

Section 28ZK (7) of the *Local Government Act 1993* requires that any person who receives a determination report must keep the determination report confidential until the report is included within an item on the agenda for a meeting of the relevant council. Failure to do so may result in a fine of up to 50 penalty units.

*Local Government Act 1993*

**CODE OF CONDUCT PANEL DETERMINATION REPORT**

**GLENORCHY CITY COUNCIL CODE OF CONDUCT**

**Complaint made by Mr Beau Thomson against Ald Kelly Sims**

**Code of Conduct Panel**

- Lynn Mason AM (Chairperson)
- David Sales (Local Government Member)
- Audrey Mills (Legal Member)

Date of Determination: 23 January 2023

Content Manager Reference: C25330

**The complaint**

The complaint refers to a number of Facebook posts on the Glenorchy Ratepayers and Citizens page, and an email exchange on 5 October 2022 between Ald Sims and Mr Thomson. On 4 October 2022 Mr Thomson was contacted by his fiancé, Ms Leah Clark, concerning what she regarded as an attack on her by Ald Sims on Facebook. Ms Clark had seen an exchange (on Facebook) between Ald Sims and a member of the public (Ms Clare Pat) commenting on one of Ald Sims's Facebook posts; Ald Sims had responded to this post in what Ms Clark described as 'a rather hostile manner'. Ms Clark then posted supporting Ms Pat's posts. Ald Sims responded on Facebook directly to Ms Clark in a manner Mr Thomson described as very aggressive, demeaning, and in his view, intimidating, and bullying.

The complaint alleges that the following sections of the Aldermanic Code of Conduct, adopted by the Glenorchy City Council on 29 January 2019, were breached:

***Part 3 – Use of Office***

*2. An elected member must not take advantage, or seek to take advantage, of their office or status to improperly influence others in order to gain an undue, improper, unauthorised or unfair benefit or detriment for themselves or any other person or body.*

***Part 7 - Relationships with community, councillors, and council employees***

- 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.

***Part 8 – Representation***

*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 also considers that the complaint could constitute breaches of the following sections of the Code:

### **Part 8 – Representation**

4. A councillor must clearly indicate when they are putting forward their personal views.

6. A councillor must show respect when expressing personal views publicly.

### **Initial assessment of the complaint**

Following receipt of the complaint, the Chairperson of the Code of Conduct Panel (the Panel) conducted an initial assessment in accordance with the requirements of section 28ZA(1) of the *Local Government Act 1993* (the Act). Having assessed the complaint against the provisions of sections 28ZB and 28ZC of the Act, the Chairperson determined that:

- the complaint was not frivolous, vexatious or trivial. The complaint appeared to relate to matters of substance under the Council's Code of Conduct and did not appear to be trifling, insignificant or a misuse of the Panel's resources;
- the reasons for not attempting to resolve the complaint directly with the respondent were adequately explained; and
- the complaint was not made in contravention of
  - a determination made by the Chairperson under subsection (2); or
  - a determination of the Code of Conduct made under section 28ZI(3).

The Chairperson determined that the complaint should be investigated and determined by the Panel as the allegations substantially related to alleged contraventions of the Code. If proven, they were capable of constituting breaches of the Code.

The complainant, respondent Alderman and the General Manager of Glenorchy City Council were notified of the outcome of the initial assessment by letter dated 21 October 2022.

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

- The Glenorchy City Council Aldermanic Code of Conduct, 29 January 2019;
- The complaint from Mr Beau Thomson, with Statutory Declaration, 18 pp, 10 October 2022;
- An email from Mr Thomson to the Panel, with 12 attached screenshots, 24 October 2022;
- A response from Ald Sims to the complaint, 4 pp, 2 November 2022;
- Response from Mr Thomson, 3 November 2022, with Statutory Declaration, 3 pp, with screenshots as above;
- Email from Ald Sims to the Panel, 6 December 2022, 2 pp.

### **Procedure**

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

The Panel met on 14 November 2022. On 22 November 2022 a redacted version of the response provided by Ald Sims on 2 November 2022 was sent to Mr Thomson<sup>1</sup>, and he responded on 23 November 2022. The Panel met on 25 November 2022 and determined that the investigation could be concluded, and a determination reached without a hearing, because the investigation could be adequately conducted by means of the written submissions and examination of the documentary evidence, provided that neither the complainant nor the respondent Alderman considered that they would be disadvantaged if no hearing were held.

---

<sup>1</sup> The Panel redacted Ald Sims's response because in the view of the Panel, it contained unfounded and damaging accusations against a number of other persons or organisations, all of which were irrelevant to the complaint itself.

Mr Thomson responded that he did not consider he would be disadvantaged if no hearing were held. Ald Sims responded on 6 December 2022, but did not make submission on hearing, nor on penalty, in the event that the Panel upheld part or all of the complaint. Her response concluded with the statement *don't contact me again on the matter* (the complaint). The Panel concluded that Ald Sims declined to make submission on hearing.

The Panel met on 13 December 2022 and determined to proceed to a determination without conducting a hearing.

## **Determination**

Pursuant to section 28ZI(1)(a), the Panel upholds the complaint against Ald Sims.

### **Reasons for determination**

#### ***Part 3 – Use of Office***

*2. An elected member must not take advantage, or seek to take advantage, of their office or status to improperly influence others in order to gain an undue, improper, unauthorised or unfair benefit or detriment for themselves or any other person or body.*

The posts to which the complaint relates appeared on the GCC Rate Payers and Citizens page. Ald Sims consistently heads her posts with her name and the title, *Alderman, GCC Tas*; the Panel therefore assumes that her posts are made using her status as an Alderman of the Council. Her posts on 4 October 2022 refer to Ms Clark as 'bias' (sic), accuses Ms Clark of being 'too afraid to hear or share the truth', and states that she will not take Ms Clark's comments seriously.

On 5 October 2022 Mr Thomson found a post from Ald Sims on his business's Facebook page. In this Ald Sims alleged that Mr Thomson 'lacked professionalism' because, according to Ald Sims, the business he shares with Ms Clark was contracted to work for the Mayor of the City of Glenorchy, and he therefore had a conflict of interest in protesting Ald Sims's public treatment of Ms Clark. Ald Sims also referred in this post to Ms Clark as a 'so-called educator', and added that she had 'personally supported' the Clark/Thomson business 'until now'. The Panel determines that these posts were intended to cause detriment to Ms Clark, Mr Thomson, and their business, in breach of Part 3(2) of the Code.

Given that these statements were posted during the period just prior to the Tasmanian Local Government elections, the Panel determines that as well as intending to cause detriment to Ms Clark et al, they were also intended to improperly influence the ratepayers of Glenorchy to vote for Ald Sims, who was running as a Mayoral candidate as well as an Alderman. The posts contained a number of derogatory comments about the then Mayor, Ald Thomas, against whom Ald Sims was running. The Panel determines that these posts were intended to influence others to gain an improper or unfair benefit to Ald Sims, in breach of Part 3(2) of the Code.

#### ***Part 7 - Relationships with community, councillors, and council employees***

- 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.*

Following the initial post by Ms Pat on 4 October 2022, Ms Clark wrote:

*I feel the same way Clare and have made the same observations as you recently. I've been following each candidate and enjoy reading their contributions, but it is unfortunate to read continuous digs etc, truthful or not, it's unnecessary and frankly, a massive turn-off.*

This post was responded to by Ald Sims, as above on 5 October 2022. Subsequent posts by Ms Clark assured Ald Sims that she was not personally affiliated with the Mayor and that she was simply 'a very active and passionate member of this community' (Glenorchy). The Panel determines that it was unfair to persist with challenging and derogatory remarks about Ms Clark on Facebook, that these remarks were embarrassing and offensive to Ms Clark, and because of the persistence of the responses to Ms Clark and Mr Thomson, amounted to bullying of the complainant and his fiancé.

The Panel determines that these posts constituted a breach of Part 7(1)(a), (b) and (c) of the Code.

After the complaint was sent to Ald Sims, she threatened to share Ms Clark's and Mr Thomson's names and the name of their business across her 'public platforms' if the complaint was not withdrawn by a specified time (approximately two days away), and an apology received from Mr Thomson. Mr Thomson forwarded screenshots of the posts to the Panel as he wanted advice on how to respond to threats being made against his fiancé, himself, and his business, if he did not withdraw the complaint and apologise. The Panel determines that this threat, while not part of the original complaint, indicates very clearly that Ald Sims was prepared to resort to additional bullying and harassment in her efforts to have the complaint withdrawn.

### **Part 8 – Representation**

*4. A councillor must clearly indicate when they are putting forward their personal views.*

*6. A councillor must show respect when expressing personal views publicly.*

*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 determines that Ald Sims consistently identified herself as an Alderman of the Council. The views she expressed were her personal views, but they were not expressed with any respect for two community members who were contributing to community posts before the elections, as was their right. Her views were expressed on public platforms, the GCC Rate Payers and Citizens page, and Mr Thomson's business Facebook page.

Ald Sims's personal conduct in these matters was undertaken as an Alderman. The Panel determines that the vindictive nature of the posts, and the persistence with which she attacked Ms Clark and Mr Thomson, had the potential to reflect adversely on the reputation of the Council. The Panel therefore determines that this behaviour constituted a breach of Part 8(4), (6), and (7) of the Code.

### **Sanction**

The Panel has taken into account the actions taken by Ald Sims since the original posts on 4<sup>th</sup> and 5<sup>th</sup> October 2022, insofar as they indicate that Ald Sims has no understanding of the behaviour expected of a serving Alderman.

She has alleged in her response to the complaint that the Code of Conduct process is 'corrupt', without providing any substantiating evidence. She has made derogatory remarks about the Panel, Ald Thomas, and the General Manager, again without providing any foundation for such statements. She has accused Mr Thomson of attempting to 'exploit' her for 'pecuniary and private gain'. She has refused to participate in the Code of Conduct proceedings, despite it being an obligation for her to comply with the Code as part of her aldermanic role.

In her final response to the Panel on 6 December 2022, Ald Sims stated in reference to the Panel that *we have a plan to ensure you and the people attempting to help their mates out while having financial and personal interests won't get away with it this time.*

She has indicated no remorse for her actions and does not appear to understand that her behaviour could not be considered reasonable when so many of her damaging statements were made without any evidence whatsoever. Additionally, the Panel considers that her making threats against the complainant and his fiancé, and the Panel, is completely unacceptable and in addition, amount to bullying and harassing conduct which may well constitute attempting to obstruct, prevent or pervert the due course of justice or the administration of the law. This matter has been referred to the Director of Local Government.

In accordance with section ZI(2)(e) of the Act, the Panel imposes on Ald Sims a suspension from performing and exercising the functions and powers of her office as an Alderman for a period of three months.

### **Timing of the Determination**

The time taken to reach a determination in this matter has exceeded 90 days. The slight delay was caused by the Christmas and New Year holiday break.

### **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.



**Lynn Mason AM**  
Chairperson



**Audrey Mills**  
Legal Member



**David Sales**  
Member

Date: 23 January 2023