

Local Government Code of Conduct Panel

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PRIVATE AND CONFIDENTIAL

Ms Bodhi McSweeney
69 Hamptons Road
MEANDER TAS 7304

Dear Ms McSweeney

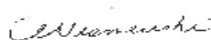
Code of Conduct Panel Determination Report - Local Government Act 1993 (Section 28ZJ)

Please find enclosed the Code of Conduct Panel's determination report in relation to the code of conduct complaint lodged by you against Cr Tayna King.

As per section 28ZK(2) of the *Local Government Act 1993* (the Act), copies of this determination report have also been sent to Cr Tanya King, to the Meander Valley Council's General Manager, and to the Director of the Local Government.

In accordance with section 28ZK(4) of the Act, the Meander Valley Council's General Manager is to ensure that a copy of the determination report is tabled at the first meeting of the relevant council at which it is practicable to do so and which is open to the public.

Yours sincerely



Catherine Wisniewski
Executive Officer
Code of Conduct Panel

18 September 2017

Encl. Determination Report of the Code of Conduct Panel

CODE OF CONDUCT PANEL

MEANDER VALLEY COUNCIL CODE OF CONDUCT

Complaint by Ms Bodhi McSweeney against Councillor (Cr) Tanya King

Determination made 5 July 2017

Local Government Act 1993

Code of Conduct Panel: Jill Taylor, (Chairperson), Gretel Chen, (Legal Member) and Lynn Mason (Member).

1. Summary of the complaint

The Meander Area Residents and Ratepayers Association (MARRA) Inc, through its President Ms Bodhi McSweeney, lodged a Code of Conduct complaint dated 27 March 2017 against Cr Tanya King (the Complaint).

MARRA Inc is an incorporated association, having been registered on 7 September 2016. It has a membership of around 70 people, with members paying an annual membership fee of \$10.00. The Panel and Cr King were provided with details of MARRA Inc's office bearers and a list of MARRA Inc's current members.

The Complaint alleges that Cr King contravened Parts 7.1(a) 7.1(b) and Part 8.6 of the Meander Valley Council's Code of Conduct, which was adopted on 21 June 2016. Specifically, the Complaint alleges that at a Meander Valley Council (the Council) meeting held on 15 November 2016, Cr King did not treat the members of MARRA Inc. with courtesy, fairness, dignity and respect caused them offence or embarrassment when she made the following comments which were recorded in the minutes:

Further to my Questions from the last meeting of Council with regard to the Code of Conduct complaint against myself lodged by Mr Bronte Booth, and letters to Council, received from Bleyer Lawyers on behalf of the Meander Area Residents and Ratepayers Association, it seems the false allegations, and demands made by their legal representation have cost Council, and in turn ratepayers in the vicinity of \$6,500.00.

Many constituents have asked will Mr Booth, and the MARRA group, be made accountable for the costs incurred by the ratepayers, for their behaviour?

Is it possible that Mr Booth, and representatives from the MARRA group could perhaps do some Community Service work, in order to make right their time and money wasting antics?

I have had constituents indicate that they would be interested in purchasing tickets to view said people conducting community work, which could be another way to recover the wasted funds. In the event that such community service work eventuates, could Council advise if it would be feasible to sell such tickets?

The Complaint further alleges that Cr King made comments about MARRA Inc members which were "discourteous, disrespectful, offensive and embarrassing" and which were quoted in the Examiner Newspaper's 21 November 2016 edition. The newspaper report

was annexed to the Complaint. It referred to Cr King's comments at the 15 November 2016 Council meeting and included the following quotes from Cr King:

"The reason for asking the question was to alert the ratepayers to the fact that the actions of the MARRA group and Bronte Booth have cost ratepayers \$6,500.00 for what has turned out to be vexatious and nuisance type complaints. Obviously at the time they were trying to stop council from progressing the Teen Challenge's lease at the school."

And

"They're very closely aligned with the Greens party and while I definitely don't want to bring politics into local government issues because I don't believe it's got any part, I've never seen anyone associated with those groups do anything to benefit the community."

The Examiner report further noted that Cr King had:

- asked council if community service work would help to cover the cost incurred to ratepayers as a result of the MARRA group's actions;
- reported that constituents had expressed interest in paying to watch the proposed community service work, which she suggested could help cover the debt; and
- said it was disappointing that the MARRA group had pursued the matter in the way it had.

The Complainant alleges that Cr King's conduct as detailed is in contravention of the Code of Conduct.

The following is the relevant extract from the Code of Conduct:

Part 7 – RELATIONSHIPS WITH COMMUNITY, COUNCILLORS AND COUNCIL EMPLOYEES

1 A Councillor: -

- a. must treat all persons with courtesy, fairness, dignity and respect; and*
- b. must not cause any reasonable person offence or embarrassment"; and*

Part 8 – REPRESENTATION

8.6 –A councillor must show respect when expressing personal views publicly.

2. Investigation

The Chairperson of the Code of Conduct Panel (the Chairperson) conducted an initial assessment of the Complaint and determined on 12 April 2017 that it was to be investigated and determined by a Code of Conduct Panel (the Panel) in accordance with section 28ZA(1)(e) of the *Local Government Act 1993* (the Act).

The Panel determined that it would hold a hearing on the matter.

The Panel received and considered the following documents prior to the hearing:

- The Complaint, including 3 attachments – 1 - details of the alleged contravention; 2 - excerpt from the November 2016 Council minutes; and 3 - copy of an article from the 21 November 2016 edition of the *Examiner*.
- The Code of Conduct; and
- Cr King's written response to the complaint dated 3 May 2017, together with attachments including a letter from Bleyer Lawyers dated 12 July 2016 and 8 August 2016.

Summary of Hearing

The hearing was convened on 5 July 2017 at the Westbury Community Health Centre, Meander Valley Road, Westbury. Both Ms McSweeney and Cr King attended and took an oath/affirmation prior to giving evidence. The Chairperson outlined the substance of the complaint and the procedure the Panel would follow, including options available to the Panel if the Complaint was upheld.

Ms McSweeney advised that her given name was Denise Margaret McSweeney but that her chosen name was Bodhi McSweeney.

Ms McSweeney told the Panel that members of MARRA Inc were deeply offended and shocked by Cr King's reference to them at the Council meeting of 15 November 2016 and the article in the 21 November 2016 edition of the Examiner Newspaper. She added that some MARRA Inc members did not understand why Cr King made the statements, and that she considered the comments to be outrageous and humiliating. Ms McSweeney told the Panel that she did not believe any members of MARRA Inc were at the Council meeting in November 2016, but they had accessed the minutes from the Council website and through the Examiner newspaper of 21 November 2016. Some were shocked that Cr King would treat constituents in that way.

Ms McSweeney advised the Panel that MARRA Inc was formed because some residents were concerned about proposed actions by Council that they did not support and what they considered to be inadequate processes undertaken by the Council.

Cr King questioned Ms McSweeney about a forerunner to MARRA Inc called "Concerned Residents". Ms McSweeney confirmed that this group formed MARRA Inc. but had never been incorporated under any other name.

When asked for her response to the Complaint, Cr King told the Panel that her comments needed to be put into context. She told the Panel that a previous Code of Conduct complaint lodged by Bronte Booth, a member of MARRA, against her was based on lies and false accusations and was dismissed on the basis that it was frivolous and vexatious. She said her comments about MARRA Inc that form the basis of the current Complaint, go back to this previous Code of Conduct complaint.

Cr King said it was her intention to alert ratepayers to the waste of time and funds that the former complaint had caused Council. Cr King told the Panel that approximately two hours before the July 2016 Council meeting she had received a letter from Bleyer Lawyers dated 12 July 2016 and which was sent on behalf of MARRA Inc. Cr King described the letter as threatening and an attempt to deliberately bully her. She considered that she was being threatened by some people in the community who were linked to MARRA Inc and the Greens. The letter referred to possible legal action against Council.

Cr King confirmed that the extract of minutes before the Panel was an accurate record of what she said at the November 2016 Council meeting. When asked by the Panel about the accuracy of the comments attributed to her in the Examiner Newspaper article of 21 November 2016, Cr King said that the context was correct but she believed she may have been misquoted. Cr King said she did not recall what she said to the Examiner reporter, and could not remember if the Examiner reporter was present at the Council meeting or contacted her afterwards.

Cr King said in hindsight she should have chosen her words at the Council meeting more carefully. She described her comments as “cheeky”.

Cr King agreed that people are entitled to lodge a Code of Conduct complaint if they feel the Code has been breached, she believed the previous complaint against her was based on lies and had wasted Council time and money.

Cr King advised the Panel that she had been elected in November 2014 and that both new and re-elected Councillors had attended a training workshop in Launceston. She advised that she had also received training in good governance but had had no specific training in the Code of Conduct.

Ms McSweeney asked Cr King why she made remarks about the waste of Council time and money on Mr Booth’s complaint when she had not made similar remarks about other matters relating to Teen Challenge which had also cost Council. Cr King responded that the other matters had not been based on lies.

The Panel was informed that of the \$6,500.00 cost to Council referred to by Cr King, around \$4,000.00 related to Council’s own legal costs and expenses in connection with the former Code of Council complaint and the matters raised in the letters from Bleyer Lawyers.

Cr King told the Panel that the Booth complaint had had a personal impact on her and her family and that she wanted to communicate that to the broader community. She acknowledged that it was a matter of public record that the Booth complaint had been dismissed.

3. Determination

The Panel determines the following:

Part 7 – RELATIONSHIPS WITH COMMUNITY, COUNCILLORS AND COUNCIL EMPLOYEES

1 A Councillor: -

- a. must treat all persons with courtesy, fairness, dignity and respect; and*
- b. must not cause any reasonable person offence or embarrassment; ...*

The Panel upholds the Complaint in relation to Part 7.1(a) and 7.1(b).

The Panel considers that Cr King’s comments recorded in the excerpt of minutes from the November 2016 meeting, and which she admits making, were gratuitous and sarcastic. The comments demonstrated an absence of respect for the right of individuals to lodge a complaint if they considered the Code had been breached. Further, Cr King’s comments inferred that Mr Booth had cost the ratepayers approximately \$6,500 by lodging a Code of Conduct complaint, when, in fact, Council’s decision to seek its own legal advice accounted for around \$4000 of that amount.

For these reasons, the Panel finds that Cr King has failed to treat Mr Booth and the members of MARRA Inc with courtesy, fairness, dignity or respect. The Panel also finds that the comments caused a reasonable person, namely Mr Booth and one or more of the MARRA Inc members, offence or embarrassment.

Cr King disputed the accuracy of the Examiner Newspaper report of 21 November 2016 and believed she had been misquoted. The Examiner article does, however, accord

with the general tenor of Cr King's comments as recorded in the Council minutes for the 15 November 2016 meeting. To the extent that the Examiner article is consistent with the Council minutes, the Panel has already determined that the comments made amount to a contravention of paragraph 7.1(a) and 7.2(b) of the Code of Conduct. To the extent that the Examiner article contains novel quotes attributed to Cr King, the Panel is not satisfied that Cr King made the comments attributed to her.

Part 8 – REPRESENTATION

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

The Panel dismisses the Complaint in relation to Part 8.6.

Part 8 – Representation of the Meander Valley Code of Conduct deals with Councillors obligations in relation to a range of communications. Part 8.6 deals with the public expression of a Councillor's views. "View" in this context is defined in the Oxford Dictionary as *manner of considering a subject, opinion, mental attitude*.

Whilst some of the comments attributed to Cr King were made in the context of a Council meeting and were therefore public, the Panel does not consider that the comments amounted to the expression of a personal view.

The second, third and fourth paragraphs of the excerpt of minutes refer to comments and questions by constituents rather than the personal views of Cr King.

The first paragraph is largely factual save for the reference to the "false allegations" costing Council in the vicinity of \$6,500.00. The description "false allegations" was used to describe the former Code of Conduct complaint against Cr King that was dismissed. On a strict reading of Cr King's words, the description "false allegations" was an inaccurate way to describe a complaint which was in fact dismissed and not found to be "false". On balance, however, the Panel considers that it is reasonable to expect that a lay person in Cr King's position would not appreciate the distinction between allegations being dismissed as frivolous and vexatious and allegations being "false". On that basis, the Panel considers that the use of the words "false allegations" did not amount to the expression of a personal "view" of the matter by Cr King.

For those reasons, the Panel does not consider that the comments made by Cr King in the November 2016 Council meeting amounted to a contravention of paragraph 8.6 of the Code.

The Panel is not satisfied that the comments attributed to Cr King and reported in the 21 November 2016 edition of the Examiner newspaper were an accurate depiction of Cr King's words. Cr King considered the context of the comments to be accurate but not the quotes themselves. She believed she had been misquoted. The tenor of the Examiner article accords with the minutes of the 15 November meeting minutes; however, the Panel has determined that the comments at the Council meeting did not amount to a contravention of paragraph 8.6 of the Code of Conduct. Accordingly, the Panel finds that a contravention of paragraph 8.6 of the Code of Conduct is not made out.

5. Sanction

Following the Panel's determination that Cr King had breached Parts 7 1(a) and 7 1 (b) of the Meander Valley Council's Code of Conduct, the Chairperson wrote to Cr King providing her with an opportunity to comment in relation to an appropriate sanction to be

imposed. Cr King responded by saying she was pleased that the Panel had found that she had not breached Part 8.6.

However, in relation to the Panel's determination in relation to 7 1(a) and 7 1 (b), Cr King indicated that she found difficulty in responding to the question of appropriateness of a sanction when she was unaware of the rationale for the determination.

In her response, Cr King continued to focus on the previous complaint against her by Mr Bronte Booth rather than acknowledging the appropriateness of her conduct in relation to the complaint lodged by Ms McSweeney on behalf of MARRA Inc.

In concluding, Cr King stated that she felt a caution was a suitable sanction.

Having considered Cr King's response to the question of sanction, the Panel reconvened to discuss a suitable sanction for this specific breach of the Code of Conduct, having regard to other sanctions that have been determined under the current Code of Conduct arrangements. The Panel acknowledged it was the first time that Cr King had been found to have breached the Code. However, Cr King made inappropriate comments that are now part of the public record in the Meander Valley Council which may have caused embarrassment to members of MARRA Inc.

6. Therefore, the Panel has determined the following sanction in accordance with Section 28ZI (2) of the Local Government Act 1959:

- Cr King be cautioned against making inappropriate public statements which may cause offence or embarrassment to any individual or community group; and
- Cr King be required to make the following apology at the first available Meander Valley Council meeting, which should be written into the Council minutes:

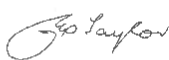
"To members of MARR Inc

I sincerely and unreservedly apologise to members of MARRA Inc for any offence or embarrassment that my comments at the Meander Valley Council meeting held on 15 November 2016, may have caused them.

Cr King"

7. 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 grounds that the Code of Conduct Panel has failed to comply with the rules of natural justice.



Jill Taylor
Chairperson



Gretel Chen
Legal Member



Lynn Mason
Member