

COORONG DISTRICT COUNCIL

DESKTOP REVIEW REPORT

**As amended based on further information received
at the Special Council Meeting of 12 April 2022**

1. INTRODUCTION

- 1.1 The Coorong District Council (the **Council**) is constituted under the *Local Government Act 1999* (the **Act**) and provides local government services to the Coorong region within its proclaimed boundaries. The Council area incorporates Lake Alexandrina, Lake Albert and part of the Murray River.
- 1.2 By email of Friday 18 March 2022, this firm was engaged by the CEO of the Council to undertake an independent, 'desk top' review of certain actions taken and decisions made over a period of time and which culminated in a resolution made by the Council at its meeting on Tuesday 15 March 2022, as follows:

Moved Cr. Jaensch, Sec. Cr. Leng that a motion of no-confidence in Mayor Paul Simmons for the failure to demonstrate a duty of care and to act impartially in the best interests of a Councillor and the reputation of this Council when dealing with the aggressive bullying and harassment of a respected female Councillor by two team Councillors sent via council's emails on 28 and 31 January 2022 to all Councillors excluding Cr. V Leng.

Voting for the motion were Councillors Bland, Hill, Jaensch and Leng

Voting against the motion were Councillors Arthur, Qualmann and Rowntree

The Deputy Mayor declared the motion CARRIED

- 1.3 For the avoidance of doubt, the motion of 'no confidence' in the Mayor is, simply, an expression of dissatisfaction in the Mayor for the matters set out in the resolution. It is of no greater effect than that and it does not give rise to any legal requirements or implications.
- 1.4 Accordingly, it does not require the Mayor to resign, or to step aside, or to take any action at all. The Mayor can choose to totally disregard the resolution, it being no more than a public statement about certain matters and reflective of the views of the members voting on the motion.
- 1.5 However, based on that resolution of the Council of 15 March 2022, this firm has been engaged to review certain documentation and to provide advice on the following:
 - 1.5.1 the process undertaken in relation to the receipt and management of three (3) complaints submitted under the *Code of Conduct for Council Members* (the **Code**) by Cr Leng on 17 November 2021;

[REDACTED]

- 1.5.3 the Mayor's receipt and consideration of a question without notice submitted by Cr Hill at the Council meeting of Tuesday 15 February 2022.

- 1.6 The actions and decisions which are the subject of this desktop review, are, variously, decisions and actions of individual Council Members and senior Administration staff.
- 1.7 These actions have been taken with the assistance of reports and presentations prepared by Administration, some of whom were also involved in providing the Mayor with advice regarding the receipt and management of the complaints, as well as guidance from advice received from the Local Government Governance Panel (the **LGGP**).
- 1.8 Consequently, a number of senior employees who may have been in a position to assist with this review process, have been unable to do so because of their prior involvement with the matters that are the subject of this review.
- 1.9 Accordingly, the CEO has engaged Kelley Jones Lawyers, as an external reviewer, to undertake this independent review of the decisions made and the actions taken and to prepare this Report for her consideration.
- 1.10 The review has been conducted taking into account the matters set out in the Council's *Complaints Handling Policy and Procedure under Council Members* (the **Procedure**) as well as relevant provisions of the Act and the *Local Government (Procedures at Meetings) Regulations 2013*.
- 1.11 The purpose of the review is to examine the processes followed by the Council in receiving and managing the matters of concern, for the purposes of determining whether the resultant actions were:
 - reasonable to take in the circumstances;
 - decisions open to be made, or appropriate actions taken, on the facts available;
 - made in the public interest; and
 - not based on a flawed decision-making process.
- 1.12 Accordingly, this Report sets out:
 - the background facts which have given rise to the desktop review;
 - a summary of relevant information obtained during the course of the review;
 - findings in relation to the issues raised and the appropriateness of the Council's actions and decisions; and
 - recommendations for the consideration of the Council.
- 1.13 In undertaking this review, we have not re-considered or re-investigated the complaints made under the Code, there being no reason or jurisdiction to do so. Rather, our role is simply, to review and consider the Council's receipt and management thereof.

1.14 It is against this background that we consider the matters giving rise to the review.

2. THE COMPLAINTS MADE BY CR LENG

2.1 By letter dated Thursday 11 November 2021 and addressed to the CEO, Cr Leng lodged three (3) separate complaints against various members.

2.2 One (1) complaint was made against Cr Rowntree, the second against Cr Taylor, and the third against each of Crs Arthur, Rowntree and Taylor for alleged breaches of the Code.

2.3 The Code Procedure provides as follows with respect to the receipt, and management of a complaint under the Code (emphasis ours):

4.1 Alleged Breach

...

4.1.2 Where the CEO or Responsible Officer under the PID Act receives a complaint, the Mayor will be advised (or if it relates to the Mayor, his/her deputy) of receipt of a complaint. The Mayor (or deputy) will determine whether the complaint relates to:

- *behaviour which falls under Part 2 of the Code;*
- *misconduct under Part 3 of the Code; or*
- *criminal or corrupt behaviour;*

in accordance with Council's Public Interest Disclosure Policy & Procedure and PID Act.

...

Council maintains jurisdiction where the complaint deals with conduct that falls into Part 2 of the Code. Part 2 deals with conduct that reflects reasonable community expectations of how Council Members should conduct themselves. Robust debate within Council which is conducted in a respectful manner is not a breach of this Part.

Having regard to the seriousness of the allegation and information provided, the Mayor, or if the complaint is from the Mayor, the Council may:

- *seek to resolve the matter internally, including through conciliation or mediation;*
- *refer the complaint to the Local Government Governance Panel;*
- *refer the complaint to an external investigator; or*
- *dismiss the allegation.*

4.1.3 *Within three business days of receipt of a complaint, the Council Member who is the subject of the complaint will be advised by the Mayor (or deputy), or if the complaint is from the Principal Member, the Chief Executive Officer, of the complaint and its substance unless this is prohibited by law. The Council Member will also be advised of the manner in which the Mayor intends to deal with the complaint. If the complaint has been received from the Mayor, the Mayor will be advised of the next Ordinary Meeting of Council at which the complaint will be considered.*

4.3 Part 2 – Referral to the Local Government Governance Panel

*Where there has been an allegation that a Council Member has breached Part 2 of the Code **the complaint may be referred to the independent Local Government Governance Panel or an external investigator by the Mayor (or deputy) under this procedure, without further reference to Council.***

Complaints referred to the Local Government Governance Panel or external investigator will as far as practicable specify the ground/s of the complaint, set out the circumstances of the complaint and be accompanied by any other material that the Local Government Governance Panel or external investigator may request.

*A complaint that is forwarded to the Governance Panel or independent investigator will be assessed accordingly. **The assessor will consider the applicable facts from the material provided and may form a provisional conclusion that further investigation is unnecessary as it would be unlikely to result in a breach finding. In these circumstances, a report will be presented to Council under Section 90 of the Local Government Act (confidential) where Council will consider the recommendation from the Governance Panel or independent investigator and determine whether to proceed to a full investigation.***

- 2.4 On notification of the complaints, the Mayor undertook the Preliminary Assessment, as required of him in accordance with clause 4.1.2 of the Procedure. He determined that, if made out, the allegations could give rise to a breach of clauses 2.9 and 2.10 of the Code, as alleged by Cr Leng.
- 2.5 Importantly, the purpose of the Preliminary Assessment is, necessarily, a ‘threshold’ process only, intended to determine whether, if made out, the allegations could give rise to a *prima facie* breach of the Code. If so, the consideration is what action is recommended, including whether a complaint warrants further investigation. It is, therefore, a low ‘threshold’ to meet.
- 2.6 In our view, noting the number of complaints made, the complexity, insofar as there were allegations that pertained to all three Members and were said to be supported by evidence, including emails, newspapers articles, agreements and correspondence, it was entirely reasonable and appropriate for the Mayor to make a determination on the Preliminary Assessment that, in ensuring transparency and

accountability as part of the governance process, that the matters be referred for independent investigation by the LGGP.

2.7 More particularly, we also note that in each complaint Cr Leng asserted:

As I have no faith in the principal member, Paul Simmons to handle this matter or discipline the accused council member and 'friend', I request that this report be forwarded to the Local Government Governance Panel for consideration and recommendations.

2.8 Whilst it was not for Cr Leng to dictate how the Mayor gives effect to his obligation under the Procedure, the decision of the Mayor accorded with the statement and request of Cr Leng. Whilst we did not receive any evidence that would support an allegation that the Mayor had a 'conflict' in giving effect to his role in this respect, the submission made by Cr Leng is a relevant consideration to take into account. Indeed, the Mayor may be assumed to have done so, in determining that the matters be referred to the LGGP.

2.9 This is opposed, for example, to determining to take any other action as provided for under clause 4.1.2 of the Procedure, including to dismiss the allegations.

2.10 In addition, whilst the Procedure provides at clause 4.2.1 that the Mayor may determine **with the agreement of all parties** to deal with a complaint internally, in our view, noting the allegations pertained to ongoing bullying and harassment, that there had been previous complaints made between the parties, in particular prior complaints lodged by Cr Taylor against Cr Leng that had been found proved and noting that the parties would, on balance, be unlikely to consider an internal response in the circumstances, we agree with the Mayor's determination. That is, that an internal response was not appropriate in the circumstances of these complaints and the matters ought to be referred to the LGGP for independent assessment.

2.11 In which case and as requested by the Mayor, by email dated Monday 22 November 2021, the CEO separately notified Crs Taylor, Rowntree and Arthur that Cr Leng had lodged complaint(s) against them and, following a Preliminary Assessment by the Mayor, it had been determined that the matters would be referred to the LGGP for assessment in accordance with clause 4.3 of the Procedure.

2.12 Included in this email notification to each of the Members, the subject of the complaints, the CEO also provided:

2.12.1 a letter of notification of the complaint received;

2.12.2 a letter regarding referral of the complaint to the LGGP;

2.12.3 a copy of the letter of complaint received from Cr Leng; and

2.12.4 a *Form 2 – Response to a Code of Conduct Complaint* (the **Form 2 Response**) for the Member to complete, to provide to the LGGP on referral.

- 2.13 By email of the same day, the CEO confirmed with Cr Leng the action to be taken on the complaints.
- 2.14 Following receipt of each of the Form 2 Responses, (save from Cr Arthur, which was received and sent to the LGGP on Friday 3 December 2021), by email of Monday 29 November 2021, the CEO sent to the LGGP, the complaints and the Form 2 Responses in accordance with clause 4.3 of the Procedure.
- 2.15 At that time, the CEO noted with the Deputy Panel Manager that:
- 2.15.1 the Complaints had been treated as three (3) separate matters; being separate complaints being one against Crs Rowntree, one against Cr Taylor and one against each of Crs Arthur, Rowntree & Taylor;
 - 2.15.2 the Mayor had determined to forward all complaints to the LGGP and the parties had been advised of this;
 - 2.15.3 each of the Members, the subject of a complaint, had been afforded the opportunity to complete a Form 2 Response and these were attached, save for Cr Arthur's, which was to be forthcoming;
 - 2.15.4 an email from Cr Taylor to the Mayor of Tuesday 19 October 2021 regarding Cr Leng's actions at a Council meeting on that day, which was not a matter for which Cr Taylor pressed a complaint at that time, but which did provide background and context to these complaints; and
 - 2.15.5 both Crs Taylor and Rowntree had made counter claims against Cr Leng in their Form 2 responses, for which the Council sought advice from the LGGP as to whether these needed to be received and managed as separate complaint matters.
- 2.16 Following the receipt and consideration of each of the complaints, as well the Form 2 Responses provided by the Members, by the LGGP, the Deputy Panel Member sent copies of the three (3) initial Assessment Reports prepared by the LGGP to the CEO, by email of Friday 17 December 2021,
- 2.17 For each of the complaint matters, the LGGP determined that no *prima facie* breach of the Code could be discerned from the allegations made. Therefore, the Panel's recommendation was that the complaints be dismissed administratively, without any further action to be taken.
- 2.18 Following which and in accordance with clause 4.3 of the Procedure, at its meeting on Tuesday 21 December 2021, the Council received and considered, in confidence, a series of reports at Agenda items 293/21, 295/21 and 298/21 in respect of the complaints.
- 2.19 The Agenda reports included copies of the Initial Assessment Reports prepared by the LGGP.

2.20 Following receipt and considering of these items, the Minutes reflect that the Council, unanimously, resolved on each occasion that:

1. *Council receive and note the Local Government Governance Panel's initial assessment report and recommendation.*
2. *The Complaint be dismissed administratively with no further action taken upon it.*

2.21 Orders were then made for each Agenda item under section 91(7) of the Act that the discussion, report and resolution be released immediately from confidence.

2.22 The Agenda reports provided to the Members for consideration on these items did not include the original letters of complaint made by Cr Leng, or the Form 2 Responses provided by the Members. However, both the allegations, and responses provided by the Members, were summarised in the LGGP Initial Assessment Reports.

2.23 In which case, it is our position that the Members did have all relevant information before them in receiving and considering these matters.

2.24 With respect then to the process adopted by Council in resolving to dismiss the complaints, we note, as set out above, that clause 4.3 of the Procedure provides as follows (emphasis ours):

*A complaint that is forwarded to the Governance Panel or independent investigator will be assessed accordingly. **The assessor will consider the applicable facts from the material provided and may form a provisional conclusion that further investigation is unnecessary as it would be unlikely to result in a breach finding. In these circumstances, a report will be presented to Council under Section 90 of the Local Government Act (confidential) where Council will consider the recommendation from the Governance Panel or independent investigator and determine whether to proceed to a full investigation.***

2.25 Accordingly, the process followed by the Council (and the Mayor) in the receipt and management of these complaints, was both transparent and accountable and was conducted in accordance with the Procedure.

2.26 For completeness, we also note at this juncture that the Minutes do not reflect that Crs Taylor, Rowntree or Arthur, being the Members the subject of the Complaints, or Cr Leng as the Complainant, declared any level of interest (material, actual or perceived, for the purpose of the Act), in the Council's receipt and consideration, of these Agenda items.

2.27 In our view, each of the named Members ought to have considered whether they had an actual or a perceived conflict of interest for the purposes of sections 75 of the Act, in determining whether to remain in the Chamber for these items, including voting on the same.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

3.12 Subsequently, each of the Members, the subjects of the complaints made by Cr Leng, emailed the CEO to request that the initial letter of complaints made by Cr Leng against them, as well as their Form 2 Responses, also be made publicly available.

3.13 Based on the requests made, the CEO prepared a report for consideration at the Council meeting of Tuesday 18 January 2022. This was Agenda item 16.3.3.

3.14 The Agenda report for this item included copies of the original letters of complaint, as well as the Form 2 Responses submitted by the Members, who were the subjects of those complaints.

3.15 Following which, by letter dated 17 January 2022 and addressed to the CEO, Cr Leng submitted as follows:

3.15.1 [Redacted];

3.15.2 he ought to have been provided with 'a right of rebuttal' to the LGGP's Initial Assessment Reports, prior to the consideration of the same by the Council at its meeting in December 2021;

3.15.3 the Mayor ought to have declared an actual conflict of interest in the Council's receipt and consideration, of the Initial Assessment Reports at the Council Meeting of Tuesday 21 December 2021; and

[Redacted]

[Redacted]

- 3.16 Regarding Cr Leng's contentions that he ought to have been provided with a 'right of reply', the Procedure **does not** provide for any further expectation or conferral of procedural fairness for a complainant, upon making a complaint which is received and considered with the Form 2 Response from the Member the subject of the complaint, as part of the LGGP Initial Assessment.
- 3.17 No 'right of reply' was required to be afforded to Cr Leng in this respect.
- 3.18 However, based on the letter received from Cr Leng, by email of Tuesday 18 January 2022, the CEO sought legal advice from one of the Council's panel legal providers.
- 3.19 In the interests of transparency and to demonstrate independence in this desktop review, we confirm that advice **was not** sought from this firm.
- 3.20 Upon receipt of this legal advice and noting the timing imperative given the Council Meeting scheduled for that day, at 11:20am the CEO responded to Cr Leng, as follows:
- 3.20.1 there was no legal or public interest barrier to the release of the original letters of complaint and the Members' Form 2 Responses, if the Council proposed to resolved accordingly;
- 3.20.2 [REDACTED];
- 3.20.3 [REDACTED];
- 3.20.4 following the Council's receipt and consideration of the Initial Assessment Reports at its meeting of Tuesday 21December 2021, the matters were now finalised;
- 3.20.5 the Mayor did not have a conflict of interest in remaining in the Chamber and chairing the meeting on the Council's consideration of the Initial Assessment Reports, as aside from giving effect to his obligations under the Procedure to conduct a Preliminary Assessment and determining to refer the matters, he had no role in the assessment undertaken by the LGGP;
- 3.20.6 further, no complaint has been made against the Mayor in this respect; and
- 3.20.7 the requests made by the Members, the subjects of the complaints made by him on 11 November 2021, were made in accordance with the Procedure. As the documents did not form part of the Agenda Report for the meeting of Tuesday 21 December 2021, the confidential Agenda report was been prepared for the Council meeting that day, Tuesday 18 January 2022.

3.21 By responding email that same day, sent at 1:00pm, Cr Leng advised the CEO that he disagreed with the position, as put to him in her response and he proposed to 'speak on these at the meeting'.

3.22 [REDACTED]

3.23 [REDACTED]

3.24 [REDACTED]

3.25 Following which, by email of 1:28pm, sent to the CEO on Tuesday 18 January 2021, Cr Leng tendered his apology for the meeting that day.

3.26 The Council Meeting commenced at 3:00pm. When the Council reached Agenda item 16.2, the Council resolved as follows:

015/22

CODE OF CONDUCT COMPLAINTS & RESPONSES (NO. 210337 1-5)

Moved Cr. Arthur, Sec. Cr. Qualmann that Council release immediately from confidence the initial complaint letters and responses in relation to Code of Conduct complaints (Matter No. 210337 1-5).

Voting for the motion were Councillors Arthur, Qualmann, Rowntree, Simmons and Taylor

Voting against the motion were Councillors Bland, Hill and Jaensch

The Mayor declared the motion CARRIED

3.27 Based on our review of the documents and the correspondence referred to above, we do not find that there was any administrative error or unfairness in this process.

3.28 We further find that the Council, both reasonably and appropriately, sought legal advice in relation to the issues of concern for Cr Leng and acted in accordance with the advice received.

3.29 Indeed, there is also a 'live' issue as to whether any complainant should consider whether there is any inherent confidentiality around a complaint they make against a Member under the Code, in any event.

3.30 In addition, each of the Members, the subjects of those complaints, were and are, entitled to make publicly available their response on the same, particularly in

circumstances whereby these submissions were canvassed and summarised in the Initial Assessment Reports, as prepared by the LGGP and which were publicly available documents after the Council's consideration of the matters at its meeting of Tuesday 21 December 2021.

- 3.31 That is, it is, in any event, at least arguable that there was no confidentiality attached to the letters of complaint or the Form 2 Responses at the time the Council resolved to make the LGGP Initial Assessment Reports publicly available documents.
- 3.32 For completeness, we note again that at the meeting of Tuesday 18 January 2022 the Minutes do not reflect that Crs, Taylor, Rowntree or Arthur, being the Members who made the request of the CEO to release the documents, the subject of the Agenda item, declared any level of interest in the Council's receipt, and consideration, of this Agenda item.
- 3.33 Each ought to have considered whether they had an actual or a perceived conflict of interest for the purposes of section 75 of the Act, in determining to remain in the Chamber for the Council's consideration of these items, including by voting on the same.
- 3.34 However, noting our views above in relation to the argument that the documents were unlikely to attract the status of confidential Council documents for the purpose of the Act or the Code at that time, we do not consider anything turns on this point.

[REDACTED]

[REDACTED]

- 3.37 In the intervening period, following the Council meeting of Tuesday 18 January 2022, there were a series of emails between Friday 28 January 2022 and Monday 31 January 2022 between elected members regarding the complaints made by Cr Leng against certain Members, as well as the Council's resolution to make the original complaint and Form 2 Responses, publicly available documents.

[REDACTED]

4. THE EMAIL EXCHANGE

4.1 As noted above, following the Council meeting on Tuesday 18 January 2022, there was a series of emails between Friday 28 January 2022 and Monday 31 January 2022 between elected members with respect to the complaints made by Cr Leng against certain Members, as well as the Council resolution to make the original complaint and Form 2 Responses, publicly available.

4.2 This exchange consisted of four (4) emails from Crs Rowntree, Taylor and Hill, to which the other Members, (save for Cr Leng) and the CEO, were copied in.

- 4.3 The first email of Friday 28 January 2022 was sent by Cr Rowntree, expressing disappointment in certain comments that had been directed at her, as well as Crs Taylor and Arthur and the Mayor, following the Council meeting of Tuesday 18 January 2022. This was when the Council resolved to release the complaint and Form 2 Response documents. [REDACTED].
- 4.4 By responding email of 31 January 2022, Cr Hill replied to the same email recipients, attaching copies of private Facebook Messenger conversations, which had taken place prior to the Local Government Periodic Elections held in 2018.
- 4.5 These conversations appear to have commonly allowed and promoted, disparaging discussions of persons that Members knew, or were aware of. Cr Hill highlighted particular comments made by [REDACTED].
- 4.6 Cr Hill's email also stated that these messages were 'just a sample', being a threat that other material was in her possession, which could be provided to Members. [Cr Hill states that this was not her intent.](#)
- 4.7 By responding email of 12:45pm that day, Cr Taylor wrote to the same email recipients, confirming that the screenshots were of a private Facebook Messenger group conversation and expressing disapproval about Cr Hill's retention and subsequent circulation of them.
- 4.8 In response to Cr Hill's admonishment in her prior email that '*the losers are the ratepayers who have had to foot the bill for lawyers, counsellors, loss of staff and who knows*', Cr Taylor stated that had Cr Leng not made the complaints (asserting that they could not be dealt with by the Mayor, which then required referral to the LGGP), there would not have been any requirement for the Council to have expended public money in the first instance.
- 4.9 By further email of the same day, 31 January 2022 and sent at 1:18pm, Cr Rowntree responded to Cr Hill, confirming the screenshots were of private messages sent in 2018 and stating her disapproval of Cr Hill's circulation of them, noting that such actions may have served to create even further divide amongst Members.
- 4.10 Insofar as Cr Leng has not been provided with a copy of this email exchange, noting the exchange was amongst all Members, save for Cr Leng, and that it pertains, amongst other things, to certain decisions made by the Council in its receipt and determination of the complaints he made, in accordance with section 61 of the Act, in our view, Cr Leng should be provided with access to this email, as a matter of parity amongst Members.

5. MEETING OF TUESDAY 15 FEBRUARY 2022

- 5.1 Following from this email exchange, at the Council meeting on Tuesday 15 February 2022, at Agenda item 5, *Questions Without Notice*, the Minutes record that Cr Hill asked the following 'question' of the Mayor:

QUESTIONS WITHOUT NOTICE

Cr. Hill asked whether the Mayor would direct two Councillors to apologise to Cr. Hill following comments made in emails sent 31 January 2022. Mayor took the question on notice.

- 5.2 In accordance with regulation 9(4) of the *Local Government (Procedures at Meetings) Regulations 2013* (the **Meeting Regulations**), the Mayor took the question 'on notice', for consideration, with any reply (if necessary), to be given at the next meeting.
- 5.3 Turning then to the questions on notice provisions under regulation 9, the Mayor, as the presiding member, is required to consider each question on an individual basis and determine first, whether it is a 'question' for the purposes of the provision, and secondly, when taking into account the matters at regulation 9(6), whether a response is to be provided.
- 5.4 The purpose of the question on notice process is to enable Members to obtain information **that is relevant to their role as a member of the governing body and the functions of that body and the Council generally.**
- 5.5 Accordingly, a question within these parameters must relate to the functional, strategic and/or policy issues of the Council, **not to** matters of a personal nature.
- 5.6 Separately, any written (or spoken) medium which purports to be a question but which, on any reasonable reading and interpretation, is not a question, as defined, will fail the 'threshold' test. That is, if it cannot reasonably (on an ordinary and literal meaning assessment) be considered to be a question, it is not necessary to further consider it as relevant to regulation 9 of the Meeting Regulations.
- 5.7 It is only if the text (or spoken question) does demonstrate a question proper, that the secondary 'test' is then applied, being whether it is a question within the conspectus of regulation 9 of the Meeting Regulations.
- 5.8 If so, the issue which falls for determination is whether it should be answered, having regard to the criteria set out at regulation 9(6), namely, whether the question is vague, irrelevant, insulting or improper. Where it is within any of these adjectives, it can be ruled that it not be answered.
- 5.9 Accordingly, on a proper and reasonable construction and reading of Cr Hill's 'question', it **is not** a question in the ordinary and literal sense and cannot, therefore, be 'answered'. Rather, it is a request for the Mayor to direct Members to take certain action, in the absence of any power or authority to do so and absent any procedural fairness being extended to the Members that Cr Hill sought such an apology from.
- 5.10 Accordingly, we are of the view that Cr Hill's Question Without Notice, **does not** satisfy the requirements of regulation 9 of the Meeting Regulations and was not required to be answered.

- 5.11 We note by reference to file notes made by the CEO, with supporting correspondence, following a conversation with Cr Hill about this matter on 22 February 2022, that the CEO confirmed with Cr Hill that her recourse about the email exchange, if she remained aggrieved, was to file a complaint under the Code against Crs Taylor and Rowntree.
- 5.12 We understand that such complaint has not been lodged by Cr Hill.
- 5.13 In addition, by reference to a file note made by the Mayor, we also understand that the Mayor contacted Cr Hill by telephone on 13 March 2022, to discuss the issue of her requested apology, as raised by way of a question without notice at the Council meeting of February 2022.
- 5.14 During that conversation the Mayor advised Cr Hill that while he could request an apology be made by Crs Hill and Rowntree, he could not direct them to do so.
- 5.15 The Mayor also asked whether Cr Hill would like to consider mediation meetings with Crs Hill and Rowntree, which he and the CEO, could attend if required.
- 5.16 **The Mayor recalls that** it was agreed during that conversation that Cr Hill would consider these options and respond to the Mayor, prior to the next Council meeting of Tuesday 15 March 2022. **Cr Hill recalls that she advised the Mayor 'she would think about it.'**
- 5.17 Cr Hill did not respond or confer further to the Mayor on these matters. Rather, the Minutes of the Council Meeting of 15 March 2022 record as follows with respect to a series of motions without notice.
- 5.18 We note Cr Taylor was an apology for this meeting, **and it was understood by most Members**, that she would be an apology, taking leave to raise money for a charity event.

044/22

Moved Cr. Jaensch, Sec. Cr. Leng that a motion of no-confidence in Mayor Paul Simmons for the failure to demonstrate a duty of care and to act impartially in the best interests of a Councillor and the reputation of this Council when dealing with the aggressive bullying and harassment of a respected female Councillor by two team Councillors sent via Council's emails on 28 and 31 January 2022 to all Councillors excluding Cr. V Leng.

Voting for the motion were Councillors Bland, Hill, Jaensch and Leng Voting against the motion were Councillors Arthur, Qualmann and Rowntree The Deputy Mayor declared the motion CARRIED

045/22

Moved Cr. Hill, Sec. Cr. Jaensch that the Mayor requests a written apology by Councillors Taylor and Rowntree to Cr. Hill as requested as the last Council meeting (through a question without notice).

Voting for the motion were Councillors Bland, Hill, Jaensch, Leng and Simmons

*Voting against the motion were Councillors Arthur, Qualmann and Rowntree
The Mayor declared the motion CARRIED*

046/22

Moved Cr. Rowntree, Sec. Cr. Qualmann that the Mayor requests an apology from Cr. Hill for sharing private Facebook Messenger messages sent prior to the 2018 election in recent Council emails without permission.

Voting for the motion were Councillors Arthur, Qualmann, Rowntree and Simmons

*Voting against the motion were Councillors Bland, Hill, Jaensch and Leng
The Mayor declared the motion TIED*

6. MOTION OF NO CONFIDENCE

- 6.1 The Minutes reflect that when Cr Jaensch moved his motion without notice (044/22), the Mayor declared a material conflict of interest and left the meeting at 3:30pm. The Deputy Mayor, Cr Arthur, assumed the position of chair.
- 6.2 As previously advised, the motion without notice, as carried, was and is, simply, an expression of dissatisfaction in the Mayor for the matters set out therein. It is of no legal or greater effect than that and certainly does not have any legal implications.
- 6.3 However, our view is that the Mayor was denied procedural fairness in this public expression of no confidence. It was incumbent on the governing body, to extend to this to him, by way of explaining what was proposed, allowing him to respond and considering any response before so resolving.
- 6.4 Having declared a material conflict of interest under the Act, as required of him, the Mayor was not provided with any opportunity to respond to the allegations and criticisms made of him, prior to the Council voting on the same.
- 6.5 Had the Mayor been provided with an opportunity to respond, he could have advised the Members of the content of his telephone conversation with Cr Hill of 13 March 2022, as well as the legal position with respect to the purported 'question' and 'direction' made of him by Cr Hill.
- 6.6 In addition, noting the content of resolution 045/22, whilst the Mayor can 'request' that Crs Taylor and Rowntree provide a written apology to Cr Hill, he cannot direct them to do so.
- 6.7 If Cr Hill seeks an enforceable sanction in this respect, and as she has already been advised by the CEO, she is required to make a complaint against those Members under the Code.

7. CONCLUSIONS AND RECOMMENDATIONS

7.1 Taking the above into account:

- 7.1.1 in our view, it cannot be said that the actions and behaviours of any member of Administration, or the Mayor, have breached their public officer obligations, or their obligations under the Act, the Meeting Regulations or the Procedure;
- 7.1.2 in which case, we **do not** find that the Council, through its employees and the Mayor, failed to consider, or did not sufficiently consider, all relevant considerations in the receipt and management of the complaints made by Crs Leng or Taylor, nor the receipt and consideration of the 'question' without notice from Cr Hill;
- 7.1.3 in the absence of a 'requested' apology forthcoming from Crs Taylor and Rowntree, Cr Hill's remedy lies in the Code, not the questions without notice provisions of the Meeting Regulations;
- 7.1.4 further, based on his telephone conversation with Cr Hill of 13 March 2022, following which Cr Hill committed to providing a response to the Mayor on certain options available to her, **we find** it was manifestly unfair for the motion without notice, being a motion of no confidence in the Mayor, to have been moved, seconded and carried at the Council meeting of 15 February 2022, in the absence of providing the Mayor with procedural fairness, in particular, an opportunity to respond prior; and
- 7.1.5 in which case, the manner in which the Council, as the governing body, received and dealt with this motion without notice, resulted in a denial of procedural fairness for the Mayor.

- 7.2 Notwithstanding this, we do note that such a resolution is no more than an expression of dissatisfaction in the Mayor for the matters set out in the resolution.
- 7.3 Whilst the Mayor does have an opportunity to make a Personal Explanation at the next meeting of Council, as per regulation 15 of the Meeting Regulations, for the purpose of providing Members with information regarding his management of the email exchange, we recommend that he carefully consider whether there is any merit in doing so, given that it could serve to further inflame the situation.
- 7.4 It follows that, based on our findings in this review, nothing further is required of the Administration, or the Mayor.
- 7.5 However, for completeness, we do recommend that the CEO and the Mayor give consideration to arranging for Members to receive 'refresher training' with respect to their conflict of interest obligations under the Act.

7.6 This concludes our review of this matter.

KELLEDYJONES LAWYERS

A handwritten signature in black ink, appearing to read 'Tracy Riddle', written in a cursive style.

TRACY RIDDLE

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