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Local Government Act 1993

CODE OF CONDUCT PANEL DETERMINATION REPORT

LATROBE CODE OF CONDUCT

Complaint brought by Councillors Peter Freshney and Graeme Brown against Councillor Shayne Allison

Code of Conduct Panel

- Jill Taylor (Chairperson),
- David Sales (Local Government Member)
- Sam Thompson (Legal Member)

Date of Determination: 12 August 2022

Content Manager Reference: C24050

Summary of the complaint

A code of conduct complaint was submitted by Councillors (Cr) Peter Freshney (the Mayor) and Graeme Brown to the General Manager of the Latrobe Council on 27 April 2022.

The complaint alleges that Councillor (Cr) Shayne Allison breached the following parts of the Local Government (Model Code of Conduct) adopted by the Latrobe Council on 12 March 2019. The alleged breaches relate to Cr Allison's behaviour at the Latrobe Council's Annual General Meeting held on 13 December 2021 and public comments in *The Mercury* and *The Advocate* newspapers and ABC radio, attributed to Cr Allison, in December 2021.

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 prejudice.

3. In making decisions, a councillor must give genuine and impartial consideration to all relevant information known to him or her, or of which he or she 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 3 - Use of Office

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

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; and

(c) must not bully or harass any person.

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.

PART 8 - Representation

1. When giving information to the community, a councillor must accurately represent the policies and decisions of the Council.

2. A councillor must not knowingly misrepresent information that he or she has obtained in the course of his or her duties.

3. A councillor must not speak on behalf of the Council unless specifically authorised or delegated by the Mayor or Lord Mayor.

4. A councillor must clearly indicate when he or she is putting forward his or her personal views.

5. A councillor's personal views must not be expressed publicly in such a way as to undermine the decisions of the Council or bring the Council into disrepute.

7. The personal conduct of a councillor must not reflect, or have the potential to reflect, adversely on the reputation of the Council.

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 complainants had made a reasonable effort to resolve the complaint. The Chairperson arrived at this conclusion for the following reason:
 - Since Cr Allison's election to Council, the complainants made several attempts provide him with advice and support regarding his role as a councillor. It is noted that Cr Allison refused to attend meetings arranged for this purpose, despite being invited to have a support person with him.
- the complaint substantially related to a contravention of Local Government (Model Code of Conduct, adopted by the Latrobe Council on 12 March 2019;
- the complaint should not be dismissed on the grounds that it was frivolous, vexatious or trivial, because, if proven, the allegations relate to a breach of the Code.
- 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 complainants and the complaint.¹

On that basis, the Chairperson determined to investigate the complaint.

The complainants, respondent councillor and the General Manager were notified of the outcome of the initial assessment on 17 May 2022.

Investigation

In accordance with section 28ZE of the Act, the Code of Conduct Panel investigated the complaint. The complainants submitted a comprehensive document outlining their allegation that Cr Allison had committed several breaches of the Code since his election in 2019, leading up to his derogatory statements about Council, other elected members and senior staff at the Annual General Meeting (AGM) of Council on 13 December 2021 and similar public comments in the media in December 2021. The complainants allege that statements made by Cr Allison were incorrect, incomplete and/or misleading. The complainants stated that in recognition

¹ 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.

that Cr Allison was a first term councillor, they have attempted “to engage with him in good faith to mentor and guide him on his responsibilities under the Local Government Act 1993”. The complainants state that Cr Allison “failed to heed that advice” and had allegedly said that he seeks “to destroy the Council”. Some of the detail contained in the complaint reference incidents which occurred outside of the statutory period of six months from the date of the incident (the AGM). The Panel has not considered these in the context of a breach of the Code but had regard to this information in the context of their relationships between the parties.

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

- The complaint lodged by Crs Freshey and Brown under cover of statutory declarations by both complainants dated 27 April 2022.
- The Local Government (Model Code of Conduct) adopted by the Latrobe Council on 12 March 2019.
- Minutes of the Latrobe Council Annual General Meeting held on 13 December 2021.

As mentioned previously, Cr Allison was provided with a copy of the complaint on 17 May 2022 and requested to provide a response to the complaint by 31 May 2022. As Cr Allison had not provided a response by that date, a reminder email was sent on 3 June 2022 which included a copy of the letter of 17 May 2022. Voicemail messages were also left on his mobile phone on 6 and 8 June 2022.

In accordance with section 28ZG(2)(b) of the Act, the Code of Conduct Panel considered that a hearing may be unnecessary in the circumstances because the investigation could be determined on the basis of the written material provided, noting that Cr Allison had not responded to several requests to provide a response to the complaint. Given that Cr Allison had not responded to several requests, in the Panel’s view, neither party would be disadvantaged without a hearing.

By letters dated 21 July 2022, the complainants and respondent councillor were notified of the Panel’s intention to proceed to determine the complaint without a hearing. Both parties were invited to provide any objection in writing within eleven days. Cr Allison was again invited to provide a response to the complaint within this timeframe, which he chose not to do. No objections were received from the complainants.

Determination

The Panel re-iterates that it has confined its deliberations to the documents listed above and in the absence of any rebuttal from Cr Allison, it makes its determination based on that evidence.

After investigating the complaint, the Code of Conduct Panel determines that Cr Allison has breached part of the Code of Conduct. Pursuant to section 28ZI(1)(c), the Panel upholds parts of the complaint and dismisses the remainder.

Reasons for determination

The Code of Conduct Panel concludes that Cr Allison did breach parts of the Code as outlined below. The Panel notes that there is some overlap between the alleged breaches and aspects of Cr Allison’s conduct.

Part 1.1. 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.

The Panel determines that whilst Cr Allison allegedly made several public statements about Council and its administration, these were a general expression of his views and not specifically related to specific decisions of Council. In the context of ordinary Council meetings matters are debated and motions put, and individual councillors have the prerogative to comment as they see fit and vote accordingly (subject to the Code). The mere fact of Cr Allison’s voting does not, in and itself, prove that he was prejudiced. The Panel dismisses this part of the complaint.

Part 1.2. A councillor must make decisions free from personal bias or prejudgement.

The complainants alleged that Cr Allison refused to accept the Council’s financial reports when he moved a “no confidence” vote at the AGM, demonstrating he had a pre-existing bias. The Panel did not accept that this was evidence of bias and prejudgement on the part of Cr Allison, but rather could have been Cr Allison having

concerns about the accuracy or otherwise of the financial data (irrespective of the reasonableness or otherwise of those concerns). The Panel dismisses this part of the complaint.

Part 1.3. In making decisions, a councillor must give genuine and impartial consideration to all relevant information known to him or her, or of which he or she should have reasonably been aware.

The complainants allege that Cr Allison failed to give genuine and impartial consideration to information he had been provided in relation to financial information contained in the Annual Report, when he refused to support the motion to adopt the Annual Report at the AGM. The complainants advised that relevant information had been provided to Cr Allison in response to a question he raised at the November Ordinary Meeting of Council and was explained again by the General Manager at the AGM. The Panel concludes that Cr Allison had been provided with the information he sought but did not have appropriate regard to it when voting against the motion. Accordingly, he failed to give genuine and impartial consideration to the information before him. The Panel upholds this part of the complaint.

Part 1.4. A councillor must make decisions solely on merit and must not take irrelevant matters or circumstances into account when making decisions

The Panel finds that Cr Allison was provided with relevant information yet failed to take this into account when voting on the motion at the AGM. This followed a pattern of refusal by Cr Allison to accept receipt of monthly financial reports, instead stating that he be provided with “*a cost benefit analysis for resource sharing*”, and he was “*not accepting any finance reports until my other questions are published in the minutes*”. The complainants alleged that Cr Allison was provided with details of how to raise his concerns but failed to do so alleging that “*he has linked his vote to an irrelevant consideration and has clearly articulated he will not change that position until such time as his demands are met*”. The Panel determines that Cr Allison has based his decisions on irrelevant circumstances. The Panel upholds this part of the complaint.

Part 3.1. The actions of a councillor must not bring the Council or the office of councillor into disrepute

The complainants identified that despite constantly providing Cr Allison with additional information he has refused to pass relevant motions at monthly Council meetings. This has caused disruption and annoyance. The Panel accepts the proposition put forward by the complainant but concludes that the actions of Cr Allison have not brought the Council into disrepute. This is evidenced by the overwhelming support and comments made at the AGM in response to his motion to move a vote of no confidence in the mayor, councillors and General Manager.

However, the Panel reaches a different conclusion in relation to bringing the office of councillor into disrepute. Whilst individual incidents of criticism of Council or disruptive behaviour may not constitute a breach of the Code, the net effect of the repeated disruptive behaviour by Cr Allison does constitute a breach. Their net effect was to bring his position as a councillor into disrepute, notwithstanding that the Council itself was not brought into disrepute. The Panel upholds this part of the complaint.

Part 7.1. A councillor –

- (a) must treat all persons fairly; and*
- (b) must not cause any reasonable person offence or embarrassment; and*
- (c) must not bully or harass any person.*

7.1(a)

The complainants provided details of a SMS message allegedly sent by Cr Allison to the General Manager containing derogatory comments about him and effectively attempting to “*exert undue influence over the General Manager*” to bring about an outcome desired by Cr Allison. This statement was circulated to all elected members, which the complaints further alleged may have been an attempt for other councillors to pressure the General Manager. The Panel concludes that the General Manager was treated unfairly by Cr Allison. It follows that Cr Allison breached this part of the Code. In addition to breaching this part of the Code, Cr Allison has not complied with section 28(3)(a) of the Act which states-

“In performing any function under this Act or any other Act, a councillor must not:

- (a) direct or attempt to direct an employee of the council in relation to the discharge of the employee’s duties”*

The Panel upholds this part of the complaint.

7.1(b)

The Panel determines that Cr Allison's constant public criticism of the General Manager is without any obvious foundation and a reasonable person would understand that it would cause offence and embarrassment. The Panel upholds the part of the complaint.

7.1(c)

The complainants alleged that Cr Allison's behaviour towards the General Manager was evidence of bullying. However, it's the Panel's view that for bullying behaviour to occur it needs to be unfounded and unwarranted verbal or physical behaviour occurring over an extended period of time. Whilst the Panel is of the opinion that Cr Allison's behaviour is unwarranted, there is no evidence to suggest this has been ongoing for an extended period or sufficiently severe over a single period to warrant it being regarded as bullying or harassment. The Panel dismisses this part of the complaint.

7.2. 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 complainants alleged that Cr Allison has a "fixation on personalities, rather than issues", pointing to his behaviour in relation to his comments about the General Manager and staff. Whilst this aspect of Cr Allison's behaviour is unacceptable, it does not convey a full picture of Cr Allison's overall performance as a councillor in relation to the wide-ranging Council agenda. The Panel dismisses this part of the complaint.

Part 8.1. When giving information to the community, a councillor must accurately represent the policies and decisions of the Council.

Part 8.2.

A councillor must not knowingly misrepresent information that he or she has obtained in the course of his or her duties.

In assessing the evidence before it, the Panel has jointly considered Parts 8.1 and 8.2. In providing reasons for his no confidence motion at the AGM, Cr Allison made statements that according to the complainants were misleading, if not untrue. As Cr Allison had not provided any rebuttal of these assertions by the complainants, the Panel accepts the statements by the complainants, having regard to the fact that Cr Allison's no confidence motion was overwhelmingly defeated at the AGM. The Panel upholds these parts of the complaint.

3. A councillor must not speak on behalf of the Council unless specifically authorised or delegated by the Mayor or Lord Mayor

By way of supporting their allegations that Cr Allison had breach this part of the Code, the complainants pointed to media reports quoting Cr Allison. The media reports presented to the Panel do not, of themselves, show that Cr Allison spoke on behalf of Council. There is no evidence of what Cr Allison actually said. The mere fact of Cr Allison being a councillor does not prevent him from commenting on issues relevant to Council. While it appears that Cr Allison spoke *about* Council, the Panel cannot find that he spoke *on behalf* of Council. The Panel dismisses this part of the complaint.

4. A councillor must clearly indicate when he or she is putting forward his or her personal views.

This allegation is similar to the one addressed immediately above. The Panel accepts that a reasonable person familiar with the workings of the Latrobe Council would consider views put forward by Cr Allison were his own and not those of Council. The Panel dismisses this part of the complaint.

5. A councillor's personal views must not be expressed publicly in such a way as to undermine the decisions of the Council or bring the Council into disrepute.

No evidence was provided that Cr Allison undermined Council decisions or brought the Council into disrepute by expressing a personal view on a range of matters before Council. Council is a deliberative polity, and councillors are charged with dealing with at times contentious issues. The Panel dismisses this part of the complaint.

7. *The personal conduct of a councillor must not reflect, or have the potential to reflect, adversely on the reputation of the Council.*

The Panel is of the opinion that a reasonable person would view the statements made by Cr Allison at the AGM and in the media as his own personal view and by extension would not link these statements to Council's position. The Panel repeats its observations about Council being a deliberative polity and a councillor's role. The Panel dismisses this part of the complaint.

Sanctions

The Panel wrote to Cr Allison on 21 July 2022 seeking his views on an appropriate sanction should the Panel find all or part of the complaint proven. However, no response was received from Cr Allison. The complainants sought a public apology and a requirement for Cr Allison to undertake governance and financial literacy training.

In considering an appropriate sanction, the Panel has had regard to Cr Allison's continual rejection of offers by the Mayor (one of the complainants) to assist him in understanding the role of responsibilities required of an elected member. The Panel concludes based on the evidence before it, that Cr Allison has blatantly disregarded offers of assistance and information provided over a period of time.

The Panel has also had regard to the fact that Cr Allison is a first-term councillor with no other breaches of the Code of Conduct.

Pursuant to section 28ZI(2)(b) the Panel reprimands Cr Allison for his continual behaviour that is inconsistent with the requirements of an elected member.

Pursuant to section 28ZI(2)(d), the Panel requires Cr Allison to attend six counselling sessions, each of one hour's duration, provided by a person who is across the full ambit of responsibilities required of an elected member. The counsellor and the date and time of each session are to be determined by the Chief Executive Officer, Local Government Association of Tasmania (LGAT). The six sessions must be completed within six months from the date this determination report is tabled at the Latrobe Council meeting.

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

Jill Taylor
Chairperson

David Sales
Member

Sam Thompson
Member

DATE : 12 August 2022