



CITY OF HOBART

AGENDA

Council Meeting

Open Portion

Monday, 10 May 2021

at 5:00 pm

Council Chamber, Town Hall

SUPPLEMENTARY ITEM

ORDER OF BUSINESS

SPECIAL REPORT – ACTING GENERAL MANAGER

- 16. Code of Conduct Determination Report - Lord Mayor Councillor Reynolds v Alderman Behrakis..... 3**

The Acting 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.”

SPECIAL REPORT – ACTING GENERAL MANAGER

**16. Code of Conduct Determination Report - Lord Mayor Councillor
Reynolds v Alderman Behrakis
File Ref: F21/40009**

Memorandum of the Acting General Manager of 6 May 2021 and attachment.

Delegation: Council



City of **HOBART**

MEMORANDUM: COUNCIL

**Code of Conduct Determination Report -
Lord Mayor Councillor Reynolds v Alderman Behrakis**

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 Lord Mayor Councillor Anna Reynolds against Alderman Simon Behrakis.

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 dated 5 May 2021 in respect to a complaint lodged by Lord Mayor Councillor Reynolds against Alderman Behrakis, 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.

Tim Short
ACTING GENERAL MANAGER

Date: 6 May 2021
File Reference: F21/40009

Attachment A: Code of Conduct Determination Report - 5 May 2021 ↓

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

The General Manager
Hobart City Council
generalmanager@hobartcity.com.au

Dear Sir/Madam

**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 Councillor Anna Reynolds against Alderman Simon Behrakis. A copy of the Determination Report is enclosed.

As per section 28ZK (2) of the Act, copies have also been provided today to Councillor Reynolds, Alderman Behrakis 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.

As the code of conduct complaint has been upheld in part, Councillor Reynolds is entitled, under section 28ZO of the Act, to a full refund of the lodgement fee. Please arrange a refund of this fee within 28 days of the date of this letter.

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

5 May 2021

Encl. Determination Report

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

Local Government Act 1993

CITY OF HOBART CODE OF CONDUCT PANEL DETERMINATION REPORT

Complaint brought by
the Lord Mayor, Councillor (Cr) Anna Reynolds, against Alderman (Ald) Simon Behrakis

Code of Conduct Panel:

Lynn Mason (Chairperson),
David Sales (community member with experience in local government),
Graeme Jones (legal member)

Date of Determination: 5 May 2021

Content Manager Reference : C21579

Summary of the Complaint

Cr Reynold's complaint dated 25 November 2020 was submitted to the General Manager of Hobart City Council on 25 November 2020 and was referred to the Chairperson for initial assessment on 1 December 2020.

The complaint alleged that over the six months leading up to the lodging of the complaint, Ald Behrakis failed to treat Cr Reynolds fairly and caused her offence and embarrassment. Additionally over this time the complaint alleged that Ald Behrakis breached the Code in regard to his representation of the Council, its decisions and policies in ways which could undermine those decisions and bring the Council into disrepute.

The Code in force at the time of the alleged breaches was approved by Council in February 2019. The sections of the Code which Cr Reynolds alleged Ald Behrakis breached are:

PART 7 – RELATIONSHIPS WITH COMMUNITY, ELECTED MEMBERS AND COUNCIL EMPLOYEES

- 7.1. A councillor -*
(a) must treat all persons fairly; and
(b) must not cause any reasonable person offence or embarrassment.

PART 8 - REPRESENTATION

- 8.1. When giving information to the community, an Elected Member must accurately represent the policies and decisions of the Council.*
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.
8.6. An Elected Member must show respect when expressing personal views publicly.

Initial Assessment

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

- the complainant had made a reasonable effort to resolve the complaint via her personal contact with Ald Behrakis and via involving Council's contact officer in attempts at mediation;

* 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 complaint substantially related to a contravention of Hobart City Council's Code of Conduct, namely Part 7.1 and Parts 8.1, 8.5 and 8.6;
- the complaint should not be dismissed on the grounds that it was frivolous, vexatious or trivial. The reasons for this conclusion were that Cr Reynolds had provided substantial evidence to support her claims;
- having made enquiries of the Code of Conduct Executive Officer, there was no relevant direction under section 28ZB(2) or 28ZI of the Act that would apply to the complainant and the complaint.¹

Pursuant to section 28ZA(1)(e) of the *Local Government Act 1993* (the Act), the Chairperson determined that the complaint should be referred to a Panel for investigation.

The complainant, respondent councillor and the General Manager were notified of the outcome of the outcome of the initial assessment by letter dated 23 December 2021.

The Complaint

Cr Reynolds alleged that during the relevant six month period, many of Ald Behrakis's public posts on his 'Ald Simon Behrakis' Facebook page were designed to damage her professional reputation, and to incite his followers to make abusive and insulting statements about her, many of which, she alleged, were unmoderated, and should have been removed from his Facebook page.

Specifically, the complaint referred to the following matters:

- An article published on Ald Behrakis's Facebook page on 26 May 2020 and on Linked In entitled 'Media Release' and containing the phrase 'Favours for Mates';
- Alleged manipulation of images of Cr Reynolds on Ald Behrakis's Facebook page;
- The process of selection of a new General Manager in October, 2020, as related on Ald Behrakis's Facebook page;
- Ald Behrakis's Facebook post regarding a parking issue in North Hobart, 23 September 2020;
- Ald Behrakis's Facebook post regarding a Code of Conduct determination, 20 August 2020;
- Ald Behrakis's Facebook post regarding Cr Reynold's published comments about funding decisions and the Taste of Tasmania, 24 May 2020; and
- The publication of the items listed above and subsequent posts on Ald Behrakis's Facebook page from third parties, some of which were deemed by Cr Reynolds to be in breach of the Code.

The complaint also alleged that Ald Behrakis's social media pages were regularly in breach of the Hobart City Council's *Social Media Guidelines (Part 1, Elected Members Development and Support Policy)*. In accordance with section 28V of the Act, the Panel can only consider complaints in relation to the contravention of the Code of Conduct of the relevant council. The Panel is unable to consider whether Ald Behrakis's social media pages breached Council's policy.

Investigation

The Panel received a response to the complaint from Ald Behrakis on 19 January 2021, which was sent to Cr Reynolds. On 26 January 2021 the Panel received a response from Cr Reynolds providing comment on Ald Behrakis's response of 19 January 2021. This was sent to Ald Behrakis.

¹ Section 28ZB(2) and 28ZI of the Act enable the Chairperson or the Panel (as applicable) to issue a direction to a complainant in prescribed circumstances not to make a further complaint in relation to the same matter unless the complainant provides substantive new information in the further complaint.

The Panel met on 27 January 2021. On 5 February 2021 the Panel asked Cr Reynolds for further information, and on 12 February 2021 a further request was sent to Cr Reynolds, asking her to provide specific reference to those parts of the Code which she considered to have been breached, and to specify which actions of Ald Behrakis constituted each breach. The Panel received Cr Reynolds's response on 22 February 2021, and this was sent to Ald Behrakis. On 5 March 2021 the Panel received an additional response from Ald Behrakis and this was sent to Cr Reynolds.

The Panel met on 11 March 2021, and resolved to ask the parties to make submission on whether or not they would be disadvantaged if a hearing were not to be held, on the grounds that the investigation in this matter could be adequately conducted on an examination of the documents provided. This correspondence was sent on 12 March 2021. On 19 March 2021 the Panel received submission from Cr Reynolds, requesting that a hearing be held. Also on 19 March 2021, the Panel received advice from Ald Behrakis that he did not intend to make any further written responses to the statements provided by Cr Reynolds, and that he did not wish to make any submission on sanction (in the event that all or part of the complaint was upheld) until the determination had been reached.

Hearing

As per section 28ZH of the Act, the Code of Conduct Panel held a hearing in Hobart on 27 April 2021.

No additional witnesses were called. Ald Marti Zucco, with the approval of the Chairperson, attended as support person for Ald Behrakis. Cr Reynolds, Ald Behrakis, and Ald Zucco all took the Oath or read the Affirmation, and all parties stated under oath that they were not recording the hearing in any way.

Material considered by the Panel

The Panel's investigation was based on the following documentation:

- The Complaint by Cr Reynolds, 25 November 2020;
- Statutory Declaration and details of the Complaint by Cr Reynolds, 25 November 2020, 22 pp with attachments 1-6;
- The Hobart City Council Elected Member Code of Conduct, February 2019;
- Response from Ald Behrakis, with Statutory Declaration, 19 January 2021 and submission in response, 8 pp, with attachments A, B, C, and D;
- Response from Cr Reynolds, 26 January 2021, 6 pp with Attachments 1, 2 and 3;
- Response from Cr Reynolds, 22 February 2021, with further information regarding the detail of the complaint, 15 pp;
- Second response from Ald Behrakis, 5 March 2021, 7 pp, with attachments A, B, C, D, E, and F;
- Letter from Ald Behrakis, 19 March 2021, re submission on sanction;
- Audio recording of the closed session of the Council meeting of 12 October 2020.

Determination

Pursuant to section 28ZI (1)(c) of the Act, the Code of Conduct Panel upholds part of the complaint against Ald Behrakis, and dismisses part of the complaint.

Reasons for the Determination

Neither party disputed that the written material provided as evidence in this investigation was accurately attributed to its source. Both Cr Reynolds and Ald Behrakis attended the Council Briefing

held on 25 May 2020, and both parties attended the closed session of the Council meeting held on 12 October 2020.

Cr Reynolds alleged that the publications, the subject of the complaint were, inter alia, unfair or untrue and as a consequence she had been treated unfairly and had suffered offence and embarrassment. Cr Reynolds also alleged that some of the publications which are the subject of the complaint did not accurately represent the policies and decisions of the Council, and had the potential to or actually could adversely affect the reputation of the Council, and that in some of those publications, Ald Behrakis failed to show respect when publicly expressing his personal views.

Ald Behrakis sought to justify the publications on the basis that he did not consider them to be in breach of any part of the Code, and in any event it would be unduly onerous to require him to constantly monitor any third party comments in response to his posts. Further, he referred to Magistrate Brown in his decision on *Howard v Code of Conduct Panel [2019] TASMC 6* as justifying his belief that the issues of complaint raised by Cr Reynolds were raised by him in political debate, and attempts to restrict the freedom of political debate by invoking the provisions of the Code of Conduct would, if found to be valid, unreasonably restrict him from freely expressing his views on political matters.

Whilst Australian law does not have an express guarantee of free speech, the High Court has acknowledged in a long line of cases that an implied freedom of communication exists under the Constitution in relation to political and government matters. This is often referred to as the implied freedom of political discussion. The High Court held that the Constitution established systems of representative and responsible government, in particular under sections 7, 24, 64 and 128, and that freedom to discuss political matters was indispensable to the various systems of government.

However, the implied freedom is not absolute and is subject to limitations and restrictions necessary for the effective operation of the particular system of representative and responsible government. There are a number of cases on this point, culminating in the High Court case of *Comcare v Banerji (2019) HCA 23*. In *Banerji* the High Court was required to consider a Code of Conduct in relation to the behaviour of public servants and sanctions to be imposed. The Court ruled that the implied freedom of political communication is not the equivalent to a personal right of free speech.

The effect of the implied freedom of political communication is that the legislature can restrict it so far as is necessary to preserve and protect the system of representative government. In this matter the Tasmanian Government has restricted the same, in the interests of managing the conduct of elected municipal members. Furthermore, Ald Behrakis took an oath to comply with the Code of Conduct in carrying out his duties as an Alderman for the City of Hobart.

Whilst the complaints relate to subject matter that may give rise to political debate, the so called defence of implied freedom of expression would not be available to Ald Behrakis if the publication complained of ventured from political discussion to something 'personal'. At the hearing Ald Behrakis conceded the same.

The Panel, in reaching its determination, considered whether the Facebook posts and media releases made by Ald Behrakis accurately portrayed statements made by Cr Reynolds, or procedures which had occurred within Council; or whether the words and phrases used by Ald Behrakis could be interpreted by a reasonable person as impugning the motives of Cr Reynolds, or implying that unacceptable, or possibly unlawful activity had taken place, been initiated or sanctioned by the Lord Mayor. The Panel also considered which, if any, of the matters raised could be seen by a reasonable person as legitimate political activity, and therefore fall outside the provisions of the Code.

The Panel also considered whether, as the person responsible for his Facebook site, Ald Behrakis could be held responsible for material posted there by third parties, given that posts can be made at any time and he might not be aware of offensive or embarrassing material for some time. In this light, the Panel considered whether any of the material posted by Ald Behrakis himself, or left in the public space of his Facebook site, could be seen by a reasonable person as potentially adversely affecting Council's reputation, and/or offending or embarrassing Cr Reynolds.

Having considered these matters broadly, and all material provided, the Panel made determination on each matter raised and the alleged breaches of specific sections of the Code.

I. 'Media release' following the Council Planning Briefing held on 25 May 2020

On 26 May 2020 Ald Behrakis published the following Facebook post, following a Council Planning briefing:

Developers, as well as concerned residents, would be well within their rights to ask questions as to the process behind this debate.

Why was the Lord Mayor's mate given preferential treatment and a special briefing to Council when the committees have been suspended and no one else has been afforded the same opportunity?

The headline item on Ald Behrakis's Facebook page on this item stated in block capitals

ANNA REYNOLDS PULLING 'FAVOURS FOR MATES' ON MAC POINT?

Ald Behrakis published the following text on his Linked In site:

Ald Behrakis has welcomed the Council's unanimous decision to approve the Macquarie Point Development Application in tonight's Council meeting but has criticised the Lord Mayor for giving favourable treatment to friends on planning matters.

'The Council made the right decision to approve the Macquarie Point Development application. It was clear after hearing from both the Mayor of Glenorchy and the applicant, as well as reading the planning report that the concerns raised in opposition to this proposed road had little basis in reality,' Ald Behrakis said.

'It was also curious that the Lord Mayor supported approval of this item, even though the item, which was initially intended to be approved by officers, was summoned to Council by her, with one single representation in her friend and fellow Mayor, Alderman Johnston. There have been many planning items since the shutdown of committees due to COVID-19. In none of the previous items were the applicants or concerned residents afforded the same opportunity to give deputations to Council to discuss the applications,' he said.

'Members of the public could be forgiven for thinking that the Lord Mayor is using her position on Council to pull favours for mates on planning matters, and politicising cut and dry applications for the purposes of political point scoring and headline chasing. Anyone with an interest in development application (sic) in the last two months would be right to ask why they were not afforded the same opportunities to plead their case that was offered to the Mayor of Glenorchy,' he said.

'I am happy to note that the Council has agreed to reinstate Committees, as necessary via Zoom. This will allow us to properly debate policy matters that cannot be properly discussed in the format of five minute speeches. It would also allow the right for those interested in planning matters to speak to Council, without first having to establish a friendship with the Lord Mayor,' he concluded.

The complaint alleged that this Facebook page and the associated text published on Linked In breached clauses 7.1 (a) and (b), and clauses 8.1, 8.5, and 8.6 of the Code.

The Panel determines that the use of the phrase 'Favours for Mates' in a political context implies wrongdoing. Ald Behrakis was unable to give good reason for the use of this phrase, and could not provide evidence that there was any particular friendship between Cr Reynolds and the Mayor of Glenorchy to justify the use of 'Mates'. Third party comments used the words 'corrupt' and 'dodgy', indicating that Ald Behrakis's readers interpreted his phrasing as indicating wrongdoing by Cr Reynolds.

The Panel determines that the process used for calling the Council Planning briefing, and the subsequent process for inviting representations on planning matters at that briefing, was not corrupted in any way, and to imply such was to misrepresent a legitimate council process and the Lord Mayor's role in that process. The Panel determines that this was unfair, offensive, and embarrassing to Cr Reynolds, and failed to accurately represent the decisions and processes of the

Council, and potentially undermined the decisions of Council and brought it into disrepute. Ald Behrakis failed to show respect when expressing his personal views.

Pursuant to section 28ZI (1)(c) of the Act, the Code of Conduct Panel upholds the complaint that with his 'media release', Ald Behrakis breached clauses 7.1 (a) and (b), and clauses 8.1, 8.5, and 8.6 of the Code.

2. Manipulation of the Complainant's image by Ald Behrakis

The complaint alleged that Ald Behrakis altered and coloured images of Cr Reynolds.

The Panel determines that while colouring images to reflect political leanings or to make the person appear drab or uninteresting may be discourteous, it could be taken by a reasonable person as part of political gamesmanship, and in the circumstances, as published by Ald Behrakis, was not necessarily unfair, offensive, or embarrassing; nor would it affect Council's reputation as a whole.

Pursuant to section 28ZI(1)(c) of the Act, the Code of Conduct Panel dismisses the complaint that manipulation of the images used by Ald Behrakis breached the Code.

3. Promotion of a statement made on ABC Radio by Leon Compton, 13 October 2020

At the Council meeting of 12 October 2020 the process for selection of a new General Manager for the City of Hobart was determined. The following day, Ald Behrakis published a Facebook post regarding the Council's process of selection of a recruitment panel for that position.

The headline item on Ald Behrakis's Facebook was a quote from Leon Compton, an ABC radio broadcaster. The headline stated:

'MAYOR, YOU WENT OUT YOU HAND PICKED 4 PEOPLE, THREE PEOPLE AND YOURSELF TO BE ON THIS RECRUITMENT PANEL. YOU WORKED IT OUT. YOU DID THE NUMBERS AND YOU ORGANISED THAT 4 PERSON PANEL WHICH IS EXACTLY WHAT CAME TO PASS.'

Ald Behrakis's text stated:

WHAT DO YOU THINK?

The selection of a new General Manager is far too important a decision to be left to a small group, hand picked by the Mayor. It should be something which the entire Council is involved in. What do you think?

The complaint alleged that the publication, when read with the quotation from Leon Compton and the question posed by Ald Behrakis, breached the Code.

The Panel determines that, having considered that the Council meeting at which the decision appointing the recruitment panel was made was conducted in accordance with procedures under the Act and the *Local Government (Meeting Procedures) Regulations 2015*, Ald Behrakis's selection of Mr Compton's statement wrongfully implies that Cr Reynolds and the Council behaved inappropriately. The recruitment panel was chosen by a council vote. The fact that Cr Reynolds asked various elected members ahead of time if they would be on the Panel, if selected, is a normal procedure in politics, and is not indicative of wrongdoing or corruption of process. The Panel determined that this publication on Ald Behrakis's Facebook page was deliberately misleading.

The Panel determines that the eventual selection of a new General Manger was decided by the full council, and that this was clearly the process to be followed, as decided at the meeting on 12 October 2020. Ald Behrakis could not fail to have been aware that the chosen committee was tasked with short listing candidates, ready for final decision by the full council. This is a reasonable and normal process, and it was a decision of council, democratically taken. To imply that the final decision was to be made by the committee is demonstrably false.

Third party comments on Ald Behrakis's Facebook site following this post uphold the Panel's view that this post brought the Council into disrepute and did not accurately represent the decision of Council.

Extracts from these posts include 'smells a bit fishy'; 'this tyrannical LM'; 'can the people of Hobart have confidence in the propriety of the operation of the council'; and 'she wouldn't know a democratic process if it bit her'. These, and the original Facebook post, are unfair, offensive, and embarrassing for Cr Reynolds. Furthermore, the publication did not accurately represent the decisions of the Council and undermined the decision process and as such, Ald Behrakis failed to show respect.

Pursuant to section 28ZI (1)(c) of the Act, the Code of Conduct Panel upholds the complaint that this post breached clause 7.1 (a) and (b), and clause 8.1, 8.5, and 8.6 of the Code.

4. 23 September 2020: North Hobart parking problem

Ald Behrakis published the following Facebook post on 23 September 2020:

Apparently the majority of business owners, the countless patrons and residents that are fed up over the lack of action are nothing more than 'a handful of people with vested interests'.

I personally would call them major stakeholders in the area, and ratepayers. Rather than repurposing their rates for pet projects such as subsidising activist groups, shouldn't we invest in the infrastructure that North Hobart needs to continue to grow as Tasmania's premiere restaurant strip?

What do you think about the Lord Mayor's comments? Is she right that this issue is being blown out of proportion by 'a handful of vested interests', or is she out of touch?

The headline item on Ald Behrakis's Facebook page stated in capital letters:

WHAT DOES ANNA REYNOLDS THINK ABOUT THE PARKING PROBLEM IN NORTH HOBART?

"THE PEOPLE THAT HAVE A CLOSED MIND IN THIS DISCUSSION ARE THE HANDFUL OF PEOPLE WITH A VESTED INTEREST..."

WHAT DO YOU THINK?

The complaint alleged that this post by Ald Behrakis breached clause 7.1 (a) and (b) and clause 8.6 of the Code.

The Panel determined that the relevant part of the original text written by Ald Reynolds stated:

The people that have a closed mind in this discussion are the handful of people with a vested interest in developing Condell Place.

The Panel found that Ald Behrakis deliberately omitted the words 'in developing Condell Place' from his published text, and then expanded the concept of people 'with a vested interest' to take in the majority of business owners, the countless patrons and residents. By his selective quoting Ald Behrakis treated Cr Reynolds unfairly and caused her offence and embarrassment. Furthermore, he failed to show respect in airing his personal views publicly.

Pursuant to section 28ZI(1)(c) of the Act, the Code of Conduct Panel upholds the complaint that Ald Behrakis breached clause 7.1 (a) and (b), and clause 8.6 of the Code.

5. Quote from Code of Conduct Determination Report, 20 August 2020

The complaint alleged that in criticising Cr Reynolds by reference to a previous Code of Conduct determination, Ald Behrakis breached clause 7.1 (a) and (b) of the Code.

No evidence was presented to the Panel to show that the statement made on 20 August 2020 was inaccurate. While it may have been embarrassing for Cr Reynolds, the Panel does not consider it to be a breach of the Code.

Pursuant to section 28ZI(1)(c) of the Act, the Code of Conduct Panel dismisses the complaint that this post breached clause 7.1 (a) and (b) of the Code.

6. 24 May – Politicising the Taste of Tasmania

Ald Behrakis published the following Facebook post on 24 May 2020:

In today's Mercury, Anna Reynolds was quoted as saying: 'These kind of funding decisions from federal and state governments have a real impact on the balance sheet of local councils and impact on our ability to fund projects like the Taste.'

For the Lord Mayor to try and link the allocation of the Federal Government's Local Roads and Community Infrastructure Program to the cancellation of the Taste of Tasmania is not only false, but an appalling attempt by the Lord Mayor to politicise this issue in pursuit of another headline.

Our city is facing one of the most significant challenges in its history. The council has many difficult decisions that will have to be made, including how we progress with this year's Taste of Tasmania. No decision has been made yet however, nor has the issue been formally discussed by the elected members. I would have hoped the leader of our city would have conducted herself in a more appropriate manner given these circumstances.

Difficult decisions such as this require sober decision making by the City's elected members and the Lord Mayor's headline chasing and attacking of the State and Federal Government does nothing to contribute to that.

The headline item on Ald Behrakis's Facebook page stated:

ANNA REYNOLDS POLITICISING TASTE OF TASMANIA

The Panel determines that while the phrases used may be strongly critical of the Lord Mayor, the quote is accurate, and Ald Behrakis's opinion and interpretation of her statement were no more than political comment of the way the funding decision was linked by Cr Reynolds to the Taste of Tasmania festival decision, still to be made.

Pursuant to section 28ZI (1)(c) of the Act, the Code of Conduct Panel dismisses the complaint that this post breached clause 7.1 (a) and (b) and clause 8.6 of the Code.

7. Failure to remove Facebook posts alleged to be in breach of the Code

Publications on social media are subject to the law and if an individual publishes material on Facebook he or she must accept responsibility for such publication. In this matter it includes third party comments.

The Panel determined that on a number of occasions, the publications on Facebook, including the third party comments on Ald Behrakis's Facebook page, could be interpreted by a reasonable person as unfair, offensive, and embarrassing for Cr Reynolds. There was clear evidence before the Panel that a number of responders interpreted the posts as meaning that Council's practices were corrupt or that Council failed to follow lawful processes.

The Panel noted that while some of the third party posts had given extreme views about how Council was conducting its business, no evidence was provided to indicate that Ald Behrakis had done anything to correct what were obviously inaccurate interpretations.

Ald Behrakis stated at the hearing that if he was told that some of the publications may have been in breach of the Code, he would make his own determination about whether or not such publications should be removed. As a consequence a number of the posts damaging to both Cr Reynolds and to Council have remained on his Facebook page for a considerable time. This has aggravated the harm caused to both Cr Reynolds and the Council. Ald Behrakis responded to a question about timely removal of damaging or offensive posts to the effect that he was unable to monitor his Facebook page fulltime, and that there had to be 'limitations' on his responsibility for public statements made on his page.

The Panel disagrees with this view.

Furthermore, there are various mechanisms available to monitor Facebook sites. While the Panel commends Ald Behrakis for his desire to be 'open and accountable' to the people of Hobart, it does not consider that it is reasonable for others who may be adversely affected by comments on his Facebook page to have to undertake constant monitoring of his page to protect themselves.

Conclusion

The Panel accepts that discourse between political opponents may be strongly worded. What the Panel does not find acceptable is the publication of false and misleading material, or the selective quotation or manipulation of words, or the misrepresentation of events, which may prove damaging to other elected members or to the Council. Nor does the Panel consider that a failure to monitor a Facebook page on the grounds that to do so would be too time-consuming for the publisher is a reasonable defence, implying as it does that other people who may be affected have to take on that responsibility themselves.

Sanction

In accordance with section 28ZI (2) of the Act, the Panel may impose one or more sanctions on Ald Behrakis. At the hearing on 27 April 2021, Ald Behrakis was again invited to make submission on sanction. Ald Behrakis stated that as he considered that the complaint should be dismissed, he did not believe any sanction should be imposed.

Pursuant to section 28ZL(2)(a), the Panel imposes a caution on Ald Behrakis.

Pursuant to section 28ZL(2)(c), the Panel requires Ald Behrakis to apologise to Cr Reynolds for causing her offence and embarrassment, and for failing to show respect in expressing his personal views publicly. Ald Behrakis is also to apologise to the Council, for failing to accurately represent the decisions of Council, and for expressing his personal views publicly in such a way as to undermine the decisions of the Council and to bring the Council into disrepute.

This apology is to be made without reservation at the ordinary Council meeting at which this report is tabled. In the event that either Cr Reynolds or Ald Behrakis is unable to attend that meeting, the apology is to be made by Ald Behrakis at the next council meeting attended by Cr Reynolds.

Timing of the Determination

In accordance with section 28ZD (1) a Code of Conduct Panel is to make every endeavour to investigate and determine a code of conduct complaint within 90 days of the chairperson's determination that the complaint is to be investigated.

The Panel has been unable to determine the complaint within 90 days, owing to public holidays falling during the December 2020 to April 2021 period, and the Panel's inability to find a suitable date in the short term on which to conduct the hearing.

Right to Review

Under s28ZJ of the Act, a person aggrieved by the determination of the Panel is entitled to apply to the Magistrates Court (Administrative Appeals Division) for a review of the determination on the ground that the Panel has failed to comply with the rules of natural justice.

Lynn Mason
(Chairperson)

Graeme Jones
(Legal Member)

David Sales
(Community Member with
experience in local government)