

Local Government Act 1993

**CODE OF CONDUCT PANEL DETERMINATION REPORT
HOBART CITY COUNCIL CODE OF CONDUCT**

Complaint brought by Ms Louise Bloomfield against Councillor (Cr) Bill Harvey

Code of Conduct Panel

- Jill Taylor (Chairperson),
- David Sales (Local Government Member)
- Phillip Zeeman (Legal Member)

Date of Determination: 21 June 2021

Content Manager Reference: C21938

Summary of the complaint

A code of conduct complaint was submitted by Ms Louise Bloomfield to the General Manager, Hobart City Council under cover of a Statutory Declaration dated 10 February 2021.

Ms Bloomfield alleged that Cr Bill Harvey breached the Hobart City Council's Elected Member Code of Conduct, which was adopted by the Council on 18 February 2019, in his role as Chairman of the Council Infrastructure Committee (CIC) at its meeting held on 25 November 2020 in relation to Item 6.2 "the Midtown Project".

Ms Bloomfield made a submission for consideration by the CIC in relation to the Midtown Project in which she presented the results of a survey she had undertaken with 142 contributors.

The complainant alleges that Cr Harvey, in his capacity as Chair of the CIC, did not consider the findings of her survey and that he was biased and not impartial in consideration of the information presented by Ms Bloomfield. Furthermore, Ms Bloomfield alleges that Cr Harvey did not treat her fairly.

The following are the Parts of the Code which Ms Bloomfield alleges Cr Harvey has breached:

***Part 1.1** An elected member must bring an open and unprejudiced mind to all matters being decided upon in the course of their duties, including when making planning decisions as part of the Council's role as a Planning Authority.*

***Part 1.2** An elected member must make decisions free from personal bias or prejudgement.*

***Part 1.3** 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.*

***Part 7.1(a)** An elected member— (a) must treat all persons fairly.*

***Part 8.2.** An elected member must not knowingly misrepresent information that they have obtained in the course of their duties.*

Initial assessment

Following receipt of the complaint, the Chairperson conducted an initial assessment of the complaint in accordance with the requirements of section 28ZA of the Act. Having assessed the complaint against the provisions of sections 28ZB and 28ZC of the Act, the Chairperson determined that:

- the complainant had made a reasonable effort to resolve the complaint. The complainant alleges that Cr Harvey “rebuffed” her approaches and publicly misrepresented her in his emails and social media posts.
- the complaint substantially related to a contravention of Hobart City Council's Code of Conduct, namely Parts 1.1, 1.2, 1.3, 7.1 (a) and 8.2.
- the complaint should not be dismissed on the grounds that it was frivolous, vexatious or trivial. The reasons for this conclusion were that evidence submitted to the Panel may, if taken at its highest, demonstrate that Cr Harvey breached the Code of Conduct.
- having made enquiries of the Code of Conduct Executive Officer, there was no relevant direction under section 28ZB (2) or 28ZI of the Act that would apply to the complainant and the complaint.¹

On this basis, the Chairperson determined on 12 March 2021 to investigate the complaint.

The complainant, respondent councillor and the General Manager were notified of the outcome of the outcome of the initial assessment by letter dated 22 March 2021.

Investigation

The Panel met on 6 May 2021 to consider this complaint. The following documents had been presented to the Panel to consider as evidence in this matter:

- Ms Bloomfield's complaint lodged under cover of a statutory declaration dated 10 February 2021;
- Ald Harvey's response sent under cover of a statutory declaration dated 19 April 2021, and
- City of Hobart Elected Member Code of Conduct adopted on 18 February 2019.

On 14 May 2021, the complainant and respondent councillor were notified of the Panel's intention to proceed to determine the complaint without a hearing. Both parties were invited to provide any objection to this course of action. The reasons for such objections were to be in writing and submitted to the Panel within 10 business days. No objection was received. On 24 May 2021, Cr Harvey provided a final submission to the Panel. On 1 June 2021, Ms Bloomfield advised that she did not wish to make a further submission.

Cr Harvey's submission dated 24 May 2021 was included in the evidence considered by the Panel when it met on 9 June 2021 to determine the complaint. Pursuant to section 28ZG (3), the Panel considered all the written documentation listed above, and investigated the complaint without a hearing.

In his submission, Cr Harvey confirmed that he was Chairman of the CIC, and that at the meeting on 25 November 2020 it considered the Council's Elizabeth Street (Midtown) Retail Precinct – Proposed Streetscape Concept, known as the Midtown Project. In their submissions both Ms Bloomfield and Cr Harvey included details of the subject matter discussed at this meeting. It is not the role of the Panel to consider the merits of the project, nor to assess the Council's administrative or decision-making processes. The Panel, therefore, disregarded information submitted specific to the Midtown Project and only considered evidence before it in relation to the alleged breaches by Cr Harvey against each of the Parts of the Code nominated by Ms Bloomfield.

¹ Section 28ZB(2) and 28ZI of the Act enable the Chairperson or the Panel (as applicable) to issue a direction to a complainant in prescribed circumstances not to make a further complaint in relation to the same matter unless the complainant provides substantive new information in the further complaint.

Determination

Pursuant to section 28ZI(1)(c), the Panel dismisses the whole complaint alleging breaches against Parts 1.1, 1.2, 1.3, 7.1 (a) and 8.2.

Reasons for determination

The Code of Conduct Panel considered relevant information provided by Ms Bloomfield dated 10 February 2021 and Cr Harvey's submissions dated 19 April 2021 and 24 May 2021 along with supporting statutory declarations. The Panel assessed this material against the parts of the Code that, according to the complaint, Cr Harvey breached. The Panel's findings are as follows:

Part 1.1 – An elected member must bring an open and unprejudiced mind to all matters being decided upon in the course of their duties, including when making planning decisions as part of the Council's role as a Planning Authority.

Ms Bloomfield alleges that Cr Harvey was prejudiced against her and that as a result he was not open minded in his treatment of her survey results when considering the Midtown Project as CIC chairperson. In response to this allegation, Cr Harvey claims that his decision was not biased and that as Chair, he felt it appropriate to refer the subject matter to full Council for consideration and decision. He further claims that he had regard to expert advice from Council staff and the matter, when put to Council, was adopted by a majority. There was no evidence to support the allegation that Cr Harvey breached this part of the Code. The Panel therefore dismisses the complaint in relation to Part 1.1 of the Code.

Part 1.2 - An elected member must make decisions free from personal bias or prejudgement.

Ms Bloomfield submits that Cr Harvey did not have an open mind and was prejudiced in his treatment of a deferral motion put by Alderman Behrakis at the CIC meeting. Ms Bloomfield further claims that Cr Harvey's treatment of this matter was "consistent with the prejudice consistently shown in handling this issue." In response Cr Harvey, re-iterated that he has made no prejudgment on this matter before it went to the CIC. The evidence submitted by Ms Bloomfield in relation to this Part of the Code relates to administrative procedures of Council. It is not within the Panel's purview to consider such matters, unless there is evidence that a breach has occurred. In this instance, no such evidence was submitted, and the Panel therefore dismisses the complaint in relation to Part 1.2 of the Code.

Part 1.3 - 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.

Ms Bloomfield alleges that Cr Harvey has "shown a distinct lack of impartiality" and that he responded to her in a "dismissive way" in relation to the results of the survey she undertook. In his response Cr Harvey questioned exactly which decision Ms Bloomfield was referring to in her complaint, and identified a number of possibilities. The Panel agreed that Ms Bloomfield had not been specific regarding this issue and had not provided any evidence to support her general assertion. The Panel dismisses the complaint in relation to Part 1.3 of the Code.

Part 7.1 - An elected member– (a) must treat all persons fairly.

Ms Bloomfield asserts that Cr Harvey has treated her unfairly in relation to the survey results she submitted to Council to be considered by the CIC. Cr Harvey responded that he did consider the results of her survey material, but he and his committee had other overriding information, including a broader, more comprehensive survey undertaken by Council. "Fairness" is a subjective term and leads to one asking, "in relation to what?" The Panel concluded that no evidence had been presented to it which indicated that Ms Bloomfield had been treated differently to other interested parties in this matter. The Panel dismisses the complaint in relation to Part 7.1 (a) of the Code.

Part 8.2. *An elected member must not knowingly misrepresent information that they have obtained in the course of their duties.*

Ms Bloomfield's assertion that Cr Harvey breached this part of the Code, goes to an email Cr Harvey inadvertently send to Ms Bloomfield instead of two councillors he was having an email conversation with. Cr Harvey responded by saying he regretted this error and apologised if he offended Ms Bloomfield. Whilst Ms Bloomfield may have taken offence to the email, there is no evidence that Cr Harvey had misrepresented information. The Panel dismisses the complaint in relation to Part 8.2 of the Code.

Direction regarding further complaints

Under Section 28ZL (3) of the Act the Code of Conduct Panel instructs Ms Bloomfield not to make a further complaint in relation to the same matter for a period of 12 months unless substantive new information is provided in the further complaint.

Timing of the Determination

In accordance with section 28ZD (1) of the Act, 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. This timeframe has been exceeded by several days owing to the extended timeframes for eliciting responses from the parties, and issues of availability for the Panel.

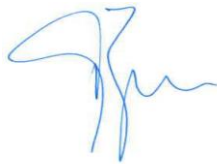
Right to review

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



Jill Taylor
Chairperson

21 June 2021



Phillip Zeeman
Legal Member



David Sales
Member