

CODE OF CONDUCT PANEL DETERMINATION REPORT *
CITY OF HOBART ELECTED MEMBER CODE OF CONDUCT

Complaint brought by Mr Brian Corr against Ald Marti Zucco

Date of Determination: 5 August 2020

Content Manager Reference: 20/75687

Code of Conduct Panel: Lynn Mason (Chairperson), David Sales (community member with experience in local government), Anthony Mihal (legal member)

Summary of the Complaint

The complaint from Mr Corr was submitted to the Executive Officer of the Code of Conduct Panel (the Panel) on 17 December 2019.

The Chairperson of the Panel undertook an initial assessment of the complaint and determined on 6 January 2020 that it should be investigated and determined by the Panel.

The City of Hobart Elected Member Code of Conduct (the Code) in force at the time of the alleged breaches was adopted by Hobart City Council in February 2019. The sections of the Code which Mr Corr alleged Ald Zucco breached are:

Part 1 – Decision Making

3. In making decisions, an Elected Member must give genuine and impartial consideration to all relevant information known to them, or of which they should have reasonably been aware.

4. An Elected Member must make decisions solely on merit and must not take irrelevant matters or circumstances into account when making decisions.

Part 3 – Use of Office

1. The actions of an Elected Member must not bring the Council or the office of Elected Member into disrepute.

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

* 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.

Part 7 – Relationships with community, councillors, and council employees

1. An Elected Member –

(a) must treat all persons fairly; and

(b) must not cause any reasonable person offence or embarrassment; and

(c) must not bully or harass any person.

Part 8 – Representation

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

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 Complaint

The Complainant alleged that the breaches occurred in five emails, several Facebook posts, a media release put out by Ald Zucco, at the Ordinary Hobart City Council meeting on 8 July 2019, and in two radio interviews on ABC Hobart radio. The complaint deals primarily with matters involving Ald Zucco which occurred during Hobart City Council's consideration of a planning application referred to as the 'Welcome Stranger' application.

Mr Corr alleged that the activities he cited in his complaint were deliberate, defamatory, and improper, and designed to ruin the reputation of Mr Corr and the organisation of which he is president, Hobart Not Highrise Inc (HnH). Mr Corr alleged that Ald Zucco had breached the Code by calling him racist and fascist and that Ald Zucco's actions were bullying or harassing.

Procedure

The parties were notified on 6 January 2020 that the complaint was to be investigated, and Ald Zucco was informed that if he wished to respond to the complaint, he should do so by 21 January 2020. On 7 January 2020, Ald Zucco requested a 14 day extension of time to make his response, and the Panel granted this.

On 21 January 2020, the Panel received a request from Ald Zucco, asking for greater detail of the reasons for the Chairperson's decision on initial assessment to refer the complaint for investigation. The Chairperson responded on 28 January 2020.

The Panel met on 30 January 2020 to consider the complaint. Subsequently on 5 February 2020, the Panel received a response from Ald Zucco to the Panel's letter of 28 January 2020 and on 14 February, the Panel wrote to Mr Corr and asked him to better particularise the complaint by specifying which parts of the Code he alleged Ald Zucco had breached by each of the actions he alleged constituted breaches of it. The actions complained about were statements made by Ald Zucco, either in emails, debate or through various media. Mr Corr was also asked to specify any action of Ald Zucco in connection with a radio interview of the Deputy Lord Mayor which Mr Corr alleged somehow constituted a breach of the Code by Ald Zucco, and particularise the parts of the Code he alleged were breached. Mr Corr was also asked to provide copies of emails he had referred to in his complaint, but which may not have been included in attachments to that complaint. Finally, Mr Corr was invited to provide further particulars of any actions by Ald Zucco which were not part of the items listed, if he wished to do so. Mr Corr provided his response on 19 February 2020.

On 3 March 2020, the Panel asked Ald Zucco to respond to the allegations as detailed in Mr Corr's document of 19 February 2020, and this was received by the Panel on 20 March 2020. This response was sent to Mr Corr on 24 March 2020. The Panel met again on 24 March 2020 to consider all material so far before it. On 30 March 2020, the Panel received further commentary from Mr Corr on Ald Zucco's response of 20 March 2020.

On 30 March 2020, the Panel wrote to Mr Corr to advise that the Panel intended to conduct a hearing of the complaint. On the same day the Panel wrote to Ald Zucco, requesting him to provide further information to support his contention that material from the Hobart Not Highrise website, or material written by Mr Corr, was 'racist' or 'fascist' in nature. The Panel also invited Ald Zucco to make submission on what he would consider to be an appropriate sanction, in the event that the Panel upheld any part or all of the complaint. Ald Zucco was told that the Panel intended to conduct a hearing into the matter in due course.

Part of the Panel's investigations concerned the degree of publicity surrounding each of the matters raised in the complaint. To this end, the Panel wrote to the General Manager, Hobart City Council, on 30 March 2020 to ask which persons received emails sent to the email address AldermenGroupContactsPublic@hobartcity.com.au. The Council responded on 7 April 2020.

Ald Zucco provided further information and response to the Panel on 9 April 2020. This was sent to Mr Corr, who responded on 4 May 2020. On 14 May 2020 Mr Corr sent another response to the Panel, dealing specifically with matters raised by Ald Zucco in his submission of 5 February 2020. Ald Zucco responded to this on 19 May 2020, and his response was sent to Mr Corr. Mr Corr answered this by email on 20 May 2020, 24 minutes before the hearing was due to start. Mr. Corr was advised at the commencement of the hearing that this document would not be taken into account as material that had been considered by the Panel in its investigation, and if there was any material in the email that he wished to have considered, he should raise it verbally during the course of the hearing. The hearing was conducted that morning, 20 May 2020.

The hearing was conducted by video conference with both parties (Ald Zucco and Mr Corr) and all members of the Panel in separate locations.

On 16 July 2020 the Panel invited Ald Zucco to make submissions as to sanction, in the event that the Panel upheld the complaint on any of seven particular alleged breaches of the Code. Ald Zucco responded on 20 July 2020, and the Panel considered his response.

Material considered by the Panel in its investigation

- The City of Hobart Elected Member Code of Conduct, February 2019;
- Complaint and Statutory Declaration submitted by Mr Brian Corr, 17 December 2019, 51 pp;
- Audio recording of the Hobart City Council ordinary council meeting, 8 July 2019;
- Audio recording of an ABC radio interview of the Deputy Lord Mayor, 9 July 2019;
- Audio recording of an ABC radio broadcast by Ryk Goddard, 19 July 2019;
- Response and Statutory Declaration from Ald Zucco, 5 February 2020, 46 pp;
- Additional information requested by the Panel and received from Mr Corr, 19 February 2020, 21 pp;
- Response from Ald Zucco, 20 March 2020, 9 pp;
- Response from Mr Corr, 30 March 2020, 13 pp, with attachment from the Mercury newspaper of 10 July 2019, entitled *Hobart's Welcome Stranger developer Hexa Group backed by multibillion-dollar Chinese international coal trader*, 2 pp;
- Response to request for information from Hobart City Council, 7 April 2020, 1 p;
- Response from Ald Zucco, 9 April 2020, 2 pp, with attachment entitled *Hobart Not Highrise removed website*;
- Response from Mr Corr, 4 May 2020, 2 pp;
- Response from Mr Corr, 14 May 2020, 21 pp, with attachments entitled:
 - *2019 06 07 Email attachment from Ald Zucco*, 3 pp;
 - *Sydney woman ordered to pay \$35,000 over Rose Bay Facebook group defamation*, 3 pp;
- Response from Ald Zucco, 19 May 2020, 1 p, with attachments entitled:
 - *Media release HCC 16 March 2019*;
 - *Letter from Hexa Group – the Welcome Stranger Redevelopment*

- *Welcome Stranger (2)*
- *Welcome Stranger Proposal*
- *I am concerned*
- *Welcome stranger development (5)*
- *Developments in Hobart*
- *Welcome Stranger Dev't*
- *'Welcome Stranger' proposal*
- *Ald Behrakis and Conflict of Interest*
- *Welcome Stranger high-rise development proposal.*

Determination

The Code of Conduct Panel dismisses parts of the complaint against Ald Zucco relating to allegations of breaches of Part 1 (3) and (4), Part 3 (1) and (2), and Part 8 (2) of the Council's Code of Conduct. **The Panel upholds parts of the complaint relating to various breaches of Part 7 (1) and Part 8 (6) and (7).**

Reasons for the Determination

The Panel will individually deal below with each of the actions of Ald Zucco that the Complainant alleges were breaches of the Code. Ald Zucco did not dispute that he sent each of the emails to the relevant recipients, published the relevant social media posts and wrote and distributed the relevant media release. He disputed that any constituted breaches of the Code.

I. Email sent by Ald Zucco to 'Ratepayer' at 9.01 pm on 7 July 2019

On 7 Jul 2019, at 8:46 pm, a person the Complainant describes as 'Ratepayer' wrote to all elected members of the Council as follows:

Dear Aldermen

On Monday, July 8 you will be voting on the proposed new buildings on the Welcome Stranger site at the corner of Davey and Harrington Streets. The developers, based in Melbourne but mostly from China and Mexico, have spent much to push their ideas. Davey Street from the Treasury buildings up to Barrack Street on both sides of the road has mostly older gracious buildings, maximum 5 storeys. of the type which gives Hobart its current innate beauty. The existing Welcome Stranger building has no architectural merit but at least is within a people friendly height. The additional tower, much higher than the limits for this area (another ambit claim) will also be...

Fifteen minutes later, Ald Zucco sent 'Ratepayer' the following response that the complaint alleged breached Part 3 (1), Part 7 (1), and Part 8 (6) and (7) of the Code:

Dear <Ratepayer>

I am appalled that you consider that your racist comments as per what country a person/s comes from is or has any possible relevance as per what planning is or the planning scheme is about.

I am not sure what doctorate you have sitting on your wall in reading this appalling email I suggest you should consider an immediate course and understanding of racism.

Seriously you would like me to take on board your comments please do not email me on this and any other issue I do not deal with racist or fascists for that matter

Appalling behaviour

The Panel determines that this email, although couched in strong language, reflects the personal views of Ald Zucco, and is therefore a reflection of his personality. The Panel cannot make a positive finding that the email could also bring the office of elected member nor the Council as a whole into disrepute in breach of Part 3.1 of the Code nor reflect adversely on the reputation of the Council in breach of Part 8.7 of the Code.

The Panel determines that 'Ratepayer' entered the public debate on the proposed Welcome Stranger development, and had the ability to respond to Ald Zucco by return email just as forcefully, should she wished to have done so, and in that sense the email was not unfair to her in breach of Part 7.1(a) of the Code.

The email was sent only to 'Ratepayer' and was not a public expression of Ald Zucco's personal views. Therefore sending it could not amount to a breach of Part 8.6, even though the email was not respectful towards the recipient. The Complainant argued that because the recipient had put the email into the public domain, it became a public expression of Ald Zucco's personal views. The Panel respectfully disagrees. The Code is directed towards the behaviour of the Alderman. Alderman Zucco had no control over what the recipient did with the private email he sent her.

In that context and having regard to the language used in the email, the Panel cannot find that a reasonable person in the position of 'Ratepayer' would have been caused offence and embarrassment by having received it, notwithstanding the strong language. The Panel cannot therefore find that sending the email was a breach of Part 7.1(b) of the Code.

For the above reasons and because sending the email was not a repeated action that the Panel might find was calculated to cause harm to the recipient, the Panel cannot find that it was bullying and harassment in breach of Part 7.1(c) of the Code.

Pursuant to section 28ZI (1)(b) of the Act, this part of the complaint is dismissed.

2. Email sent by Ald Zucco to 'Ratepayer' at 9.15 pm on 7 July 2019

On 7 Jul 2019, at 9:05 pm, 'Ratepayer' emailed a response to Ald Zucco's email above in the following terms:

I am sorry you felt these comments racist, nothing was further from my mind.

In response, Ald Zucco sent the following email:

Well maybe consider what you write when someone has most likely triggered you into sending out emails on what you obviously have no idea about stick to your doctorate

On planning matters get the FACTS before you make outrageous comments the building opposite is the mantra which is a tall building and the zoning allows these heights in this area Take some more time to read and understand the planning scheme and not lobbyist

Have a great day

The complaint alleged that this email breached Part 7 (1), and Part 8 (2), (6) and (7) of the Code.

For the same reasons as the finding in respect of the previous email, the Panel cannot find that this email breaches Parts 7.1 or 8.6-7 of the Code.

As to the alleged breach of Part 8.2 of the Code, the Complainant submitted that Ald Zucco mislead the recipient of the email because the Manta is around 24 metres high and the proposed Welcome Stranger development was to be 45 metres high and “in a different ‘zone’ with different planning rules”.

In the hearing, Ald Zucco gave evidence that he intended the words *‘the building opposite is the mantra (sic) which is a tall building and the zoning allows these heights in this area’*, to mean that heights beyond the permitted height of buildings were discretionary, and therefore his statement that the planning scheme zoning allows taller buildings was not misleading.

The Panel determines that it cannot be satisfied that Ald Zucco attempted to mislead ‘Ratepayer’ with this statement. The email is so poorly expressed that it is difficult to be certain what Ald Zucco was attempting to communicate.

Pursuant to section 28ZI (1)(b) of the Act, this part of the complaint is dismissed.

3. Email sent by Ald Zucco to ‘Ratepayer’ and all elected members of Council at 9.16.20 pm on 7 July 2019

On 7 July 2019 at 9.08 pm, ‘Ratepayer’ emailed all elected members:

Marty Zucco has taken my comments as racist. Nothing was further from my mind. I welcome diversity, not bad design.

Ald Zucco’s email in reply, sent to all elected members and ‘Ratepayer’, stated

Your email is Clearly racist

The complaint alleged that this email breached Part 3 (1), Part 7 (1), and Part 8 (6) and (7) of the Code.

The Panel determines that while the email to 'Ratepayer' said that her email was '*clearly racist*' and went to all elected members as well as the ratepayer, this does not constitute a public pronouncement by Ald Zucco, and therefore could not constitute a breach of Part 3 (1), or Part 8 (6) and (7). Pursuant to section 28ZI (1)(b) of the Act, this part of the complaint is dismissed.

Ald Zucco provided his definition of racism in his statement in response to the complaint, made on 5 February 2020. He defined racism as

A belief or doctrine that inherent differences among the various human racial groups determine cultural or individual achievement, usually involving the idea that one's own race is superior and has the right to dominate others or that a particular racial group is inferior to the others.

The email from 'Ratepayer' used the words '*The developers, based in Melbourne but mostly from China and Mexico, have spent much to push their ideas.*'

The Panel accepts that the countries of origin of the proponents of a planning application are irrelevant to the planning decision to be made. However, the Panel determines that it was not open for Ald Zucco to accuse 'Ratepayer' of racism in accordance with his own definition, simply because she mentioned the purported country of origin of developers. A reasonable person could not reach a conclusion that the email was 'racist' and even if Ald Zucco did, he could have expressed himself courteously in pointing out the irrelevance of the country of origin of developers to the Council's decision.

The Panel determines that Ald Zucco was not treating 'Ratepayer' fairly in the characterisation of the email as racist and circulating that characterisation to all elected members of the Council, contrary to Part 7(1)(a) of the Code.

Similarly, the Panel determines that a reasonable person could be offended or embarrassed by this branding and the manner of its communication to all elected members. Given the circumstances in which the email found its way to the Complainant, 'Ratepayer' was clearly offended or embarrassed by it.

The Panel does not consider that the exchange between Ald Zucco and 'Ratepayer' was of sufficient duration to constitute bullying or harassment, and pursuant to section 28ZI (1)(b) dismisses the complaint that there has been a breach of Part 7 (1)(c) in this email.

Pursuant to section 28ZI (1)(a) of the Act, the Panel upholds the complaint that there has been a breach of Part 7 (1) (a) and (b).

4. Facebook post by Ald Zucco, 9.39 pm on 7 July 2019

On 7 July 2019, Ald Zucco caused a post to be published on his public Facebook page in the following terms:

I have never been so appalled in receiving emails from some members of the public lobbying me not to support a development because of the nationality of the developers.

I have also seen comments from the lobbyist group in Hobart Not Highrise with a similar theme.

This appalling behaviour is beyond comprehension. In all my years on Council racism is not acceptable and furthermore absolutely NOT in the planning scheme.

I assure you all any person using these tactics will be advised accordingly

Maybe I should name and shame those that us this tactic..thoughts on this please?????

The complaint alleged that by publishing the Facebook post, Ald Zucco breached Part 3 (1) and (2), Part 7 (1), and Part 8 (2), (6) and (7) of the Code.

Ald Zucco, as an elected member, is entitled to make his personal views known. His interpretation of the emails to which he refers may not be what was intended by the senders, but the Panel is not satisfied that the post brings the Council or the office of elected member into disrepute, contrary to Part 3(1) of the Code.

No persons were named in the post. Hobart Not Highrise is a lobby group which actively participated in the Welcome Stranger public debate, and its website did carry information about the national backgrounds of the proponents of the development in the form of an ASIC Company Search which included the names and addresses of the directors of the proponent company. While Ald Zucco's interpretation of the material on Hobart Not Highrise's website differs from that of Mr Corr, it is expected that as an elected member, Ald Zucco will attempt to sway others to his point of view. The Panel cannot find that his attempt to do so was 'improper' contrary to Part 3(2) of the Code in that the Panel cannot be satisfied that there was any fraud, deceitfulness or dishonesty on the part of Ald Zucco.

Ald Zucco was expressing an opinion about emails and material on the Hobart Not Highrise website rather than presenting information he had obtained as an elected member and therefore in doing so Ald Zucco could not have breached Part 8(2) of the Code.

The Panel determines that Ald Zucco's behaviour did not reflect adversely on the reputation of the Council, as no evidence was provided to show that this had happened to any significant extent.

The language that Ald Zucco used in the post was more temperate and circumspect than that used in his other communications. He did not level an accusation of racism towards any specific person or in respect of any specific behaviour. Accordingly, the Panel cannot find that Ald Zucco treated any person unfairly, caused any reasonable person offence or embarrassment, nor bullied or harassed any person contrary to Part 7(1) of the Code, nor that he failed to show respect when expressing his personal views on his public Facebook page contrary to Part 8(6) of the Code or that the post had the potential to reflect adversely on the reputation of the Council contrary to Part 8(7) of the Code.

Pursuant to section 28ZI (1)(b) of the Act, this part of the complaint is dismissed.

5. Facebook post by Ald Zucco in response to a post by Michael Dutta, referencing the Welcome Stranger planning application

On 7 July 2019, Ald Zucco published a response to a comment posted by Ald Michael Dutta on Ald Zucco's public Facebook page in the following terms:

Michael Dutta mike you have received these emails suggesting Mexicans chineses (sic) are behind this development...it is obvious the Mexican comment is directed towards the spokesperson who has a Latin American name what is further infuriating is the Lord Mayor denied receiving such emails which is totally incorrect...furthermore you support Hobart Not Highrise and Brian Corr who initiated the race debate from his post which has now escalated how on earth you can support HNH is beyond comprehension in instigating this into a racist debate you and others should immediately distance themselves from this racist and potentially fascist lobby group who use this type of argument and you and I both know first hand about being victimized. Mike call out Brian Corr and all those who have made comments that can be and are directed towards race

The complaint alleged that Ald Zucco breached Part 3 (1) and (2), Part 7 (1), and Part 8 (2), (6) and (7) of the Code by publishing the response.

As above, this post reveals Ald Zucco's personal views, and is in keeping with his role in trying to influence others. The Panel is not satisfied that the post supports the allegation of impropriety within the meaning of the Code. The Panel determines that this post does not breach Part 3 (1) and (2), and dismisses this part of the complaint.

Ald Zucco provided his definition of fascism in his statement in response to the complaint, made on 5 February 2020. He defined fascism as

A way or organising a society in which a government ruled by a dictator controls the lives of the people and in which people are not allowed to disagree with the government: very harsh control or authority.

Ald Zucco accuses Mr Corr of initiating the 'race debate', and refers to Hobart Not Highrise as a 'racist and potentially fascist' lobby group. Mr Corr is president of Hobart Not Highrise. The Panel determines that the use of the words 'racist' and 'fascist' in association

with Mr Corr in a public arena (viz., Facebook) could cause a reasonable person offence and/or embarrassment and did in fact cause Mr Corr offence and embarrassment. The Panel determines that the use of the word 'fascist' in accordance with Ald Zucco's own definition, but with no material or argument to support its use, is unfair to Mr Corr.

Pursuant to section 28ZI (1)(a) of the Act, the Panel upholds the complaint that there has been a breach of Part 7 (1)(a) and (b).

The Panel does not consider that Ald Zucco has knowingly misrepresented information he has obtained as an elected member because again he is expressing his own opinions rather than presenting information, nor that his action has brought Council into disrepute. The Panel determines that Ald Zucco's behaviour has not reflected adversely on the reputation of the Council, as no evidence was provided to show that this had happened to any significant extent. Pursuant to section 28ZI (1)(b) of the Act, the Panel dismisses the complaint that there has been a breach of Part 8 (2) and (7) in this post.

The Panel determines that Facebook is a public arena, and as such, Ald Zucco is bound by the Code of Conduct to show respect when expressing his personal views publicly. The Panel determines that a reasonable person would consider this post disrespectful to Mr Corr.

Pursuant to section 28ZI (1)(a) of the Act, the Panel upholds the complaint that there has been a breach of Part 8 (6) of the Code.

6. Facebook posts on Ald Zucco's site referencing the Welcome Stranger debate in Council, 8 July 2019

The following posts were made by Ald Zucco on 8 July 2019 in an exchange with a number of other people below the post he made on 7 July 2019:

Yes Mr Corr shouted at one elected member tonight when she was speaking which is not on in the chamber

And

Phew thanks...yes but it's open to all to listen to the recording as I stated one Alderman was yelled at and another was in near tears over the racist comments all for the public to listen to...it is sad that any elected members have to be subjected to emails that are racist and fascist that's Chooka

And

...Brian Corrs (sic) comments incites racism

And

..you should ask Brian Corr about why he resigned from a local radio station what would be interesting to hear??

The complaint alleged that Ald Zucco breached Part 7 (1), and Part 8 (2), (6) and (7) of the Code by publishing the Facebook posts.

Ald Zucco alleged that Mr Corr's comments incited racism. He also referred to Mr Corr's role in a local radio station, stating that he had resigned from there and that *'it would be interesting to hear'* the reason for the alleged resignation. Mr Corr denied that he had resigned from the station. Several posts by other people in the same exchange denigrated Mr Corr.

The Panel determines that Ald Zucco has treated Mr Corr unfairly by continuing his unfounded accusations of racism in a public forum, and by inferring that Mr Corr had ceased employment with a local radio station in *'interesting'* circumstances. The Panel determines that a reasonable person would find this offensive and embarrassing, and that Mr Corr was offended and embarrassed by the posts. Ald Zucco also failed to show respect in expressing his personal views publicly.

Harassment involves a course of conduct that causes annoyance or upset to a person that is persistent over a period of time. For there to be conduct that amounts to harassment, an intention to harass is not necessary, but there must be an element of unreasonableness in the conduct. The Panel determines that in leaving these posts on his Facebook site for several months, Ald Zucco's treatment of Mr Corr amounts to harassment.

Pursuant to section 28ZI (1)(a) of the Act, the Panel upholds the complaint that there has been a breach of Part 7 (1)(a) (b) and (c), and Part 8 (6).

The Panel determines that Ald Zucco did not knowingly misrepresent information he had received as an elected member. The relevant part of the complaint is that Ald Zucco posted that Mr Corr had *'shouted'* at an elected member during the Council debate on the Welcome Stranger proposal. While Mr Corr's interjection can be clearly heard on the audio recording of the council meeting, Mr Corr denied that he had shouted. The Panel accepts there could be differing interpretations of *'shouting'* and cannot determine that Ald Zucco was deliberately misleading when he gave Mr Corr's interjection that character, contrary to Part 8(2) of the Code.

For the reasons similar to those previously articulated, the Panel determines that Ald Zucco's behaviour did not reflect adversely on the reputation of the Council and the Panel does not consider that the behaviour potentially could have done so, contrary to Part 8(7) of the Code.

Pursuant to section 28ZI (1)(b), the Panel dismisses the complaint that there has been a breach of Part 8 (2) and (7) in this post.

7. Email sent by Ald Zucco to Mr Corr and all elected members of Council at 4.31 pm on 8 July 2019

On 8 July 2019, Ald Zucco sent an email to Mr Corr and all the elected members of the Council in the following terms:

Dear Mr Corr

Planning is about the planning and the planning scheme.

The planning scheme does not give any weight whatsoever as to the names of the developer as part of the evaluation.

Making reference and advertising names is and was intended to incite hatred towards those persons for "not being Tasmanian" really maybe find a mirror

On the basis that there is NO requirement under planning and your insistence to name you have in fact created the problem and in my opinion escalated to racism and furthermore fascism

If you had simply made planning argument under planning as should be the case then maybe you would not be subjected to being considered a racist.

Similarly your attack on Ald Behrakis is really NOT your concern

I have advised you I do not tolerate your harassment and bullying tactics and will call you out on such behaviours

Have a great day

Ald Zucco

The complaint alleged that this email breached Part 7 (1), and Part 8 (2), (6) and (7) of the Code.

In this email, Ald Zucco accused Mr Corr of inciting hatred towards persons for not being Tasmanian, and escalating the Welcome Stranger debate to 'racism and furthermore fascism'. Ald Zucco wrote that he would not tolerate Mr Corr's 'harassment and bullying tactics.'

The Panel determines that by sending this email to all elected members of Council, Ald Zucco has treated Mr Corr unfairly with his unsupported accusation of racism and fascism, and in his accusation of harassment and bullying by Mr Corr. Mr Corr belonged to a lobbyist organisation. The members of the organisation were lobbying for what they believed to be the right course for the Council to take in respect of a development application and their actions did not constitute bullying or harassment. The Panel

determines that a reasonable person would be offended and embarrassed by these accusations, and that Mr Corr was in fact offended and embarrassed by them.

Pursuant to section 28ZI (1)(a) of the Act, the Panel upholds the complaint that there has been a breach of Part 7 (1)(a) and (b). The Panel dismisses the complaint that there has been a breach of Part 7 (1)(c) in this email, for the same reasons as articulated above.

The Panel determines that while the email went to all elected members as well as Mr Corr, this does not constitute a public pronouncement by Ald Zucco, and therefore does not constitute a breach of Part 8 (6) and (7) of the Code. The Panel determines that no evidence was provided to show that Ald Zucco had knowingly misrepresented information he had obtained as an elected member, as opposed to holding and expressing a different interpretation of Mr Corr's statements on the Welcome Stranger proposal. Pursuant to section 28ZI (1)(b) of the Act, the Panel dismisses the complaint that there has been a breach of Part 8 (2) in respect of this email.

8. Media release by Ald Zucco, sent at 1.10 pm on 8 July 2019

ZUCCO SLAMS MAYOR FOR FAILING TO CALL OUT RACISM

Alderman Marti Zucco has slammed Hobart Lord Mayor Anna Reynolds for failing to call out and condemn the racist campaign against those associated with the Welcome Stranger development.

"Over recent days people associated with the group "Hobart Not Highrise" have been circulating information on line regarding the country of origin of some of the people involved with the project," Ald Zucco said.

"This has included the generation of a large number of emails to the elected members and Council officers repeating these appalling and nasty claims.

"Yet this morning on ABC radio Lord Mayor Anna Reynolds played dumb and pretended she wasn't aware of the matter.

I have no doubt the Lord Mayor would have read yesterdays (sic) email exchange with these racists and their comments prior to speaking on the ABC.

"Is this because Hobart Not Highrise were a strong backer of Ms Reynolds at the recent election?"

"Racism is not on, in any circumstances.

"The Lord Mayor's failure to condemn and call out this racism is akin to her endorsing it.

"I call on the Lord Mayor to immediately condemn racism and in particular those involved in it and denounce Hobart Not Highrise in particular its convenor Brian Corr for initiating this racist actions through a social media post"

Ald Zucco added that "The Lord Mayor and ALL those elected members who were supported by HNH during and since the election must immediately disassociate themselves from this racist and somewhat fascist group"

In closing Ald Zucco said "I for one who has been directly subjected to racism am not going to tolerate racists and in particular those who seek support from racists and racist groups"

"The standard you walk past is the standard you accept."

MARTI ZUCCO - ALDERMAN

The complaint alleged that this media release breached Part 3 (1), Part 7 (1), and Part 8 (2), (6) and (7) of the Code.

In this media release, Ald Zucco called on the Lord Mayor to 'denounce Hobart Not Highrise and in particular its convenor Brian Corr for initiating this racist actions (sic) through a social media post. He refers to Hobart Not Highrise as a racist and somewhat fascist group.

The media release was widely circulated and is therefore a public statement by Ald Zucco, expressing his personal views as an elected member and there is no evidence that Ald Zucco brought the Council or Office of Elected member into disrepute by circulating it. The Panel determines that this is not misuse of his role as an elected member, and dismisses the complaint that there has been a breach of Part 3 (1) by this media release.

The Panel determines that by his public accusation of racism against Mr Corr personally, and his accusation that the lobby group named in conjunction with Mr Corr is racist and 'somewhat' fascist, Ald Zucco is treating Mr Corr unfairly. The Panel determines that a reasonable person subjected to these descriptions could be offended and/or embarrassed, that Mr Corr was in fact offended or embarrassed by it.

Pursuant to section 28ZI (1)(a) of the Act, the Panel upholds the complaint that there has been a breach of Part 7 (1)(a) and (b) of the Code.

The Panel determines that no evidence was provided to show that Ald Zucco had knowingly misrepresented information he had obtained as an elected member. Pursuant to section 28ZI (1)(b) of the Act, the Panel dismisses the complaint that there has been a breach of Part 8 (2) in this media release.

The Panel determines that the media release is disrespectful of the office of Lord Mayor, and of Mr Corr, and that it has the potential to reflect adversely on the reputation of the Council, in particular because of the inappropriate use of the terms 'racist' and 'fascist'.

Pursuant to section 28ZI (1)(a) of the Act, the Panel upholds the complaint that there has been a breach of Part 8 (6) and (7) of the Code.

9. Audio recording of the Hobart City Council meeting, 8 July 2019, including a speech made in debate by Ald Zucco

At the Council meeting on 8 July 2019, Ald Zucco spoke to the 'Welcome Stranger' Development Application.

Transcript from the audio recording of the relevant part of the meeting is as follows:

Ald Zucco:

Firstly I'd like to make a point about what Ald Denison made about emails...I won't give the name of this person but I'll read the contents...we all received it...it's lobbying us to make decisions...and I'll read...the developers, based in Melbourne but mostly from China and Mexico...not only is that racist...that means fascist...it doesn't matter whether we think it's a fact...we here have to make decisions based on planning...so whether or not...can I just hold my book while I ask a question to the Director... does the planning scheme or the planning act state that we have to make planning decisions based on where the developer lives...who the developer is... whether they live in Melbourne... whether they live in Siberia

The Director answers 'no'.

Ald Zucco continues:

Okay... We're now back to [inaudible] which is relevant to the planning scheme... there is information that's gone out to the public... right... stating who the developers were... stating that potentially these developers do not live in Tasmania... well if they don't live in Tasmania they're being fascists... I find it absolutely absurd that we, as aldermen of this city, have to receive emails advising us who we have to, and who we don't have to, listen to when it comes to planning matters... we are here to make planning decisions... and now I'll get to the planning decisions because I'm glad Ald Denison brought this point up...

The complaint alleged that this speech breached Part 1 (3) and (4), Part 3 (1), Part 7 (1), and Part 8 (2), (6) and (7) of the Code.

In his address to Council in debate on the Welcome Stranger application, Ald Zucco cited the phrase 'The developers, based in Melbourne but mostly from China and Mexico', from the email sent by 'Ratepayer' and said that this was *not only racist, but fascist*. He also said *well if they don't live in Tasmania then they're being fascists*. Given Hobart Not Highrise had already been named by another elected member, and Mr Corr's role in opposing the planning application was well known, a reasonable person could infer that *they're being fascists* refers to Mr Corr and 'Ratepayer'.

While the matters raised in this part of the debate by Ald Zucco have no bearing on the planning decision to be made, no evidence was provided to indicate that these considerations influenced Ald Zucco's decision when the vote was taken. Pursuant to section 28ZI (1)(b) of the Act, the Panel dismisses the complaint that there has been a breach of Part 1 (3) and (4) in this speech.

Ald Zucco was participating in debate on a contentious item in which there was considerable public interest. The Panel considers that in this context, nothing said by Ald Zucco brought the Council or the office of elected member into disrepute in breach of Part 3 (1) of the Code, and dismisses this part of the complaint.

The Panel determines that Ald Zucco treated members of the public, including 'Ratepayer' and Mr Corr, unfairly in his public speech during debate, when they collectively and individually had no means to respond or defend their positions. The Panel determines that any reasonable person in Mr Corr's position during that debate would have been offended and embarrassed by Ald Zucco's words, and Mr Corr was in fact offended or embarrassed by them.

Pursuant to section 28ZI (1)(a) of the Act, the Panel upholds the complaint that there has been a breach of Part 7 (1)(a) and (b).

The Panel determines that no evidence was provided to show that Ald Zucco had knowingly misrepresented information he had obtained as an elected member. Pursuant to section 28ZI (1)(b) of the Act, the Panel dismisses the complaint that there has been a breach of Part 8 (2) in this speech in debate.

In using the terms 'racist' and 'fascist' loosely in debate, Ald Zucco failed to show respect to those community members who had contributed to the public debate on the Welcome Stranger application. This includes a failure to show respect to 'Ratepayer' and Mr Corr. The Panel determines that this had the potential to reflect adversely on the reputation of the Council, when an elected member describes community members who have exercised their rights to make representations to Council on significant issue in such pejorative terms.

Pursuant to section 28ZI (1)(a) of the Act, the Panel upholds the complaint that there has been a breach of Part 8 (6) and (7) of the Code.

10. Radio interview with the Deputy Lord Mayor on 9 July 2019

On 9 July 2019, the Deputy Lord Mayor of the Hobart City Council was interviewed on ABC Local Radio Hobart.

The complaint alleged that the interview was evidence that Ald Zucco had breached Part 3 (1), Part 7 (1), and Part 8 (2), (6) and (7) of the Code.

The interviewer said the following at the relevant time:

the Hobart Not Highrise group made some pretty awful claims about the developers ... they were called out ... not appropriate behaviour ... do you think that defeats the credibility of the Hobart Not Highrise voice though if they're operating on such a low common denominator? ...accusing the developer of having a PR campaign and they're saying things like that trying to be racially divisive ...in terms of listening to community voices though and community consultation if the community's attitude is they're foreigners or mainlanders so we don't like them, do they deserve to be heard? ... doesn't that take all their credibility away?

Mr Corr concluded that because Ald Zucco's media release was sent the afternoon before this radio interview, these comments by the interviewer were a direct result of Ald Zucco's media release.

The Panel determines that insufficient evidence was provided to support Mr Corr's allegation that Ald Zucco's media release was the principle contributing factor in the interviewer's description of Hobart Not Highrise. The Panel accepts that Mr Corr found this offensive and embarrassing, but cannot find that the interviewer's words can with certainty be attributed to Ald Zucco's media release.

Pursuant to section 28ZI (1)(b) of the Act, the Panel dismisses the complaint that there has been a breach of Part 3 (1), Part 7 (1), and Part 8 (2), (6) and (7) in this instance.

Bullying and Harassment

Finally, the complaint alleged that a number of communications by Ald Zucco constituted bullying and harassment of the complainant, in contravention of Part 7(1)(c) of the Code.

To harass in its ordinary sense involves conduct committed with the purpose of causing an effect on the person harassed, for example worry, fear or mental anguish: see *Johnson v Collier* (1997) 142 FLR 409. Bullying is repeated use of words or behaviour to cause distress or harm to another person, and often involves a power imbalance where the person to whom the behaviour is directed has less influence or power than the other person.

Here, Ald Zucco repeatedly, unfairly, and unfoundedly referred to Mr Corr or Mr Corr's actions or the group which Mr Corr leads as 'racist' or 'fascist'. He embarked on that course of conduct by way of his Facebook communications on 7 and 8 July 2020, email of 8 July 2020, media release and speech at the Council meeting on 8 July 2020. The Panel accepts Mr Corr's evidence that the use of that language caused him distress.

The only substantive reason Ald Zucco gave for his conclusions about racism and fascism was the publication on the Hobart Not Highrise website of the ASIC search for the proponent company showing the overseas addresses of its directors. On Ald Zucco's own definitions, doing so does not constitute racism or fascism. Ald Zucco could have used temperate and courteous language to express his entirely correct view that the nationality of the proponent of a development is irrelevant to the Council's consideration

of it. Instead, he chose to use words that would offend and embarrass Mr Corr, and the Panel can only conclude that he did so with the intention of causing a deleterious effect on Mr Corr and to cause others not to consider any of the arguments of Hobart Not Highrise or Mr Corr against the proposed development.

Thereby, Ald Zucco bullied and harassed Mr Corr.

Pursuant to section 28ZI(1)(a) of the Act, the Panel upholds the complaint that there has been a breach of Part 7(1)(c) in connection with Ald Zucco's Facebook communications of 7 and 8 July, email of 8 July 2020, media release and speech at the Council meeting on 8 July 2020.

Conclusion and Sanction

The Panel accepts that these events occurred during consideration of a divisive issue which had stirred considerable public interest, and that the lobby group of which Mr Corr is President was actively participating in the debate in opposition to Ald Zucco's position. As an elected member, Ald Zucco has the right and the responsibility to make his views known. The Code of Conduct sets out the boundaries which should not be crossed in making these views known. A number of the allegations made against Ald Zucco have been dismissed, on the grounds that the Panel was not satisfied that Ald Zucco had breached the Code of Conduct by his actions. Nevertheless, the Panel finds that in the ten incidents cited in the complaint, Ald Zucco has several times been unfair, has caused offence or embarrassment to a person or both, has harassed a member of the public by repeated public attacks on him, and has failed to show respect to a number of people including Mr Corr in his pronouncements. Some of his actions had the potential to reflect adversely on the reputation of Hobart City Council.

After the hearing, Ald Zucco was made aware of the sanctions that the Panel may impose after finding a complaint or part of a complaint upheld. He was invited to make submissions as to sanction in the event that the Panel was to uphold the parts of the complaint that the Panel has now upheld. He submitted that in that event, the sanction should be limited to a caution.

A sanction is warranted in this case but a caution is not the appropriate sanction, because Ald Zucco's behaviour contrary to the Code was repeated, and not in the nature of a mistake that he should be warned not to repeat.

Imposing a reprimand allows the Panel to make a strong expression of disapproval of the breaches, which the Panel finds is appropriate in the circumstances.

Pursuant to section 28ZI(2) of the Act, the Panel imposes a reprimand on Ald Zucco.

Timing of Determination

In accordance with section 28ZD(1)(a), the Panel is required to investigate and determine a complaint within 90 days of the Chairperson's decision to investigate the complaint. The

90 day period for this complaint expired on 5 April 2020. Investigation of this complaint occurred over Easter, and this caused a relatively brief delay in reaching the Determination. Further delay was caused by the complexity of the issues raised, the need to give both parties adequate time to make responses to the allegations levied, some delay in setting a suitable time to conduct the hearing, and in compiling a complex and lengthy report.

Right to Review

Under section 28ZJ 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)



Anthony Mihal
(Legal Member)



David Sales
(Member)