

*Local Government Act 1993*  
**DERWENT VALLEY CODE OF CONDUCT DETERMINATION REPORT \***  
**RELATING TO THE CONDUCT OF COUNCILLORS**

Complaint by Mr David Bradford against Councillor Paul Belcher

Determination made on 20 August 2020

**Code of Conduct Panel:**

Jill Taylor (Chairperson), Sam Thompson (Legal Member) and Sally Darke (Member)

**I. Summary of the complaint**

A Code of Conduct Complaint (the complaint) dated 18 March 2020 made by Mr David Bradford against Councillor (Cr) Paul Belcher was forwarded to the Executive Officer of the Code of Conduct Panel on 25 March 2020. Mr Brian Barrett, Acting General Manager, Derwent Valley Council determined that the complaint met the requirements of Section 28V (3) of the *Local Government Act 1993* (the Act). The Executive Officer referred the complaint to the Chairperson of the Code of Conduct Panel for initial assessment.

The complaint alleged that Cr Belcher had breached Parts 3.1 and 3.3 of the Derwent Valley Council's Code of Conduct (the Code), which was approved on 21 March 2019.

Cr Belcher was, and is, a member of the Derwent Valley Council (Council). The complaint related to Cr Belcher's conduct in opening and operating a pizza shop trading as Pauly's Pizza (the business). The business was within the Council's municipal area. It was regulated by the Council under legislation such as the *Land Use Planning and Approvals Act 1993*, *Food Act 2003* and *Building Act 2016*.

Mr Bradford was an environmental health officer employed by the Council. His complaint alleged that Cr Belcher had brought the Council and/or the office of councillor into disrepute by not complying with environmental health and building requirements when he commenced the operation of his pizza shop (the Code, Part 3.1). Furthermore, Mr Bradford alleged that Cr Belcher used his role as a councillor, expecting preferential treatment by members of the Council staff regarding his pizza business (the Code, Part 3.3).

The following evidence was uncontroversial. On 24 May 2019, a Council officer served an infringement notice on Cr Belcher for "operating a [f]ood business that is not registered as a food business", contrary to s 86 of the *Food Act 2003*. The notice related to Cr Belcher's business Pauly's Pizza. The offence date was 24 March 2019. Mr Bradford further alleged that Cr Belcher failed to comply with the *Building Act 2016* (specifically, relating to the Form 42 requirements) regarding his development and opening of the pizza business.

It is unnecessary to explore those regulatory requirements in detail. The Panel's sole task is to determine the complaint and assess Cr Belcher's conduct against the Code, the relevant parts of which read: -

\* 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 3 – Use of Office**

3.1 *The actions of a Councillor must not bring the Council or the office of Councillor into disrepute.*

....

3.3 *In his or her personal dealings with the Council (for example ratepayers, recipient of a Council service or planning applicant), a councillor must not expect nor request, expressly or implicitly, preferential treatment for himself or herself or any other person or body.*

On 1 April 2020, in relation to the initial assessment, the Chairperson sought clarification from Mr Bradford of some aspects of his complaint. Mr Bradford provided a response on 14 April 2020.

The Chairperson completed the initial assessment and, pursuant to s 28ZA(1)(e), determined that the whole of the complaint be investigated and determined by the Panel. Both the complainant and the respondent were advised of this decision on 15 April 2020. Cr Belcher was asked to provide a response to the complaint within 14 days of receipt of that advice. Cr Belcher provided an email response on 24 April 2020.

As a result of several interactions between the Panel and Mr Bradford and/or his legal representative Mr James Groom, the Panel determined to hold a directions hearing to respond to issues raised by the complainant and to provide information about the Panel's task and the investigation and determination process.

The directions hearing was held by telephone conference on 19 May 2020. Cr Belcher appeared and Mr Bradford was represented by his lawyer, Mr James Groom.

The directions hearing resolved that both the complainant and respondent could have a further 14 days to submit any further evidence. The Panel agreed that it would contact witnesses identified by Mr Bradford to request that they submit statutory declarations. The Panel did so because Mr Bradford was no longer a Council employee and, as such, did not have access to those people he nominated. Pursuant to s 28ZE (4), the Panel subsequently requested that these witnesses submit to the Panel, under cover of a statutory declaration, any emails or text messages sent or received between 9 January 2019 and 12 December 2019 which related to the complaint.

## **2. Investigation**

A hearing was held on 5 August 2020 at the New Norfolk Court of Petty Sessions building. Mr Bradford and Cr Belcher, as well as witness Mr Greg Winton, appeared in person. The Chairperson provided an overview of the hearing procedure and listed the documentation before the Panel. Because of the voluminous documentation exchanged between the parties and the Panel in the weeks leading up to the hearing, all the material before the Panel was sent to both parties on 31 July 2020.

That information is detailed below:

1. Mr Bradford's complaint dated 18 March 2020
2. Version 4 of the Derwent Valley Council's Code of Conduct approved on 21 March 2019
3. Letter dated 1 April 2020 from Chairperson seeking clarification of complaint
4. Email response dated 14 April 2020 from Mr Bradford
5. Email dated 20 April 2020 from Melinda Pearce, DVC, with three attachments:
  - a. 2-page letter to A Tay, Division of Local Government
  - b. 111 pages permit documentation, plans, etc
  - c. 92 pages documentation sent to A Tay
6. Email dated 24 June 2019 from Melinda Pearce, DVC to Local Government Division, containing four attachments (provided under cover of Ms Pearce's email of 6 July 2020)
7. Email dated 24 April 2020 from Cr Belcher in response to complaint
8. Letters dated 5 May 2020 from Chairperson to Mr Bradford and Cr Belcher advising status of complaint
9. Letters dated 12 May 2020 advising Mr Bradford and Cr Belcher a direction hearing to be held on 19 May 2020
10. Email from Mr Bradford dated 15 May 2020 requesting James Groom represent him at directions hearing
11. Letter dated 18 May 2020 from Chairperson to Mr Bradford re legal representative
12. Statutory declaration dated 2 June 2020 from Mr Bradford with attachments "A" through to "L"
13. Letter dated 2 June 2020 from Mr James Groom
14. Email dated 15 June 2020 from EO to Integrity Commission and response from Integrity Commission dated 15 June 2020
15. Letter dated 15 June 2020 from Chairperson to Mr James Groom
16. Letter dated 15 June 2020 from Chairperson to Mr Dean Griggs, GM, DVC
17. Letter dated 15 June 2020 from Chairperson to Cr Belcher
18. Letters dated 15 June 2020 from Chairperson to the following witnesses:
  - a. David Dwyer
  - b. Richard Blackwell
  - c. David Clark
  - d. Jo Adlard
  - e. Greg Winton
19. Statutory declaration dated 15 June 2020 from Joanne Adlard
20. Statutory declaration dated 29 June 2020 from Gregory Winton
21. Statutory declaration dated 1 July 2020 from Richard Blackwell
22. Statutory declaration dated 6 July 2020 from David Dwyer
23. Email dated 6 July 2020 from Melinda Pearce, DVC, with attachments relating to G Winter documents on DVC files
24. Letters dated 10 July 2020 from Chairperson to Mr Bradford and Cr Belcher regarding final submissions prior to hearing

Both Cr Belcher and Mr Bradford made an affirmation.

### The complainant

Mr Bradford was asked to articulate the nature of his complaint by reference to Parts 3.1 and 3.3 of the Code. Mr Bradford stated that there were two parts to his complaint. The first was that Cr Belcher brought the Council and/or the office of councillor into disrepute by failing to comply with building and environmental health requirements with respect to his pizza business. Mr Bradford contended that Cr Belcher's breaching of the law, by the fact itself, breached Part 3.1 of the Code. The second part was that Cr Belcher used his position to seek, implicitly, preferential treatment with respect to building and environmental health requirements, contrary to Part 3.3 of the Code.

The Panel proceeded to hear and determine the complaint on that basis.

Mr Bradford contended that Cr Belcher, as a councillor, should be held to a high standard; that Cr Belcher was advised of the procedures (to establish his business) many times; and that Cr Belcher's actions put Council employees, including Mr Bradford, in a "difficult" situation. According to Mr Bradford, the result was that public health was at risk.

Mr Bradford claimed that, during the period leading up to the opening of the pizza business, Cr Belcher's actions prevented him and other staff members from "doing their job". Mr Bradford told the hearing that he was only trying to assist Cr Belcher and prevent him from being sued as he had not complied with health and environmental requirements. Mr Bradford referred to "Attachment E" to his statutory declaration dated 2 June 2020, which he claimed demonstrated that Cr Belcher was seeking preferential treatment and was threatening Council employees.

Mr Bradford said that the evidence that he wanted to present to support his complaint was contained in his two statutory declarations viz. one dated 20 March 2020 and the second dated 2 June 2020, and the attachments to the statutory declaration dated 2 June 2020.

Although afforded the opportunity, Cr Belcher did not cross-examine Mr Bradford.

### The (then) General Manager

The next person to give evidence was Mr Winton, having previously submitted a statutory declaration dated 29 June 2020. At the times relevant to the complaint, Mr Winton was the General Manager of the Council.

Mr Winton made an affirmation prior to giving evidence.

The Panel asked Mr Winton whether he had seen or was aware of any instances where Cr Belcher had used his position as a councillor in relation to the statutory requirements in opening his pizza shop. Mr Winton said that, possibly prior to January 2019, he became aware that Cr Belcher wanted to open a pizza shop. Cr Belcher spoke to Council staff regarding what

he needed to do in relation to that. Mr Winton said that it appeared that Cr Belcher wanted to open the shop even if he did not have the required permits.

Mr Winton added that he noticed a “degree of frustration” being exhibited by Cr Belcher, who felt that the processes were “bureaucratic”. When asked whether he had told Cr Belcher that he did not need to comply with those requirements, Mr Winton answered “no”. Mr Winton’s impression was that Cr Belcher considered some of the requirements to be “superfluous” or “unnecessary”.

Mr Winton was asked whether he thought that Cr Belcher had used his position as a councillor in his dealings with Council staff regarding his business during this period. Mr Winton said that Cr Belcher’s engagement in relation to his business was like other Council matters that Cr Belcher pursued (on behalf of constituents). Cr Belcher was assertive in requesting information on behalf of his constituents. According to Mr Winton, Cr Belcher was “pushing boundaries”, but that was no different to how he would act for a constituent, or indeed how other councillors would act.

Mr Winton had, on occasion, heard about emails back and forth between Cr Belcher and Council staff. Mr Winton recalled Cr Belcher saying at some stage during the process that he would “go to the media”. However, Mr Winton saw this as Cr Belcher reaching a point of frustration.

The Panel asked Mr Winton whether he was aware of any occasion where Cr Belcher had specifically requested or implied that he should receive special treatment. Mr Winton responded by saying that the only perception giving rise to Cr Belcher receiving “preferential treatment” was that he had access to Mr Winton’s private mobile number. Mr Winton had provided copies of text messages between the two under cover of his statutory declaration. The Panel concluded that none of that communication demonstrated Cr Belcher using, or attempting to use, his role as a councillor to achieve a positive outcome for himself. Mr Winton added that Cr Belcher did not have a lot of faith in some of the staff and told Mr Winton that, when he requested information in writing, it was often given verbally.

Mr Winton told the hearing that he did not believe that Cr Belcher sought or expected preferential treatment because of his role as a councillor. In Mr Winton’s opinion, Cr Belcher’s interactions with Council staff regarding the pizza business did not have anything to do with Cr Belcher being a councillor. Mr Winton made the point that the culture at Council was such that elected members would go directly to staff members if they had matters they wished to discuss. Mr Winton acknowledged that this was contrary to the requirements of the (Local Government) Act and said he had met with resistance from elected members and staff members when he tried to comply with the requirements of the Act.

Mr Winton said that despite advising Cr Belcher not to open his shop until the necessary Council requirements had been met, he had no doubt that Cr Belcher would open the pizza shop. Mr Winton told Mr Bradford at the time that if Cr Belcher was so unwise as to go ahead (and open his pizza business) then he (Cr Belcher) would suffer the consequences.

The Panel noted that the infringement notice was not issued until 24 May 2019 despite the business operating since late March, and asked Mr Winton whether this was unusual. Mr Winton responded that there was an unusual delay caused by the need to seek legal advice. The Panel accepts this explanation.

After the notice was served, Cr Belcher wrote to the General Manager, requesting that it be withdrawn. Mr Winton confirmed that he rejected Cr Belcher's request.

Mr Bradford was then given the opportunity to question Mr Winton. He asked Mr Winton whether he remembered Mr Bradford asking about issuing an emergency order [under the *Building Act*] in January 2019 to stop Cr Belcher's work on his pizza shop. Mr Winton said that he could not recall that but added that would not have issued an emergency order as the business was not operating at that time. In response to a further question from Mr Bradford, Mr Winton said that he had some recollection of an exhaust canopy being mentioned in connection with the pizza shop. Mr Winton says that he thought at that point he was distracted by other matters.

Cr Belcher then cross-examined Mr Winton. Cr Belcher asked Mr Winton if he recalled Cr Belcher raising concerns about having to deal with some staff members, especially Mr Bradford, in relation to his development application. Mr Winton accepted that he had some recollection but added that Cr Belcher had previously raised similar objections in relation to other matters and offered no new information.

Cr Belcher asked Mr Winton if he was aware that Mr Bradford had made an offer to buy into the pizza shop. Mr Winton said he did recall it but there was no evidence put forward that required further action on his part.

Mr Bradford was given the opportunity to respond to Cr Belcher's question regarding buying a share in the business. Mr Bradford responded that on one occasion outside the Council Chambers he made a joke about it. Cr Belcher suggested that this was the reason why he asked for Mr Bradford to be removed from dealing with his pizza business.

At this point, Mr Winton was excused from the hearing.

#### The respondent councillor

The Chairperson confirmed with Cr Belcher that the only submission from him in response to Mr Bradford's complaint was an email dated 24 April 2020. Mr Bradford said he did not have a copy of that email and was given a copy to peruse. Cr Belcher confirmed that the email was his only submission. Cr Belcher was also shown the copy of his email. As this evidence was not covered by a statutory declaration, the Chairperson asked Cr Belcher, who had previously affirmed the truth and accuracy of his evidence, to confirm such in relation to his email of 24 April 2020. Cr Belcher did so. The Panel accepted the email as evidence.

Cr Belcher said that he did not influence Council officers in his role as a councillor during the development application process in the establishment of his pizza shop. Cr Belcher said that

information that came back to him was not clear about what he had to do. He said he did not receive a form to complete until after the infringement notice was issued.

The Panel asked Cr Belcher whether he knew that a “food application form” had to be completed. He said that he was aware that there was “some form” but could not get any information from Council about it. Cr Belcher said he was not sure whether he had to complete the necessary form at the time he was opening a business.

The Panel asked whether he should have clarified what was required rather than waiting for something to come from Council. Cr Belcher answered “possibly”. He said that there was some “verbal chit chat” but he did not get anything in writing.

The Panel asked Cr Belcher what steps he had taken to make sure he had met Council requirements before he opened his business. Cr Belcher said he checked with the Planning Officer. Cr Belcher added that he was not saying he did not do the wrong thing but did not believe that he had breached the Code. Cr Belcher re-stated that he had not received anything in writing from the Council until he received the infringement notice.

The Panel identified a letter dated 26 February 2019 from Greg Winton to Cr Belcher which included the following-

*“Note that building works may not commence until you have complied with any conditions of this permit or without all other necessary approvals, including separate plumbing or building permit from Council”.*

The Panel asked Cr Belcher why he did not comply with the requirements outlined in that letter. Cr Belcher said that he tried to get information from Mr Bradford but felt that he was not given the correct information. That is why he went to the General Manager to request a change in Council personnel to liaise with.

Cr Belcher admitted that he had opened his pizza shop before he had completed all the necessary documentation. When asked by the Panel if he had “broken the law”, Cr Belcher said yes.

Cr Belcher said he did not receive proper treatment from some Council staff, including Mr Bradford who had offered to buy a share in his business.

The Panel asked Cr Belcher if a councillor “had broken the law” would a reasonable person think that action brought the position of councillor into disrepute. Cr Belcher said that he did not think so, stating that he thought his matter was a private matter.

The Panel asked a general question of Cr Belcher regarding what training he had received in compliance with the Code of Conduct. He said that he attended a one-hour workshop but admitted that there was so much in the Code to take in.

The Panel asked Cr Belcher whether he thought that in his dealings with Council he gave the impression that he should be given preferential treatment. He said that he did not.

Mr Bradford then cross-examined Cr Belcher. Cr Belcher was asked whether he received written advice about the Form 42. Cr Belcher said that he did not until he received the infringement notice.

### Submissions

The Panel then invited the parties to make brief closing submissions.

Mr Bradford summarised by saying his statutory declaration dated 2 June 2020 was “very succinct” and contained sufficient evidence to find Cr Belcher guilty of breach of the Code. Cr Belcher was advised of the whole process and given treatment “over and above” that given to other applicants. Mr Bradford’s line about buying a share in Cr Belcher’s pizza business was “a throwaway line”, about which he was not serious. The Panel interpreted Mr Bradford to be submitting that his line about buying a share in the business was not the real reason why Cr Belcher asked for Mr Bradford to be removed from dealing with the business.

In his summation, Cr Belcher said he did not use his position as a councillor in his dealings with Council relating to the establishment and opening of his pizza business. He said his relationship with Mr Bradford had changed when he refused Mr Bradford’s offer to buy into his business. Cr Belcher submitted that while he was frustrated that he was not getting the information that he wanted from Council staff, he did not pressure those members of staff. Cr Belcher said the fact that he was issued with an infringement notice, which he paid, showed that he did not receive any preferential treatment. In fact, Cr Belcher argued that he was treated in a worse manner than others were. If he did receive preferential treatment, he would have opened his business much earlier.

(Part 3.3 of the Code may be breached even if a councillor does not receive preferential treatment. Expecting or requesting preferential treatment may breach the Code, even if such treatment is not actually received).

## **4. Determination**

The Panel considered Mr Winton to be a careful and impressive witness. The Panel accepted his evidence. As to the other parties, this matter involved little factual dispute. Rather, the issues largely revolved around the inferences to be drawn from the parties’ conduct, and the Panel’s evaluation of that conduct and those inferences against the Code.

Pursuant to s 28ZL(1)(c) of the Act, the Panel upholds part of the complaint and dismisses the remainder.

The Panel upholds the complaint in relation to a breach of Part 3.1 of the Code. Cr Belcher claimed that he was only given verbal advice during the period leading up to the opening of his pizza shop. However, in evidence was a letter from Mr Winton to Cr Belcher. The letter advised Cr Belcher that he needed to comply with certain conditions. Whilst those conditions were not listed, a reasonable person would expect that Cr Belcher, a councillor of some 7 years’ experience, would have followed up to ensure that he met the planning and



environmental health conditions. Moreover, it is the Council's role to enforce those conditions. The Panel does not accept that Cr Belcher's ignorance is a defence for non-compliance. Indeed, Cr Belcher admitted at the hearing that he had "broken the law". Nor does the Panel accept, as was contended by Cr Belcher, that his non-compliance was a "private" or "confidential" matter. The Code of Conduct was introduced as a means of establishing acceptable conduct of elected members. Whilst the Panel does not consider that every breach of any law will breach Part 3.1 of the Code, the Panel finds that Cr Belcher's failure to comply with environmental health requirements (which resulted in the issuing of an infringement notice by the very council of which he is a member) brought his role as councillor and the Council into disrepute.

The Panel dismisses the complaint in relation to a breach of Part 3.3 of the Code. The complainant alleged that Cr Belcher's non-compliance of the health and environmental requirements was evidence of him using his position as councillor to receive preferential treatment. Cr Belcher refuted this allegation, stating that at no time did he present as a councillor in dealings relating to the establishment of his business. There was no evidence presented to the Panel that showed Cr Belcher behaved in any way other than a person setting up a business within the Derwent Valley municipality. The Panel accepts Mr Winton's evidence. In particular, the Panel is not satisfied that by asking Mr Winton to assign a different environmental health officer, Cr Belcher expected or requested preferential treatment because of his position as a councillor. Whilst Cr Belcher's contact with Council staff may have been informal, even perhaps undesirable, there was no evidence that he expected or requested preferential treatment.

## **5. Sanction**

At the hearing Cr Belcher was asked what sanction he would consider appropriate in the event that Mr Bradford's complaint was upheld wholly or in part. Cr Belcher said that he did not consider any sanction should be imposed but if the Panel were of the mind to impose one, then he would apologise.

The Panel acknowledges that whilst Cr Belcher has been a councillor for some years, it is the first time that a complaint has been made against him under the Code of Conduct legislative scheme. Cr Belcher did acknowledge that he had not complied with Council requirements (resulting in the infringement notice) but did not use his position to influence any positive outcomes in his favour. Cr Belcher's breach of the Code was more than a technical or trivial breach (which may entail no sanction being imposed), but a sanction towards the lower end of the scale prescribed by s 28ZI is justified.

Pursuant to s 28ZI(2)(a), the Panel cautions Cr Belcher in relation to his breach of Part 3.1 of the Code.

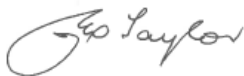
### **Delay in determining complaint**

Section 28ZD (1)(a) of the *Local Government Act 1993* (the Act) requires the determination to be made within 90 days after the initial determination by the Chairperson to investigate and determine the complaint, or provide reasons why this requirement could not be met. In this

instance the 90-day period concluded on 13 July 2020. Reasons for the delay included responding to requests by Mr Bradford's legal representative, arranging and conducting a directions hearing, extending the period for further submissions following the directions hearing and identifying a mutually convenient date for the hearing.

## 6. Right to Review

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



Jill Taylor  
Chairperson



Sam Thompson  
Legal Member



Sally Darke  
Member