

*Local Government Act 1993*

**CODE OF CONDUCT PANEL DETERMINATION REPORT**

**DERWENT VALLEY COUNCILLOR CODE OF CONDUCT**

**Complaint brought Mr Tarrant Derksen against Councillor Paul Belcher**

**Code of Conduct Panel**

- Lynn Mason (Chairperson)
- Liz Gillam (Local Government Member)
- Phillip Zeeman (Legal Member)

Date of Determination: 5 October 2021

Content Manager Reference : C22590

**Summary of the complaint**

A code of conduct complaint was submitted by Mr Tarrant Derksen to the General Manager of the Derwent Valley Council on 2 July 2021.

The complaint alleged that at the Derwent Valley Council meeting on 24 June 2021, Councillor (Cr) Belcher breached the Code of Conduct (the Code) during consideration of Item 10.6 on the agenda, *the Local Small Business Recovery Grants 2021*. Cr Belcher voted against the following motion:

*That the Council approve the following recommendations for the Local Small Business Recovery Grants 2021:*

- a) Fund Dunn & Demanet Pty Ltd \$3000 for promotional brochure;*
- b) Fund Drinkmakers Australia \$3000 for development of 'mix with mates' experience;*
- c) Fund Tasmania's Most Haunted \$3000 for rebranding and new tour offering;*
- d) Fund Tandam Services \$3000 for shopfront branding;*
- e) Fund F Vickery & L D Weaver t/a Tassie Bound Adventure Tours \$2447.50 for co-branded vehicle wrap;*
- f) Fund HRTas \$2750 for website and online marketing support;*
- g) Fund Our Story House \$630 for e-commerce website and professional development.*

The Code in force at the time of the alleged breaches was adopted by Council in March 2019. The sections of the Code which Mr Derksen alleged Cr Belcher breached are:

**Part 1 – Decision Making**

- 2. A councillor must make decisions free from personal bias or prejudgement.*
- 3. In making decisions, a councillor must give genuine and impartial consideration to all relevant information known to them, or of which they should have reasonably been aware.*
- 4. A councillor must make decisions solely on merit and must not take irrelevant matters or circumstances into account when making decisions.*

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

- 2. A councillor must act openly and honestly in the public interest.*

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

1. A councillor –
  - (a) must treat all persons fairly;
2. A councillor must listen to, and respect, the views of other councillors in Council and committee meetings and any other proceedings of the Council, and endeavour to ensure that issues, not personalities, are the focus of debate.

The complaint also alleged that Cr Belcher breached the Principles of Good Governance. The Code of Conduct Panel (the Panel) makes no finding on this; the Panel's investigation is confined to consideration of potential breaches of the provisions of the Code of Conduct.

### **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 Chairperson arrived at this conclusion as the Council's decision had been made;
- the complaint substantially related to a contravention of the Derwent Valley Councillor Code of Conduct, namely Parts 1.2, 1.3, 1.4, 2.2, 7.1(a) and 7.2 ;
- the complaint should not be dismissed on the grounds that it was frivolous, vexatious or trivial. The reasons for this conclusion were that if proven the allegations would amount to a significant breach of the Council's code of conduct;
- she was satisfied 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 23 July 2021.

### **The Complaint**

The complaint alleged that Cr Belcher exhibited 'clear bias' against the New Norfolk Distillery, a business of which Mr Derksen is the sole director. Mr Derksen is also the sole director of Drinkmakers Australia, a training and events business which had applied for a grant from the Local Small Business Recovery Grants 2021. The complaint alleged that this bias (against the Distillery) caused Cr Belcher to vote against approving the grant application from Drinkmakers Australia.

The complaint further alleged that Cr Belcher gave weight to an email received from a local resident questioning the grant process, and that this email influenced his decision to vote against the motion. The complaint alleged that the email was 'irrelevant' in consideration of the motion before Council.

At the time the vote was taken, there were only five Councillors present, and the Mayor believed that an absolute majority was required for the motion to be passed. With Cr Belcher voting against the motion, the Mayor called the vote lost, with the result that none of the seven grant applications were

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<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.

approved<sup>2</sup>. The complaint alleged that this was evidence that Cr Belcher had failed to act openly and honestly and in the public interest.

Mr Derksen alleged that Cr Belcher had treated Drinkmakers Australia unfairly, and that he failed to listen to the advice of the council officer and the Mayor, as provided during the debate on Item 10.6.

## Procedure

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

On 29 July 2021 following a request to the General Manager, the Panel received information regarding the decision to overturn the ruling on the initial vote on Item 10.6 on 24 June 2021. The Panel met on 9 August 2021. On 17 August 2021 the Panel requested a copy of the minutes or audio recording of the council committee meeting where the recommendation for grant approvals was made. In response, the Panel was told that Derwent Valley Council committee meetings are not audio recorded, and that the officer's report, which was part of the agenda for the council meeting on 24 June, was substantially a record of the committee meeting and there were no formal minutes as such.

On 17 August 2021 the Panel received Cr Belcher's response to the complaint. On 20 August 2021 the Panel wrote to Mr Derksen, requesting his submission on whether he believed he would be disadvantaged if the Panel decided not to conduct a hearing into the matter, but rather rely on written submissions and the examination of documentary evidence. Cr Belcher's response to the complaint was sent to Mr Derksen. The Panel also wrote to Cr Belcher requesting submission on the necessity for a hearing and submission on penalty, in the event that the Panel upheld part or all of the complaint.

On 27 August 2021 the Panel received a response from Mr Derksen, but no submission on hearing. The Panel also received a submission on penalty from Cr Belcher, but no submission on hearing. On 3 September the Panel met to consider the responses, after which each response was sent to the other party, and both parties were specifically asked for submission on hearing. On 3 September 2021 Mr Derksen submitted that he did not consider he would be disadvantaged if a hearing were not held. Cr Belcher made no submission regarding the conduct of a hearing.

## Material considered by the Panel

The Panel considered the following documents in its investigation:

- the Derwent Valley Councillor Model Code of Conduct, March 2019;
- the complaint from Mr Derksen, attached to a Statutory Declaration dated 2 July 2021;
- the Agenda and Minutes of the ordinary council meeting of 24 June 2021;
- audio recording of the ordinary council meeting of 24 June 2021;
- material from the General Manager, 29 July 2021;
- response from Cr Belcher, attached to a Statutory Declaration dated 16 August 2021;
- response from Mr Derksen, attached to a Statutory Declaration dated 27 August 2021;
- response from Cr Belcher, attached to a Statutory Declaration dated 27 August 2021;
- submission on hearing from Mr Derksen, 3 September 2021;

## Determination

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

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<sup>2</sup> This decision was subsequently overturned and the motion carried.

## Reasons for the Determination

### Part 1 – Decision Making

2. *A councillor must make decisions free from personal bias or prejudgement.*
3. *In making decisions, a councillor must give genuine and impartial consideration to all relevant information known to them, or of which they should have reasonably been aware.*
4. *A councillor must make decisions solely on merit and must not take irrelevant matters or circumstances into account when making decisions.*

The Panel noted that during debate on Item 10.6 Cr Belcher had asked questions of the council officer regarding the terms of reference for the grants, and the officer's advice was in accordance with the advice provided in the meeting agenda. This is the duty of a Councillor to ask questions in considering his or her vote at the council table. No evidence was provided to indicate that Cr Belcher exhibited personal bias, nor that he had prejudged the issue prior to the debate, nor that he had given undue weight to the email from an external party.

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

2. *A councillor must act openly and honestly in the public interest.*

Cr Belcher had no conflict of interest in Item 10.6. The Panel finds that Cr Belcher legitimately acted openly and honestly in the public interest as he saw it. This finding is supported by his asking pertinent questions at the meeting to allow others to hear his concerns.

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

1. *A councillor –*
  - (a) *must treat all persons fairly;*
2. *A councillor must listen to, and respect, the views of other councillors in Council and committee meetings and any other proceedings of the Council, and endeavour to ensure that issues, not personalities, are the focus of debate.*

No evidence was provided to show that Cr Belcher did not listen to the advice given at the council meeting; nor did he show any disrespect towards other Councillors or officers. The debate focussed on the issue of the grants, not personalities. It is possible that Cr Belcher could have moved an amendment to the motion, to allow a separate debate on the application from Drinkmakers Australia, but this did not happen. His vote, along with the votes of all other Councillors present, therefore treated all applicants equally.

### 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



Liz Gillam  
Member



Phillip Zeeman  
Member

DATE : 5 October 2021