

CODE OF CONDUCT PANEL

KING ISLAND COUNCIL CODE OF CONDUCT

Determination made 27 November 2018

Local Government Act 1993

Code of Conduct Panel:

Christine Fraser (Chairperson), Lynn Mason, Anthony Mihal

I. Summary of the complaint

A code of conduct complaint was submitted by Mr Troy Brice as General Manager of King Island Council on 14 August 2018.

The complaint alleges that Councillor David Munday breached these parts of the King Island Code of Conduct:

Part 2 - Conflict of interest.

Part 3 - Use of office.

Part 5 - Use of information.

The Chairperson made an initial assessment on 30 August 2018. In accordance with section 28ZA of the *Local Government Act 1993* (the Act), the complaint appeared to substantially relate to a contravention of the council's code of conduct; it was neither frivolous nor vexatious; and it did not require referral to another person or authority for investigation. The Chair concluded that the complaint alleged breaches of the Council's Code of Conduct and should be investigated.

By letter dated 30 August 2018 Councillor Munday was advised of the complaint against him and provided with a copy of the original complaint. He forwarded his response in the form of a statutory declaration, dated 11th September 2018.

The Panel convened on 21 September 2018 to consider the complaint and agreed that the complaint lacked sufficient detail. A letter was sent to Mr Brice on 25 September 2018, inviting him to consider applying to the Panel under Section 28X(2) of the Act for consent to amend the complaint, pointing out that:

Section 28V of the Act provides that a complaint must:

- (d) *state the provisions of the relevant code of conduct that the councillor has allegedly contravened; and*
- (e) *contain details of the behaviour of each councillor that constitutes the alleged contravention.*

In its initial form, the complaint alleged only breaches of Parts 2, 3 and 5 of the Code; it did not identify the specific provisions of the Code (by part and paragraph numbers) that Councillor Munday was alleged to have contravened, nor the specific behaviour that might constitute each contravention.

Mr Brice as advised that if he wished to seek the Panel's consent to amend the complaint to specify particular clauses of the Code, he should forward a proposed amendment by 2 October 2018. Mr Brice was informed that before determining whether to give consent, the Panel would invite submissions from Councillor Munday and if consent was granted, the Panel would seek Councillor Munday's response to the amended complaint. As Mr Brice did not submit a proposed amendment to the complaint, nor any further information, the Panel considered the complaint alleged breaches of the whole of Sections 2, 3 and 5 of the King Island Council Code of Conduct.

Mr Brice's complaint alleged that Councillor Munday had made:

incorrect and untrue statements in the King Island Courier newspaper by way of his letter to the Editor dated 8 August 2018.

The concern relates to Cr Munday's public letter with mis-information regarding Council information provision, additionally his broad public statements of opposition to the Council's decision to amend airport fees and charges. The incident was reported to me by multiple concerned rate payers.

Mr Brice stated that while Councillor Munday said he had requested information from the Council organisation but had not been provided with it:

the truth of the matter is that he was provided all such information during the 2018 Budget decision process and in separate briefing sessions with the General Manager.

Cr Munday wrote to me, as General Manager on 22 July requesting the same information. I responded on 22 July offering him again the opportunity to meet with me to review the information he had already been provided. He did not take up the offer despite multiple attempts by me to reinforce the offer to meet and clarify.

Mr Brice stated

Given that Councillor Munday is employed by an airline operating at the Council owned King Island Airport and that he has not declared a conflict of interest for related decisions, is an extended matter of concern.

However, it is clear that this "extended matter of concern" is not a separate matter of complaint because the complaint itself is limited to the letter to the Editor.

Councillor Munday's response on 11 September 2018, was in the form of a statutory declaration. He stated that he had voiced his *opposition to the FY 18/19 through different outlets* and pointed out that *this was on the public record on 26th of June when I voted against the above budget.*

I also voiced my disappointment through a letter to the Courier. This was carried out after our Mayor on Tasmanian radio said derogatory comments about an airline that services our island. He is supposed to be our spokesman and I wanted it known he was not speaking for me.

He stated the reason for his request for information:

DEPRECIATION has been a subject to me that has been the main point that I have voted against the budget for a few years now. I have been an outspoken critic of this subject within our budget. The Auditor General addressed us in the past and we were using DEPRECIATION in a different way to his description of how we could treat it.

He said that when he complimented an airline's service, it was as *a normal customer thanking them for their courtesy and kind actions provided to me as a customer.*

In a statutory declaration on 2 October, Councillor Munday stated *I have not worked as a subcontractor for said airline since early June 2018.* He stated that in the past, *the Auditor General has*

addressed Council regarding depreciation and I feel the Council is using depreciation in a different way to his advice.

On 26 October, a letter was sent to Mr Brice requesting that he forward to the Panel any documents he had provided to Councillor Munday regarding:

- the request, or instructions, from the Auditor General that the Council get the airport to a breakeven point (in his letter in the Courier, Councillor Munday says that reference to such a request or instruction was included in a Council press release of the 3 July)
- the depreciation schedule and an amortization scale on entities within the airport.

Mr Brice responded on 30 October, stating he had attached

examples of the information shared with Councillor Munday (as per all Council members) during the May/June 2018 budget cycle. The multiple Council workshops during this period discussed at length Depreciation and the documented Auditor General requirements of King Island Council...

Post Budget period, Cr. Munday did request information regarding the Airport Depreciation via a Sunday email to me...I responded to offer to provide again all the info (attached) and to talk him thru again the nuances of the budget elements. Cr. Munday did not take up my offer.

Mr Brice also forwarded these documents:

- King Island Airport – Impact of fees and charges
- Airport - FY2018-19 proposed budget
- Summary of Airport charges 22 May 2018 Workshop
- July 2018 Our strength is our pride
- Email sent to councillors with rates mailer attached 9 July 2018
- Depreciation and underlying result (a presentation by the Tasmanian Audit Office in May 2018)
- Email sent to Councillors following a depreciation workshop 24 May 2018.

A letter was also sent to Councillor Munday on 26 October 2018, requesting his written advice as to whether he was the author of the letter published over his name on page 6 of the King Island Courier on 8 August 2018. In the event that he did write that letter, he was asked to provide the Panel with a copy of the Council press release of 3 July to which he referred.

In his response of 1 November, Councillor Munday confirmed that he was the writer of the letter to the Courier on 8 August, and attached the Council press release of 3 July.

2. Determination

In accordance with section 28ZE of the Act, the Code of Conduct Panel conducted an investigation on the evidence before it. The Panel considered the complaint, all the supporting material provided by the complainant, and both of Councillor Munday's statutory declarations. The Panel determined under section 28ZG (2) (b) that a hearing was unnecessary in the circumstances because the investigation could be adequately conducted by means of written submissions and examination of documentary evidence.

The Panel could make that determination *inter alia* because Councillor Munday says that he was the author of the letter to the King Island Courier and Mr Brice provided the information he stated had been shown or discussed with Councillor Munday and was relevant to the question exercising the Panel's mind.

For reasons that will become clear, the only factual matter that the Panel had to determine in order to dispose of the complaint was whether or not Councillor Munday had requested and received

- the request, or instructions, from the Auditor General that the Council get the airport to a breakeven point, and
- the depreciation schedule and an amortization scale on entities within the airport,

thereby showing to be untrue, the statements in his letter to the Editor that he had not received the same as alleged in the complaint. The Panel considered that it could properly find that Councillor Munday had requested those documents, and that Mr Brice provided insufficient evidence that those specific documents had been provided to Cr Munday.

It was unnecessary for the Panel to make any finding as to whether or not Councillor Mundy was employed by an airline operating at the King Island Airport. He says that he was not.

Under section 28ZI (1)(c) of the *Local Government Act 1993*, the Code of Conduct Panel determines the complaint by dismissing it, on the basis that the matters of complaint cannot amount to a breach of Part 2, or Part 5 of the King Island Council Code of Conduct, and that there is insufficient evidence that Councillor Munday had breached Part 3 of the Code by making untrue statements in his letter to the Editor.

3. Reasons for determination

Part 2 – Conflict of interest

Part 2 of the King Island Code of Conduct states that:

1. *When carrying out his or her public duty, a councillor must not be unduly influenced, not be seen to be unduly influenced, by personal or private interests that he or she may have.*
2. *A councillor must act openly and honestly in the public interest.*
3. *A councillor must uphold the principles of transparency and honesty and declare actual, potential or perceived conflicts of interest at any meeting of the Council and at a workshop or any meeting of a body to which the councillor is appointed or nominated by the Council.*
4. *A councillor must act in good faith and exercise reasonable judgement to determine whether he or she has an actual, potential or perceived 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.*

The Panel concludes that the conduct complained about, a letter to the King Island Courier, cannot be a breach of Part 2; items (3), (4), (5) and (6) of the King Island Code of Conduct in that it did not occur at a meeting of the Council, or a workshop, or a meeting of a body to which Councillor Munday had been appointed. With respect to Part 2, (1) and (2), there could be no conflict of interest in the published letter.

Part 3 (1): Use of office

Part 3 (1) of the King Island Code of Conduct states that:

The actions of a councillor must not bring the Council or the office of councillor into disrepute.

In its examination of the documents submitted, the Panel did not find any that met the specific requests from Councillor Munday in his email to Mr Brice on 22 July 2018, in which he asked to see (1) the instructions from the Auditor General to get the airport to a break even and beyond; and (2) a copy of the complete depreciation schedule for the airport, which included years left to amortize entities within the airport.

There is insufficient evidence to show that Councillor Munday was provided with the specific written information he requested. The Panel could not identify any documents in the extensive bundle supplied by Mr Brice that are specifically those that Councillor Munday requested. There was information about depreciation and there were documents that made reference to requests by the Auditor General but in order to find that the Councillor had made untrue statements about not receiving the specific documents, the Panel would need to see evidence that Councillor Munday had in fact received those specific documents. Mr Brice could not supply that evidence when he was compelled to do so under the Act after receiving a request from the Panel. The Panel can only conclude that such evidence does not exist.

The Panel finds that Councillor Munday's letter to the King Island Courier on 8 August did not bring the Council into any disrepute by the inclusion of false statements or at all.

Part 3 (2) and (3) – Use of office

Part 3 (2) of the King Island Code of Conduct states that:

A councillor must not take advantage, or seek to take advantage, of his or her office or status to improperly influence others in order to gain an undue, improper, an unauthorised or unfair benefit or detriment for himself or herself or any other person or body.

Part 3 (3) of the King Island Code of Conduct states that:

In his or her personal dealings with the Council (for example as a ratepayer, recipient of a Council service or planning applicant), a councillor must not expect nor request expressly or implicitly, preferential treatment for himself or herself or any other person or body.

The Panel concludes that there is a lack of evidence demonstrating that Councillor Munday breached Part 3 (2) and (3). It is clear on the face of the letter to the Editor, that Councillor Munday was not seeking to take advantage of his office, or any preferential treatment.

Part 5 – Use of information

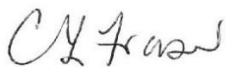
Part 5 of the King Island Code of Conduct states that:

- 1. A councillor must protect confidential Council information in his or her possession or knowledge, and only release it if he or she has the authority to do so.*
- 2. A councillor must only access Council information needed to perform his or her role and not for personal reasons or non-official purposes.*
- 3. A councillor must not use Council information for personal reasons or non-official purposes.*
- 4. A councillor must only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation.*

The Panel concludes that the allegation that Councillor Munday breached Part 5 (1); (2); (3) or (4) is entirely misconceived. In writing to the King Island Courier, Councillor Munday was not releasing confidential information, nor accessing council information for personal reasons, nor releasing council information that had not already been in the public domain. That is clear on the face of the letter.

4. The right to review

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



Christine Fraser
Chairperson



Lynn Mason
Member



Anthony Mihal
Legal Member

27 November 2018