



CITY OF HOBART

AGENDA

Council Meeting

Open Portion

Monday, 25 May 2020

at 5:00 pm

SUPPLEMENTARY ITEM

ORDER OF BUSINESS

- 13. Code of Conduct Determination Report 3**

The General Manager reports:

“That in accordance with the provisions of Part 2 Regulation 8(6) of the *Local Government (Meeting Procedures) Regulations 2015*, these supplementary matters are submitted for the consideration of the Committee.

Pursuant to Regulation 8(6), I report that:

- (a) information in relation to the matter was provided subsequent to the distribution of the agenda;
- (b) the matter is regarded as urgent; and
- (c) advice is provided pursuant to Section 65 of the Act.”

13. Code of Conduct Determination Report
File Ref: F20/51210; 15/130-003

Memorandum of the General Manager of 21 May 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 Ms Amanda-Sue Markham 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: 21 May 2020
File Reference: F20/51210; 15/130-003

Attachment A: Code of Conduct Determination Report ↴

Local Government Code of Conduct Panel

Executive Building, 15 Murray Street, HOBART TAS 7000 Australia
GPO Box 123, HOBART TAS 7001 Australia
Ph: (03) 6232 7013 Email: lgconduct@dpac.tas.gov.au

PRIVATE AND CONFIDENTIAL

Mr Nick Heath
General Manager
Hobart City Council
generalmanager@hobartcity.com.au

Dear Mr Heath

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

In accordance with section 28ZK of the *Local Government Act 1993* (the Act) the Code of Conduct Panel has made its determination in relation to the complaint lodged by Ms Amanda-Sue Markham against Cr Holly Ewin. A copy of the Determination Report is enclosed.

As per section 28ZK (2) of the Act, copies have also been provided today to Ms Markham, Cr Ewin, and to the Director of Local Government.

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 fifty penalty units.

In accordance with section 28ZK (4) of the Act, you are to ensure that the Report is tabled at the first meeting of the Council at which it is practicable to do so and which is open to the public.

I may be contacted on (03) 6232 7013 or by email at lgconduct@dpac.tas.gov.au if you have any queries.

Yours sincerely



Helen Medhurst
Executive Officer
Code of Conduct Panel

20 May 2020

Encl. Determination Report

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

Complaint by Ms Amanda-Sue Markham against Councillor (Cr) Holly Ewin

(Reference C20300)

Determination made on 12 May 2020

Code of Conduct Panel:

Jill Taylor (Chairperson), Graeme Jones (Legal Member) and Penny Cocker (Member)

I. Summary of the complaint

On 23 July 2019 a Code of Conduct Complaint (the complaint) made by Ms Amanda-Sue Markham against Councillor (Cr) Holly Ewin was forwarded to Mr Nick Heath, General Manager, Hobart City Council. As the complaint did not fully meet the requirements of Section 28V of the *Local Government Act 1993* (the Act), the Council advised Ms Markham accordingly. Unfortunately, delays within Council resulted in this matter not being forwarded to the Executive Officer of the Code of Conduct Panel until 2 March 2020.

The General Manager provided the following chronological details of the delay in forwarding Ms Markham's complaint:

- | | | |
|---|---|------------------------|
| o | Original complaint | 23 July 2019 |
| o | Response clarifying intent of complaint | 26 July 2019 |
| o | Statutory declaration provided | 1 October 2019 |
| o | Clarification on intent of statutory declaration | 23 and 24 October 2019 |
| o | Correspondence raising residual deficiencies | 25 October 2019 |
| o | Email satisfying residual deficiencies in complaint | 29 October 2019 |

The complaint alleged that Cr Ewin had breached Part 7 and Part 8 of the City of Hobart Elected Member Code of Conduct (the Code), which was adopted by Council on 18 February 2019.

Rather than state details of the respective Parts of the Code, Ms Markham referenced the descriptors in the introduction to the Code as follows:

"Part 7 - An Elected Member is to be respectful in their conduct, communication and relationships with members of the community.....that builds trust and confidence in the Council" and

"Part 8 – An elected member is to represent themselves and the Council appropriately and within the ambit of their role."

Specifically, Ms Markham alleged that Cr Ewin circulated an email to politicians, local government councillors and the media which contained baseless views and were damaging to Ms Markham's reputation.

The Chairperson undertook an initial assessment and advised on 16 March 2020 that further investigation was warranted in relation to the complaint.

* 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.

A Code of Conduct Panel was formed to investigate the complaint. On 16 March 2020, Cr Ewin was provided with a copy of the complaint and invited to provide a response within 14 days. Having not received a response by 1 April 2020, the Executive Officer wrote to Cr Ewin providing an extension until 6 April 2020 to provide a response to Ms Markham's complaint or to advise if a response would not be forthcoming.

On 6 April 2020, Cr Ewin provided a statement addressed to "whom it may concern" but did not specifically address the complaint. This statement was not accompanied by a statutory declaration.

In the meantime, on 18 March 2020, Ms Markham forwarded an email to the Executive Officer alleging a Facebook post by Cr Ewin was offensive to Ms Markham and her husband. Ms Markham was advised that she should determine whether this was the subject of a new complaint, or if she wished it to form part of her evidence for the existing complaint that she should submit a statutory declaration to that effect. No communication was received from Ms Markham in response to this advice.

On 9 April 2020, the Panel met to progress investigation of this complaint. The Panel determined that, in accordance with Section 28ZG(2)(a) and (b), a hearing was not necessary. Ms Markham and Cr Ewin were advised of the Panel's intention and advised that if they had any concerns about not holding a hearing they should advise the Panel accordingly and provide reasons for their view. Cr Ewin was also asked to provide views of what, if any sanction should apply, should the complaint be upheld. On 27 April 2020, Ms Markham confirmed that she was satisfied to proceed without a hearing. Despite a reminder sent on 27 April 2020, Cr Ewin did not provide a response.

2. Investigation

The Panel met on 7 May 2020 to investigate and determine the complaint without a hearing. The following documents had been presented to the Panel to consider as evidence in this matter:

- Ms Markham's complaint submitted by email to Mr Heath, General Manager Hobart City Council and an attachment of a screenshot of an email headed "The Australian Magazine" purportedly sent on 22 July 2019.
- Ms Markham's statutory declaration signed on 30 September 2019
- Cr Ewin's email response dated 6 April 2020.

The attachment to Ms Markham's complaint, emailed to the Hobart City Council's General Manager sent on 23 July 2019, showed a number of barely legible email addresses and the content of a message signed by "Holly". Ms Markham alleges that by sending this email, Cr Ewin breached the Code as the Councillor was performing the functions and exercising the powers of a councillor. Ms Markham stated that the contents of the email were "utterly baseless" and had potential to damage the reputation of her and her husband.

The Panel noted that the email did not carry any insignia of the Hobart City Council nor any reference to "Holly" as an elected member. The only reference to "Council" was in the last paragraph which stated: "Not sure what, if anything, we are able to do on this from a council perspective...".

The Panel concluded that a reasonable person on reading this would not necessarily assume that it was sent by someone in their role of a councillor. Additionally, the Panel noted that there was a fine vertical line appearing by the side of the addressees and the content of the email. This often appears in a chain of emails, which suggests that the extract supporting the complaint may have been part of a larger email exchange that any number of people could have contributed to.

The Panel concluded that in the event that Cr Ewin did compile and send the email, it was an expression of an individual's view as opposed to that of a councillor.

Whilst the content of the publication may be viewed by Ms Markham as defamatory or derogatory, it is not the role of the Panel to make such a determination. In fact, evidence before the Panel shows that statements made by both Ms Markham and Cr Ewin may well have been offensive to the other. The Panel's role is to determine whether a breach of the Code has been made by Cr Ewin as alleged by Ms Markham.

3. Determination

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 complainant, Cr Ewin breached the Code. That evidence is limited to the copy of an email allegedly widely distributed by Cr Ewin on 22 July 2019.

As indicated previously, Ms Markham only referred to the broad descriptors of Parts 7 and 8 of the Code. The Panel, in considering all the evidence before it, has deduced that the relevant Parts are 7.1 (a) and (b) and 8.4 and 8.6. Therefore, the Panel has made determinations accordingly.

Parts 7.1 (a) & (b) and Parts 8.4 and 8.6 are outlined below:

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;*

PART 8 – Representation

- 4. *An Elected Member must clearly indicate when they are putting forward their personal views.*
- 6. *An Elected Member must show respect when expressing personal views publicly.*

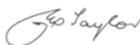
The Panel determined that the complaint alleging breaches of Parts 7.1(a) and 7.1(b), and Parts 8.4 and 8.6, should be dismissed, as it determined that the published material attributed to Cr Ewin contained their personal opinions and were not expressed by them whilst acting as an elected representative of the Hobart City Council.

Therefore, the Panel is not satisfied that there has been a breach of the Code of Conduct as alleged by Ms Markham.

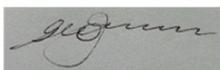
It follows that the complaint must be dismissed.

4. Right to Review

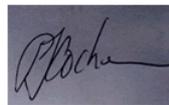
A person aggrieved by the determination of the Code of Conduct Panel is entitled under section 28ZP of the Act to apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination on the ground that the Code of Conduct Panel has failed to comply with the rules of natural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



Jill Taylor
Chairperson



Graeme Jones
Legal Member



Penny Cocker
Member