

CODE OF CONDUCT PANEL

LAUNCESTON CITY COUNCIL CODE OF CONDUCT

Determination made 27 October 2016

Local Government Act 1993

Complaint against Alderman Janie Finlay

Code of Conduct Panel: Jill Taylor (Chairperson), Richard Grueber (Legal Representative), Christine Fraser.

1. Summary of the complaint

A Code of Conduct complaint was submitted by Mr Lionel Morrell to the General Manager of the Launceston City Council on 27 July 2016.

The complaint alleges that on 12 May 2016 and 6 June 2016, Alderman Janie Finlay breached:

- Part 7 – Relationships with the Community, Aldermen and Council Staff
- Part 8 – Representation of the Council

of the Launceston City Council Code of Conduct, Version 1, dated 22 September 2014.

As the alleged breaches occurred on 12 May 2016 and 6 June 2016, the Panel considered the complaint against the provision of the *City of Launceston Code of Conduct for Aldermen, Version 1*, adopted on 22 September 2014 which was in effect at Launceston City Council (LCC) at that time.

Mr Morrell alleges that Ald Finlay breached parts 7 and 8 of the Launceston Council Code of Conduct, dated 22 September 2014, because she demonstrated unwarranted harassment and discrimination towards him, violating his dignity and creating an environment that was threatening, intimidating, hostile, degrading, humiliating and offensive. Mr Morrell alleges that this took place at a meeting of the Cataract Gorge Advisory Committee (CGAC) Meeting held on 12 May 2016. He further alleges that Ald Finlay expressed vehement and dictatorial attacks on him at a meeting that took place at the Launceston Town Hall on 6 June 2016.

2. Investigation

In accordance with section 28ZE of the *Local Government Act 1993* (the Act), the Code of Conduct Panel investigated the evidence before it.

The Chairperson of the Code of Conduct Panel (the Chair) conducted an initial assessment of the Complaint and determined on 17 July 2016 that it was to be investigated and determined by a Code of Conduct Panel (the Panel) in accordance with section 28ZA(1)(e) of the Act.

The Panel received and considered the following documents:

- Complaint from Mr Morrell dated 27 July 2016
- Replacement page 1 to complaint of 27 July 2016, dated 28 July 2016
- Launceston City Council Code of Conduct dated 22 September 2014 and model Code of Conduct endorsed by LCC on 14 June 2016.
- CGAC Terms of Reference approved by Council on 18 December 2006
- Letter dated 6 August 2015 from Mr Morrell to Mr Andrew Smith indicating his preparedness to continue as a community representative on the CGAC
- Emails from Mr Morrell dated 18 March 2016 and 10 May 2016 (to Ald Finlay) to CGAC members regarding telephone aerials at the Gorge
- Minutes of meeting of the CGAC held on 12 May 2016
- Series of emails between Mr Morrell, Tricia De Leon-Hillier and Barry Picket regarding these minutes
- Emails dated between 2 and 3 May 2016 from Mr Morrell to Ald Finlay requesting information prior to meeting of CGAC
- Series of emails from 23 April to 3 May 2016 between Mr Morrell and Ald Finlay and Ms De Leon-Hillier regarding frequency of meetings
- Email from Mr Morrell dated 23 April 2016 to CGAC regarding an article in the Examiner newspaper
- Letter dated 14 June 2016 from Ald Finlay to Mr Morrell requesting his written resignation following his verbal offer of resignation
- Letter dated 29 June 2016 from Mr Morrell to members of the CGAC regarding lack of action by Ald Finlay concerning an impact on the environmental significance of the Reserve
- Letter dated 28 July 2016 from Mr Morrell to Mayor requesting reasons for cancellation of meetings of CGAC
- Letter dated 29 July 2016 from A/g General Manager, LCC to Executive Officer (EO) Code of Conduct Panel
- Letter dated 3 August 2016 from Mayor to Mr Morrell responding to Mr Morrell's letter regarding reasons for cancellation of meetings of CGAC
- Letter dated 5 August 2016 from Mr Morrell to Chairperson Code of Conduct Panel confirming his wish to proceed with his complaint
- Letter dated 9 August 2016 from Mr Morrell to Chairperson of Code of Conduct Panel referring to Mayors response dated 3 August 2016
- Letter dated 10 August 2016 from Mr Morrell to Chairperson of Code of Conduct Panel seeking clarification of which version of LCC Code of Conduct he should refer to.
- Letter dated 18 August 2016 from Mr Morrell to Chairperson of Code of Conduct Panel confirming the specific sections Ald Finlay has been alleged to have breached
- Statutory declaration by Ald Finlay dated 29 August 2016
- Email dated 16 September from Mr Morrell to EO, Code of Conduct Panel querying progress of his complaint and providing contact details for all members of the CGAC and commenting on Ms Christine Fraser's appointment to the LCC Code of Conduct Panel
- Letter dated 16 September 2016 from GM, LCC to Mr Morrell removing him from CGAC
- Statutory declaration from Mr Barry Picket dated 19 September 2016
- Statutory Declaration from Rosemary Armitage dated 14 October 2016
- Statutory Declaration from Peter Reynolds dated 14 October 2016
- Statement from Ian Norton dated 14 October 2016

- Letter dated 16 October 2016 from EO Code of Conduct to Mr Morrell advising him of the Hearing and Panel's decision to call Mr Pickett and Ald Williams as witnesses

In reviewing the considerable documentation presented to it, the Panel decided that it would request Mr Barry Pickett of the Launceston City Council to provide a Statutory Declaration and appear as a witness as he was present on both occasions that the alleged breaches of the Code of Conduct occurred.

Both Mr Morrell and Alderman Finlay were invited to call witnesses. Alderman Finlay named Alderman Emma Williams as her witness. Mr Morrell was requested on two occasions to provide details of any witnesses he wished to call, once on 26 September 2016 and then on 11 October 2016. He did not provide details of any witnesses. Prior to and at the Hearing, Mr Morrell said that he thought as he supplied the names of attendees at the meeting held on 12 May 2016, that would be sufficient. However, he supplied those names in an email dated 16 September 2016, prior to the two requests mentioned above. The Panel concluded that he had been given ample opportunity to call his witnesses. Mr Morrell did not formally seek an adjournment and, on balance, the interests of justice favoured proceeding with the Hearing without the delay of an adjournment.

3. Summary of Hearing

The Hearing was convened in Launceston on 27 October 2016. Both Mr Morrell and Ald Finlay were present throughout the Hearing and Mr Barry Pickett and Ald Williams only attended to give their evidence and be questioned by the Panel and Mr Morrell and Ald Finlay. In opening the Hearing, the Chair read out a statement about the purpose of the Hearing, the procedures to be followed and the options available to the Panel in its determination.

Mr Morrell referred to an email from the Chair of the Panel stating that matters he raised which were identified to be operational would be discussed at the Code of Conduct Hearing. The matter went to the cancellation of CGAC meetings after 12 May 2016. The Chair indicated that was an operational matter for Council and it was not unusual for organisations to cancel or postpone meetings for one reason or another. Mr Morrell did not agree with the Panel's view and he was advised that he would need to demonstrate during the Hearing how the matter was related to the alleged breaches of the Code of Conduct.

Mr Morrell outlined his credentials and advised that he has been a member of the CGAC since 2007. He indicated that the genesis of his Code of Conduct complaint against Ald Finlay was his numerous attempts to contact Ald Finlay, at least seeking a conversation with her, or requesting a special meeting of the CGAC be called. The reasons for his attempts to meet with Ald Finlay or hold a special meeting related to two matters, viz.,

- the erection of two mobile network transmitting aerials; and
- Hydro Tasmania's advertisement in the Examiner newspaper dated 23 April 2016 advising of a decision it had reached regarding environmental water flow through Cataract Gorge.

Mr Morrell's contacts were by mail, email and telephone between 18 March 2016 and 10 May 2016.

Ald Finlay acknowledged that she did not respond to all of Mr Morrell's communications immediately but as Chair of the CGAC she took the decision that the matters would be dealt with at the next meeting of the CGAC scheduled for 12 May 2016. Mr Morrell was advised of her decision on 3 May 2016. Mr Morrell indicated to the Panel that he was "annoyed, frustrated and angry" with Ald Finlay's perceived non-action.

In a final email prior to the meeting of 12 May 2016, dated 10 May 2016, Mr Morrell again requested information regarding the matters he had raised prior to the meeting. Ald Finlay told the Panel that the matter of the environmental water flow was more appropriately being handled by another area of Council and the aerials were now the subject of a Planning Application before Council.

The scheduled meeting of 12 May 2016 went ahead but was preceded by an information session. Once the meeting proper commenced, Mr Morrell noted that the two matters were not included in the agenda and requested they be discussed. Ald Finlay told the Panel that the status of these two matters were reported to the meeting. Mr Morrell claims when Ald Finlay denied him a chance to speak on the subjects, he felt harassed and intimidated.

Ald Finlay said that she went into the meeting of the 12 May 2016 with a clear objective to be assertive and manage the meeting as there had been behavioural issues at previous meetings. However, according to Ald Finlay and witnesses Mr Pickett and Aid Williams, the meeting degenerated into a discussion between Mr Morrell and Ald Finlay. There was no evidence of any shouting or any verbal abuse having occurred. However, Ald Finlay said that Mr Morrell, who was sitting next to her had intruded into her personal space and referred to her as "Hitler". It was at this point that she ended the meeting. Mr Morrell denied that he had called her "Hitler" and neither of the witnesses had heard him say it.

Ald Finlay admitted that she may have raised her voice to make herself heard by Mr Morrell. Mr Morrell claimed that on several occasions he tried to call a "point of order" but neither Ald Finlay nor the witnesses recalled hearing this. Ald Finlay said that she had no alternative but to call a premature close to the meeting because there was no progress on the agenda. Ald Finlay said that she was also concerned about the welfare of staff and community members attending the meeting. When asked by the Panel whether she thought that, if Mr Morrell had been provided with the information, there would have been a different outcome to the meeting, Ald Finlay said she did not think so.

Ald Finlay told the Panel that she was concerned that staff were being involved in CGAC matters outside of the formal meetings. When asked if this was covered in the Terms of Reference of the CGAC she said it was not and that the Launceston City Council was reviewing all Committee's Terms of Reference.

At the conclusion of the meeting, held on 12 May 2016, Mr Morrell claimed that Ald Finlay had asked him to resign, Ald Finlay said that when she went into the meeting she had no such intention, but admitted that she could have done so but did not recall. Mr Morrell told the Panel that Ald Finlay said to him "you will offer your resignation" in a raised voice which he described as shrill. Ald Finlay said that she remembered Mr Morrell saying words to the effect "that I don't have to be here".

Subsequent to the meeting Mr Morrell requested a copy of the tape of the meeting. He was advised that the tape had been "wiped" and that this was consistent with a practice of doing so once the minutes had been typed.

A meeting between Mr Morrell, Ald Finlay and Mr Pickett was arranged and held on 6 June 2016 at the Launceston Town Hall. Ald Finlay had asked a Council employee to contact Mr Morrell to arrange the meeting and he told the Panel that, when contacted, was told the meeting was to be "a chat". Ald Finlay indicated to the Panel that this was her intention. She wanted to raise the issue of Mr Morrell's behaviour at CGAC meetings in an informal way. Ald Finlay told the Panel that Mr Morrell's experience and knowledge is highly valued but his behaviour has caused concern with some Council employees and the CGAC. Ald Finlay said she went into that meeting with the possibility of raising mediation with Mr Morrell. Both Mr Morrell and Ald Finlay agreed that the meeting started in a "cordial manner". Mr Pickett, who was attending to other Council matters, came to the meeting after Ald Finlay and Mr Morrell had arrived.

At this meeting Ald Finlay stated that Mr Morrell presented her with a copy of the Launceston City Council Code of Conduct and she saw this as inappropriate and felt the tone of the meeting again degenerated from that point. Mr Morrell did acknowledge he gave Ald Finlay a copy of the Code of Conduct which he claimed she threw on the floor. Ald Finlay denied this, saying she may have put it on a chair and it fell off. Mr Pickett told the Panel that he had no memory of Ald Finlay throwing the documents provided by Mr Morrell to the floor.

Mr Morrell claimed that Ald Finlay had also cut short this meeting and again requested his resignation adding that she would take action to have him replaced. He claims that she spoke in a shrill voice, and again saying "you will offer your resignation".

Ald Finlay acknowledged that it became clear that no progress was going to be achieved regarding Mr Morrell's behaviour. She did indicate that she was providing Mr Morrell with the opportunity to resign rather than being removed.

The Panel called Mr Barry Pickett as a witness because he was present on the two occasions that Mr Morrell alleged Ald Finlay breached the LCC Code of Conduct. Mr Pickett had provided a Statutory Declaration stating that in his opinion Ald Finlay did not verbally threaten or bully Mr Morrell. He added that Ald Finlay asked Mr Morrell if he wanted to resign at the meeting on 6 June 2016 after he made a statement to the effect that "he didn't have to be on the CGAC". He said that Ald Finlay raised her voice but that it was in response to Mr Morrell's persistent questioning of her without allowing her time for response.

Mr Pickett's view of the meeting of the CGAC held on 12 May 2016 was that it became a discussion between Mr Morrell, who was continually asking Ald Finlay questions, and Ald Finlay who was trying to manage the meeting. He said the others present were not engaged and he felt the meeting was not achieving any purpose and was a waste of time. He agreed with Ald Finlay's decision to close the meeting. In response to a question from Mr Morrell, Mr Pickett said his behaviour at meetings was disruptive, adding that whilst Mr Morrell spoke in a considered way, he continually interrupted others, putting his views by "stealth".

Ald Williams, Ald Finlay's witness, was present at the CGAC meeting held on 12 May 2016. She told the Panel that in her view Ald Finlay did not breach the LCC Code of Conduct with her behaviour towards Mr Morrell at that meeting. Ald Williams stated that Ald Finlay was constantly interrupted by Mr Morrell and may have raised her voice to be heard but added Ald Finlay was not shouting. Ald Williams told the Panel that, in her view, the meeting ended early as it was not sticking to the agenda and Mr Morrell was not acknowledging the role of the Chair. At an earlier meeting, Ald Williams said that she thought Mr Morrell had been dismissive of staff and she was concerned that he continually sent correspondence out of session. Ald Williams said that she believed that the Terms of Reference of the CGAC needed to be reviewed.

When asked by Mr Morrell whether anyone had made comment about the tenor of the meeting, Ald Williams said no. Ald Williams told the Hearing that she had gone to the General Manager after that meeting to see if there was a Code of Conduct for Committee members. She was advised that this was not the case and subsequently submitted a formal complaint about Mr Morrell. Mr Morrell stated that this was the first he had heard of this. Ald Williams stated that she had not involved Ald Finlay in her decision to lodge a complaint about Mr Morrell. Ald Williams stated that she would have expected that Mr Morrell be offered mediation/counselling. Ald Finlay stated that this was the purpose of the meeting of 6 June 2016. Ald Williams stated that she did agree with Mr Morrell that the water flow issue was important but this was from her professional perspective and not a matter for the CGAC.

In summing up Mr Morrell said that Ald Finlay failed to treat him with courtesy and respect in the lead up to the meeting held on 12 May 2016, at that meeting, and the subsequent meeting held on 6 June 2016. He contended that the circumstances in which the meeting on 6 June was arranged amounted to an ambush by Ald Finlay to demand his resignation. He added that Ald Finlay had harassed and bullied him by words and actions including a threat to have him removed from the CGAC. He further stated that he has been denied natural justice by removing him from the CGAC without providing any reasons. There was no evidence that Ald Finlay caused this to occur and her evidence was that she excused herself when this matter was before the Council and that she did not participate in the discussion or decision. A Panel can only determine breaches of the Code of Conduct and cannot get involved in operational matters.

In her summary, Ald Finlay denied that she had bullied or harassed Mr Morrell, saying that she has high regard for his knowledge and experience. On both occasions, i.e. 12 May 2016 and 6 June 2016, Ald Finlay stated that she had no intention of requesting Mr Morrell to resign. However, at the meeting of 6 June 2016, realising that Mr Morrell's behaviour was not going to change, she took the opportunity to offer him the chance to resign rather than being removed from the CGAC. Ald Finlay stated that this was not made in a threatening manner.

It is clear on the evidence of all witnesses that the meeting held on 12 May 2016 became unruly and reached an early conclusion when Ald Finlay, as Chair, closed the meeting. Mr Morrell sent several communiques to Ald Finlay and other Council staff prior to the meeting

of 12 May 2016. Whilst the Terms of Reference are silent on this matter, it is customary for matters outside of committee to be forwarded to the Chair only. Mr Morrell's expectation of response time from Ald Finlay may have been unrealistic given her other responsibilities.

Ald Finlay and both witnesses did not believe that Ald Finlay had breached the LCC Code of Conduct at this meeting.

At the meeting held at the Council on 6 June 2016, Mr Morrell took Ald Finlay's request for him to provide his resignation as a threat. Ald Finlay denied this, stating that she was providing Mr Morrell with this opportunity instead of being removed from the CGAC. Apart from Mr Morrell's bare assertion there was no evidence to support his contention that the meeting was an ambush. Both Mr Morrell's evidence and Ald Finlay's evidence indicate that the meeting was quite civil until Mr Morrell's conduct was raised and he produced the Code of Conduct. It then deteriorated as described by Mr Pickett and it appears reasonable that Ald Finlay terminated it to avoid further confrontation.

4. Determination

In accordance with section 28ZH of the Act, the Code of Conduct Panel held a Hearing on 27 October 2016 at 12-16 St John Street Launceston and heard evidence from:

- The complainant Mr Lionel Morrell
- The respondent Ald Janie Finlay
- Mr Barry Pickett; and
- Ald Emma Williams

In accordance with section 28ZI of the Act, the Panel determines that the complaint is dismissed.

5. Reason for determination

The Code of Conduct Panel considered the information provided by Mr Morrell and the response by Ald Janie Finlay along with supporting statutory declarations and evidence presented by witnesses.

The Code of Conduct current at the time of the alleged breaches is dated 22 September 2014 ("the LCC Code of Conduct"). The relevant provisions in the Code of Conduct enlivened by Mr Morrell's complaint are:

- In Part 7: *Aldermen...must treat people with courtesy, fairness, dignity and respect.*
- In Part 8: *Aldermen must ensure that when representing the Council they only do so within the ambit of their authority...*

Mr Morrell's complaint, insofar as it relates to Part 8, is misconceived and must be dismissed. The Standard relates to exceeding authority arising from their position as an Alderman or delegated by the Council. It has no relevance to the alleged impugned conduct of Ald Finlay.

This leaves the question of whether Ald Finlay's conduct breached Standard 7, a matter to be determined on the balance of probabilities.

Mr Morrell asserts that the manner in which he was treated by Ald Finlay was in breach of the Standard, and identified the alleged demands for resignation, alleged threat to have him removed from the CGAC, the termination of the 12 May meeting, the failure to call a further meeting to enable him to address the members and the alleged ambushing at the 6 June meeting, as specific instances of harassment, bullying or intimidation.

Mr Morrell's allegations are denied by Ald Finlay. It therefore falls to the Panel to determine, on the evidence before it, whether it is satisfied on balance that the alleged conduct occurred and that, if it did, whether it amounted to a breach of Standard 7.

The evidence of Mr Morrell that Ald Finlay bullied and threatened Mr Morrell and used *emotional and psychological methods intended to intimidate and frighten* him (Mr Morrell's letter of complaint dated 27 July 2016) is disputed by Ald Finlay and is either not supported by or is disputed by the evidence of Mr Pickett and Ald Williams. It was clear from the way he gave his evidence that Mr Pickett believed that Mr Morrell's own conduct was questionable and that his view of Ald Finlay's conduct had to be seen in that context, but he presented as a truthful and candid witness. Ald Williams also had concerns about Mr Morrell's conduct, sufficient to ground a complaint of her own, but she also presented as a truthful and balanced witness.

At most, the Panel could be satisfied that Ald Finlay raised her voice, asked Mr Morrell to resign and terminated the two meetings. This is supported by the evidence of Mr Pickett and Ald Finlay. The evidence does not indicate that the former was so unreasonable in the fraught circumstances of either meeting, circumstances contributed to by Mr Morrell's conduct, as to constitute a lack of courtesy, fairness, dignity and respect. Neither could the request for Mr Morrell to resign be seen as a breach in the context of the concerns Ald Finlay had about his conduct in CGAC and the outcome of the meeting on 6 June. The decision to terminate the 12 May meeting was clearly appropriate on the evidence of Mr Pickett and Ald Williams. Ald Finlay's conduct must be considered in the context of these surrounding circumstances.

Mr Morrell's claim that he was bullied and harassed by Ald Finlay's lack of response to his request for information and her treatment of him at the CGAC meeting and the meeting on 6 June 2016 was not found to be proven. Ald Finlay's handling of the matters raised by Mr Morrell on the surface appeared reasonable to have the discussion at the next available CGAC meeting. However, the Panel considers that communication back to Mr Morrell could have been more timely and comprehensive. The Panel accepts, that whilst the meeting of 6 June 2016 resulted in Ald Finlay asking for Mr Morrell's resignation, her intention was to give him the opportunity to resign before she called a special meeting of CGAC to seek a recommendation to be put to Council to have him removed from CGAC, as set out in her letter to him dated 14 June 2016. The panel notes that Ald Finlay did not proceed to convene such a meeting. It is difficult to see how the failure to convene any subsequent meeting of the CGAC could be in breach of the Code by preventing Mr Morrell from communicating his position to members when Mr Morrell had evidenced his ability to do just that by his letter to them of 29 June 2016.

The Code of Conduct Panel concludes that based on the evidence presented, it is not proven that Ald Finlay breached Standard 7 of the LCC Code of Conduct.

6. 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 Code of Conduct Panel has failed to comply with the rules of natural justice.



Jill Taylor
Chairperson



Richard Grueber
Member



Christine Fraser
Member