

*Local Government Act 1993*

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

Complaint brought by Ms Louise Elliott against the Lord Mayor, Cr Anna Reynolds

**Code of Conduct Panel**

- Lynn Mason (Chairperson)
- David Sales (Local Government Member)
- Sam Thompson (Legal Member)

Date of Determination: 22 April 2022

Content Manager Reference: CM 23316

**Summary of the complaint**

The complaint dated 6 December 2021 was submitted on 23 December 2021, and was referred to the Chairperson for assessment on 5 January 2022.

The complaint alleged that in December 2021 and on other occasions Cr Reynolds charged her private electric motor vehicle from a power supply provided by the Council on the Hobart Town Hall parking deck. It was alleged that this was 'system and planned behaviour' (sic). The complaint stated that the Council's Elected Member Development and Support Policy in force at the time allowed only two options for recouping financial costs associated with private car travel, and these did not include use of Council electricity to recharge an electric vehicle, and that therefore, a breach of this policy would bring the office of the elected member, and the Council, into disrepute.

It was also alleged that Cr Reynolds used her position of authority improperly to influence installation of the charging infrastructure. Further it was alleged that Cr Reynolds failed to declare a conflict of interest when directing that the charging infrastructure be installed. The complaint alleged that these actions constituted breaches of Part 2.6(b), Part 3.1, Part 3.2 and Part 4.2 of the *City of Hobart Elected Member Code of Conduct* (the Code).

The complaint alleged that Cr Reynolds breached the following sections of the Code:

***Part 2 - Conflict of interests that are not pecuniary***

6. *An elected member who has an actual, potential or perceived conflict of interest in a matter before the Council must: –*
  - a) –
  - b) *act in good faith and exercise reasonable judgement to determine whether a reasonable person would consider that the conflict of interest requires the elected member to remove himself or herself physically from any Council discussion and remain out of the room until the matter is decided by the Council.*

***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.*

2. *An elected member must not take advantage, or seek to take advantage, of their office or status to improperly influence others in order to gain an undue, improper, unauthorised or unfair benefit or detriment for themselves or any other person or body.*

#### **Part 4 – Use of Resources**

2. *An elected member must not use Council resources for private purposes except as provided by Council policies and procedures.*

#### **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 *Local Government Act 1993* (the Act). Having assessed the complaint against the provisions of sections 28ZB and 28ZC of the Act, the Chairperson determined that:

1. Under section 28ZB(1)(a) the alleged breach of Part 3.2 was dismissed, on the grounds that it was vexatious, meaning, that it was brought without sufficient grounds. No evidence was provided to substantiate the allegation that Cr Reynolds influenced the installation of the charging infrastructure in any way.
2. Under section 28ZB(1)(b), the alleged breach of Part 2.6(b) was dismissed as this part of the complaint did not substantially relate to a contravention of the Code. Part 2.6(b) of the Code refers to declarations which occur when elected members are making decisions in council meetings. There was no suggestion in the complaint that Cr Reynolds participated in council decision making in a meeting where a declaration of conflict of interest should have been made. As noted above, no evidence was provided that Cr Reynolds influenced the installation of the charging infrastructure in any way.
3. Under section 28ZA(1)(f), having assessed the complaint against the provisions of sections 28ZB and 28ZC of the Act, the Chairperson determined that the alleged breaches of Part 3.1 and Part 4.2 of the Code were to be investigated and determined by the Code of Conduct Panel on the following grounds:
  - the complainant had made a reasonable effort to resolve the complaint. The Chairperson arrived at this conclusion because the complainant had recently asked a question of the Council regarding the Elected Member Development and Support Policy and its application and the transparent recording of elected member benefits, and this had not been answered when the complaint was submitted;
  - the complaint substantially related to a contravention of the City of Hobart Elected Member Code of Conduct, namely Part 3(1) and Part 4(2);
  - these parts of the complaint should not be dismissed on the grounds that they were frivolous, vexatious or trivial. The reasons for this conclusion were that if upheld on investigation, the Mayor's use the Council electricity supply to charge her electric vehicle could have brought the Council or the office of Elected Member into disrepute, and could have revealed that Cr Reynolds had used Council resources for private purposes; and
  - 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.<sup>1</sup>

On this basis, the Chairperson determined to investigate the complaint.

The complainant, respondent councillor and the General Manager were notified of the outcome of the initial assessment by letter dated 1 February 2022.

---

<sup>1</sup> 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.

## The Complaint

Ms Elliot alleged that Cr Reynolds had systematically used the Council electricity supply to recharge her electric vehicle. The *Elected Member Development and Support Policy* in force at the time stated:

*For the purposes of this policy, travel is defined as modes of transport utilised by elected members for local travel which attract costs, such as, fuel, taxi and bus services etc.;*

and

*Where elected members utilise private vehicles powered by fuel, they will be requested to nominate one (only) of the following options in any financial year: (i) Seek the reimbursement of costs through the submission of kilometre claims, which will be paid at the relevant rate per km, as set by the State Public Service, (as also applying to City of Hobart employees), subject to the provision of supporting information including travel date, destination, and details of the Council activity undertaken.*

*(ii) As an alternative to kilometre claims, elected members may nominate to be issued with a fuel card which enables a maximum allocation of 1,500 litres of fuel to be drawn from the Council's provider in each year. Under this option there is no requirement for elected members to submit travel details. Elected members who nominate to draw from this fuel allocation must only do so by utilising the Council issued fuel card.*

The complaint also alleged that a charger specifically for electric vehicles was installed on the Council's parking deck; and that this charger was subsequently removed because it was found to be incompatible with some electric vehicles. Ms Elliot believed that the introduction of specific charging infrastructure demonstrated that the 'Lord Mayor's decision to charge her vehicle has been planned, intentional and highly likely, ongoing.'

## Investigation

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

The Panel met on 15 February 2022 to consider the complaint. Cr Reynold requested a brief extension of time to respond to the complaint and this was granted. Her response was received on 18 February 2022, and this was sent to Ms Elliot. Ms Elliot's response to Cr Reynold's statement was received on 23 February 2022, and in this response, Ms Elliot stated that she would welcome a hearing into the matter.

The Panel met again on 2 March 2022 and determined that a hearing would be conducted. The parties were advised that the Panel did not intend to call witnesses, but both Ms Elliot and Cr Reynolds could advise the Executive Officer should they wish to call witnesses. Neither party elected to do so. Cr Reynolds provided a further statement prior to the hearing, and this was sent to Ms Elliot.

The hearing was conducted by Zoom on 1 April 2022. The complainant and the respondent were each sworn/affirmed, gave evidence and were permitted to cross-examine the other. The Panel asked questions of the parties. The parties then made closing submissions, following which the Panel met to determine the complaint.

## Material considered by the Panel

- The City of Hobart Elected Member Code of Conduct adopted February 2019;
- The Complaint, dated 6 December 2021, submitted on 23 December 2021, 3 pp, and accompanied by a Statutory Declaration;
- Statutory Declaration from Cr Reynolds, dated 18 February 2022, 4pp, with Annexure A, 1 p;
- Response from Ms Elliot, 23 February 2022, 4 pp;
- Statutory Declaration from Cr Reynolds, dated 25 March 2022, 3 pp, with Annexures A, B, C, and D, 111 pp; and
- Statutory Declaration from Ald Briscoe, dated 1 April 2022, 1 p.

## Determination

Pursuant to section 28ZI(1)(b) of the Act, the Panel dismisses the complaint against Cr Reynolds.

### Reasons for determination

- I. Included in Cr Reynolds' submission of 18 February 2022 was an email dated 3 December 2021 from Mr Paul Jackson, Manager Legal & Governance / City Governance (City of Hobart) to all elected members of Council. It states, in part:

*Under the Elected Member Development and Support Policy (Section K2) elected members are entitled to be reimbursed the costs associated with local travel whilst undertaking the functions of office. This is the travel that 'attracts cost, such as, fuel, taxi and bus services etc.' Whilst electricity usage associated with charging a private vehicle is not specifically referenced it is clear that the intention of the policy is to capture those costs given that the examples noted in the policy are not exhaustive.*

Cr Reynolds also tendered a copy of an email from Mr Nick Heath, who was General Manager of the Council until April 2021, written to Cr Reynolds on 9 March 2022. In it he stated that he recalled being told by Cr Reynolds prior to his retirement that she intended to purchase an electric vehicle. He then stated:

*I further recall advising you that it was appropriate for you to charge the new vehicle on the various electric chargers located in the Town Hall basement car park and the Elected member car parking space on the Town Hall Top Deck. My advice was based on the fact that as Lord Mayor you were using the vehicle for elected member duties and as such the use was reasonable and was within the Local Government Act and Regulations.....I also recall that the cost of using the service was minimal, less than \$8.00 per day for all day charging.*

Support for this statement from Mr Heath was provided in an email from Mr Peter Carr, formerly one of Mr Heath's direct reports; this was sent to Cr Reynolds on 17 March 2022, and stated that Mr Carr recalled being told by Mr Heath that he (Mr Heath) had advised Cr Reynolds that she could use the Council power supply to charge her vehicle occasionally.

Cr Reynolds also tendered a copy of a letter from the Council's current Chief Executive Officer (CEO) Ms Kelly Grigsby, dated 24 March 2022. The letter noted in part that no elected members had been refused the right to charge their electric vehicles on the Council's electricity supply, and that the power point used by the Lord Mayor is also used by a number of community groups or homeless people who require power. Additionally, the CEO noted that *'Council is not physically able to capture the costs of charging a vehicle as an individual power point used for this purpose is not individually metered. It is considered that the cost of doing this would far outweigh the value in doing so given the relatively small cost associated with charging an electric vehicle from a standard power point.'*

The crux of the complaint was that Cr Reynolds breached Council's policy by using the charger and that the advice provided by Mr Heath, Mr Carr and Ms Grigsby did not derogate from or excuse that. In effect, the complainant invited the Panel to determine whether Cr Reynolds did, in fact, breach the policy. This would require the Panel to interpret the policy and determine whether Cr Reynolds breached it. This is a misinterpretation of the Panel's role. The Panel's task is to assess whether Cr Reynolds breached the Code in the ways alleged by Ms Elliot. A breach of the policy does not, by the fact itself, constitute a breach of the Code. Rather, Cr Reynolds' conduct must be assessed against the provisions of the Code. The advice provided by Mr Heath and Mr Jackson (supported, after the fact, by Ms Grigsby) is relevant in making that assessment. The Panel cannot and does not find whether Mr Heath and Ms Grigsby's advice was correct or not, nor whether they were able to give that advice, nor whether Cr Reynolds breached the policy. It is the Code, not the policy, with which the Panel is concerned. The Panel finds that Council's administrative officers allowed Cr Reynolds to charge her car. Cr Reynolds acted reasonably in doing so.

While the complainant strongly averred that the email from Mr Heath to Cr Reynolds did not give her permission to charge her car at the Council, the Panel does not agree with this view. It is usual for an elected member to seek advice from the appropriate council officer on the reasonable interpretation of council policy. Mr Heath provided that interpretation, and Cr Reynolds did not act unreasonably in accepting and acting on that advice. As has been noted above, and contrary to the complainant's submission, whether Mr Heath's interpretation was correct or not is beside the point.

Given the statement from the current CEO of the Council, it is not possible to accurately record the value of the electricity used by an elected member in recharging an electric vehicle. The use of Council's power source to charge elected members' modes of transport, phones, and computers used in carrying out their council duties is taken to be a reasonable benefit to the elected members, incurring relatively negligible cost to the Council. The Panel accepts that this is reasonable practice.

The complainant stated at hearing that the role of Lord Mayor is 'full time'. The Panel agrees with this view and therefore deems it reasonable for the Lord Mayor to recharge her vehicle at the council premises when necessary and when fulfilling her council duties. The Lord Mayor confirmed that she had access to a domestic power supply at her place of residence, and that the car was frequently recharged there. This domestic expense is not claimed by Cr Reynolds for reimbursement.

Ms Elliot stated that Cr Reynolds breached Part 4(2) of the Code, on the grounds that the Elected Member Development and Support Policy permitted only two means of reimbursement for fuel for official use of a private vehicle, and that as Cr Reynolds had not used either of these two methods, her use of Council supplied electricity breached this Policy. The section on which Ms Elliot relied related only to the provision of fuel which read in context of the balance of the section meant liquid fuel, i.e., petrol or distillate. The Panel disagrees with this narrow interpretation of the policy, and accepts that the intention of the policy was to ensure that the travel costs of elected members (in carrying out council duties) were not costs to be borne by the individual elected member. The advice given to Cr Reynolds by Council officers supports that intention.

The complainant stated that she considered that Cr Reynolds as Lord Mayor had a duty to inform other elected members that electricity for charging private vehicles was available for all elected members, as advised by Mr Heath in April 2021. The Panel disagrees with this view. It is the role of the CEO or another senior council officer to disseminate such information to elected members. Elected members aware of Cr Reynolds' use of council's power supply had the same right and ability as Cr Reynolds, viz., to enquire of the CEO whether such practice was acceptable. It appears from the evidence provided that no other elected member raised the issue until December 2021.

Pursuant to section 28ZI (1)(b) of the Act, the Code of Conduct Panel therefore dismisses the complaint that Cr Reynolds breached Part 4(2) of the Code.

2. No evidence was provided that the actions of Cr Reynolds had brought the Council or the office of Elected Member into disrepute. The Panel accepts that Ms Elliot and possibly one or two other elected members considered that charging the electric vehicle brought the Council into disrepute, but no further evidence was provided. The Panel has found above that Cr Reynolds acted reasonably (in the sense of not breaching other provisions of the Code).

Pursuant to section 28ZI (1)(b) of the Act, the Panel therefore dismisses the complaint that Cr Reynolds breached Part 3(1) of the Code.

### 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.



Lynn Mason  
Chairperson



Sam Thompson  
Legal Member



David Sales  
Member