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*Local Government Act 1993*

**CODE OF CONDUCT PANEL DETERMINATION REPORT**

**BURNIE CITY COUNCIL CODE OF CONDUCT**

**Complaint brought by Mr Simon Overland and Ms Belinda Lynch against Mayor, Councillor Teeny Brumby**

**Code of Conduct Panel**

- Jill Taylor (Chairperson),
- Philip Cocker (Local Government Member)
- Frank Neasey (Legal Member)

Date of Determination: 21 March 2025

Content Manager Reference: C34807

**Summary of the complaint**

A code of conduct complaint was submitted by Mr Simon Overland and Ms Belinda Lynch which Mr Overland as the General Manager confirmed complied with section 28Z of the Act and forwarded the complaint to the Executive Officer on 18 July 2024.

The complaint alleges that during the period 7 April 2024 to 11 July 2024, Councillor (Cr) Teeny Brumby breached the following parts of the Burnie City Council Code of Conduct, version 7, approved on 28 February 2023 at a Burnie City Council meeting.

***PART 1 - Decision making***

- 1) A councillor must bring an open and unprejudiced mind to all matters being decided upon in the course of 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 prejudgement.*
- 4) A councillor must make decisions solely on merit and must not take irrelevant matters or circumstances into account when making decisions.*

***PART 7 - Relationships 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;**

**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:

- Part of the complaint, namely those parts alleging a breach of Parts 1.1, 1.2 and 1.4 of the Code be dismissed on the basis that insufficient evidence was submitted

and in accordance with section 28ZB(1)(b) of the Act these parts did not substantially relate to a contravention of the code;

- the balance of 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, it would result in a breach of the code;
- the complainants had made a reasonable effort to resolve the complaint. The Chairperson arrived at this conclusion for the following reason –
  - that the complainants advised that the councillor had been educated about her professional behaviour and been provided with support.
- the balance of the complaint substantially related to a contravention of the Burnie City Council's Code of Conduct, approved by Council on 28 February 2023;
- the complaint does not disclose that an offence may have been committed or that it should more appropriately be dealt with by another person or authority;
- 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 that part of the complaint is to be investigated and determined by the Code of Conduct Panel, i.e., those parts of the complaint relating to Parts 7.1 (a) and (b) of the complaint.

The complainants, respondent councillor and the General Manager were notified of the outcome of the initial assessment by letter dated 12 August 2024.

## **Investigation**

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

The Panel determined that further information was required from the complainants and wrote to them on 19 September 2024 seeking the following information -

1. the name of staff member/s you allege Cr Brumby treated unfairly or offended or embarrassed
2. position held by the staff member
3. date of the alleged breach
4. where the incident occurred
5. names of any witnesses

On 8 October 2024, the complainants provided the following response -

1. Mrs Belinda Lynch.
2. Director Corporate and Commercial Services, Burnie City Council.
3. 9 July to 11 July 2024
4. In Council's workplace, including and primarily via Council's email system
5. The entire Council, Mrs Lynch and Mr Overland.

Bearing in mind that the response received from the complainants dated 8 October 2024, varied from that contained in their complaint dated 18 July 2024, on 18<sup>th</sup> October 2024 the

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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.

Panel wrote again to Mr Overland and Ms Lynch to confirm that only one person was the subject of this complaint and that was Ms Lynch. Furthermore, the Panel sought to confirm that the date of the incident was from 9 July 2024 to 11 July 2024 and not 7 April 2024 to 11 July 2024 as stated in the complaint. The complainants confirmed these facts in a letter dated 22 October 2024.

### **Material considered by the Panel**

The following documents were presented to the Panel to consider as evidence in this matter:

- Code of Conduct complaint by Mr Overland and Ms Lynch under cover of a statutory declaration dated 18 July 2024 with a 16-page attachment
- A 98-page response to the complaint from Cr Brumby under cover of statutory declaration dated 2 September 24
- Submission dated 8 October 2024, from Mr Overland and Ms Lynch to the Panel in response to the letter of 19 September 2024 for further information.
- Further response dated 22 October 2024, from Mr Overland and Ms Lynch in response to Panel letter of 18 October 2024
- Burnie City Council Code of Conduct, version 7, approved on 28 February 2023.

### **Further Investigation of complaint**

In their complaint of 18 July 2024, the complainants initially alleged that Councillor (Cr) Brumby had breached the code of conduct on several occasions during the period 7 April 2024 to 11 July 2024. In addition to Ms Lynch, the complainants submitted that Cr Brumby had breached the Code in relation to at least one other staff member.

As noted above in subsequent communication between the Panel and the complainants it was established that the complaint ultimately related only to Cr Brumby's behaviour towards Ms Lynch and that the incidents occurred between 9-11 July 2024. By reducing the scope of the complaint, the Panel observed that the complainants were essentially complaining about two emails sent by Cr Brumby to her fellow councillors on 9 July 2024, one sent at 3.35pm and the other at 9.23pm.

For completeness the two emails are set out below:

**3.35pm**

*Councillors,*

*I wanted to inform you about a decision I made over two months ago regarding my interactions with Bel Lynch. As I previously explained to Simon, I will not be meeting with Bel without the presence of two other staff members or colleagues.*

*The decision was prompted by a particularly uncomfortable encounter during a phone call, which was overheard by a constituent while I was with another councillor. During this call, Bel's treatment towards me as Mayor was inappropriate to the extent that the constituent considered lodging a Code of Conduct complaint. The manner in which she berated and threatened me was deeply unprofessional both in my view and certainly in the opinion of the constituent who witnessed my response to this phone conversation. While I did not take formal action at the time, I determined that I would no longer meet with her alone, as this was not an isolated incident. Simon accepted my stance.*

*To ensure a professional and respectful environment, I have made it clear that I am not comfortable taking a phone call or meeting with Bel without additional staff present. I apologise for not sharing this information with you sooner, but given the ongoing challenges in my working environment, I felt it was important to bring this to your attention now.*

*Thank you for your understanding.*

*Best regards,*

*Teeny Brumby*

**9.23pm**

*Councillors,*

*Further to my earlier email today regarding my working relationship with Bel, I neglected to point out that if Bel is shortlisted as a candidate for the position of GM, I will declare a conflict of interest due to the deterioration of my working relationship with her.*

*Thank you for your understanding.*

*Best regards,*

*Teeny Brumby*

The background to this complaint as asserted by the complainants was that when Cr Brumby was elected as Mayor, she was inexperienced and required “*significant administrative and executive support*”. Despite providing this, the complainants state in their complaint that Cr Brumby “*continues to demonstrate a lack of understanding of and regard for the limits of her role as Mayor*”. The complainants added that by early March 2024 the relationship between the General Manager (Mr Overland) and the two Executive Directors (one of which was Ms Lynch) had deteriorated. Mr Overland imposed restrictions on Cr Brumby which included not meeting individually with him or his executive directors unless there were two of them present. These restrictions were in place at the time the complaint was lodged.

Cr Brumby was elected Mayor at the October 2022 Council elections. By her own admission, Cr Brumby said she was inexperienced as a mayor and “*relied heavily on Simon and Bel’s counsel*”, stating her gratitude for their guidance. However, by early March 2024 the working relationship had broken down. Both Mr Overland and Ms Lynch stated in their complaint the relationship “*deteriorated to the point where Mr Overland instituted clear parameters to regulate contact with the Mayor*”. Cr Brumby in her response to the complaint stated “*during a meeting on 4 March 2024 (with Mr Overland and Ms Lynch) she was told “our working relationship had unequivocally changed. They expressed they no longer trusted me at all.”*

In her response to the complaint Cr Brumby provided a 98-page submission which chronologically accounted for much of the exchanges she had with Mr Overland and Ms Lynch via text, from early 2024 until the time of the complaint. Cr Brumby stated that she has always acted in good faith and with the community’s best interest at the forefront of her decision making. Despite the challenges of the breakdown in her relationship with Mr Overland and Mr Lynch she said she has endeavoured to address Council matters professionally.

However, Cr Brumby stated that because of the restrictions imposed on her by Mr Overland, she found her role as Mayor increasingly untenable. She was not permitted to traverse the executive side of the building. This resulted in her restricting the times she came into her office as she felt “*unwelcomed and treated like an outcast*”.

By 3 May 2024, in an email to Cr Brumby, Mr Overland stated that “*...I have put in place safeguards on your interactions with staff. You continue to demonstrate a fundamental misunderstanding as to your role, and repeated failure to have proper regard for professional workplace boundaries and behaviour.*” Mr Overland went on to say “*I am now directing that you do not have any conversations (oral or written) with any member of staff*

*of the Burnie City Council with whom you are authorised to have direct contact, about any aspect of their performance without my prior express approval.....”*

According to the complainants and Cr Brumby the breakdown in the relationship between Mr Overland and Ms Lynch and Cr Brumby continued until such time as Mr Overland left the Council’s employment (as General Manager) on 3 November 2024.

In their letter of 22 October 2022 where the complainants reaffirmed the scope of their complaint, they stated that the two emails sent by Cr Brumby on 9 July 2024 were unfair to Ms Lynch as they were an attempt to negatively influence the view of other councillors if Ms Lynch applied for the position of General Manager. They went on to say that the emails caused embarrassment to her and adversely reflected on Ms Lynch’s professionalism. They further claimed that Cr Brumby chose to provide information to other councillors regarding Ms Lynch and the telephone exchange between them in early April 2024 without providing proper context<sup>2</sup>. The complainants stated that the timing of these emails was unfair to Ms Lynch as, at that time, she had not decided to apply for the vacant position of General Manager.

Reference to the telephone exchange in question was contained in Cr Brumby’s response to the complaint in which she included an email she received from Des Hodgetts as follows-

*“To whom it may concern*

*I am writing to provide an account of an incident I witnessed during a meeting between myself Mayor Teeny Brumby and Alderman David Pease. The discussion was conducted at my residence at 68 Moody Street, Burnie on Friday 5<sup>th</sup> April 2024.*

*During the course of our conversation Mayor Brumby received a phone call which she did not initially answer. When the phone rang a second time, the Mayor promptly excused herself, saying ‘Bel Lynch is calling again, it must be important’. The mayor accepted the call and moved to an adjoining room to take the call. Even though Mayor Brumby had stepped out of the room, I could clearly hear the majority of the phone conversation.*

*What I overheard was deeply concerning. I could hear Director Lynch admonishing the Mayor over an announcement of the recent purchase of the form Motors site. Council had taken calls from members of the Motors team who were concerned what the sale announcement meant for their future. It was evident to me that the demanding manner in which Director Lynch was addressing the Mayor was totally unsatisfactory. I was in disbelief as I overheard the Mayor being spoken to in this manner.*

*When the Mayor returned to the table, it was clear that she was visibly affected, struggling to concentrate and admitted that the Director had berated her.*

*The situation was so troubling to me that I had considered lodging a code of conduct complaint against Director Lynch for speaking to the Mayor in such a disrespectful way. While I ultimately decided against pursuing this course of action, I did follow up with Mayor Brumby afterwards to check on her well-being.*

*This type of interaction with the Mayor is both unbecoming and unacceptable. I have never heard a mayor spoken to in such a demanding and disrespectful way in my experience with local government.*

*The current culture of disrespectful communications within Burnie City Council is one of great disappointment. It would not be tolerated in any workplace. I remain hopeful that*

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<sup>2</sup> See first email of 9 July 2024-2<sup>nd</sup> paragraph.

*the recent training undertaken by Aldermen and senior staff will provide the basis for improved interactions.*

*Yours sincerely*

*Des Hodgetts*

In her response to the complaint, Cr Brumby stated that it was not her intention to cause offence or embarrassment to a staff member. She added that she always strived to treat all Council staff with respect and fairness. In relation to the two emails she sent on 9 July 2024, Cr Brumby stated that these were “*grounded in my commitment to transparency, especially as we approach the recruitment process for a new position where Bel may have been a candidate*”.<sup>3</sup> Cr Brumby felt it was imperative to openly acknowledge any potential conflicts of interest.

## **Hearing**

As per section 28ZH of the Act the Code of Conduct Panel held a hearing on 26 February 2025 at the Burnie City Council offices in Burnie. Mr Overland attended by video link.

Prior to the hearing, Cr Brumby requested that she be represented by an advocate, Mr Des Hodgetts. This was approved by the Panel. Cr Brumby was advised that Mr Hodgetts’ role was to present her response to the complaint and cross-examine the complainants on her behalf. The Panel and complainants were permitted to question Cr Brumby directly during the hearing.

The Chairperson commenced the hearing by reading a preamble, summarising the complaint, outlining the process the hearing would take, sanctions that could be applied should all or part of the complaint be upheld, with a projected timeframe for providing the determination.

Mr Overland, Ms Lynch and Mr Hodgetts made an affirmation prior to speaking at the hearing and Cr Brumby took an oath.

The Chairperson re-iterated that whilst both parties had submitted a significant amount of documentation to the Panel, the focus of the hearing was that the complaint was specifically about Cr Brumby’s behaviour towards Ms Lynch and the period in question was 9 to 11 July 2024, in particular two emails sent by Cr Brumby to her fellow councillors on 9 July. Parties were advised to confine their evidence to that allegation.

Mr Overland was first to provide his evidence. He said that there was a context to the events of 9 to 11 July 2024 and asserted that Cr Brumby did not have a conflict of interest in July 2024 as Ms Lynch had publicly stated that she had not made up her mind to apply for the position of General Manager. By sending these emails at that time Cr Brumby had treated Ms Lynch unfairly, causing embarrassment.

Mr Overland said that in the process of recruiting a new General Manager the Council would follow ministerial direction and the principles governing selection, citing *Local Government (Appointment and Performance of General Managers) Order 2024* (the Order). The Panel questioned Mr Overland regarding his reference to the Order which was not issued until 11 July 2024 and did not take effect until 24 July 2024<sup>4</sup>, which was after the relevant period of this complaint. Mr Overland responded by saying he may have got the dates confused and his complaint was submitted sometime later.

Mr Overland said that, in addition to councillors participating in the selection process there was a requirement for a person not being a councillor to be included. Once the process

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<sup>3</sup> See Cr Brumby’s response to complaint-bottom of page 78.

<sup>4</sup> See clause 2 of the Order and *Tasmanian Government Gazette* dated 24 July 2024.

commenced, Ms Rachael Hull, Manager, People and Safety was added to the selection panel. Ms Lynch later made a decision to apply for the vacancy. Mr Hodgetts drew the Panel's attention to the fact that Ms Lynch was Ms Hull's immediate supervisor.

Mr Overland said that Cr Brumby had deliberately excluded him (as a recipient) when she sent the emails on 9 July 2024. It was put to Mr Overland by the Panel that it was the responsibility of Council collectively to recruit a General Manager and not the current incumbent and asked why he thought he should be included. Mr Overland responded by saying that he had expertise in the recruitment process that many of the councillors did not have and he should have been involved to direct them through the process.

When commencing her evidence, Ms Lynch stated that the relationship between Mr Overland and Cr Brumby had broken down long before Cr Brumby sent her emails of 9 July 2024. Ms Lynch confirmed that she and Mr Overland had a good working relationship with Cr Brumby up until early 2024, when Mr Overland had reason to impose restrictions on Cr Brumby relating to some concerns about her performance as Mayor.

Ms Lynch said that her relationship with Cr Brumby broke down in relation to an incident regarding the Motors site in Burnie. According to Ms Lynch, Cr Brumby had announced through an article in the Advocate newspaper, that the Motors large car yard had been sold for development. Ms Lynch said this was not appropriate for Cr Brumby to announce. Ms Lynch said that (in early April 2024) a "robust" telephone discussion had taken place with Cr Brumby but maintained that the call was professional on her part. Cr Brumby included an email by Mr Hodgetts in her response to the complaint, as outlined above, about the same telephone call.

Ms Lynch claimed that her professional reputation had been tarnished because of Cr Brumby's emails. The Panel put it to Ms Lynch that the worst thing said about her in Cr Brumby's email of 9 July 2024, was that she had berated and treated Cr Brumby unprofessionally. Ms Lynch denied this, saying that her take from the email was Cr Brumby using her bias against her to sway other councillors against her. In response to a further question from the Panel, Ms Lynch said that by sending the email without her knowledge, Ms Lynch was not afforded natural justice.

Ms Lynch stated that the timing of Cr Brumby's emails was inappropriate, and she should have advised her fellow councillors about the breakdown of their relationship when it occurred in April 2024. It was Cr Brumby who made the decision at that time not to have contact with Ms Lynch on her own.

In questioning Ms Lynch, Mr Hodgetts asked if she thought different people could have different views of the same event to which Ms Lynch replied that she did.

Mr Hodgetts then asked Mr Overland whether there were any efforts were made to resolve the complaint, Mr Overland said "no". Mr Hodgetts asked Mr Overland if he recalled whether he received a request from Cr Brumby asking for independent mediation. Mr Overland responded that he did. Mr Hodgetts asked Mr Overland whether there had been a second written request from Cr Brumby for independent mediation on 22 June 2024 which again was refused. Mr Overland confirmed this. Mr Hodgetts then asked Mr Overland at what point did he decide that mediation was not a consideration. Mr Overland responded by saying "*at the outset*".

Mr Overland responded further by saying mediation would not help as it was more about Cr Brumby's role and function and her inability to comply with the various legal and regulatory requirements of her job. Mr Overland said that the Council "*was deeply divided and dysfunctional*" and that he had employed many options, including training, workshops

and engaging consultants, to improve the behaviour of all councillors, including Cr Brumby.

When asked by the Panel why he did not accept the request for mediation, Mr. Overland said Cr. Brumby did not understand her role and functions and that he was implementing "*legal and regulatory processes*" to address the behaviour of some councillors, including Cr. Brumby. He was further questioned by the Panel whether mediation could have been included as a tool alongside the formal processes he was implementing. He replied by saying that he didn't believe mediation would be useful. Ms Lynch said that there was nothing to mediate because the situation had broken down.

When asked by the Panel if she believed the breakdown of the relationship between Cr Brumby and Mr Overland had contributed to the breakdown of her relationship with Cr Brumby, Ms Lynch said she supported Mr Overland's stance, as his values aligned with integrity.

The emails sent by Cr Brumby on 9 July 2024 were sent to her fellow councillors, and did not include the General Manager or Directors. Ms Lynch told the hearing that one of the councillors drew her attention to the emails when they asked her about her mental health.

Mr Hodgett's asked Mr Overland did he authorise the IT unit to access Cr Brumby's emails at Ms Lynch's request, despite her being a potential candidate for the position of General Manager. Mr Overland stated that he did.

Ms Lynch said at her request, Mr Overland instructed the IT section to provide him with copies of the emails. Ms Lynch said that she had been treated unfairly by Cr Brumby because at that time she had not decided to apply for the position and Cr Brumby knew this. In early July the formal selection process had not begun, and Ms Lynch said that Cr Brumby was unjustified in passing comment on the relationship between the two of them. She added that she considered Cr Brumby has a bias against her.

The Panel asked Ms Lynch whether she thought the content of the emails were unfair to which she replied that they were unfair, and she was very embarrassed.

Ms Lynch said that she and Mr Overland thought Cr Brumby should have waited for the selection process to formally commence and once it was known that Ms Lynch was an applicant before she could determine if she had a conflict of interest.

When questioned further by the Panel as to whether Cr Brumby could function properly as Mayor with these restrictions on her, Ms Lynch answered by saying she had worked in four councils, and it was not unusual for a Mayor to only have access to the General Manager.

Mr Hodgetts as the advocate for Cr Brumby told the hearing that the relationship between Cr Brumby and Mr Overland and Ms Lynch was positive until March 2024. It was then that Mr Overland as General Manager had put in place restrictions on Cr Brumby to the effect that she "*couldn't talk to anyone in Council and felt very isolated.*" These restrictions remained in place until 3 November 2024 when Mr Overland's resignation took effect.

Mr. Hodgetts stated that Cr. Brumby had requested Mr. Overland to engage an independent mediator once verbally and twice in writing. Mr Overland's response to Cr Brumby was that there was nothing to mediate.

Mr Hodgetts explained that Cr Brumby had not used the internal "*hash tag system*" for emails, when she sent her emails on 9 July 2024 as the General Manager was included in that circulation list. When asked by the Panel if Cr Brumby did this because she simply wanted to commence a dialogue with her fellow councillors (who would be responsible for engaging the new General Manager), Mr Hodgetts agreed.

At 11.57am Mr Overland advised that he would be leaving the hearing at 12 noon. The Chairperson explained that the hearing would have to be adjourned. However, Cr Brumby and Ms Lynch expressed concern that this should happen given the difficulty that had been experienced in arranging a mutually convenient time for the Panel and the parties. Mr Overland said he was satisfied that he had been able to present his case and would hand over to Ms Lynch as his co-complainant for the remainder of the hearing. Ms Lynch and Cr Brumby agreed to proceed on that basis.

The Panel asked why Cr Brumby had sent the email on 9 July 2024, containing information that Ms Lynch had berated her and treated her unprofessionally, just an hour or so before the workshop. Cr Brumby replied that as she had no one in Council she could confide in, she was unsure whether the timing was appropriate, so it got down to her having to make that decision which she felt it appropriate to do so. Cr Brumby said that she had not previously revealed to any other councillor the difficult position she was placed in by the restrictions Mr Overland had placed on her, adding that it was very humiliating.

When questioned further about why she didn't wait and bring the matter up at the workshop, Cr Brumby said that she was not involved in setting the agenda for the workshop and often didn't know what was on the agenda until she checked the Council portal just prior to the workshop.

Cr Brumby explained the reason she did not use the normal hash tag system to send the emails was that she was under the impression that Ms Lynch was included in that circulation. Ms Lynch advised the hearing that she was not, confirming again that a councillor had drawn her attention to Cr Brumby's emails which mentioned her, and she then requested a copy of the emails.

In her summation, Ms Lynch speaking on behalf of the co-complainants said that Cr Brumby could have found a time and place to discuss whether she intended to apply for the General Managers position, and it was not appropriate for Cr Brumby to make derogatory comments about her in an email. When Ms Lynch was asked about whether mediation might have resolved some issues her response was that "there was nothing to mediate because the situation had broken down".

Ms Lynch said that Cr Brumby had treated her unfairly and embarrassed her especially as her comments were now circulating outside of the Burnie City Council. Ms Lynch added that she has worked for four councils and now her integrity has been compromised.

In summing up for Cr Brumby, Mr Hodgetts said that the email was only intended for fellow councillors and if it had been restricted to them, then Ms Lynch would not have been offended. Mr Overland was aggrieved that he was not included in the emails which resulted in him requesting his IT section to provide copies of the emails in question. Mr Hodgetts said that Mr Overland had found a way to embed himself in the selection of a General Manager which Mr Hodgetts commented was inappropriate.

Mr Hodgetts concluded by saying that the selection of a General Manager is a significant event in Council and Cr Brumby had made a "big decision to step outside of the process" in the belief that she would have a conflict of interest should Ms Lynch be an applicant.

## **Determination**

As per section 28ZI of the Act the Code of Conduct Panel determines that Councillor Teeny Brumby has breached the Code of Conduct, and therefore the Code of Conduct Panel upholds the complaint to the extent that it relates to Part 7.1(a) and (b) of the Code of Code of Conduct (the balance of the complaint having already been dismissed upon initial assessment).

## **Reasons for determination**

The Code of Conduct Panel considered the information provided by Mr Overland and Ms Lynch and the response by Cr Brumby including their written submissions and oral evidence at the hearing. Based on this evidence the Conduct Panel concludes that Cr Brumby breached Parts 7.1 (a) and (b) of the Burnie City Council Code of Conduct which was current at the time of the alleged contravention on 9-11 July 2024.

### **Part 7.1 (a)**

The complainants contended that the timing of the emails sent by Cr Brumby on 9 July 2024 was inappropriate and resulted in unfairness to Ms Lynch. It was the Panel's view that not only had a significant amount of time elapsed since the telephone discussion between Cr Brumby and Ms Lynch in early April, during which period Cr Brumby had ample opportunity to inform councillors of the breakdown in her working relationship with Ms Lynch and the reasons for it, it was presumptive of Cr Brumby to foreshadow a declaration of a conflict of interest as Ms Lynch had publicly stated that she had not made her mind up in terms of being an applicant for the vacant General Manager's position.

Cr Brumby told the hearing that she refrained from speaking out earlier regarding the breakdown of her relationship with Ms Lynch and the constant conflict with Mr Overland and the Executive as she would feel humiliated. Therefore, in her opinion Cr Brumby felt it was appropriate timing ahead of a Council workshop where she believed the selection process for the new General Manager might be the subject of discussion. However, in the Panel's view, until such time as Ms Lynch declared her candidacy for the position, it was unnecessary and ultimately unfair to Ms Lynch for the two emails to be sent when they were.

Ms Lynch claimed that she was treated unfairly because she was singled out in the emails and there was no speculation about any other potential candidate for the position. The Panel agreed with this assertion.

The Panel upholds this part of the complaint.

### **Part 7.1 (b)**

Both in her written submission and evidence given at the hearing, Cr Brumby was adamant that she operates in a transparent manner and her email stating that she would not participate in a selection panel should Ms Lynch be a candidate was an example of that.

Ms Lynch said that while Cr Brumby's email might have contained the right words, her real intention was to discredit her, (Ms Lynch) in the eyes of councillors who would ultimately select the new General Manager of the Burnie City Council.

For the reasons stated in respect of Part 7.1(a), not only does the Panel conclude that the email sent at 9.23pm on 9 July 2024 was presumptive, there was no conclusive evidence before the Panel that even if Ms Lynch had declared herself a candidate for the position of General Manager, Cr Brumby would necessarily have had a conflict of interest in participating in the selection process.

In all the circumstances, including that Ms Lynch herself told the Panel she was offended and embarrassed by the two emails, the Panel is satisfied that by sending them when she did Cr Brumby caused Ms Lynch offence and embarrassment as a reasonable person.

The Panel upholds this part of the complaint.

## Sanctions

Where a code of conduct complaint or part of it is upheld, the Code of Conduct Panel may impose one or more of the sanctions referred to in section 28ZI(2) of the Act on the respondent councillor. These include

- A caution
- A reprimand
- An apology to the complainant or other person affected by their behaviour
- A requirement to attend a counselling or training course;
- A suspension from the office of councillor for a period of up to three months.

On 28 February 2025, the Panel wrote to Cr Brumby giving her the opportunity to make a submission on what, if any sanction, she considered would be appropriate in the event that the Panel upheld all or part of her complaint. In an email of 28 February 2025 sent at 8.46pm, Cr Brumby replied saying, among other things –

*“While I categorically refute the claims made in these complaints, I place myself fully at the discretion of the Panel and respect the process that has taken place.”*

By email of 14 March 2025, and in further response to the Panel’s letter to her of 28 February in respect of sanction, Cr Brumby forwarded what she variously described as a ‘replacement response’, an ‘additional response’ and an ‘entire response’. In this document of some 5 pages Cr Brumby addressed (and denied) all the allegations against her under the original complaint, including those that were dismissed on initial assessment, set out a chronology of events between 5 April and 23 July 2024 and ultimately called for the Panel’s dismissal of the complaint.

It appears to the Panel that Cr Brumby mistakenly took the invitation of 28<sup>th</sup> February to comment on sanction as an opportunity to present further evidence and/or make further submissions in respect of the allegations against her. Only the final two paragraphs of the submission of 14 March bore directly upon the issue of sanction, which were in these terms:

*‘I respectfully request that the Panel dismiss this complaint, as I cannot, in good conscience, select a sanction for myself when I firmly believe I have done nothing wrong. I have acted as any upright citizen and responsible leader would—by telling the truth, acting with integrity, and ensuring transparency. My decision to declare a conflict of interest and step aside from the recruitment process was made in good faith and in alignment with proper governance principles.*

*I stand by my actions and my commitment to serving Burnie with honesty, fairness, and integrity.’*

The Panel does not take into account anything in the submission of 14 March except for the final two paragraphs as Cr Brumby’s opportunity to present her case (through an advocate) and defend herself against the allegations ceased at the end of the hearing, conducted in the presence of the complainants. The Panel will of course take the entirety of Cr Brumby’s submission of 28 February into account in respect of sanction.

In its final analysis, the Panel finds that owing to the restrictions placed upon her by the General Manager Cr Brumby was placed in the unenviable position in Council of not being able to confer with any senior staff regarding the timeliness and content of her emails sent on 9 July 2024. Had she been able to do so, she may well have chosen not to send them.

However, the Panel did find that by sending those emails, Cr Brumby did treat Ms Lynch unfairly and caused her, as a reasonable person, an offence and embarrassment.

In all the circumstances the Panel considers that a caution is a sufficient sanction to impose and accordingly cautions Cr Brumby in relation to the parts of the complaint it has upheld.

### **Timing of the Determination –**

In accordance with section 28ZD (1) a Code of Conduct Panel is to make every endeavour to investigate and determine a code of conduct complaint within 90 days of the chairperson's determination that the complaint is to be investigated.

The Panel has been unable to determine the complaint within 90 days, owing to requests for extensions of timeframes, unavailability of parties and Panel members from time to time and the intervention of the Christmas/New Year holiday period.

### **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. In accordance with section 17 of the *Magistrates Court (Administrative Appeals Division) Act 2001*, an appeal must be lodged within 28 days of the date of receipt of this determination.



Jill Taylor  
**Chairperson**



Frank Neasey  
**Legal Member**



Philip Cocker  
**Member**

DATE: 21 March 2025