

CODE OF CONDUCT PANEL DETERMINATION REPORT*

TASMAN COUNCIL COUNCILLOR CODE OF CONDUCT

Ref : C19435

Complaint brought by the Mayor, Cr Kelly Spaulding, against Cr David Beard

Date of Determination: 6 December 2019

Code of Conduct Panel:

Lynn Mason (Chairperson), Elizabeth Gillam (community member with experience in local government), Gretel Chen (legal member)

Summary of the Complaint

The complaint from Cr Spaulding was provided to the Executive Officer of the Code of Conduct Panel (the Panel) on 12 September 2019.

The Chairperson of the Panel undertook an initial assessment of the complaint and advised on 26 September 2019 that it should be referred to the Panel for investigation.

The sections of the Code which Cr Spaulding alleged Cr Beard breached are:

Part 4 – Use of Resources

1. *A councillor must use Council resources appropriately in the course of his or her public duties.*

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

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.*

Part 8 – Representation

1. *When giving information to the community, a councillor must accurately represent the policies and decisions of the Council.*
5. *A councillor's personal views must not be expressed publicly in such a way as to undermine the decisions of the Council or bring the Council into disrepute.*

* 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.

7. *The personal conduct of a councillor must not reflect, or have the potential to reflect, adversely on the reputation of the Council.*

Schedule 1

7. *A councillor is to be respectful in his or her conduct, communication and relationships with members of the community, fellow councillors and Council employees in a way that builds trust and confidence in the Council.*
8. *A councillor is to represent himself or herself and the Council appropriately and within the ambit of his or her role, and clearly distinguish between his or her views as an individual and those of the Council.*

The Complaint

The complaint related to proposed council works in Lyne Street, Eaglehawk Neck in the Tasman Council area. Specifically the complaint alleged that Cr Beard had 'entered into' an operational area of the Council after he had been advised that various issues raised with some councillors by members of the community regarding the proposed works were being looked into or reinvestigated by Council officers.

Procedure

The Panel met on 28 October 2019 to consider the complaint and Cr Beard's response to it. On 30 October Cr Beard's response was forwarded to Cr Spaulding for comment. In addition, the Panel wrote to Cr Spaulding requesting further information to support his allegation that Cr Beard had breached the Code of Conduct. Cr Spaulding responded on 12 November 2019. The Panel considered the response and determined that the information contained therein did not provide additional relevant detail to the material already provided by Cr Spaulding, and did not require further response from Cr Beard.

Both parties were then asked to make submission to the Panel on whether or not they would be disadvantaged if the Panel did not conduct a hearing into the matter, and whether they considered that the matter could be decided on the material provided to the Panel, or to which the Panel had access. Neither Cr Spaulding nor Cr Beard considered that they would be disadvantaged if a hearing were not held, and were content for the matter to be determined on the material provided and available to the Panel.

After considering both submissions the Panel determined that the matter could be decided by means of the written submissions already held, and examination of documents received, and that no disadvantage would accrue to either party if a hearing were not held.

Cr Spaulding and Cr Beard were also asked to make submission on sanction, in the event that the Panel upheld part or all of the complaint. Both submissions were considered by the Panel.

Material considered by the Panel

- Complaint submitted by Cr Spaulding, dated 12 September 2019, 19pp, including attachments:
 - Email from Cr Beard to the Acting General Manager, 29 August 2019, 10.47 am, re Request for Information, with letter from Cr Beard to the Acting General Manager dated 29 August 2019, 2 pp;
 - Email from Cr Beard to the Acting General Manager, 5 September 2019, 7.56 pm, re Request for Information, 1 p;
 - Email from the Acting General Manager to Cr Beard, 10 September 2019, 11.38 am, cc Cr Spaulding and Cr Stacey, re Request for Information, 1 p;
 - Email from Cr Beard to the Acting General Manager, 10 sept 2019, 4.00 pm, cc Cr Spaulding and Cr Stacey, re Request for Information, 1 p;
 - Design Guidelines from IPWEA, published by LGAT;
 - Email from Cr Beard to the Acting General Manager, 7 August 2019, 8.13 pm, cc Cr Garrett, re Lyne Street Eaglehawk Neck, 1 p;
 - Email from the Acting General Manager to Cr Beard, 13 August 2019, 12.11 pm, cc Cr Garrett, re Lyne Street Eaglehawk Neck, 1 p;
 - Email from the Acting General Manager, 14 August 2019, 3.58 pm, to the Mayor, Cr Spaulding, re Lyne Street Eaglehawk Neck, 1p;
 - Email from Karmen Pemberton to Tasman Council, 3 July 2019, 8.19 pm (*sic*), re Please forward email to Ms Kim Hossack, General Manager, 1 p with letter attached from Karmen Pemberton to the General Manager, 1 p;
 - Email from Samantha Stansbie to Tasman General Manager, 3 July 2019, 10.50 am, re Please forward email to Ms Kim Hossack, General Manager, cc Cr Spaulding, Simon Pulford, and Cr Garrett, 1 p;
 - Email from Cr Garrett to Tasman General Manager, 9 July 2019, 2.48 pm, re Lyne Street Eaglehawk Neck, 1 p;
 - Email from Tasman General Manager to Cr Garrett, 16 July 2019, 6.59 pm, cc Cr Spaulding, re Lyne Street Eaglehawk Neck, 1 p;
 - Email from Kim Hossack to Cr Garrett, 24 July 2019, 2.24 pm, cc Tasman General Manager and Simon Pulford, re Lyne Street Eaglehawk Neck, 2 pp;

- Response to the complaint from Cr Beard, 16 October 2019, 15pp, including:
 - Statutory Declaration, 17 October 2019;
 - Letter to Chairperson detailing response, 9 pp;
 - Agenda for Tasman Council workshop held on 28 August 2019, with some highlighted text;
 - Letter to Acting General Manager from Cr Beard, 29 August 2019, 1 p, sent as attachment to an email to the Acting General Manager, 29 August 2019, 10.47 am, 1 p;
 - Email from the Acting General Manager to Cr Beard, 10 September 2019, 11.38 am, cc Cr Spaulding and Cr Stacey, re Request for Information, 1 p;
 - Email from Cr Beard to the Acting General Manager, 10 sept 2019, 4.00 pm, cc Cr Spaulding and Cr Stacey, re Request for Information, 1 p;
- Agenda and Minutes of the Ordinary Council meeting, 28 August 2019;
- Agenda and Minutes of the Ordinary Council meeting, 25 September 2019;
- Draft Minutes of the Ordinary Council meeting, 23 October 2019;
- Email from Cr Spaulding to the Panel, 1 November 2019, 2.12 pm, 1 p, with attachments:
 - Transcription from the Ordinary Council Meeting 25 September 2019, Item 8.1, 5 pp;
 - Email from Cr Spaulding to Cr Beard, 30 September 2019, 11.49 am, re Meeting 25 September 2019, 1 p, with reply from Cr Beard to Cr Spaulding, undated;
 - Email from Peter Derkley, ENACT secretary, to Cr Spaulding, 15 October 2019, 1.03 pm, re Escape to Eaglehawk Raffle Draw, 1 p;
 - Email from Cr Spaulding to Cr Beard, 18 October 2019, 7.59 pm, re Escape to Eaglehawk Raffle Draw, 1 p;
- Response from Cr Spaulding to a Panel request for further information, 12 November 2019, 2pp;
- Submission on hearing and sanction, Cr Beard, 21 November 2019, 1p;
- Submission on hearing and sanction, Cr Spaulding, 26 November 2019, 1 p.

Determination

The Code of Conduct Panel dismisses the complaint against Cr Beard.

Reasons for the Determination

Alleged breach of *Part 4 – Use of Resources*

1. *A councillor must use Council resources appropriately in the course of his or her public duties.*

Cr Spaulding stated that Acting General Manager James Dryburgh had emailed Cr Beard on 13 August 2019, with a copy to Cr Garrett. The email contained the words, '*some councillors might not be being careful enough not to cross the line in providing technical advice or undermining staff professionalism*'. After receiving this email, Cr Beard contacted Acting General Manager Kim Hossack on 29 August to request further information about the proposed council works at Lyne Street, stating that he intended to prepare a Notice of Motion for the next council meeting. This is a legitimate councillor role. The Panel determined that this correspondence with the Acting General Manager did not constitute inappropriate use of council resources, and dismisses this part of the complaint.

Alleged breach of *Part 7 - Relationships with community, councillors, and council employees*

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.*

Cr Spaulding withdrew this allegation on 12 November 2019. The Panel determines that this part of the complaint is dismissed.

Alleged breach of *Part 8 – Representation*

1. *When giving information to the community, a councillor must accurately represent the policies and decisions of the Council.*

No material was provided to the Panel to support the allegation that Cr Beard had failed to accurately represent the policies and decisions of the Council. The Panel dismisses this part of the complaint.

5. *A councillor's personal views must not be expressed publicly in such a way as to undermine the decisions of the Council or bring the Council into disrepute.*

No material was provided to the Panel to support the allegation that Cr Beard had expressed his personal views publicly in such a way as to undermine the decisions of the Council or to bring it into disrepute. The Panel dismisses this part of the complaint.

7. *The personal conduct of a councillor must not reflect, or have the potential to reflect, adversely on the reputation of the Council.*

It is possible that Cr Beard discussed alternatives to the proposed works to be done in Lyne Street with members of the community. However, no material was provided to the Panel to indicate that this had been done, or done in such a way as to reflect adversely on the reputation of the Council, nor, in particular, in such a way as to undermine Council's engineering staff.

The Panel considers that a councillor bringing forward a motion to change a course of action which has been proposed by council officers does not of itself reflect adversely on the reputation of the Council. The Panel determined that the wording of the Notice of Motion put forward by Cr Beard contained nothing to reflect adversely on the reputation of the Council, and nothing which had the potential to reflect adversely on Council's reputation. The act of bringing forward such a motion is part of the councillor's role to represent the interests of the community. No material was provided to support the allegation that the reputation of the Council had been adversely affected by Cr Beard's words or actions.

Alleged breach of *Schedule 1*-

7. *A councillor is to be respectful in his or her conduct, communication and relationships with members of the community, fellow councillors and Council employees in a way that builds trust and confidence in the Council.*

The Panel asked Cr Spaulding to specify how Cr Beard's behaviour did not meet this standard. In support of his allegation Cr Spaulding stated that Cr Beard had continued to meet with residents (of Lyne Street) instead of referring them back to the Acting General Manager. This allegation was not supported by any of the material provided to the Panel. In addition, the Panel considers that it is part of the role of a councillor to meet with concerned residents, as provided in the *Local Government Act 1993*, section 28, which states that:

- (1) *A councillor, in the capacity of an individual councillor, has the following functions:*
(a) *to represent the community; and*
(c) *to facilitate communication by the council with the community.*

The Panel dismisses this part of the complaint.

Alleged breach of *Schedule 1* –

8. *A councillor is to represent himself or herself and the Council appropriately and within the ambit of his or her role, and clearly distinguish between his or her views as an individual and those of the Council.*

No material was presented to the Panel to support the allegation that Cr Beard had breached this section of the Code. The Panel dismisses this part of the complaint.

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.

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Lynn Mason
(Chairperson)

A black ink signature, appearing to read 'G. Chen', written in a cursive style.

Gretel Chen
(legal member)

A black ink signature, appearing to read 'E. Gillam', written in a cursive style.

Elizabeth Gillam
(community member with local
government experience)