or all of the

complaint. On 22 April 2020 Ald Behrakis asked the Panel to allow him to make submission on sanction if necessary, once it had reached its determination, and the Panel agreed to this.

Ald Behrakis also sent the Panel his response to Mr Corr's material provided on 8 April, and this was forwarded to Mr Corr. Mr Corr responded to the Panel on 3 May 2020.

Neither party submitted that he would be disadvantaged if the Panel did not investigate the complaint by way of a hearing.

On 5 May 2020 both parties were notified that the Panel intended to proceed to determination without conducting a hearing, on the basis that neither party would be disadvantaged by this, and that it was appropriate in the circumstance not to hold a hearing because the Panel had sufficient material from both parties, and from the audio recording of the Council meeting of 8 July 2019, to reach a determination. The relevant circumstances were that there was no factual dispute between the parties in that Ald Behrakis did not dispute that he made each of the communications, and each party made lengthy, detailed and well-reasoned written submissions as to why Ald Behrakis did or did not breach the Code by making them.

Material considered by the Panel in its investigation

- The City of Hobart Elected Member Code of Conduct, February 2019;
- Complaint and Statutory Declaration submitted by Mr Brian Corr, 23 December 2019, 45 pp;
- Audio recording of the Hobart City Council ordinary council meeting, 8 July 2019;
- Letter from Mr Corr to the Panel, 25 February 2020, 15 pp;
- Letter from Ald Behrakis to the Panel, 25 March 2020, 22 pp;
- Letter from Mr Corr to the Panel, 8 April 2020, 10pp;
- Letter from Ald Behrakis to the Panel, 22 April 2020, 1 p;
- Attachment from Ald Behrakis to Panel, 22 April 2020, 20pp;
- Letter from Mr Corr to the Panel, 3 May 2020, 8pp.

## **Determination**

The Code of Conduct Panel dismisses the complaint against Ald Behrakis for breaches of Part 1 (3) and (4), Part 3 (1), Part 7 (1), and Part 8 (2), (6), and (7) of the Council's Code of Conduct.

## **Reasons for the Determination**

1. Facebook post by Ald Behrakis, 10.10 am 1 July 2019

In a post on his public Facebook page, Ald Behrakis described a poll of electors organised to gauge public opinion on the Welcome Stranger development proposal as a 'farce', and referred to Hobart Not Highrise Inc. as an 'anti-development lobby group' which continued to 'strong arm the council into making decisions based on rank populism'.

The Complainant was the President of the incorporated association called Hobart Not Highrise Inc. which had participated in the public debate about the proposed Welcome Stranger Development. The Association was arguing against the proposal because of the height of the proposed building.

Ald Behrakis used some robust language in opposition to the Association's agitation against the proposed development. The Panel determines that the language he used in the Facebook posts was not so strong that the reputation of the Council or the office of elected member could be brought into disrepute contrary to parts 3(1) and 8(7) of the Code, nor that any reasonable person in the Association including the Complainant could be offended or embarrassed contrary to part 7(1)(b) of the Code, nor that Ald Behrakis failed to show respect when expressing his views about Hobart Not Highrise, contrary to part 8(6) of the Code.

Ald Behrakis was forcefully but legitimately expressing his view of the poll of electors, and his view of the political position of Hobart Not Highrise. He was not bullying nor harassing anyone in any sense, contrary to part 7(1)(c) of the Code.

The Complainant did not identify any unfairness to any person in respect of the Facebook post that was contrary to part 7(1)(a), nor any information that Ald Behrakis received in the course of his duties that he misrepresented in the Facebook post contrary to part 8(2) of the Code.

The Panel therefore determines that there has been no breach of parts 3 (1), 7 (a), or 8 (2) (6) or (7) of the Code.

## 2. Facebook post by Ald Behrakis, 6.22 pm 8 July 2019

Ald Behrakis made a post on his public Facebook page after the Council determined to refuse the application for a planning permit for the Welcome Stranger Development.

The Complainant submitted that in the post, Ald Behrakis criticized the Council's decision by using the words *a loud and clear message about the Council's priorities* and *Collectively we have failed that test and Hobart deserves better than this anti-development hypocrisy*. The Complainant submitted that Ald Behrakis criticised the Deputy Lord Mayor for calling a point of order against him, and various other Aldermen, for not making *any effort to condemn the wholly inappropriate comments that have been circulating around the race or background of the items, contrary to every other elected member who spoke*, and that those words also inferred criticism of Hobart Not Highrise and Mr Corr as the President of that organisation.

The Panel determines that Ald Behrakis's post does not breach part 3 (1), part 7 (1), or part 8 (2) (6) or (7) of the Code.

The Panel determines that the language used in the Facebook posts was not such that the reputation of the Council or the office of elected member could be brought into disrepute, contrary to parts 3(1) and 8(7) of the Code, nor that any reasonable person could be offended or embarrassed contrary to part 7(1)(b) of the Code, nor that Ald Behrakis failed to show respect when expressing his views about Hobart Not Highrise, contrary to part 8(6) of the Code.

Again, Ald Behrakis was forcefully but legitimately expressing his view of the decision of the Council and actions by individuals at the meeting. He was not bullying nor harassing anyone in any sense, contrary to part 7(1)(c) of the Code.

The Complainant did not identify any unfairness to any person in respect of the Facebook post that was contrary to part 7(1)(a), nor any information that Ald Behrakis received in the course of his duties that he misrepresented in the Facebook post, contrary to part 8(2) of the Code.

The words used did not refer particularly to Mr Corr nor the organisation of which he was President. The post was made immediately following an intense debate on a contentious issue in the Council, and the Panel considers that in the political context of the post, there was no breach of the Code.

3. Facebook post by Ald Behrakis, 12.25 pm 8 July 2019

Ald Behrakis made a post on his public Facebook page in which he referred to various emails as 'appalling' and *attempting to turn this discussion into one about race or background of the applicants, as opposed to the merits of the development.*

Ald Behrakis wrote that *This is clearly inspired, and encouraged by Brian Corr and his band of happy clappers ... and is further evidence that he will stop at nothing to block development in Hobart at any cost.*

As President of Hobart Not Highrise, Mr Corr engaged legitimately in political debate on a contentious issue in Hobart. Ald Behrakis did not agree with the position taken by Mr Corr and the Panel considers it was his right to express his views in ways which a reasonable person would see as part of the discourse between opposing parties. The words he used were reasonably moderate. He did not, for example, say that Mr Corr or Hobart Not Highrise was racist. He wrote that Mr Corr and Hobart Not Highrise inspired and encouraged others to make reference to the race or background of the proponents of the Development. The Complainant strongly disputes that this was true, but that does not mean that saying it was unfair, reasonably offensive or embarrassing, had the potential to bring the Council or office of Councillor into disrepute, was bullying or harassing, disrespectful, or misrepresented information Ald Behrakis received in the course of his duties.

The Panel determines that the words used by Ald Behrakis did not breach part 3 (1), part 7 (1), or part 8 (2) (6) or (7) of the Code.

4. Facebook post by Ald Behrakis, 8.05 am 8 July 2019

Ald Behrakis made a post on his public Facebook page as follows:

*Never let the truth get in the way of telling a good story. It is curious how indignant the Deputy Lord Mayor is that the applicants felt it necessary to run a media campaign, but made no comment about the unprecedented, scorched earth media campaign from anti-development lobby group Hobart Not Highrise. A group which has appallingly included trying to turn the discussion to one about the race of the applicants.*

The Complainant submitted that Ald Behrakis was misrepresenting information in an email from an unidentified person which refers to the imputed nationality of the proponent of the Welcome Stranger Development and information on the Hobart Not Highrise website, namely a Company Search showing the overseas addresses of the directors of the proponent company.

The Panel finds that there is simply a disagreement between the parties as to the characterisation of the information. Ald Behrakis was expressing his opinion about it, with which the Complainant strongly disagrees. That is not to say that there was anything unfair, offensive or embarrassing to a reasonable person, bullying or harassing, that could bring the Council or office of Councillor into disrepute, or that misrepresented information that Ald Behrakis received in the course of his duties. Again, in the relevant context, Ald Behrakis uses fairly moderate language to express his opinion. The

effect of the words was not to infer, as the Complainant submits, that Hobart Not Highrise conducted a racist campaign.

In respect of this post, the Complainant also contends that it demonstrated that Ald Behrakis took into account irrelevant matters when he decided to vote in favour of the Welcome Stranger Development, contrary to Part 1 (4) of the Code. The Panel cannot find any such indication in the words used in the post.

The Panel determines that the post does not breach part 1 (4), part 7 (1), or part 8 (2) (6) or (7) of the Code, as it was not a personal attack, and the post was part of an ongoing political debate.

5. Email sent by Ald Behrakis to other Elected Members and one member of the community, 12.23 am, 8 July 2019

Ald Behrakis sent an email as follows to each of the other elected members of the Council and a member of the community:

*Subject: RE: Proposed Welcome Stranger development.*

*This isn't the only email I have received with the same, appalling flavour. Clearly motivated, and encouraged by Brian Corr and his band of happy clappers (See Here: [http://www.hobartnothighrise.com.au/welcome-stranger-developer.html?](http://www.hobartnothighrise.com.au/welcome-stranger-developer.html?fbclid=IwARIsEfsyx2v_Xr90fABDV4xwUnxo_waxdhDk7plPYVxxmf52WCvRRiQ7EZ0)*

*fbclid=IwARIsEfsyx2v\_Xr90fABDV4xwUnxo\_waxdhDk7plPYVxxmf52WCvRRiQ7EZ0).*

*I am unsure of what Mr Corr, his Lobby Group Hobart not Highrise, and his followers are implying with this email campaign. Is the insinuation that if the applicant was a white Australian, as opposed to someone of Chinese heritage, the proposal would be considered to be acceptable? If that is not the case, I am at a loss to understand why the information provided on the Hobart not Highrise (sic) has any relevance to the discussion of this item.*

*Whilst I have every faith my colleagues would not allow such sleazy distractions to affect their decision making as a planning authority, it is extremely disturbing to see groups such as Hobart not Highrise attempt to turn this discussion into one about the race or background of the applicants, as opposed to the merits of the development.*

*Yours sincerely,*

*Alderman Simon Behrakis*

The hyperlink in the email refers to the part of the Hobart Not Highrise website that contained the Company Search referred to previously.

Reference to the nationalities of some persons involved in the development proposal before Council was published by Hobart Not Highrise in the form referred to above and by others. It is apparent from the complaint and responses that Mr Corr and Ald Behrakis took opposing views on the characterisation of this information. Ald Behrakis considered that it was irrelevant to Council's consideration of the planning matter, and Mr Corr agreed with this view.

Ald Behrakis was bringing his opinion about the characterisation of the information to the attention of his fellow Elected Members, and a member of the public who had noted the nationalities in an email to Elected Members. To do so was a reasonable action by an Elected Member questioning the relevance of this information in the context of a planning decision to be made by Council. It is part of an Elected Member's role to try to influence his fellows to vote in accordance with his own position.

The Panel determines that this email does not breach part 3 (1), part 7 (1), or part 8 (2) (6) or (7) of the Code.

6. Media release issued by Ald Behrakis on 9 July 2019

Ald Behrakis circulated a media release which included the following:

*On ABC radio this morning, Ms Burnett refused to condemn the actions of Hobart Not Highrise, saying the issue had been "blown out of proportion" and was a "distraction".  
Worse, the Deputy Lord Mayor went on to suggest that the racial background of developers was a relevant fact for discussion in planning proposals...  
Especially after claiming that the housing crisis is not a relevant consideration, these comments are frankly appalling comments ...  
Last night we had the unedifying spectacle of the President of Hobart Not Highrise, yelling at Ald Tanya Denison from the public gallery when she raised these issues. A number of Aldermen and Councillors also spoke out against this racism, yet the Lord Mayor, Deputy Lord Mayor and Councillor Harvey all sat silently by and refused to condemn Hobart Not Highrise's actions.  
It seems that because Mr Corr is a vocal support of the Greens' agenda, it is okay to raise issues of nationality and race. When it comes to the Greens on Council, it seems no double standard is too big for them.*

Ald Behrakis was expressing his opinions about the words used by his fellow elected members in the course of political discourse about the proposed development. He was entitled to do that and he used moderate language to do so, such that he cannot be said to have misrepresented information he received in the course of his duties, or to have embarrassed or offended any reasonable person.

The release stated that Mr Corr had 'yelled' at an Elected Member who was speaking in debate at the Council meeting of 8 July 2019, calling this an 'unedifying spectacle'. Mr Corr denies that he yelled, but his voice can be clearly heard on the audio recording of the meeting. Ald Behrakis may have overstated the manner of Mr Corr's interjection, but the Panel does not consider that this could have embarrassed or offended any reasonable person, nor that this constituted a misrepresentation of information he received in the course of his duties.

The Panel determines that the media release does not breach of part 3 (1), part 7 (1), or part 8 (2) (6) or (7) of the Code.

7. Speech made by Ald Behrakis in the 'Welcome Stranger' debate at the Hobart City Council meeting, 8 July 2019

In the course of the debate at the relevant Council meeting, Ald Behrakis said the following:

*I'm quite disappointed by the rhetoric that's surrounding this debate on this issue... not only have lobby groups encouraged others to make representations based on the background of the applicants... and ...even in light of the unconscionable unfortunate media campaign run by the anti-development group, Hobart Not Highrise.*

The complaint submitted that Ald Behrakis described Hobart Not Highrise in a misleading way, and attempted to improperly influence his fellow Elected Members' votes.

The Panel determines that Ald Behrakis legitimately expressed his view of Hobart Not Highrise in the debate, and that it was his role as an Elected Member to try to sway his fellow Elected Members. The Panel considers that his mention of issues outside the planning issues in the debate does not indicate that these issues will prevent him from making his decision on merit.

The Panel does not consider that this constitutes a breach of part 1 (3) and (4), part 3 (1), part 7 (1), or part 8 (2) (6) or (7) of the Code.

## Conclusion

The Panel has considered this complaint in the context of a planning proposal which attracted a significant number of representations by members of the community, both in favour and against. There was considerable public debate in Hobart prior to the Council meeting on 8 July 2019, including the conduct of an Elector Poll on the issue. The organisation of which Mr Corr was and remains President opposed the development and publicly lobbied against it. Ald Behrakis disagreed with that view. The Panel accepts that Ald Behrakis spoke out against the views of that organisation, and made statements about that organisation and Mr Corr's role in it. Mr Corr disagreed with his characterisation. The Panel does not accept that Ald Behrakis's actions taken in context breached the Code of Conduct.

## Timing of Determination

In accordance with section 28ZD (1) (a), the Panel is required to investigate and determine a complaint within 90 days of the Chairperson's decision to investigate the complaint. The 90 day period for this complaint expired on 19 April 2020. Investigation of this complaint occurred over Easter, and this caused a relatively brief delay in reaching the Determination. Further delay was caused by the complexity of the issues raised and the need to give both parties adequate time to make responses to the allegations levied, and the need for the Panel to take sufficient time to reach its determination and compile its report.

## 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)



Anthony Mihal  
(Legal Member)



David Sales  
(Member)