

CODE OF CONDUCT PANEL REPORT
DORSET COUNCIL CODE OF CONDUCT FOR COUNCILLORS

Complaint against Cr. Lawrence Archer

Date of Determination: 18 October 2017

Code of Conduct Panel:

Lynn Mason (Chairperson), Christine Fraser, Ketrina Clarke

Summary of the Complaint

The complaint, submitted on 29 August 2017 by the Mayor, Cr. Gregory Howard, alleged that at the Dorset Council meeting on 21 August 2017, Cr. Archer breached the Dorset Council Code of Conduct (the Code) during agenda item 159/17. The sections of the Code which Cr. Archer was alleged to have breached are

Part 2 Conflict of Interest

5. A councillor must avoid, and remove himself or herself from, positions of conflict of interest as far as reasonably possible.

6. A councillor who has an actual, potential or perceived conflict of interest in a matter before the Council must –

(a) declare the conflict of interest before discussion on the matter begins; and

(b) act in good faith and exercise reasonable judgement to determine whether the conflict of interest is so material that it requires removing himself or herself physically from any Council discussion and remaining out of the room until the matter is decided by the Council.

Preliminary Procedure

The complaint was referred to the Chairperson of the Code of Conduct Panel (the Panel) on 4 September 2017. The Chairperson of the Panel (the Chairperson) informed the Respondent on 25 September 2017 that she had assessed the complaint as a whole, and as per section 28ZA (1) (e) of the *Local Government Act*

1993 (the Act), determined that the complaint was to be investigated and determined by the Code of Conduct Panel for the following reasons:

1. The complaint substantially related to an alleged contravention of the Dorset Council's Code of Conduct;
2. The complaint alleged that at the Council meeting on 21 August 2017, Cr. Archer breached Part 2 Conflict of Interest, clauses 5 and 6 of the Code; and
3. The complaint did not appear to be frivolous or vexatious in nature.

Mayor Howard supplied the Panel with an excerpt from the unconfirmed minutes of the Council meeting of 21 August 2017, showing the record of item 159/17. The item dealt with a Notice of Motion submitted by the Mayor and seconded by Cr. Jessup. The motion stated:

That Council pass a motion of no confidence in Councillor Lawrence Archer for his decision to publicly disclose commercial in confidence information (which has only been made available to Councillors in Closed Sessions of Council) relating to the financial performance of Aminya and State Government support.

The unconfirmed minute then stated:

Cr. Lawrence Archer addressed the meeting, then declared an interest in Item 159/17 and stepped away from the table, but did not leave the room.

The unconfirmed minutes noted that the motion was passed, with five Councillors in favour, and one voting against. Cr. Archer did not vote, but returned to the council table after the vote was concluded and the Mayor resumed chairing the meeting.

The Panel was also shown a copy of an email exchange between the Assistant to the General Manager and Mayor of Dorset Council, and the Director of Local Government, seeking advice on the correct recording of the vote taken on item 159/17.

In response to a request from the Chairperson, the General Manager of Dorset Council submitted a statutory declaration on 5 September 2017. This informed the Panel that during item 159/17, after the motion was moved and seconded, Cr. Archer asked leave to address the meeting, which he did for approximately 57 seconds. He then took a seat in the public gallery. Debate on the motion lasted for approximately 18 minutes and 9 seconds, at which point the vote was taken.

The Panel asked Cr. Archer to respond to the complaint by 13 October 2017. Cr. Archer's response was received by the Panel on 2 October 2017. This response comprised a covering letter, a statutory declaration in response to the complaint, an

excerpt from the council minutes of the meeting of 26 June 2017, item 116/17, and a copy of an email (8 June 2017) signed by the Mayor and sent to the Local Government Association of Tasmania and to all Tasmanian mayors, with the subject line *LGAT Campaign – from Katrena Stephenson*.

Cr. Archer's response was sent to Mayor Howard on 9 October 2017, with an invitation to provide further information or response to the Panel by 17 October 2017. Mayor Howard responded to the Panel on 10 October 2017. This statutory declaration was sent to Cr. Archer on 10 October, with the request that if he wished to make any further response, that he provide this to the Panel by 17 October. Cr. Archer provided his second statutory declaration to the Panel on 11 October 2017. No further information was sought by the Panel.

Proceedings of the Panel

The Panel met on 18 October to consider the material provided and to determine whether the matter required a hearing under s 28ZG of the Act.

The Panel noted that there was no dispute as to the events which took place during the conduct of item 159/17 on 21 August 2017. The Panel determined that in accordance with s 28ZG (2)(b) of the Act, the investigation could be adequately conducted by means of examination of the written submissions provided and examination of the documentary evidence provided, and that therefore, a hearing was unnecessary.

As a result, the Panel considered the statutory declarations and accompanying documentation and proceeded to its determination.

The Complaint and Response

Mayor Howard stated (in part) that it was his view that Cr. Archer *did not take all reasonably possible action to remove himself from a position of conflict of interest...It is also my view that a motion of no confidence is so material, that it requires the councillor to remove themselves (sic) from the room and remain out of the room until the matter is decided.....By remaining in the room it is my belief that Cr. Archer has attempted to stifle open discussion and to intimidate fellow councillors into voting against the motion.*

In response, Cr. Archer said that he had sought opinion on the motion of No Confidence and had been advised that it had no legal standing. He stated that he had exercised what he believed to be reasonable judgement under Clause 6 (b) of the Code and concluded that *if the motion has no legal standing, I therefore did not have a material interest.....I did declare an interest in the item and sat in the public*

gallery as I did not want to be further involved in the debate on a motion which I thought was unjustified. I did not intend to intimidate or influence fellow councillors, and I am confident that the recording of the meeting will show that my presence did not restrict councillors' debate.

Cr. Archer also raised the issue of a previous Notice of Motion which he had moved at the council meeting of 26 June 2017, a motion in which Mayor Howard had declared an interest but remained in the room.

Mayor Howard's second statutory declaration stated, in part, that a Notice of Motion does have legal standing in that once voted on, it has legal recognition as the decision of the council. Mayor Howard also stated that the circumstance of his remaining in the room during the item 116/17 on 26 June 2017 differed from the circumstance of 159/17 on 21 August 2017, as he had declared his intention to declare an interest if the motion was seconded and opened for debate. This did not occur and the motion lapsed for want of a seconder. Mayor Howard had therefore remained in the meeting room.

Cr. Archer's second statutory declaration provided further statements regarding the legal standing of the No Confidence motion, and further opinion regarding the procedure followed during item 116/17 on 26 June.

Determination of the Code of Conduct Panel

The Code of Conduct Panel dismisses the complaint.

Reasons for the Determination

The Panel considered that by declaring an interest in the matter, and removing himself from the table, and thereby not participating in any way in the vote on the motion, Cr. Archer acted in good faith and exercised reasonable judgement.

There is no provision in the Act or any associated legislation for a council to impose any sanction on a fellow councillor through a motion passed by the council itself. The Panel is of the opinion that the interest which Cr. Archer had in the matter was therefore not of sufficient materiality to necessitate his retirement from the meeting room. The Panel notes that the Code provides for councillors to elect to leave the room or remain within, provided that the councillor acts in good faith and exercises reasonable judgement in making his decision. On the evidence provided, the Panel determines that Cr. Archer fulfilled these requirements before making his decision to remain in the room.

The Panel considers that the evidence does not support the view that Cr. Archer attempted to stifle debate or to intimidate his fellow councillors. The debate lasted

for approximately 18 minutes; and the vote was resoundingly ‘against’ Cr. Archer, in that the motion of No Confidence was passed. The Panel therefore considers that it is reasonable to conclude that debate was not stifled by his presence in the public gallery, and his fellow councillors were not intimidated into voting against the motion.

Right to Review

Under S.28ZJ 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.

Lynn Mason (chairperson)



Christine Fraser



Ketrina Clarke

