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*Local Government Act 1993*

**CODE OF CONDUCT PANEL DETERMINATION REPORT**

**DEVONPORT CITY COUNCIL CODE OF CONDUCT**

**Complaint brought by Mr Robert Vellacott against Mayor Annette Rockliff**

**Code of Conduct Panel**

- Robert Winter (Chairperson),
- Liz Gillam (Local Government Member)
- Graeme Jones (Legal Member)

Date of Determination: 9 September 2022

Content Manager Reference: C23997

**Summary of the complaint**

The complaint brought by Mr Vellacott was submitted on 8<sup>th</sup> April 2022 and was provided to the Chairperson for assessment on 22<sup>nd</sup> April 2022.

The complaint alleged that during the Devonport City Council Annual General Meeting held at the Paranaple Convention Centre in Devonport on 8<sup>th</sup> November 2021, Mayor Rockliff in allowing Councillor Leon Perry to ask a question of Mr Vellacott whilst he was moving his Notice of Motion 7.6 on the Agenda for the Annual General Meeting (Item 6), amounted to breaches of the following Parts of the Council's Code of Conduct:

PART 1 – Normal Decision-making.

- (1) A Councillor must bring an open and unprejudiced mind to all matters being decided upon during his or her duties, including when making planning decisions as part of the Council's role as a planning authority.
- (2) A Councillor must make decisions free from personal bias or prejudice.
- (3) In making decisions, a Councillor must give genuine and impartial consideration to all relevant information known to him or her, or of which he or she should have been reasonably aware.
- (4) A Councillor must make decisions solely on merit and must not take irrelevant matters or circumstances into account when making decisions.

PART 7 – Relationship with community, Councillors, and Council employees.

- (1) A Councillor
  - (a) Must treat all persons fairly; and
  - (b) Must not cause any reasonable person offence or embarrassment; or
  - (c) Must not bully or harass any person.

PART 8 - Representation:

- (7) The personal conduct of a Councillor must not reflect, or have the potential to reflect, adversely on the representation of the Council.

## 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 complaint against Mayor Rockliff in relation to alleged breaches of Part 1, 1.1, 1.2, 1.3 and 1.4, and Part 7.1 (a) and (b) and Part 8.7 should be further investigated as these substantially related to a contravention of the Devonport City Council's Model Code of Conduct adopted in January 2019.
- The complaint against Mayor Rockliff in relation to Part 1(c) be dismissed as the evidence did not support Mr Vellacott's complaint that Mayor Rockliff bullied or harassed him.

## Material considered by the Panel

- The complaint submitted under cover of statutory declaration, from Mr Vellacott dated 8<sup>th</sup> April 2022 with attachments.
- Mayor Rockliff's response to the complaint by statutory declaration dated 25<sup>th</sup> May 2022.
- Statutory declaration from Mayor Rockliff dated 27<sup>th</sup> June 2022 – responding to two questions posed by the Panel on 14<sup>th</sup> June 2022
- Statutory declaration of Mr Vellacott dated 27<sup>th</sup> June 2022 responding to Mayor Rockliff's response by statutory declaration dated 25<sup>th</sup> May 2022
- Statutory declaration of Councillor Leon Perry dated 9<sup>th</sup> July 2022
- Statutory declaration of Mr Vellacott dated 8<sup>th</sup> August 2022.
- Video footage of the Annual General Meeting of 8 November 2021 - (available on the Devonport City Council Website)

## Investigation

In accordance with section 28ZE of the Act, the Code of Conduct Panel investigated the complaint.

The Panel met on 28<sup>th</sup> July 2022 to consider the complaint.

On the 1<sup>st</sup> of August 2022 both Mr Vellacott and Mayor Rockliff were asked in a letter from the Chairperson to provide their views on the possibility of the Panel determining the investigation without a hearing, on the basis that the evidence received and the material provided was sufficient to allow a determination to be made without a hearing.

In its correspondence to Mayor Rockliff on 1<sup>st</sup> August 2022, the Chairperson also asked her to make submissions on sanction, should the Panel determine that all or any part of the complaint was upheld.

On 8<sup>th</sup> August via email, Mr Vellacott advised that he was content for the complaint to be dealt with without a hearing.

On 11<sup>th</sup> August Mayor Rockliff indicated that she wished to make no submissions regarding the Panel's suggestion that it could determine the complaint without conducting a hearing. After a further follow-up, on 15<sup>th</sup> August 2022 Mayor Rockliff advised that she did not wish to make any submissions in relation to sanction.

As a consequence of these advice the Panel decided to determine the complaint and did so, referring to all of the previously indicated evidence when it met via Zoom on 30<sup>th</sup> August 2022.

## Determination

Pursuant to section 28Z1 (1) (b) of the Act, the Code of Conduct Panel determines that Mayor Rockliff has not breached the Devonport City Council Code of Conduct and therefore the complaint is dismissed.

## Reasons for determination

### Part 1 – Decision-making

Having considered the evidence before it the Panel concluded that Mayor Rockliff had not breached Part 1 1.1, 1.2, 1.3,1.4 of the Code of Conduct as it was not her, but rather a Councillor Perry who had made the relevant decision to ask the question of Mr Vellacott in relation to his Motion.

The evidence before the Panel, particularly the video recording of the relevant part of the Devonport City Council AGM on 8<sup>th</sup> November 2021, clearly indicated that immediately upon Councillor Perry commencing to ask his question of Mr Vellacott, “ *Thank you Mayor, it's just a question to the mover of the motion, um...um...Mr Vellacott, do you stand to derive a benefit if this motion is successful tonight ..and subsequently successful*”, Mayor Rockliff intervened, and verbally directed Councillor Perry to desist from continuing to pursue his questioning of Mr Vellacott.

There was no evidence before the Panel upon which it could be satisfied on the balance of probability (the requisite standard), that Mayor Rockliff had any prior knowledge that Councillor Perry was going to ask the question he did of Mr Vellacott.

The Panel was also satisfied that this issue had been resolved as between Mr Vellacott and Councillor Perry prior to Mr Vellacott's lodgement of the current complaint against Mayor Rockliff.

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

Having considered all of the evidence, the Panel was of the view that there was no evidence to support Mr Vellacott's allegation of a breach of this Part of the Devonport City Council's Code of Conduct.

As indicated previously in this determination, the Panel was satisfied that upon asking his question of Mr Vellacott, Mayor Rockliff immediately intervened in an effort to prevent Councillor Perry from continuing.

### Part 8 – Representation.

Although it was apparent to the Panel that the question put by Councillor Perry to Mr Vellacott at the relevant part of the Annual General Meeting was not directed through Mayor Rockliff as the Chair, there was no evidence before the Panel that the personal conduct of Mayor Rockliff reflected, or had the potential to reflect, adversely on the reputation of the Council.

## Sanctions

As the Panel has dismissed the complaint, it has no need to consider any sanction.

## Delay in Determination

Due to the nature of Mr Vellacott's complaint, delays with the provision of all requested information to the Panel, and leave and other commitments of all Panel members, it was not possible for the Panel to determine this complaint with the 90-day period prescribed by section 28ZD (2) of the Act.

The delay in the delivery of this Determination Report was also exacerbated by what the Panel consider was Mayor Rockliff's evasive and generally unhelpful responses during the Code of Conduct Panel's investigations of the complaint.

## Right to review

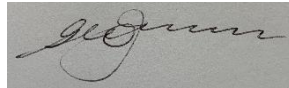
A person aggrieved by the determination of the Code of Conduct Panel, on the ground that the Panel failed to comply with the rules of natural justice, is entitled under section 28ZP of the Act to apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination.



Robert Winter

Chairperson

DATE: 9 September 2022



Graeme Jones

Legal Member



Liz Gillam

Member