



CITY OF HOBART

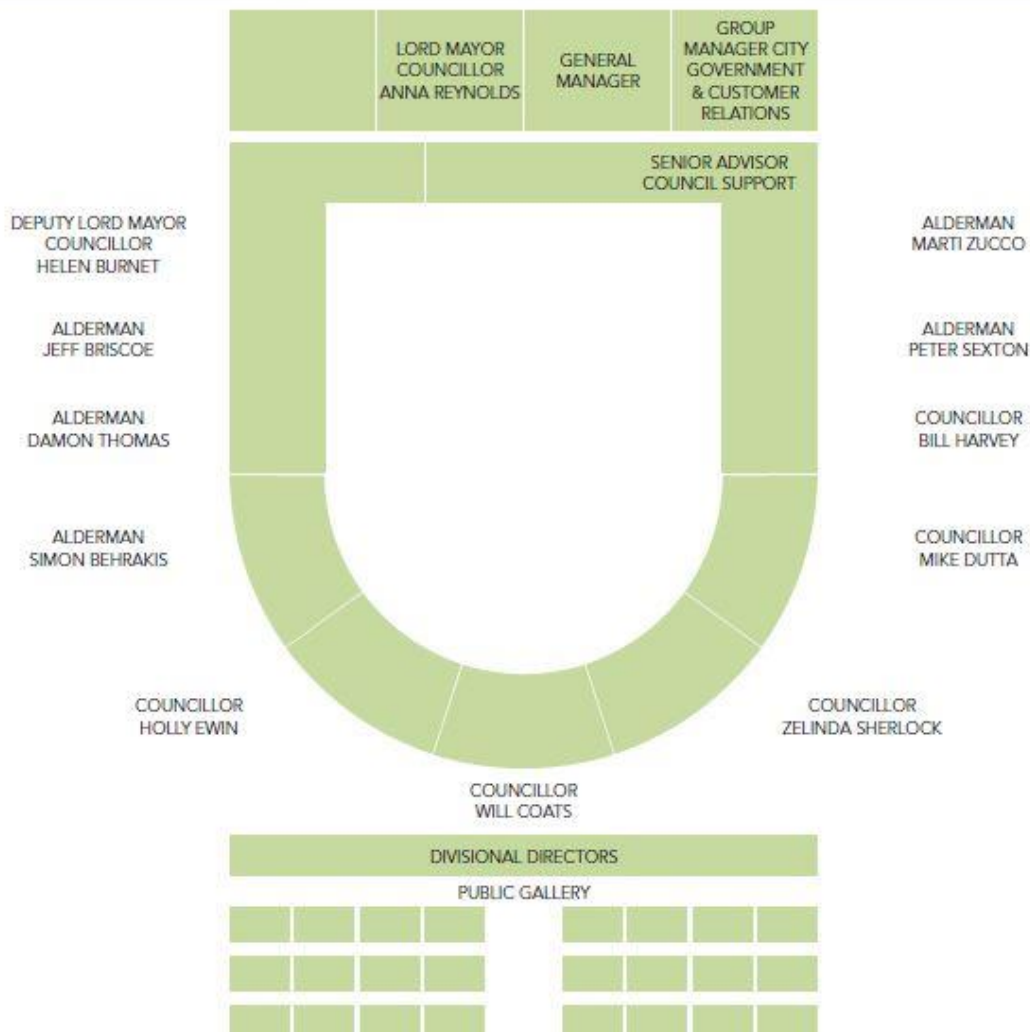
AGENDA

OPEN PORTION OF THE COUNCIL MEETING

TUESDAY, 11 FEBRUARY 2020

AT 5:00 PM





ORDER OF BUSINESS

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**A MEETING OF THE OPEN PORTION OF THE COUNCIL WILL BE HELD IN THE
COUNCIL CHAMBER, TOWN HALL ON TUESDAY, 11 FEBRUARY 2020 AT
5:00 PM.**

**N D Heath
General Manager**

ELECTED MEMBERS:

Lord Mayor A M Reynolds
Deputy Lord Mayor H Burnet
Alderman M Zucco
Alderman J R Briscoe
Alderman Dr P T Sexton
Alderman D C Thomas
Councillor W F Harvey
Alderman S Behrakis
Councillor M S C Dutta
Councillor H A Ewin
Councillor Z E Sherlock
Councillor W N S Coats

APOLOGIES:

LEAVE OF ABSENCE:
Councillor W N S Coats.

1. CONFIRMATION OF MINUTES

The Chairman reports that she has perused the minutes of the meeting of the Open Portion of the Council meeting held on [Tuesday, 28 January 2020](#), finds them to be a true record and recommends that they be taken as read and signed as a correct record.

2. TRANSFER OF AGENDA ITEMS

Are there any items, which the meeting believes, should be transferred from this agenda to the closed agenda or from the closed agenda to the open agenda, in accordance with the procedures allowed under Section 15 of the *Local Government (Meeting Procedures) Regulations 2015*?

3. COMMUNICATION FROM THE CHAIRMAN

4. NOTIFICATION OF COUNCIL WORKSHOPS

In accordance with the requirements of the *Local Government (Meeting Procedures) Regulations 2015*, the General Manager reports that the following workshop has been conducted since the last ordinary meeting of the Council.

Date: 4 February 2020
Purpose: Elected Members Forum

5. PUBLIC QUESTION TIME

6. PETITIONS

7. CONSIDERATION OF SUPPLEMENTARY ITEMS

Ref: Part 2, Regulation 8(6) of the *Local Government (Meeting Procedures) Regulations 2015*.

RECOMMENDATION

That the Council resolve to deal with any supplementary items not appearing on the agenda, as reported by the General Manager in accordance with the provisions of the *Local Government (Meeting Procedures) Regulations 2015*.

8. INDICATIONS OF PECUNIARY AND CONFLICTS OF INTEREST

Ref: Part 2, Regulation 8(7) of the *Local Government (Meeting Procedures) Regulations 2015*.

Elected Members are requested to indicate where they may have any pecuniary or conflict of interest in respect to any matter appearing on the agenda, or any supplementary item to the agenda, which the Council has resolved to deal with.

REPORTS OF COMMITTEE

CITY PLANNING COMMITTEE

9. COUNCIL ACTING AS PLANNING AUTHORITY

In accordance with the provisions of Part 2 Regulation 25 of the *Local Government (Meeting Procedures) Regulations 2015*, the intention of the Council to act as a planning authority pursuant to the *Land Use Planning and Approvals Act 1993* is to be noted.

In accordance with Regulation 25, the Council will act as a planning authority in respect to those matters appearing under this heading on the agenda, inclusive of any supplementary items.

The Council is reminded that in order to comply with Regulation 25(2), the General Manager is to ensure that the reasons for a decision by a Council or Council Committee acting as a planning authority are recorded in the minutes.

9.1 23 Marievile Esplanade, Sandy Bay - Partial Demolition, Extension and Alterations PLN-19-889 - File Ref: F20/9741

Ref: Open [CPC 7.1.1](#), 3/02/2020
Application Expiry Date: 19 February 2020

That pursuant to the *Hobart Interim Planning Scheme 2015*, the Council approve the application for a partial demolition, extension and alterations at 23 Marievile Esplanade Sandy Bay Tas 7005 for the reasons outlined in the officer's report attached to item 7.1.1 of the Open City Planning Committee agenda of 3 February 2020 and a permit containing the following conditions be issued:

GEN

The use and/or development must be substantially in accordance with the documents and drawings that comprise PLN-19-889 - 23 MARIEVILLE ESPLANADE SANDY BAY TAS 7005 - Final Planning Documents except where modified below.

Reason for condition

To clarify the scope of the permit.

ENV 1

An approved Construction Environmental Management Plan must be implemented.

Prior to the commencement of works, a Construction Environmental Management Plan prepared by suitably qualified persons must be submitted and approved. The Demolition and Construction Environmental Management Plan must:

- detail the proposed construction methodology (particularly where works may have environmental impacts);
- identify all potential environmental impacts associated with the works, particularly the risk of water pollution; and
- include measures to adequately avoid or mitigate all identified environmental risks.

The approved Construction Environmental Management Plan forms part of this permit and must be complied with.

Advice: Once the CEMP has been approved, the Council will issue a condition endorsement (see general advice on how to obtain condition endorsement).

Where building approval is also required, it is recommended that documentation for condition endorsement be submitted well before submitting documentation for building approval. Failure to address condition endorsement requirements prior to submitting for building approval may result in unexpected delays.

Reason for condition

To minimise the potential for environmental impacts from the construction works

ADVICE

The following advice is provided to you to assist in the implementation of the planning permit that has been issued subject to the conditions above. The advice is not exhaustive and you must inform yourself of any other legislation, by-laws, regulations, codes or standards that will apply to your development under which you may need to obtain an approval. Visit the Council's [website](#) for further information.

Prior to any commencement of work on the site or commencement of use the following additional permits/approval may be required from the Hobart City Council.

BUILDING PERMIT

You may need building approval in accordance with the *Building Act 2016*. Click [here](#) for more information.

This is a Discretionary Planning Permit issued in accordance with section 57 of the *Land Use Planning and Approvals Act 1993*.

PLUMBING PERMIT

You may need plumbing approval in accordance with the *Building Act 2016*, *Building Regulations 2016* and the National Construction Code. Click [here](#) for more information.

PART 5 AGREEMENT

Please note that the development site is located within a Coastal Inundation Medium Hazard Area under the Inundation Prone Areas Code of the *Hobart Interim Planning Scheme 2015* and may be subject to coastal inundation over its lifetime. It is recommended that consideration be given to this possibility in the detailed design of the development and that flood-resistant design be considered.

9.2 71 Nelson Road, Sandy Bay - Partial Demolition and New Fencing PLN-19-851 - File Ref: F20/10037

Ref: Open [CPC 7.1.3](#), 3/02/2020
Application Expiry Date: 28 February 2020

That pursuant to the *Hobart Interim Planning Scheme 2015*, the Council approve the application for partial demolition and new fencing at 71 Nelson Road Sandy Bay Tas 7005 for the reasons outlined in the officer's report attached to item 7.1.3 of the Open City Planning Committee agenda of 3 February 2020 and a permit containing the following conditions be issued:

GEN

The use and/or development must be substantially in accordance with the documents and drawings that comprise PLN-19-851 71 NELSON ROAD SANDY BAY TAS 7005 - Final Planning Documents except where modified below.

Reason for condition

To clarify the scope of the permit.

ENG s1

The proposed sliding gate must open to the full width of the driveway access carriageway.

Reason for condition

To ensure safe and efficient access for all users, including drivers, passengers, pedestrians and cyclists.

ADVICE

The following advice is provided to you to assist in the implementation of the planning permit that has been issued subject to the conditions above. The advice is not exhaustive and you must inform yourself of any other legislation, by-laws, regulations, codes or standards that will apply to your development under which you may need to obtain an approval. Visit the Council's [website](#) for further information.

Prior to any commencement of work on the site or commencement of use the following additional permits/approval may be required from the Hobart City Council.

BUILDING PERMIT

You may need building approval in accordance with the *Building Act 2016*. Click [here](#) for more information.

This is a Discretionary Planning Permit issued in accordance with section 57 of the *Land Use Planning and Approvals Act 1993*.

OCCUPATION OF THE PUBLIC HIGHWAY

You may require a licence to Occupy and/or Carry Out Works in the Hobart City Council highway reservation. Click [here](#) for more information.

PLANNING

During construction care should be taken to protect the structural root zone of the tree to the south of the access. Careful consideration of the placement of footings must be taken to avoid damage to the root system when installing the fence and electric gate.

WASTE DISPOSAL

It is recommended that the developer liaise with the Council's Cleansing and Solid Waste Unit regarding reducing, reusing and recycling materials associated with demolition on the site to minimise solid waste being directed to landfill.

Further information regarding waste disposal can also be found on the Council's [website](#).

FEES AND CHARGES

Click [here](#) for information on the Council's fees and charges.

DIAL BEFORE YOU DIG

The applicant is alerted that significant TasNetwork infrastructure is located in the vicinity of the proposed fence. The applicant must complete Dial Before You Dig investigations prior to commencement of works. Click [here](#) for dial before you dig information.

Please note, typically, easement width for underground cables can vary between 4-6 metres in total. Any encroachments into these easement widths would need to be considered on a case by case basis. Any changes required to existing assets/connections or any new electricity connections should be made via TasNetworks' [Connections Portal](#).

9.3 110 Regent Street, Sandy Bay - Partial Demolition, Extension, Alterations, Fencing and Two Multiple Dwellings (One Existing, One New) PLN-19-628 - File Ref: F20/10185

Ref: Open [CPC 7.1.4](#), 3/02/2020
Application Expiry Date: 12 February 2020

That pursuant to the *Hobart Interim Planning Scheme 2015*, the Council approve the application for partial demolition, extension, alterations, fencing and two multiple dwellings (one existing, one new) at 110 Regent Street, Sandy Bay for the reasons outlined in the officer's report attached to item 7.1.4 of the Open City Planning Committee agenda of 3 February 2020 and a permit containing the following conditions be issued:

GEN

The use and/or development must be substantially in accordance with the documents and drawings that comprise PLN-19-628 - 110 REGENT STREET SANDY BAY TAS 7005 - Final Documents except where modified below.

Reason for condition

To clarify the scope of the permit.

TW

The use and/or development must comply with the requirements of TasWater as detailed in the form Submission to Planning Authority Notice, Reference No. TWDA TWDA 2019/01471-HCC dated 10/10/2019 as attached to the permit.

Reason for condition

To clarify the scope of the permit.

ENG sw1

All stormwater from the proposed development (including but not limited to: roofed areas, ag drains, retaining wall ag drains and impervious surfaces such as driveways and paved areas) must be drained to the Council's stormwater infrastructure prior to first occupation or commencement of use (whichever occurs first).

Advice: Under section 23 of the Urban Drainage Act 2013 it is an offence for a property owner to direct stormwater onto a neighbouring property.

Reason for condition

To ensure that stormwater from the site will be discharged to a suitable Council approved outlet.

ENG sw4

Any new stormwater connection must be constructed and existing abandoned connections sealed by the Council at the owner's expense, prior to the first occupation.

Detailed engineering drawings must be submitted and approved, prior to commencement of work. The detailed engineering drawings must include:

1. the location of the proposed connection; and
2. the size of the connection appropriate to satisfy the needs of the development.

All work required by this condition must be undertaken in accordance with the approved detailed engineering drawings.

Advice:

The applicant is advised to submit detailed design drawings via a Council City Amenity Division [application for a new stormwater connection](#). If detailed design to satisfy this condition is submitted via the planning condition endorsement process there may be fees associated with the assessment, and once approved the applicant will still need to submit an application for a new stormwater connection with Council City Amenity Division.

Where building / plumbing approval is also required, it is recommended that documentation to satisfy this condition is submitted well before submitting documentation for building/plumbing approval. Failure to address planning condition requirements prior to submitting for building/plumbing approval may result in unexpected delays.

Reason for condition

To ensure the site is drained adequately.

ENG 2a

Prior to first occupation or commencement of use (whichever occurs first), vehicular barriers compliant with the Australian Standard AS/NZS1170.1:2002 must be installed to prevent vehicles running off the edge of an access driveway or parking module (parking spaces, aisles and manoeuvring area) where the drop from the edge of the trafficable area to a lower level is 600mm or greater, and wheel stops (kerb) must be installed for drops between 150mm and 600mm. Barriers must not limit the width of the driveway access or parking and turning areas approved under the permit.

Advice:

The Council does not consider a slope greater than 1 in 4 to constitute a lower level as described in AS/NZS 2890.1:2004 Section 2.4.5.3. Slopes greater than 1 in 4 will require a vehicular barrier or wheel stop.

Designers are advised to consult the National Construction Code 2016 to determine if pedestrian handrails or safety barriers compliant with the NCC2016 are also required in the parking module this area may be considered as a path of access to a building.

Reason for condition

To ensure the safety of users of the access driveway and parking module and compliance with the standard.

ENG 3a

The access driveway, and parking module (parking spaces, aisles and manoeuvring area) must be designed and constructed in accordance with Australian Standard AS/NZS2890.1:2004 (including the requirement for vehicle safety barriers where required), or a Council approved alternate design certified by a suitably qualified engineer to provide a safe and efficient access, and enable safe, easy and efficient use.

Advice:

It is advised that designers consider the detailed design of the access and parking module prior to finalising the Finished Floor Level (FFL) of the parking spaces (especially if located within a garage incorporated into the dwelling), as failure to do so may result in difficulty complying with this condition.

Reason for condition

To ensure the safety of users of the access and parking module, and compliance with the relevant Australian Standard.

ENG 3c

The access driveway, and parking module (parking spaces, aisles and manoeuvring area) must be constructed in accordance with the planning permit.

Prior to the first occupation, documentation by a suitably qualified engineer certifying that the access driveway and parking module has been constructed in accordance with the above must be lodged with Council.

Advice:

Certification may be submitted to Council as part of the Building Act 2016 approval process or via condition endorsement (see general advice on how to obtain condition endorsement)

Reason for condition

To ensure the safety of users of the access and parking module, and compliance with the relevant Australian Standard.

ENG 4

The access driveway and parking module (car parking spaces, aisles and manoeuvring area) approved by this permit must be constructed to a sealed standard (spray seal, asphalt, concrete, pavers or equivalent Council approved) and surface drained to the Council's stormwater infrastructure prior to the first occupation.

Reason for condition

To ensure the safety of users of the access driveway and parking module, and that it does not detract from the amenity of users, adjoining occupiers or the environment by preventing dust, mud and sediment transport.

ENG 5

The number of car parking spaces to be provided on the site, for use is four (4). An additional on site parking space must be incorporated to achieve this total.

Prior to the issue of any approval under the *Building Act 2016*, revised plans must be submitted and approved in accordance with the above requirements.

Reason for condition

To ensure the provision of parking for the use is safe and efficient.

ENG 1

Any damage to council infrastructure resulting from the implementation of this permit, must, at the discretion of the Council:

1. Be met by the owner by way of reimbursement (cost of repair and reinstatement to be paid by the owner to the Council); or
2. Be repaired and reinstated by the owner to the satisfaction of the Council.

A photographic record of the Council's infrastructure adjacent to the subject site must be provided to the Council prior to any commencement of works.

A photographic record of the Council's infrastructure (e.g. existing property service connection points, roads, buildings, stormwater, footpaths, driveway crossovers and nature strips, including if any, pre-existing damage) will be relied upon to establish the extent of damage caused to the Council's infrastructure during construction. In the event that the owner/developer fails to provide to the Council a photographic record of the Council's infrastructure, then any damage to the Council's infrastructure found on completion of works will be deemed to be the responsibility of the owner.

Reason for condition

To ensure that any of the Council's infrastructure and/or site-related service connections affected by the proposal will be altered and/or reinstated at the owner's full cost.

ENV 1

Sediment and erosion control measures sufficient to prevent sediment from leaving the site must be installed prior to any disturbance of the site, and maintained until all areas of disturbance have been stabilized or re-vegetated.

Advice:

For further guidance in preparing a Soil and Water Management Plan – in accordance with Fact sheet 3 Derwent Estuary Program click [here](#).

Reason for condition

To avoid the sedimentation of roads, drains, natural watercourses, Council land that could be caused by erosion and runoff from the development, and to comply with relevant State legislation.

HER 17a

The palette of exterior materials must reflect those principal exterior materials of the existing building on the site.

Prior to the issue of any approval under the *Building Act 2016*, revised plans must be submitted and approved prior to the commencement of work. The plans must:

1. Substitute the originally proposed use of perforated bronze panel cladding with an exterior cladding to satisfy the above requirement.

All work required by this condition must be undertaken in accordance with the approved plans.

Reason for condition

To ensure that development in a heritage precinct is undertaken in a sympathetic manner which does not cause loss of historic cultural heritage significance.

HER 17b

The use of the colour and material Colorbond 'Monument' on the roof of the original building, new extension and new dwelling is not approved. An alternative colour must be selected and used that is equivalent to the BCA classification for Colorbond in the light to medium solar absorptance range and that is more sympathetic to and better reflects the exterior colours within the local streetscape and precinct.

Prior to the issue of any approval under the *Building Act 2016*, revised plans must be submitted and approved which shows an alternative roof cladding in accordance with the above requirements.

All work required by this condition must be undertaken in accordance with the approved revised plans.

Advice:

The applicant is to note that the solar absorptance of the colour 'Monument' is 0.73 and classified as a 'dark' colour under the BCA. The following link outlines these figures and identifies colours that offer a better thermal efficiency and colours within the light to medium range.

www.steel.com.au/products/coated-steel/colorbond-steel/basix-and-bca-classification

Reason for condition

To ensure that development in a heritage precinct is undertaken in a sympathetic manner which does not cause loss of historic cultural heritage significance.

ADVICE

The following advice is provided to you to assist in the implementation of the planning permit that has been issued subject to the conditions above. The advice is not exhaustive and you must inform yourself of any other legislation, by-laws, regulations, codes or standards that will apply to your development under which you may need to obtain an approval. Visit the Council's [website](#) for further information.

Prior to any commencement of work on the site or commencement of use the following additional permits/approval may be required from the Hobart City Council.

CONDITION ENDORSEMENT ENGINEERING

All engineering drawings required to be submitted and approved by this planning permit must be submitted to the City of Hobart as a CEP (Condition Endorsement) via the City's [Online Service Development Portal](#). When lodging a CEP, please reference the PLN number of the associated Planning Application. Each CEP must also include an estimation of the cost of works shown on the submitted engineering drawings. Once that estimation has been confirmed by the City's Engineer, the following fees are payable for each CEP submitted and must be paid prior to the City of Hobart commencing assessment of the engineering drawings in each CEP:

Value of Building Works Approved by Planning Permit Fee:

Up to \$20,000: \$150 per application.

Over \$20,000: 2% of the value of the works as assessed by the City's Engineer per assessment.

These fees are additional to building and plumbing fees charged under the Building and Plumbing Regulations.

Once the CEP is lodged via the [Online Service Development Portal](#), if the value of building works approved by your planning permit is over \$20,000, please contact the City's Development Engineer on 6238 2715 to confirm the estimation of the cost of works shown on the submitted engineering drawings has been accepted.

Once confirmed, please call one of the City's Customer Service Officers on 6238 2190 to make payment, quoting the reference number (ie. CEP number) of the Condition Endorsement you have lodged. Once payment is made, your engineering drawings will be assessed.

BUILDING PERMIT

You may need building approval in accordance with the *Building Act 2016*. Click [here](#) for more information.

This is a Discretionary Planning Permit issued in accordance with section 57 of the *Land Use Planning and Approvals Act 1993*.

PLUMBING PERMIT

You may need plumbing approval in accordance with the *Building Act 2016*, *Building Regulations 2016* and the National Construction Code. Click [here](#) for more information.

OCCUPATION OF THE PUBLIC HIGHWAY

You may require a Permit to Open Up and Temporarily Occupy a Highway (for work in the road reserve). Click [here](#) for more information.

NEW SERVICE CONNECTION

Please contact the Hobart City Council's City Amenity Division to initiate the application process for your [new stormwater connection](#).

STORMWATER

Please note that in addition to a building and/or plumbing permit, development must be in accordance with the Hobart City Council's Infrastructure By law. Click [here](#) for more information.

WORK WITHIN THE HIGHWAY RESERVATION

Please note development must be in accordance with the Hobart City Council's Infrastructure By law. Click [here](#) for more information.

DRIVEWAY SURFACING OVER HIGHWAY RESERVATION

If a coloured or textured surface is used for the driveway access within the Highway Reservation, the Council or other service provider will not match this on any reinstatement of the driveway access within the Highway Reservation required in the future.

ACCESS

Designed in accordance with LGAT- IPWEA – Tasmanian standard drawings. Click [here](#) for more information.

CROSS OVER CONSTRUCTION

The construction of the crossover can be undertaken by the Council or by a private contractor, subject to Council approval of the design. Click [here](#) for more information.

WORK PLACE HEALTH AND SAFETY

Appropriate occupational health and safety measures must be employed during the works to minimise direct human exposure to potentially-contaminated soil, water, dust and vapours. Click [here](#) for more information.

NOISE REGULATIONS

Click [here](#) for information with respect to noise nuisances in residential areas.

WASTE DISPOSAL

It is recommended that the developer liaise with the Council's Cleansing and Solid Waste Unit regarding reducing, reusing and recycling materials associated with demolition on the site to minimise solid waste being directed to landfill.

Further information regarding waste disposal can also be found on the Council's [website](#).

FEES AND CHARGES

Click [here](#) for information on the Council's fees and charges.

DIAL BEFORE YOU DIG

Click [here](#) for dial before you dig information.

9.4 235-237 Collins Street, Hobart and Adjacent Road Reserve - Partial Demolition, Alterations and Partial Change of Use to Single Dwelling PLN-18-896 - File Ref: F20/9255

Ref: Open [CPC 7.1.5](#), 3/02/2020
Application Expiry Date: 9 March 2020

That pursuant to the *Hobart Interim Planning Scheme 2015*, the Council approve the application for partial demolition, alterations, and partial change of use to single dwelling at 235-237 Collins Street, Hobart for the reasons outlined in the officer's report attached to item 7.1.5 of the Open City Planning Committee agenda of 3 February 2020 and a permit containing the following conditions be issued:

GEN

The use and/or development must be substantially in accordance with the documents and drawings that comprise PLN-18-896 - 235-237 COLLINS STREET HOBART TAS 7000 - Final Planning Documents, except where modified below.

Reason for condition

To clarify the scope of the permit.

ENG sw1

All stormwater from the proposed development (including but not limited to: roofed areas, ag drains, retaining wall ag drains and impervious surfaces such as driveways and paved areas) must be drained to the Council's stormwater infrastructure prior to first occupation or commencement of use (whichever occurs first).

Reason for condition

To ensure that stormwater from the site will be discharged to a suitable Council approved outlet.

ENG 3a

The access driveway and parking space must be designed and constructed in accordance with Australian Standard AS/NZS2890.1:2004 (including the requirement for vehicle safety barriers where required), or a Council approved alternate design certified by a suitably qualified engineer to provide a safe and efficient access, and enable safe, easy and efficient use.

Advice:

It is advised that designers consider the detailed design of the access and parking module prior to finalising the Finished Floor Level (FFL) of the parking spaces (especially if located within a garage incorporated into the dwelling), as failure to do so may result in difficulty complying with this condition.

Reason for condition

To ensure the safety of users of the access and parking module, and compliance with the relevant Australian Standard.

ENG 3b

The access driveway and parking space design must be submitted and approved, prior to the commencement of work or issuing of any approval under the *Building Act 2016* (whichever occurs first).

The access driveway and parking space design, prepared and certified by a suitably qualified engineer, must comprise either:

1. The JMG plans No. J191140CH, Sheets C01-C04 - Rev P2 (dated 11/11/2019); or
2. An alternative design with detailed analysis demonstrating B85 vehicle clearance, general compliance with the Tasmanian Standard Drawings and AS/NZS2890.1:2004; or
3. Where the design deviates from AS/NZS2890.1:2004, certification by a suitably qualified and experienced engineer that the design will provide safe and efficient access, and enable safe, easy and efficient use; or
4. Plans showing the on-site parking space to be removed along with the existing crossover, and reinstatement of the kerb & channel and public footpath.

Advice:

It is advised that designers consider the detailed design of the access and parking module prior to finalising the Finished Floor Level (FFL) of the parking spaces (especially if located within a garage incorporated into the dwelling), as failure to do so may result in difficulty complying with this condition.

Once the design has been approved, the Council will issue a condition endorsement (see general advice on how to obtain condition endorsement) Where building approval is also required, it is recommended that documentation for condition endorsement be submitted well before submitting documentation for building approval. Failure to address condition endorsement requirements prior to submitting for building approval may result in unexpected delays.

A permit to open up a highway will be required prior to commencement of work within the highway reservation

Reason for condition

To ensure the safety of users of the access and parking module, and compliance with the relevant Australian Standard.

ENG 3c

The access driveway and parking spaces must be constructed in accordance with the design drawings approved by Condition ENG 3b.

Prior to the commencement of use, documentation by a suitably qualified engineer certifying that the access driveway and parking module has been constructed in accordance with the above drawings must be lodged with Council.

Advice:

Certification may be submitted to Council as part of the Building Act 2016 approval process or via condition endorsement (see general advice on how to obtain condition endorsement)

Reason for condition

To ensure the safety of users of the access and parking module, and compliance with the relevant Australian Standard.

ENG 1

Any damage to council infrastructure resulting from the implementation of this permit, must, at the discretion of the Council:

1. Be met by the owner by way of reimbursement (cost of repair and reinstatement to be paid by the owner to the Council); or
2. Be repaired and reinstated by the owner to the satisfaction of the Council.

A photographic record of the Council's infrastructure adjacent to the subject site must be provided to the Council prior to any commencement of works.

A photographic record of the Council's infrastructure (e.g. existing property service connection points, roads, buildings, stormwater, footpaths, driveway crossovers and nature strips, including if any, pre-existing damage) will be relied upon to establish the extent of damage caused to the Council's infrastructure during construction. In the event that the owner/developer fails to provide to the Council a photographic record of the Council's infrastructure, then any damage to the Council's infrastructure found on completion of works will be deemed to be the responsibility of the owner.

Reason for condition

To ensure that any of the Council's infrastructure and/or site-related service connections affected by the proposal will be altered and/or reinstated at the owner's full cost.

ADVICE

The following advice is provided to you to assist in the implementation of the planning permit that has been issued subject to the conditions above. The advice is not exhaustive and you must inform yourself of any other legislation, by-laws, regulations, codes or standards that will apply to your development under which you may need to obtain an approval. Visit the Council's [website](#) for further information.

Prior to any commencement of work on the site or commencement of use the following additional permits/approval may be required from the Hobart City Council.

BUILDING PERMIT

You may need building approval in accordance with the *Building Act 2016*. Click [here](#) for more information.

This is a Discretionary Planning Permit issued in accordance with section 57 of the *Land Use Planning and Approvals Act 1993*.

PLUMBING PERMIT

You may need plumbing approval in accordance with the *Building Act 2016*, *Building Regulations 2016* and the National Construction Code. Click [here](#) for more information.

WORK WITHIN THE HIGHWAY RESERVATION

Please note development must be in accordance with the Hobart City Council's Infrastructure By law. Click [here](#) for more information.

CBD AND HIGH VOLUME FOOTPATH CLOSURES

Please note that the City of Hobart does not support the extended closure of public footpaths or roads to facilitate construction on adjacent land.

It is the developer's responsibility to ensure that the proposal as designed can be constructed without reliance on such extended closures.

In special cases, where it can be demonstrated that closure of footpaths in the CBD and/or other high volume footpaths can occur for extended periods without unreasonable impact on other businesses or the general public, such closures may only be approved by the full Council.

For more information about this requirement please contact the Council's Traffic Engineering Unit on 6238 2804.

REDUNDANT CROSSOVERS

Redundant crossovers are required to be reinstated under the Hobart City Council's Infrastructure By law. Click [here](#) for more information.

ACCESS

Designed in accordance with LGAT- IPWEA – Tasmanian standard drawings. Click [here](#) for more information.

CROSS OVER CONSTRUCTION

The construction of the crossover can be undertaken by the Council or by a private contractor, subject to Council approval of the design. Click [here](#) for more information.

STORM WATER / ROADS / ACCESS

Services to be designed and constructed in accordance with the (IPWEA) LGAT – standard drawings. Click [here](#) for more information.

WORK PLACE HEALTH AND SAFETY

Appropriate occupational health and safety measures must be employed during the works to minimise direct human exposure to potentially-contaminated soil, water, dust and vapours. Click [here](#) for more information.

PROTECTING THE ENVIRONMENT

In accordance with the *Environmental Management and Pollution Control Act 1994*, local government has an obligation to "use its best endeavours to prevent or control acts or omissions which cause or are capable of causing pollution." Click [here](#) for more information.

NOISE REGULATIONS

Click [here](#) for information with respect to noise nuisances in residential areas.

WASTE DISPOSAL

It is recommended that the developer liaise with the Council's Cleansing and Solid Waste Unit regarding reducing, reusing and recycling materials associated with demolition on the site to minimise solid waste being directed to landfill.

Further information regarding waste disposal can also be found on the Council's [website](#).

FEES AND CHARGES

Click [here](#) for information on the Council's fees and charges.

DIAL BEFORE YOU DIG

Click [here](#) for dial before you dig information.

SPECIAL REPORTS – GENERAL MANAGER
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10. Code of Conduct Determination Report
File Ref: F20/10761; 15/130-003

Memorandum of the General Manager of 5 February 2020 and attachment.

Delegation: Council



City of **HOBART**

MEMORANDUM: COUNCIL

Code of Conduct Determination Report

Pursuant to section 28ZK(2) of the *Local Government Act 1993* I have been provided with a copy of a determination report from the Code of Conduct Panel in respect to a complaint lodged by Alderman Briscoe and former Alderman Denison against Councillor Ewin.

The Act requires that I table this at the first meeting of the Council which is practicable to do so and which is open to the public. As such, a copy of the determination report is included as **Attachment A** to this report.

RECOMMENDATION

That the Council receive and note the Code of Conduct Determination Report shown as Attachment A to this report.

As signatory to this report, I certify that, pursuant to Section 55(1) of the Local Government Act 1993, I hold no interest, as referred to in Section 49 of the Local Government Act 1993, in matters contained in this report.

N D Heath
GENERAL MANAGER

Date: 5 February 2020
File Reference: F20/10761; 15/130-003

Attachment A: Code of Conduct Determination Report - 23 January 2020 ↴


Local Government Code of Conduct Panel

PRIVATE AND CONFIDENTIAL

Code of Conduct Panel Determination Report
Local Government Act 1993 (Section 28ZJ)

Local Government Act 1993

Local Government Act



Helen Medhurst
Executive Officer
Code of Conduct Panel

Encl. Determination Report

*Local Government Act 1993***HOBART CITY COUNCIL CODE OF CONDUCT DETERMINATION REPORT ***

**Complaint by Alderman (Ald) Jeff Briscoe and Alderman (Ald) Tanya Denison
against Councillor (Cr) Holly Ewin
Determination made on 23 January 2020**

Code of Conduct Panel:

Jill Taylor (Chairperson), Sam Thompson (Legal Member) and Liz Gillam (Member).

I. Summary of the complaint

Alderman (Ald) Jeff Briscoe and Ald Tanya Denison lodged a Code of Conduct complaint against Councillor (Cr) Holly Ewin on 23 September 2019. The complainants and the respondent are councillors elected to the Hobart City Council. Ald Briscoe and Ald Denison prefer the title Alderman, whilst Cr Ewin prefers the title Councillor. Cr Ewin uses the pronouns 'they' and 'their'. This determination report uses the parties' preferred titles and pronouns.

The 23 September 2019 complaint followed an initial complaint dated 5 August 2019 which was not compliant with Section 28V of the *Local Government Act 1993* (the Act). The original complaint was submitted by three complainants whereas the Act does not allow for more than two complainants. The complaint of 5 August 2019 was subsequently amended to delete reference to the third person (Ald Zucco), and new statutory declarations dated 23 September 2019 were submitted by Ald Briscoe and Ald Denison. It is this new complaint of 23 September 2019 only that is to be considered.

The complaint alleged that Cr Ewin had breached the City of Hobart Elected Member Code of Conduct (the Code) that was adopted by Council on 18 February 2019. Specifically, the complaint alleged that Cr Ewin breached Part 7 by posting several offensive comments about the complainants on the Councillor's Facebook page between 6 June 2019 and 26 July 2019. The complaint also alleges that Cr Ewin breached the Code in a radio interview that was conducted with Ryk Goddard of ABC Radio Hobart on 23 July 2019.

On 18 October 2019, the complainants wrote to the Panel requesting an amendment to their complaint. However, on 28 October 2019 they advised that they wished to withdraw the amendment request. The Panel accepted the withdrawal. On 1 November 2019, the Panel wrote to the complainants pointing out that Part 7 of the Code contained sub-paragraphs and asked them to identify which sub-paragraphs were relevant to their complaint and align them with dates and a description of each alleged breach of the Code.

The complainants provided a table containing this information on 1 November 2019, which the Panel subsequently provided to Cr Ewin. The table included sub-paragraphs of Part 8 of the Code in addition to Part 7. The Panel determined that as the nature of the complaint had not been varied, and having regard to sections 28X(1) and 28ZE(1) and (2) of the *Local Government Act 1993* (the Act), the inclusion of additional Parts of the Code was acceptable. Cr Ewin did not demur at the hearing.

* 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.

The complainants' table is reproduced in full below: -

Date	Description	Component/s of Code of Conduct
23-07-2019 <i>Interview on ABC Radio</i>	Clr Ewin made the statement "unfortunately the people who voted against it weren't present at the Committee meeting um and it didn't sound like they read the information that I submitted with the motion either 'cause there was just such a lot in there and they were voting along ideological lines which is a real shame" (Clr Ewin also shared this audio on her Facebook page)	7.1(a) 7.1(b) 7.2 8.5 8.6 8.7
26-07-2019 <i>Facebook post made by Clr Ewin after being informed by General Manager of complaint – Facebook page: Holly Anastasia Ewin ('friends' privacy setting)</i>	Clr Ewin posted "three of my colleagues on council have put in a semi-official complaint about me, for saying people should listen to experts and not vote along ideological lines. Yes, those are the words I used, if you can believe it. #theaudacity (meanwhile on the front page of the paper on the same day...) photograph of Mercury newspaper headline "MP's War on Bullies"	7.1(a) 7.1(b) 7.1(c) 8.2 (misrepresentation about nature of complaint) 8.5 8.6 8.7
6-06-2019 <i>Facebook post – Facebook page: Holly Anastasia Ewin ('public' privacy setting)</i>	Clr Ewin posted "I was just outvoted on trans inclusivity by 3 openly conservative cis men, because two progressive women councillors were absent..." Holly's own responses to comments include: we don't "let the bastards get us down", "it was stitched up beforehand, in response to a question regarding if Aldermen are receiving gifts from organisations, "it's not impossible"	7.1(a) 7.1(b) 7.1(c) 7.2 8.1 (misrepresentation about nature of item) 8.5 8.6 8.7

It is convenient to refer to these as the three events. The first two, being the 23 July 2019 radio interview and the 26 July 2019 Facebook post, related to a council motion in support of pill testing. The third, being Cr Ewin's 6 June 2019 Facebook posts and their comments on that post in response to their followers' comments, related to a council motion regarding transgender inclusive signage in public bathrooms.

The relevant Parts of the Code of Conduct were and are as follows: -

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. *An Elected Member must listen to, and respect, the views of other Elected Members 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, an Elected Member must accurately represent the policies and decisions of the Council.*
2. *An Elected Member must not knowingly misrepresent information that they have obtained in the course of their duties.*
5. *An Elected Member'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.*
6. *An Elected Member must show respect when expressing personal views publicly.*
7. *The personal conduct of an Elected Member must not reflect, or have the potential to reflect, adversely on the reputation of the Council.*

The Chairperson undertook an initial assessment and determined on 1 October 2019 that the whole complaint was to be investigated and determined by the Code of Conduct Panel.

A Code of Conduct Panel was formed to investigate the complaint. On 15 October 2019 Cr Ewin was provided with a copy of the complaint and invited to provide a response. Cr Ewin responded to the complaint in writing on 23 October 2019.

2. Investigation

The Panel met on 30 October 2019 to review the complaint and Cr Ewin's response. It was at this meeting that the Panel decided that the complainants should be asked to clarify the sub-paragraphs of Part 7 of the Code which Cr Ewin was alleged to have breached. The Panel also determined that its investigation should be conducted by means of a hearing and that it should call Mr Nicholas Heath, the General Manager of the Hobart City Council, as a witness.

When advised that he would be called as a witness, Mr Heath requested that he provide a statutory declaration in lieu of giving evidence. The Panel agreed to Mr Heath submitting a statutory declaration for its consideration. Mr Heath subsequently submitted a statutory declaration dated 19 November 2019. The Panel accepted the statutory declaration, subject to agreement from Ald Briscoe, Ald Denison and Cr Ewin that they did not require Mr Heath to attend the hearing for the purpose of cross-examination. The parties advised that they did not wish to cross-examine Mr Heath, and he was advised accordingly with the proviso that he be on stand-by if required whilst the hearing was underway.

The hearing proceeded on 13 December 2019. Ald Briscoe and Cr Ewin made an affirmation and Ald Denison swore an oath.

The Chairperson outlined the substance of the complaint and the procedure of the hearing, including identification of the written evidence before the Panel, as listed below, and confirmed that all parties had received copies of:

- Amended complaint by Ald Briscoe and Ald Denison together with statutory declarations signed on 23 September 2019
- Attachments A, B, C and D to the complaint
- Extracts of Parts 7 and 8 of the City of Hobart Elected Member Code of Conduct

- Statutory declaration by Cr Holly Ewin dated 23 October 2019
- Statutory declaration by Ald Denison and Ald Briscoe dated 29 October 2019
- Summary document of complaint and relevant Parts of the Code that are alleged to have been breached by Cr Ewin submitted by complainants dated 1 November 2019
- Statutory declaration by Mr Nicholas Heath dated 19 November 2019

Ald Denison gave evidence first. She said that the comments made by Cr Ewin in the interview with Ryk Goddard on ABC radio, which suggested that Ald Denison and Ald Briscoe voted on ideological lines, were “an appalling accusation” and offensive. Ald Denison said that by making such a statement, Cr Ewin’s did not acknowledge the in-depth consideration that she put into her contribution to Council matters. Ald Denison said that she had always acted professionally and with respect. Ald Denison told the Panel that Cr Ewin’s collective description suggested that she and Ald Briscoe always voted the same way, something that Ald Denison rejected. Ald Denison pointed to her and Ald Briscoe’s respective voting history, noting that often they voted differently but that they had respect for each other’s positions on various matters. She identified the building heights and cable car matters as examples. Ald Denison said that she was devastated that Cr Ewin had referred to some of the elected members as “bastards” and accused them of receiving gifts. Ald Denison said that these statements undermined the position of councillor. Ald Denison said that she was very upset by a response by one of Cr Ewin’s followers, which was to the effect that the follower would “egg someone’s car”. Ald Denison claimed that Cr Ewin’s Facebook post had incited this type of response and the Councillor should immediately remove such comments.

Ald Briscoe gave evidence second. He detailed his academic and professional background and experience as a means of demonstrating his ability to consider a range of issues before Council. In particular, he referred to his qualifications in chemistry which, he said, gave him a good understanding of the issue of pill testing, which was the subject of debate in respect of which Cr Ewin accused the complainants of being ideologically opposed. Ald Briscoe said that despite Cr Ewin stating that they did not name individuals, the names of those opposing the motion were mentioned that evening on the Mercury newspaper’s website. Ald Briscoe said he was “troubled, concerned and offended” by Cr Ewin’s remarks on ABC radio regarding voting along ideological grounds. He went on to say that he had always taken his role of councillor seriously and that elected members often had different opinions, which he respected. He tendered a copy of Cr Ewin’s signed declaration of office in which Cr Ewin committed to observing the Councillor Code of Conduct. The document was shown to Cr Ewin, who did not object to it being included in the evidence. The Panel admitted the document as evidence and marked it B2. A page from the minutes of the Council meeting on 22 July 2019, showing councillors’ votes on a motion relating to pill testing, was also tendered without objection by Cr Ewin. It was taken and marked B1.

Ald Briscoe said that he and Ald Denison had attempted to avoid this matter escalating to a Code of Conduct hearing. They emailed Mr Heath seeking mediation. In his statutory declaration, Mr Heath advised that he had discussed the matter with Cr Ewin. Mr Heath’s statutory declaration, admitted as evidence without objection, exhibited a text message exchange with Cr Ewin:

Mr Heath: Holly – have u had a chance to consider what we discussed on Friday re ‘voting along ideological grounds’??

Cr Ewin: I haven’t dedicated much headspace to it, but as you’ve probably guessed, I’m not interested in apologising for nothing I’ve done wrong.

Mr Heath: [thumbs up emoji] - spoke to Anna today. We can organise external mediation if you want, but it's your call. Otherwise, you can politely decline and see what they do.

Cr Ewin: I politely decline.

Cr Ewin responded to the complaint by saying that there was no dispute as to the substance of it. Cr Ewin admitted to the contents of the ABC radio interview and the Facebook posts and comments. Cr Ewin went on to say that the posts were on their private Facebook page and not an official one as councillor. Cr Ewin gave evidence of having both a private page and a public page. Cr Ewin said that they try to moderate their Facebook posts on their Facebook page.

Cr Ewin told the hearing that an apology would be forthcoming if they considered their actions to be "wrong". Cr Ewin maintained that their actions were not wrong, saying that all councillors had the right to express an opinion. Additionally, Cr Ewin felt particularly targeted with (code of conduct) complaints, stating that there had been occasions when they had been the target of others' offending behaviour. The Panel told the parties that it only had jurisdiction to consider the complaint before it. Cr Ewin said that the Code needs improving, and that behaviour also needs changing.

Cr Ewin advised that they did not dispute Mr Heath's statutory declaration, but that the declaration did not cover all the exchanges between them. As stated in Cr Ewin's statutory declaration, the Councillor recalled approaching Mr Heath to ask whether in his opinion the Councillor had done anything wrong and whether an apology should be forthcoming. Cr Ewin said that Mr Heath said that he did not think the Councillor had done anything wrong, adding that, in his opinion, he thought it best to resolve the matter through mediation.

At this point, the Panel determined that Mr Heath should be called to provide his version of the interaction which took place with Cr Ewin, as his statutory declaration was silent on the point.

There was a short adjournment while Mr Heath was requested to attend the hearing.

Mr Heath attended the hearing and made an affirmation. Panel members questioned Mr Heath, following which he was cross-examined by Cr Ewin and by Ald Briscoe.

Mr Heath told the Panel that he recalled having a conversation with Ald Zucco about this complaint and that he advised Ald Zucco that he would attempt to arrange mediation as a means of resolving the matter if all involved were agreeable. Mr Heath said that he thought mediation was a preferable to going through a formal process culminating in a Code of Conduct Panel hearing. When asked by Cr Ewin whether he had said that Cr Ewin "had done nothing wrong", Mr Heath said he recalled the conversation but had no memory of saying those words or words to that effect. Mr Heath said that his recollection of the discussion was "hazy" as Cr Ewin was interstate at the time. Cr Ewin suggested to Mr Heath that the conversation took place in his office. Ald Briscoe asked whether Mr Heath remembered having a similar conversation with him as he (Mr Heath) did with Ald Zucco. Mr Heath replied he did recall some discussion but not the detail of the conversation.

Mr Heath was then relieved as a witness and departed the hearing room.

Cr Ewin expressed frustration that Mr Heath did not recall the detail of the conversation between them. The Panel advised Cr Ewin that it was not the role of a General Manager to assess whether a councillor had breached the Code.

The Panel then asked whether Cr Ewin could accept that – in relation to the Code of Conduct – it was not a matter of what the sender of a message intended but rather how that message was felt or interpreted by the recipient. Cr Ewin replied by saying "to some extent". However, Cr Ewin stuck by their conduct on Facebook and other mediums, although they may consider in

future "toning them down". When asked about one follower on the Councillor's Facebook page threatening to egg a car belonging to one of the elected members, Cr Ewin said that they (Cr Ewin) had taken that post down.

The Panel asked Cr Ewin if the Councillor understood the requirement of elected members to comply with all the provisions of the Code of Conduct, pointing out that the Councillor had agreed to this when signing the declaration of office (exhibit B2). Cr Ewin re-iterated that the behaviour did not breach the Code. Cr Ewin said that in future they would "refrain from speaking about other people's decisions or motives but other people on council do this regularly, they speak about other people's decisions, other people's motives". Cr Ewin said, "I am still yet to be convinced that I ever said anything out of line because, to my mind I have stated facts."

With respect to Cr Ewin, two points need to be made. Firstly, the Panel is concerned only with this complaint. The conduct of others, such as whether they may have breached the Code in other ways, is irrelevant to the Panel's task. Secondly, the assertion that the comments were accurate is not necessarily determinative of the complaint. Accurate or truthful conduct may still, depending on the circumstances, breach the Code. The wording of the Code must be considered.

The complainants were then given an opportunity to summarise their complaint by way of submissions. Ald Denison said that she felt threatened by the Facebook comment that someone was going to "egg her car", which was prompted by Cr Ewin's post. She referred to Cr Ewin's evidence, in which Cr Ewin repeatedly stated that the Councillor "had done nothing wrong" but admitted to calling some aldermen "bastards" and accusing them of accepting gifts in exchange for deeds.

In summarising, Ald Briscoe rejected Cr Ewin's contention that there had been deliberate attempts to silence Cr Ewin. Ald Briscoe submitted that complying with the Code of Conduct is "a small price to pay" for elected members, which all elected members should recognise. Ald Briscoe said that this matter could have been resolved earlier through internal channels, avoiding the need to progress to a formal Code of Conduct complaint. Cr Ewin responded that neither of the complainants had approached the Councillor with this in mind.

When given the opportunity to make further submissions, Cr Ewin did not want to add anything other than to say that neither of the complainants had approached the Councillor to resolve the matter internally (i.e., without a Code of Conduct complaint).

3. Determination

Prior to outlining the determination it is convenient to first set out the Panel's task. The Panel's task is to investigate (sections 28ZE and 28ZH) and determine (sections 28ZI) the complaint. In particular, the Panel must consider whether, on the basis of the evidence provided by the parties, Cr Ewin breached the Code. The Panel cannot consider complaints that are not before it, nor can it consider the conduct of persons other than the respondent councillor. However, the Panel is not limited to considering conduct that offends the particular complainants. A complainant may make a complaint with respect to a councillor's conduct that affected another person (so much so is made clear by the wording in section 28ZI(2)(c) of the Act). This is relevant to the third event, in respect of which other councillors were the subject of Cr Ewin's Facebook post.

In undertaking its task, the Panel's applicable standard of proof is the balance of probabilities and the hearing is to be conducted by way of inquiry. In doing so, the Panel received some documents and heard evidence from Ald Briscoe, Ald Denison, Cr Ewin and Mr Heath. The parties were afforded the opportunity to cross-examine witnesses and make submissions.

Cr Ewin accepted that they had made the comments as described in the written complaint and by Ald Briscoe and Ald Denison at the hearing. With one exception, there was no dispute as to the facts. The sole exception is whether or not Mr Heath told Cr Ewin that the Councillor had "done nothing wrong" or said words to that effect. Putting that exception to one side, the Panel's task is therefore to consider whether Cr Ewin's admitted conduct, namely the ABC radio interview of 23 July 2019 and Cr Ewin's Facebook posts and/or comments of 6 June 2019 and 26 July 2019 (the three events), breached the Code in the ways alleged in the complaint. Whilst some of the sub-paragraphs of Parts 7 and 8 of the Code related to all three events, others did not. These have been identified below.

The sole exception should be considered next. Cr Ewin's evidence was that Mr Heath said that the Councillor had "done nothing wrong" or words to that effect. Mr Heath's evidence was that he did not recall saying that, and he doubted that he would have "commented on the merits" of the dispute. His evidence was delivered carefully, and the Panel formed the view that he was doing his best to recall a conversation that occurred some time ago and in unexceptional circumstances. Mr Heath's text message exchange with Cr Ewin, annexed to his statutory declaration, is broadly supportive of Mr Heath not having told Cr Ewin that the Councillor had "done nothing wrong". Telling Cr Ewin that the Councillor had "done nothing wrong" is inconsistent with offering to facilitate mediation. It would be surprising for an experienced general manager to proffer a view to one councillor about a dispute with other councillors. On the other hand, Cr Ewin was adamant and unshaken in their evidence. Cr Ewin's evidence was that the Councillor would apologise if they thought that they had done something wrong. It is unnecessary for the Panel to make a finding about whether Mr Heath said those words or words to that effect. As the Panel pointed out to Cr Ewin during the hearing, it is not the general manager's task to assess whether or not a councillor has breached the Code, notwithstanding Mr Heath's experience and that this was Cr Ewin's first term as a councillor. The onus rested with Cr Ewin alone to comply with the Code.

Before considering whether Cr Ewin breached the Code in the ways alleged by the complainants, it is appropriate to comment on the nature of the complainants' allegations in light of the Facebook posts. The Code is concerned with a councillor's conduct. That conduct may, plainly enough, include a councillor's conduct on social media platforms. It may include a councillor's Facebook posts and comments on Facebook posts or other media (videos, photographs etc). Some of the documents provided in support of the complaint depicted comments by other persons on Cr Ewin's Facebook posts. The conduct of those third parties is not in issue. In response to a question from the Panel, Ald Briscoe and Ald Denison stated that they did not impugn those third parties' comments. Such a concession is appropriate because the Code is concerned only with the respondent councillor's conduct. The complainants must establish that the respondent councillor breached the Code in the ways particularised by them. At its highest, the complainants' case with respect to others' Facebook comments on Cr Ewin's posts was that the Councillor's own post had "encourage[ed]" others to post. The Panel has considered Cr Ewin's conduct on that basis.

Alleged breaches of Parts relating to all events

Part 7 (1) (a) A councillor must treat all persons fairly.

In relation to Part 7.1 (a), the Panel determined that the complaint had been proven in relation to all three events. Cr Ewin did not dispute the comments made on ABC radio nor the Facebook posts. The complainants detailed the unfairness of Cr Ewin's name-calling and imputations regarding their behaviour. Both complainants told the Panel that in the time that they have been councillors, many of their colleagues have had different opinions on an array of issues (including different opinions between them). However, they respected this and accepted the right to different views. They said that the comments made by Cr Ewin proved that the Councillor did not afford them the same courtesy that had been afforded to other councillors (with whom Cr Ewin had agreed), and therefore had treated them unfairly.

'Fair' is relevantly defined in the Macquarie Dictionary as "free from bias, dishonesty, or injustice". The Panel must consider whether Cr Ewin's conduct was biased and/or dishonest. It is necessary to consider the imputations conveyed by the Councillor's conduct with respect to the three events. In drawing imputations, the Panel is not to apply a literal interpretation, but must consider the natural and ordinary meaning of Cr Ewin's words. This may include nuance and insinuation.¹ Those imputations, and the Panel's comments on them, are:

- The complainants were wilfully ignorant in voting against the pill testing motion and voted along ideological grounds. The comments amounted to a tacit assertion that the complainants themselves breached the Code; particularly Part 1, which deals with a councillor's decision-making obligations.
- The complainants and Ald Zucco complained against Cr Ewin because Cr Ewin had said that "people should listen to experts and not vote along ideological lines". In the Panel's view, Cr Ewin mischaracterised the complaint - see the above imputation.
- The complainants and Ald Zucco were bullies. Such an imputation is compelled by Cr Ewin's sharing of a photograph of the Mercury newspaper headline "MP's War on Bullies".
- Councillors who voted against a motion relating to transgender signage in public bathrooms were biased towards viewpoints held by "openly conservative cis [non-transgender] men".
- Councillors who voted against a motion relating to transgender signage in public bathrooms were "bastards".
- Councillors who voted against a motion relating to transgender signage in public bathrooms had dishonestly or surreptitiously orchestrated the motion's defeat ("stitched up beforehand").
- Councillors who voted against a motion relating to transgender signage may have received gifts from organisations ("it's not impossible"), and therefore may have committed a criminal offence. This is an example of an imputation that, although not conveyed literally, was conveyed clearly by the overall tone and tenor.

Fairness is to be assessed objectively. A councillor's statutory functions (section 28) and the robust nature of political debate are to be borne in mind. One should not too easily find 'unfairness'. Cr Ewin's conduct and those imputations are properly considered in combination.

¹ Although in the context of the law of defamation, Wigney J's statement of principle in *Rush v Nationwide News Pty Ltd (No 7)* [2019] FCA 496 at [72]-[85] is relevant.

Whilst one alone may not constitute unfairness, their collective effect did. The Panel concluded that the complainants had not been treated fairly by Cr Ewin. This part of the complaint is upheld.

Part 7(1) (b) A councillor must not cause any reasonable person offence or embarrassment.

In relation to Part 7.1 (b) the Panel determined that the complaint had been proven in relation to the three events. Ald Briscoe pointed to his long tenure as a councillor and his good record over many years. Cr Ewin did not dispute this evidence. Ald Briscoe said that the comments made by Cr Ewin were embarrassing to him, especially the allegation that he was taking an "ideological position" on the pill testing issue. Ald Denison was equally embarrassed by Cr Ewin's comments, stating that it was offensive to be described as a "bastard" and accused of accepting gifts in return for favours. Ald Briscoe and Ald Denison's evidence was to the effect that they were offended and embarrassed. In the Panel's view, subjective offence or embarrassment is insufficient to make out a breach of Part 7.1(b). The Code creates an objective test; the standard is one of a reasonable person. Having regard to the language used by Cr Ewin and the repetition of the remarks (on both ABC radio and on Facebook), the Panel accepts that Ald Briscoe and Ald Denison were reasonably offended and embarrassed. This part of the complaint is upheld.

Part 8.5 An Elected Member'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.

Part 8.5 of the Code has two disjunctive limbs. It requires proof that Cr Ewin's personal views were expressed publicly and that they, in fact, either (i) undermined a decision made by the Council, or (ii) brought the Council into disrepute. The Panel will deal with the limbs in reverse order.

Cr Ewin's comments, whilst being derogatory generic statements about some colleagues, did not in the opinion of the Panel bring the Council into disrepute. Commenting on an issue before Council does not, in and of itself, bring the Council as an institution into disrepute. Council is a deliberative polity. A councillor has political functions. Robust debate and commentary are to be expected - see sections 20, 25 and 28 of the Act. As to the first limb, Cr Ewin had voted in favour of the motion which was passed at the meeting of Council on 22 July 2019, and therefore Cr Ewin's expression of personal views did not undermine the Council's decision. As to Cr Ewin's Facebook post and comments of 6 June 2019, they were insufficient to undermine Council's decision or bring the Council, as an institution, into disrepute. Although they may have been offensive, unfair and inelegantly expressed, Cr Ewin's expression of their personal views did not bring the Council into disrepute.

The Panel therefore concluded that Cr Ewin did not undermine the decision of Council nor did Cr Ewin's actions bring the Council into disrepute. This part of the complaint is dismissed.

Part 8.6 An Elected Member must show respect when expressing personal views publicly.

In relation to Part 8.6 the Panel determined that the complaint was proven in relation to the three events. Cr Ewin's view was that all elected members have the right to express an opinion which is why the councillor made the comments on radio and posted statements on Facebook. Cr Ewin expressed the view that the Code and the complaint infringed their freedom of speech. In the Panel's view, councillors may have strongly held views. They are elected representatives and, as councillors, have political functions (see Section 28). However, the Code of Conduct adopted by the Council imposes limits and requirements on councillors, although the Code must not be read as derogating from a person's constitutionally protected freedom of political

communication.² The Panel's observations are applicable to the majority of the complaint before it. Cr Ewin expressed the view that the Councillor's "obligation to speak the truth trumps the Code". The Panel disagrees. As has been stated, the Code must not be read as limiting Cr Ewin's implied freedom of political communication, but rather it sets boundaries that are not less than the implied freedom. In that sense, the implied freedom is relevant in informing when a councillor's conduct infringes the Code.

The Panel determined that the content of the communications made by Cr Ewin showed a lack of respect for other elected members. The Panel acknowledges that within the confines of a Council meeting a range of views are expressed on several matters. Often there is robust discussion and it is the Chair's role to maintain order. The implied freedom is relevant. The requirement to show respect must not be construed too literally so as to sanitise debate.

However, Cr Ewin's language went beyond simply showing a lack of respect for a particular viewpoint. Cr Ewin's language targeted the complainants, and others. It showed a manifest lack of respect for them as persons, as distinct from a mere lack of respect for their positions or as distinct from mere discourtesy. Such a conclusion is compelled by the Panel's findings as to the imputations, set out above, of Cr Ewin's comments.

Cr Ewin's conduct and those imputations are properly considered in combination. Whilst one may not have been sufficient to breach Part 8.6 of the Code, the Panel determined that the nature of the opinions collectively and expressed publicly by Cr Ewin did not afford respect to Ald Briscoe and Ald Denison. This part of the complaint is upheld.

Part 8.7 The personal conduct of an Elected Member must not reflect, or have the potential to reflect, adversely on the reputation of the Council

In relation to Part 8.7 the Panel determined that the complaint was not proven in relation to the three events. There was no evidence put before the Panel that supported the complaint that Cr Ewin's comments had reflected, or had the potential to reflect, adversely on the reputation of Council. As the Panel has explained above, commenting on an issue before Council does not, in and of itself, bring Council into disrepute. Council is a deliberative polity. There are political functions to a councillor's functions; see section 28(1) and (2). Robust debate and commentary is to be expected. Something more than a lack of respect (Part 8.6), reasonably offensive or embarrassing behaviour (Part 7.1(b)), or unfairness (Part 7.1(a)) is required. In the Panel's opinion, behaviour of that type does not, in and of itself, reflect, or have the potential to reflect, adversely on the reputation of the Council. This is distinct from behaviour that reflects or has the potential to reflect adversely on the reputation of a person, such as the councillor; or a councillor's behaviour that is such a gross departure from accepted standards and norms that it not only reflects adversely on the councillor's reputation but also on the reputation of Council itself. The distinctions between the Council as an institution (Sections 18 and 29) and its functions (Section 20), and a councillor (Section 25) and the councillor's functions (Section 28), are important. This part of the complaint is dismissed.

² *Howard v Code of Conduct Panel*, Unreported, Magistrates Court of Tasmania, 18 July 2019 at [49]-[60] (Magistrate S Brown). The Panel has considered Ald Briscoe's comments regarding compliance with the Code being a "small price to pay" in light of the implied freedom of political communication.

Alleged breaches of Parts relating to Facebook post of 6 June 2019 and ABC Radio interview of 23 July 2019

Part 7.1 (c) must not bully or harass any person

In relation to Part 7.1 (c) the Panel determined that the complaint was not proven in relation to the events on 6 June and 23 July 2019. It was the Panel's view that harassment and/or bullying in this part of the Code requires unwarranted and unacceptable behaviour towards an individual over a sustained period. The Panel determined that Cr Ewin did not demonstrate sustained personal attacks on Ald Briscoe and Ald Denison. The Councillor had not named the complainants personally, although some comments may have led to some people being able to identify the complainants. The Panel determined that there was insufficient evidence to substantiate this part of the complaint. This part of the complaint is dismissed.

Part 7.2 An Elected Member must listen to, and respect, the views of other Elected Members 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

In relation to Part 7.2 the Panel determined that the complaint was not proven in relation to the two events listed above. This part of the Code is limited to conduct occurring in either a Council meeting, a committee meeting or "any other proceedings" of the Council. There was no evidence that Cr Ewin failed to listen to or respect other councillors in any of those proceedings, nor that Cr Ewin had focussed on personalities rather than issues during those proceedings. Cr Ewin's conduct outside of Council proceedings does not fall within the ambit of Part 7.2 of the Code. This part of the complaint is dismissed.

Alleged breaches of Parts relating to Facebook post and comments of 6 June 2019

Part 8.1 When giving information to the community, an Elected Member must accurately represent the policies and decisions of Council

In relation to Part 8.1, the Panel determined that the complaint was not proven in relation to Cr Ewin's Facebook post and comments of 6 June 2019. There was no evidence presented that Cr Ewin had misrepresented the policies or decisions of Council (as distinct from the reasons behind votes on such policies or decisions). This part of the complaint is dismissed.

Alleged breaches of Parts relating to Facebook post of 26 July 2019

The breach against Part 8.2 was alleged in relation to the event of 26 July 2019.

Part 8.2 An Elected Member must not knowingly misrepresent information that they have obtained in the course of their duties.

In relation to Part 8.2, the Panel determined that the complaint was not proven in relation to Cr Ewin's Facebook post of 26 July 2019. There was no evidence that Cr Ewin had knowingly misrepresented information obtained through the course of the councillor's duties. Whilst it may be the case that Cr Ewin misrepresented Ald Denison and Ald Briscoe's reasons for voting against the pill testing motion (although the Panel does not make such a finding for the purpose of this part of the complaint), there was no evidence that the information – namely, the complainants' votes – was obtained in the course of Cr Ewin's duties. The complainants' respective voting records, in respect of motions debated and voted upon in the open portion of a Council meeting, are matters of public record and not information that Cr Ewin obtained in the course of the Councillor's duty. This part of the complaint is dismissed.

For these reasons, pursuant to section 28ZI(1)(c), the Panel upholds part of the complaint and dismisses the remainder of it.

Sanction

The Panel's draft findings in Part 3 of this report were provided to the parties, and Cr Ewin was invited to make submissions regarding what sanctions, if any, should be imposed in light of those findings. Cr Ewin's submissions were to the following effect:

- Cr Ewin disagreed that "stating the fact of my colleagues voting along ideological lines regarding pill testing could be construed as offensive".
- "I respect my colleagues as fellow human beings but will not respect their decisions or actions on these issues. I fundamentally disagree with the politics of respectability. Respect existence or expect resistance. I do not believe I owe anybody an apology and would strongly resent being legally bound to apologise for calling out bad behaviour by people who should, if they have in fact done their due diligence, know better."

The Panel accepts that Cr Ewin, like all councillors, has a political function and may hold strong views about contentious issues. However, the Code is to temper and govern a councillor's conduct. Cr Ewin's conduct, although not necessarily outrageous, went beyond the bounds set by the Code. In response to a question from the Panel, Cr Ewin stated:

"I didn't expect to be elected and am now just along for the ride".

A previous code of conduct complaint against Cr Ewin was upheld in part by Determination Report 15 October 2019 - Hobart City Council - Complaint by Ms Isla MacGregor and Ms Bronwyn Williams against Councillor Holly Ewin - Partially upheld - Tabled 21 October 2019.

Although the conduct the subject of that complaint predates the subject of this complaint, the Panel's report was not made until after this complaint was received. Thus, it is not a 'prior conviction' in that sense. Nonetheless, it is relevant. In the Panel's view, Cr Ewin's answers given in the hearing, such as being "just along for the ride", display a lack of insight into a Councillor's functions and obligations.

The Panel takes into account Cr Ewin's relative inexperience and that, at the time of the three events, no complaints had been upheld in whole or in part. It also acknowledges the contentious debates that gave rise to Cr Ewin's conduct and that a value judgment is required. The Panel accepts that Cr Ewin did not intend to breach the Code (in that that is not what Cr Ewin set out to do). Nonetheless, Cr Ewin's conduct did, in fact, breach the Code. Cr Ewin's conduct was repeated, spanning several different days and two different mediums.

In their complaint form, the complainants sought an apology. The Panel has already referred to their evidence about the effect that Cr Ewin's conduct has had on them. In submissions, Cr Ewin "strongly resent[ed]" being directed to apologise. Notwithstanding that a forced apology may be of somewhat limited value to a complainant, the Panel is satisfied that the repeated nature of Cr Ewin's conduct warrants an apology. For the above reasons, the Panel is also of the view that Cr Ewin would benefit from training.

Section 28ZI (2) prescribes a descending hierarchy in terms of severity of sanction. The starting point is whether any sanction should be imposed. The Panel is satisfied that it should. In the 15 October 2019 report, Cr Ewin was cautioned. For the above reasons, something more severe than a caution is required on this occasion. The Panel therefore imposes the following sanctions:

- Pursuant to section 28ZI(2)(c), Cr Ewin is to apologise to Ald Briscoe and to Ald Denison. Such an apology is to be made orally in the Council meeting when this report is tabled. A written copy of the apology, signed by Cr Ewin, is to be given to the Hobart City Council General Manager within 7 days of the tabling of this report. The Panel determines that the apology should be as follows:

"I, Councillor Holly Ewin, unreservedly apologise for not showing respect for you as fellow councillors, which may have caused you offence or embarrassment.

- Pursuant to section 28ZI(2)(d), Cr Ewin is to attend a training course regarding Cr Ewin's obligations as a Councillor. The training and its time and place are to be determined by the Chief Executive Officer of the Local Government Association of Tasmania. The training must be commenced within 6 weeks of the tabling of this determination at a Hobart City Council meeting and be completed within 6 months. The training should include –
 - o A councillor's responsibility to all constituents of the municipality
 - o A councillor's legal and moral relationship with fellow councillors
 - o A councillor's responsibility in making public statements on social media and other communication channels.

3. Determination of complaint

Section 28ZD (1) (a) of the Act requires the Panel to investigate and determine the complaint within 90 days of the initial assessment. In this instance that 90-day period has been exceeded for the following reasons:

- Additional correspondence between parties to the complaint
- Additional time to follow up with a witness and seek a statutory declaration
- Short periods of unavailability of Panel members and parties to the complaint
- The need to re-schedule the hearing

4. 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



Sam Thompson
Legal Member



Liz Gillam
Member

**11. Committee Vacancies
Resignation of Alderman Denison
File Ref: F20/10948**

Memorandum of the General Manager of 5 February 2020.

Delegation: Council



City of **HOBART**

MEMORANDUM: COUNCIL

Committee Vacancies Resignation of Alderman Denison

The resignation of former Alderman Denison has created a vacancy on the following Council committees and internal / external groups:

Council Committees:

1. City Infrastructure (Chair);
2. City Planning; and
3. Risk & Audit Panel

Internal / External Groups:

- Battery Point Foreshore Accessway Working Group;
- City of Hobart and UTAS Governance Forum (Proxy);
- HCC Access Advisory Committee (Chair);
- Superannuation Policy Group;
- Tasmanian Water and Sewerage Corporation – Owner's Representative; and
- Wellington Park Management Trust - Deputy to Ald Thomas (expiry 31/12/2021).

Given that the election to fill the casual vacancy on the Council created by Ald Denison's resignation has now been completed it is appropriate to consider filling these vacancies. Nominations from the Council are therefore required.

Councillor Coats has indicated that given he has been elected on former Ald Denison's preferences that he is happy and has expressed interest to fill the vacancies left on the City Planning and City Infrastructure Committees.

In respect to the Owner's Representative for Tas Water, given that the General Manager generally attends these meetings in any event, it is open to the Council to appoint the General Manager as its Owner's Representative if it so wished.

RECOMMENDATION

That nominations be sought to fill the following vacancies created by the resignation of former Alderman Denison:

- 1. City Infrastructure Committee.**
- 2. Chairman City Infrastructure Committee.**
- 3. City Planning Committee.**
- 4. Any consequential appointments required following the determination of points 1 to 3.**
- 5. Risk and Audit Panel.**
- 6. Representatives on Internal / External Groups**

As signatory to this report, I certify that, pursuant to Section 55(1) of the Local Government Act 1993, I hold no interest, as referred to in Section 49 of the Local Government Act 1993, in matters contained in this report.



N D Heath
GENERAL MANAGER

Date: 5 February 2020
File Reference: F20/10948

12. Alderman Zucco - Service Recognition Function
File Ref: F20/14287

Memorandum of the Acting Director City Governance of 6 February 2020.

Delegation: Council



City of **HOBART**

MEMORANDUM: COUNCIL

Alderman Zucco - Service Recognition Function

The purpose of this report is to seek the Council's endorsement of the proposed arrangements for a reception to celebrate Alderman Zucco's service to the City of Hobart as the Council's longest serving Alderman.

Alderman Zucco's service was noted by the Council at its meeting held on 28 January 2019 when he was presented with a Certificate of Recognition noting his election as an Alderman of the City in 1992.

The Council has a policy celebrating the retirement of long-serving elected members at a hosted dinner function, however there is currently no provision which recognises significant service milestones of serving elected members. The cost of this type of function is estimated at \$3570. Alderman Zucco has indicated a preference for a less formal 2 hour cocktail function in the Court Room, which is estimated to cost \$3328.

Based on the significance of the occasion, and the existing policy which recognises service to the Council of "long-serving" elected members of just twelve years, it is appropriate to recognise Alderman Zucco's milestone service as the longest serving elected member in the history of the Hobart City Council.

Alderman Zucco has indicated that upon approval of this function, he would seek to move the location of the reception to the Town Hall in order to extend the number of guests over and above the 80 person capacity of the Court Room.

In accordance with the policy, elected members, their partners and the General Manager will be invited.

Costs associated with the change in venue and the attendance of guests over and above the 80 people which the Council would otherwise host, would be met by Alderman Zucco, and would involve Town Hall hire fees, together with the additional catering and invitation costs.

The General Manager would make the appropriate arrangements to facilitate the event, ensuring probity and transparency considerations.

RECOMMENDATION**That:**

- 1. In recognition of Alderman Zucco's service milestone as the longest serving Elected Member in the history of the Hobart City Council, the Council approve a two hour cocktail function for 80 persons in the Court Room, at a cost of \$3328, to be funded from the City Government Function within the 2019/20 Annual Plan.**
- 2. In the event of Alderman Zucco seeking to invite guests over and above the eighty people as approved by the Council, and thereby necessitating the relocation of the function to the Town Hall, all additional costs associated with doing so, such as hall hire fees, catering and invitation costs, including additional administration be funded personally by Alderman Zucco, subject to terms and conditions required by the General Manager to ensure the probity and transparency of arrangements.**
- 3. The General Manager be authorised to facilitate the arrangements, as outlined in clause 3.**
- 4. A policy be prepared for consideration by Council which acknowledges significant service occasions of Elected Members, which are not addressed within current policy provisions.**

As signatory to this report, I certify that, pursuant to Section 55(1) of the Local Government Act 1993, I hold no interest, as referred to in Section 49 of the Local Government Act 1993, in matters contained in this report.



Margaret Johns
**ACTING DIRECTOR CITY
GOVERNANCE**

Date: 6 February 2020
File Reference: F20/14287

13. CLOSED PORTION OF THE MEETING

RECOMMENDATION

That the Council resolve by absolute majority that the meeting be closed to the public pursuant to regulation 15(1) of the *Local Government (Meeting Procedures) Regulations 2015* because the items included on the closed agenda contain the following matters:

- Leave of absence
- Information of a confidential nature

The following items are listed for discussion:-

Item No. 1	Minutes of the last meeting of the Closed Portion of the Council Meeting
Item No. 2	Communication from the Chairman
Item No. 3	Leave of Absence
Item No. 4	Consideration of supplementary Items to the agenda
Item No. 5	Indications of pecuniary and conflicts of interest
Item No. 6	Dark Mofo 2020 LG(MP)R 15(2)(c)(i)