

## CODE OF CONDUCT - MAYOR RADICH

Department: Civic

### REASONS FOR CONFIDENTIALITY

Grounds:	S48(1)(a) - The public conduct of the part of the meeting would be likely to result in the disclosure of information for which good reason for withholding exists under section 7.
Reason:	S7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of a deceased person.

### EXECUTIVE SUMMARY

- 1 A Code of Conduct complaint was laid in accordance with the process set out in the Dunedin City Council Code of Conduct (Code of Conduct) following the receipt by the Chief Executive of a joint complaint from Crs Sophie Barker and Jim O'Malley against Mayor Radich.
- 2 The Code of Conduct, approved in 2016 but remaining in force until replaced by this Council, sets out the process to be followed on receipt of a complaint being made, including an independent investigation and referral of that investigation to Council. This process has been followed.
- 3 The independent investigator has upheld the complaint made and has found that the matter was a material breach. The Council must now decide on its response.
- 4 As this is an administrative report, there are no options or Summary of Considerations.

### RECOMMENDATIONS

That the Council:

- a) **Considers** the findings of the investigation of the Independent Investigator, Mr Jordan Boyle, into the Code of Conduct complaint in respect of Mayor Radich.
- b) **Provides** Mayor Radich the opportunity to address the Council if he wishes to.
- c) **Decides** whether a material breach of the Code of Conduct has occurred, and if so, which if any of the sanctions set out in the DCC Code of Conduct should be imposed on Mayor Radich.
- d) **Considers** whether, following the meeting, a public statement is to be made, and if so, its content.

## THE PROCESS UNDERTAKEN

- 5 On 8 September 2023, the Chief Executive received a joint complaint from Crs Barker and O'Malley about the actions of Mayor Radich after the completion of the confidential Council meeting on 29 August 2023.
- 6 The complaint related to statements made by Mayor Radich on 30 August 2023, on Radio NZ, about item C4, the Code of Conduct complaint against Mr Barry Williams, Chair of the Strath Taieri Community Board, considered at the 29 August Council meeting. Mr Williams Code of Conduct related to an allegation of verbal abuse and using a racial slur [REDACTED]
- 7 The complaint alleged that Mayor Radich's statements breached the confidentiality of the meeting and minimised the seriousness of Mr Williams' actions. Crs Barker and O'Malley's raised the complaints pertaining to, but not limited to, the following sections of the Code of Conduct
  - 3.2 – Values – public trust
  - 5.1 – Relationships between members
  - 5.3 – Relationship with the public
  - 6.2 – Media comment on a member's own behalf
  - 7.1 – Confidential information
- 8 On 31 August 2023, Mayor Radich issued a media statement with an apology – "I want to apologise unreservedly for minimising the clearly racist comment made by the chair of the Strath Taieri Community Board in my comments to media".
- 9 Clauses 12 and 13, and Appendix B of the Code of Conduct, adopted 25 October 2016, sets out the process to be followed when complaints are laid. The following process was undertaken in accordance with the Code of Conduct:
  - An independent investigator, Mr Jordan Boyle, was appointed by the Chief Executive from the approved List of Independent Investigators, to complete a preliminary report, to determine whether the issue was sufficiently serious to warrant a full investigation.
  - Crs Barker and O'Malley were advised that their allegation had been referred to independent investigator for investigation.
  - Mayor Radich was advised by the Chief Executive of the allegation received, that a Code of Conduct complaint had been made and would be referred to an independent investigator, and the process for dealing with complaints. Once appointed, Mayor Radich was advised of the name of the investigator.
  - Mr Boyle carried out a preliminary investigation and on 24 October 2023 provided a Preliminary Report to the Chief Executive. Mr Boyle advised the Chief Executive that following an assessment of all the information available, he had formed the view that the alleged conduct was potentially material and required a full investigation.

- A copy of the investigators Preliminary Report was provided to Mayor Radich on 27 October 2023. Crs Barker and O'Malley were advised of the outcome of Mr Boyle's preliminary assessment.
- Mr Boyle undertook a full investigation of the allegations, which included interviewing Mayor Radich, Cr Barker and Cr O'Malley.
- Mr Boyle provided Mayor Radich, and Crs Barker and O'Malley with a copy of his draft final report and invited feedback. Their feedback has been incorporated into the report where Mr Boyle considered appropriate.
- A final investigator's report, at Attachment A, was sent to the Chief Executive on 7 December 2023.

## DISCUSSION

- 10 Clause 5.1 of the Code of Conduct sets out the expectations of elected members, and their relationships between members. Appendix B of the Code of Conduct set out the process for the Council to consider the investigator's report. A copy of Appendix B is at Attachment B.
- 11 Before making any decision in respect of the investigator's report, the Code of Conduct requires that the Council give Mayor Radich an opportunity to appear and speak in his own defence, but he is unable to participate in any debate or vote at the meeting.
- 12 Councillors must read the report attached. The Council must consider the investigator's report and rule on the complaint by determining whether there has been a breach of the Code of Conduct and determine the nature of any penalty or action (if any), depending on the seriousness of the breach. The nature of any penalty or actions are set out in section 13.1 of the Code of Conduct. Clause 13.1 also sets out actions the member may agree to do that could enable a Council to not impose any penalty. A copy of Clause 13.1 is at Attachment C.
- 13 This matter has a high degree of public interest. Once Council has decided on its response to this complaint, consideration needs to be given to what public statement, if any, should be made. While the investigator has determined that confidentiality has been breached, care would be needed in making any public statement to ensure that Council does not also breach the same confidentiality.

## NEXT STEPS

- 14 Mayor Radich will be advised of the decisions made by Council.
- 15 If agreed, a public statement will be drafted for approval and release.

## Signatories

Author:	Sharon Bodeker - Special Projects Manager
Authoriser:	Sandy Graham - Chief Executive Officer

## Attachments

	Title	Page
A	Final Investigators Report	

- B Appendix B of the Code of Conduct
- C Clause 13.1 of the Code of Conduct



**DYHRBERG DRAYTON**  
EMPLOYMENT LAW

**Dunedin City Council**

Report of Independent Investigation into  
Code of Conduct Complaint by Councillors Barker and O'Malley about Mayor Radich's  
conduct

7 December 2023

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## 1 Introduction

- 1.1 Councillors Sophie Barker and Jim O'Malley made a joint formal complaint (**the Complaint**) on 8 September 2023 regarding alleged conduct by Mayor Jules Radich after a confidential Council meeting on 29 August 2023 (**the Meeting**). The Complaint concerned Mayor Radich's comments to Radio New Zealand (**RNZ**) on 30 August 2023.
- 1.2 Crs Barker and O'Malley were concerned by statements Mayor Radich made regarding the Code of Conduct investigation into comments made by Strath Taieri Community Board Chair Barry Williams. It was alleged Mr Williams verbally abused someone and used a racial slur [REDACTED]. The investigation upheld this allegation.
- 1.3 Crs Barker and O'Malley allege Mayor Radich's statements to RNZ on 30 August breached the confidentiality of the Meeting and the following sections (among others) of the Dunedin City Council (**DCC**) Code of Conduct:
  - a. Section 3;
  - b. Sections 5.1 and 5.3;
  - c. Section 6.2; and
  - d. Section 7.1.
- 1.4 Section 3 relates to values and requires members to uphold the value of public trust by working together constructively and upholding the values of honesty, integrity, accountability and transparency. Section 5.1 relates to relationships between elected members which requires members to conduct their dealings in a manner that maintains public confidence. Section 5.3 relates to relationships with the public which requires members to act in a way that upholds the reputation of the local authority. Section 6.2 of the Code of Conduct requires elected members when expressing personal views to the media to also observe other requirements of the Code of Conduct, for example, not disclosing confidential information. Section 7.1 requires members to not use or disclose confidential information for any purpose other than the purpose for which the information is supplied to that member.
- 1.5 Sandy Graham (Chief Executive) engaged the writer, Jordan Boyle, Partner, Dyhrberg Drayton Employment Law to undertake an independent investigation of the complaint. I confirmed availability and that I had no conflict of interest.
- 1.6 As is required under the Code of Conduct, Crs Barker and O'Malley and Mayor Radich were advised of my appointment to conduct an investigation.
- 1.7 The relevant information was provided by the DCC, being:
  - a. The Complaint;
  - b. Strath Taieri – report to Confidential Council meeting;
  - c. Unconfirmed partial Minute Extract – Strath Taieri matter;
  - d. Letter from Mayor Radich to Mr Williams dated 29 August 2023;
  - e. DCC media release regarding the Code of Conduct of Conduct complaint against Mr Williams dated 29 August 2023; and
  - f. Dunedin City Council Code of Conduct dated October 2022.

## **2 Preliminary Assessment - Materiality**

2.1 Appendix B to the Code of Conduct sets out the process for the determination and investigation of complaints. As was required, I undertook a preliminary assessment of the Complaint to determine whether:

1. the complaint is frivolous or without substance and should be dismissed;
2. the complaint is outside the scope of the Code of Conduct and should be redirected to another Agency or process;
3. the complaint is non-material; and [sic – should read ‘or’]
4. the complaint is material and a full investigation is required.

2.2 As indicated, I read the ‘and’ in the third consideration as ‘or’.

2.3 In making the assessment, the Appendix allows me (as Investigator) full discretion to make the assessment after whatever initial inquiry I consider necessary.

2.4 After carefully reviewing the materials provided, I assessed that, if the allegation was proven, the breach could be material. Materiality is defined in section 12.4 of the Code of Conduct:

An alleged breach under this Code is material if, in the opinion of the independent investigator, it would, if proven, bring a member or the council into disrepute or, if not addressed, reflect adversely on another member of the council.

2.5 The ordinary meaning of disrepute is ‘*lack or decline of reputation; a state of being held in low esteem*’.<sup>1</sup> Another ordinary meaning is ‘*a loss or lack of credit or repute, bad reputation, disgrace, disfavour*’.<sup>2</sup>

2.6 I considered if the conduct alleged in the Complaint occurred, that could bring Mayor Radich and the Council into disrepute. The public had been expressly excluded from the meeting for the purpose of protecting individual privacy. A breach of confidentiality could have serious implications for the conduct of Council business.

2.7 I wrote to Mayor Radich on 3 October 2023, outlining my process in relation to my preliminary assessment, as outlined above, and my view that a full investigation should be undertaken. I provided Mayor Radich with an opportunity to comment on my view regarding the materiality of the complaint.

2.8 Mayor Radich provided me with his comment on 6 October 2023. Following consideration of Mayor Radich’s feedback, I determined the alleged conduct was potentially material and a full investigation is required. I advised Ms Graham of this.

## **3 Process**

3.1 I decided the most appropriate way to investigate the alleged breach was to conduct interviews via Microsoft Teams with Crs Barker and O’Malley and Mayor Radich.

3.2 I interviewed Cr Barker on 25 October 2023 and Cr O’Malley on 26 October 2023. Notes of these interviews were prepared and confirmed as accurate by Crs Barker and O’Malley.

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<sup>1</sup> Merriam Webster Dictionary.

<sup>2</sup> Collins English Dictionary.

- 3.3 They were then provided to Mayor Radich in advance of our interview, which occurred on 10 November 2023. Notes of Mayor Radich's interview were also prepared, and he confirmed their accuracy.
- 3.4 A copy of my draft report was provided to Crs Barker and O'Malley and Mayor Radich for their feedback. Crs Barker and O'Malley and Mayor Radich advised they had no feedback on the report.

#### **4 Information Obtained**

- 4.1 As summarised above, Crs Barker and O'Malley and Mayor Radich provided their perspective on the complaint in their interviews with me. I also considered Mayor Radich's comment on my preliminary assessment in completing this investigation. In addition to interview notes I was provided with news articles and other information by the participants, which I summarise below.

##### *Chronology*

- 4.2 Briefly, a chronology of key events is as follows:
- a. 14 May 2023 – Incident between Barry Williams (Strath Taieri Community Board Chair) and [REDACTED]. This led to a complaint under the Code of Conduct.
  - b. 27 June 2023 – DCC receives a report into the Code of Conduct complaint from Steph Dyhrberg, Barrister.
  - c. 29 August 2023 – DCC considers the report at the Meeting, it is upheld and DCC issues Mr Williams with a letter of censure.
  - d. 30 August 2023 – Mayor Radich is interviewed on RNZ's 6 pm news. An article is published on RNZ's website.
  - e. 31 August 2023 – DCC issues a mayoral statement regarding the comments made in the RNZ interview.
  - f. 8 September 2023 – Crs Barker and O'Malley lay the Complaint with DCC under the Code of Conduct.

##### *Cr Barker*

- 4.3 Cr Barker was told about the RNZ interview and subsequently listened to it. Other DCC councillors were upset by the interview at the time.
- 4.4 I asked Cr Barker about the allegation that Mayor Radich had disclosed the site of the event involving Mr Williams, given his statement in the interview was [REDACTED]  
[REDACTED]  
[REDACTED]
- 4.5 In Cr Barker's view, while some people may have already known details of the incident involving Mr Williams, she disputed the idea it was common knowledge. She felt they had a duty to Dunedin to keep the information confidential.
- 4.6 Cr Barker felt that by disclosing any information provided in the Meeting, Mayor Radich was breaching the confidentiality of the Meeting. She noted Strath Taieri is a small community [REDACTED]  
[REDACTED]. This emphasised the importance of keeping the information confidential.



- 4.7 By stating the incident happened [REDACTED] this led to the media being able to identify the person the subject of Mr Williams' racist comments. Cr Barker felt this put them in a terrible position, [REDACTED].
- 4.8 Cr Barker said DCC took the biggest step possible by issuing the letter of censure to Mr Williams. This demonstrated DCC didn't think the incident was minor and it didn't think the people of Dunedin did. It took a purposeful approach of saying racism isn't minor.
- 4.9 Cr Barker felt Mayor Radich's comments minimised Mr Williams' actions and undermined DCC's position. Cr Barker noted in the Meeting councillors gave impassioned speeches about the incident. These were confidential. Mayor Radich's comments were contrary to these speeches and could give the public the wrong impression of DCC's view of Mr Williams' actions. Cr Barker felt Mr Williams' actions were not minor, even when compared to other examples of racism. Cr Barker said Mayor Radich's comments about the incident being minor were insulting and upsetting.
- 4.10 Cr Barker agreed with Mayor Radich's comments that people could redeem themselves when it came to racism. However, she was concerned about whether this was possible for Mr Williams, given his comments.
- 4.11 Cr Barker felt Mayor Radich should be cautious when expressing his own opinion. Acknowledging the mayor is the first point of contact to talk on behalf of DCC, Cr Barker felt by saying Mr Williams' actions were a minor thing was contrary to what DCC had agreed on.
- 4.12 Cr Barker felt Mayor Radich's subsequent statements did not do enough. She thought the hurt had already been done to the community and to councillors. Cr Barker viewed Mayor Radich's apology as coming too late (24 hours after the RNZ interview). She also noted it was only issued to local media, not national media like the original statements.
- 4.13 Cr Barker considered Mayor Radich's actions didn't show leadership and undermined the trust and confidence the public can have in DCC addressing these important issues, which impact people every day. DCC should show true leadership and be great representatives. Cr Barker felt the comments shouldn't have been made and the apology should have been faster.

*Cr O'Malley*

- 4.14 Cr O'Malley was concerned that shortly after the Meeting finished Mayor Radich gave the RNZ interview and provided details of confidential information discussed in Meeting.
- 4.15 By identifying the location of Mr Williams' comments [REDACTED], Mayor Radich identified the specific location. [REDACTED]. Cr O'Malley felt this breached the confidentiality of the Meeting, even if the name wasn't mentioned.
- 4.16 Cr O'Malley noted that even if Mr William's locality extends to many other areas, the media were easily able to identify [REDACTED]  
[REDACTED]
- 4.17 Cr O'Malley explained that while some people may have known the details of the incident, it was not national knowledge and was confidential on a wider scale. Mayor Radich's RNZ interview made it national knowledge, and created a substantially larger story which caused further harm to the person who was subject to the comments.
- 4.18 Cr O'Malley told me Middlesbrough is a small community. When Mayor Radich stated the complaint was made [REDACTED], this [REDACTED]. Cr O'Malley felt this identified people even without

naming them. [REDACTED]  
[REDACTED]

- 4.19 Cr O'Malley's biggest concern was the fact DCC had strategised how to respond to media in the Meeting and Mayor Radich made comments which went completely against this.
- 4.20 Cr O'Malley considered that by Mayor Radich saying the incident was a relatively minor thing, that it happened [REDACTED] and that Mr Williams didn't remember all minimised the seriousness of the Mr Williams' actions. This had the effect of undermining DCC's decision. DCC had suggested Mr Williams resign from his position. Subsequently saying it was minor undermined this.
- 4.21 Cr O'Malley wanted casual racism to be taken seriously and for the public to see it was being taken seriously. He felt Mayor Radich did not treat Mr Williams' racism as seriously as the position DCC had taken, which was that if it had the power, it would remove Mr Williams from his position. Cr O'Malley consider DCC should take accountability for Mr Williams' racism and Mayor Radich's minimisation of it.
- 4.22 The fact Mayor Radich did not preface his comments by saying it was his own opinion meant he was representing DCC and what he said was not what was agreed by DCC.
- 4.23 Cr O'Malley agreed with Mayor Radich's comments that people can come back from these types of actions. [REDACTED]  
[REDACTED]  
[REDACTED] Cr O'Malley considered if that was the only comment made and Mayor Radich acknowledged how big the issue was then it would have been a nice comment about humanity.
- 4.24 Cr O'Malley considered Mayor Radich's comments were clear in their meaning and could only be interpreted one way. He felt the whole institution of DCC has been impacted by the comments.
- 4.25 Cr O'Malley said Mayor Radich has a habit of making statements which undermine DCC and then needing to make corrections or issue apologies. Cr O'Malley felt the apology doesn't negate the breach of confidentiality. Cr O'Malley considered Mayor Radich's habit of making these comments negates the relationship between councillors and the mayor. Cr O'Malley said the Complaint is procedural, not about garnering Mayor Radich's resignation.

#### *Mayor Radich*

- 4.26 Mayor Radich considered his comments to RNZ were consistent with his role of the mayor and the Code of Conduct which states the mayor is the first point of contact.
- 4.27 Mayor Radich was firm on the fact he didn't disclose the location or site of the event involving Mr Williams. His intention in the RNZ interview was to point out that Mr Williams' actions weren't in a board meeting or on any official business and occurred in [REDACTED], not in his capacity as Community Board Chair. Mayor Radich noted Mr Williams works across a large area and [REDACTED]  
[REDACTED] He considered the reason the media was able to identify the specific location was because it was common knowledge in Middlemarch (noting the original complaint came from word of mouth).
- 4.28 Mayor Radich considered he didn't disclose the gender of the person subject to the comments, or any identifying information. He stated he had no intention of disclosing the location of the incident or anyone involved.

- 4.29 Mayor Radich saw the incident as common knowledge in Middlesbrough and therefore it couldn't be considered confidential information. He noted information in a public excluded session can still be requested under the Local Government Official Information and Meetings Act 1987, it doesn't provide a blanket of confidentiality.
- 4.30 Mayor Radich noted he had signed the letter of censure to Mr Williams and also spoke to him on the phone following sending the letter. Mayor Radich wanted to discuss the incident in the spirit of positivity, given people didn't like being told off. [REDACTED]  
[REDACTED]
- 4.31 Mayor Radich explained that in the week prior to the RNZ interview he had spoken to a survivor of the March 15 Christchurch mosque shootings. This was fresh in his mind when he spoke to RNZ. His use of the word '*minor*' was in reference to other serious incidents, not to say Mr Williams' racist comments were minor.
- 4.32 Mayor Radich's view is that punishment shouldn't be the first step. His intention was to get Mr Williams to look at the situation differently and change his behaviour.
- 4.33 Mayor Radich apologised quickly following the interview once he realised what his comments had done. Mayor Radich provided me with an email from Cr Steve Walker on 30 August 2023 at 6.21 pm. Cr Walker stated:

Your comment that I just heard on the 6pm news (RNZ) is rather perplexing!

I quote: [REDACTED] and was a relatively minor thing."

Two questions. Firstly, (and with reference to the decision / letter), how can you be appalled by a 'relatively minor' thing?

Secondly, do you consider racism / sexism etc a 'relatively minor thing'?

- 4.34 Mayor Radich responded at 7.06 pm stating:

Sorry Steve, you are right and I can see how you might be perplexed.

I do not consider racism and sexism to be minor things and was appalled by Barry Williams comments.

I said so to him on the phone. I suggested a path of contrition and expunging such language from his vocabulary.

My comment about the incident being relatively minor was made in the context of far worse comments and actions that have appeared in the media and been delivered in official forums from other miscreants. I was thinking in terms of him apologizing for his slur to the board and community, as I suggested since he had already done that with the victim.

I remain appalled and very disappointed by his remark.

I am also sorry for any misconception my comments may have created.

- 4.35 It wasn't Mayor Radich's intention to undermine DCC's position. He was trying to show a pathway toward redemption and the ability to come back from actions like casual racism. This is consistent with other work Mayor Radich does in the community.

- 4.36 Mayor Radich didn't think DCC's relationship with the public had been impacted. He felt his discussion with Mr Williams had produced a positive outcome (an apology) rather than a toothless punishment.
- 4.37 Mayor Radich felt the 30 August 2023 RNZ interview and article was not complete if not read alongside the letter of censure.

*New articles and other information*

- 4.38 I reviewed the RNZ article about Mayor Radich's comments. I also listened to a recording of the interview.<sup>3</sup> The RNZ article accurately reflected Mayor Radich's comments in the interview.
- 4.39 On 29 August 2023 RNZ published an article entitled '*Dunedin mayor urges Strath Taieri Community Board chairperson to resign over racist slur*'. The article recorded the contents of the letter of censure. A similar *Stuff* article was also published.
- 4.40 On 31 August 2023 the Otago Daily Times (**ODT**) published an article entitled '*Mayor backtracks on labelling slur 'relatively minor''*'. The article referred to '*Embarrassed Dunedin Mayor Jules Radich*'.
- 4.41 *Stuff* also published an article on 31 August 2023 with the headline '*Mayor apologises 'unreservedly' over minimising racial abuse from community board chair*'. It referred to Mayor Radich's statements in the RNZ interview and the subsequent mayoral statement from DCC.
- 4.42 On 2 September the ODT published an opinion piece '*Mayor's reputation brought low*'. The article stated:

If Dunedin Mayor Jules Radich can emerge from this week with a reputation for being merely gaffe-prone, he can take that as a win.

As blunders go, utterly misrepresenting Dunedin City Council sentiment by playing down the significance of a racial slur is towards the scarcely believable end of ineptitude.

It is worse than that, because Mr Radich unwittingly contributed to a culture of excuse-making and equivocation about racial abuse.

...

The council's position had been unambiguous.

...

Mr Radich signed his name to this statement sent to Mr Williams and there was no need for him to depart from this position.

The mayor's comment to RNZ the slur was "just a relatively minor thing" nowhere nearly reflected the council's stance.

He put his colleagues in an invidious position.

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<sup>3</sup> <https://www.youtube.com/watch?v=88l5iEoRXU>.

The council's media release on Tuesday had ended with: "The investigator's report and any further details will not be made public in order to protect the privacy of the individual involved in the incident. We will not be making any further comment on the matter."

Then the mayor publicly disclosed the incident occurred [REDACTED].

- 4.43 On 5 September 2023 a *Stuff* article was published [REDACTED] *leaves town after racist abuse from Dunedin politician*'. The article contained more details of the incident with Mr Williams and named the location of the incident [REDACTED]. It stated:

The incident also led to Mayor Jules Radich to later "apologise unreservedly" after earlier telling RNZ: [REDACTED] and he didn't even remember that it had happened, so it was just a relatively minor thing".

Radich later backtracked from those comments, issuing a statement saying: "To be clear - a racist comment is always a racist comment" Radich said in a following statement.

- 4.44 On 6 September 2023 *Stuff* published a further article headlined '*Leaked letter reveals racist abuse from Otago politician over [REDACTED] food order*'. It appears the letter was leaked to *Stuff* after the 5 September 2023 article by the same journalist (though this is not certain).
- 4.45 Mayor Radich referred me to the ODT's 15 September 2023 Letters to the Editor. One letter from a member of the public criticised Crs Barker and O'Malley for making the Complaint. Another referred to council members having '*bitter arguments about stupid things*'.
- 4.46 Mayor Radich also referred me to DCC's 30 October 2023 ordinary meeting. A member of the public, Diane Yeldon spoke during the public forum. Ms Yeldon stated Code of Conduct complaints should be a last resort and too many brought DCC into disrepute. Ms Yeldon also criticised the use of independent investigators.

## 5 Analysis

- 5.1 The comments made by Mayor Radich in the RNZ interview are not in dispute. The issue for me to determine is if the comments breached the Code of Conduct.
- 5.2 The first allegation is that Mayor Radich breached the confidentiality of the Meeting. The Meeting was confidential to protect the privacy of the person who was subjected to the comments by Mr Williams and to protect information which was subject to an obligation of confidence.
- 5.3 The relevant part of the Code of Conduct is s 7.1 which states:

### 7.1 Confidential information

In the course of their duties members will occasionally receive information that is confidential. This will generally be information that is either commercially sensitive or is personal to a particular individual or organisation. Accordingly, members agree not to use or disclose confidential information for any purpose other than the purpose for which the information was supplied to the member.

- 5.4 Mayor Radich stated:

- a. '*It happened [REDACTED] and he didn't even remember that it had happened so it was just a relatively minor thing.*'; and

b. *'Certainly the people who overheard the incident didn't report it or bring it to anyone's attention.'*

- 5.5 I don't consider stating Mr Williams did not remember the comment and the opinion that the incident was minor could reasonably be said to be disclosing confidential information.
- 5.6 In my view, the fact the complainant was not a person who witnessed the incident is confidential information. There was no evidence before me to suggest it was common knowledge the complainant didn't witness the event. I don't consider Mayor Radich disclosing this information was consistent with the purpose of which he received it, i.e. making a decision on the complaint. I therefore consider by disclosing this information Mayor Radich has breached s 7.1 of the Code of Conduct. However, I would not consider this breach to be material. This is because there was not sufficient detail in the statement to identify the complainant, nor was there any suggestion this occurred as a result.
- 5.7 I consider the fact the incident happened [REDACTED] was confidential information. Mayor Radich's view was this was common knowledge and therefore it was not confidential. I accept the more people that know the information the less likely it is to be confidential. Many people in the Strath Taieri community may have been aware of the information. However, I don't consider it was common knowledge, particularly on the national scale, which the RNZ interview was.
- 5.8 While Mayor Radich did not disclose the specific location [REDACTED], I accept it was obvious to people with knowledge of the area [REDACTED] was being referred to. This is evidenced by the fact [REDACTED] was identified in the media a few days after the RNZ interview. This was prior to the letter of complaint being leaked to *Stuff*. I therefore consider Mayor Radich's comments in the RNZ interview ultimately led to the identification of the person who was subject to the comments from Mr Williams. The Meeting was confidential to prevent this happening. Mayor Radich disclosing this information was not consistent with the purpose for which he received it. I therefore find this action breached s 7.1 of the Code of Conduct. In my view, this breach was material. It is important for people who engage in processes like this to have confidence their information will be kept confidential, particularly when they could face negative consequences if this confidence is breached. I consider failure to keep this information confidential could bring Mayor Radich and DCC into disrepute and undermine the public's confidence in DCC. This is evidenced by the 2 October 2023 opinion piece in the ODT which is critical of Mayor Radich for disclosing this information.
- 5.9 Regarding the allegation he minimised Mr Williams' racist comment and undermined DCC's position in the RNZ interview, I accept Mayor Radich did not intend to minimise Mr Williams' comments. I understood his comments about the incident being minor when compared to more serious incidents of racism and intolerance. I took into account the fact Mayor Radich did sign the letter of censure and he spoke to Mr Williams following this and [REDACTED] [REDACTED] I understood Mayor Radich's perspective on trying to focus on a positive result.
- 5.10 However, considering the evidence before me, Mayor Radich's comments to RNZ did not contain this additional context or information. Mayor Radich is responsible for the meaning that could be reasonably interpreted from his comments. He stated the incident was minor, Mr Williams didn't remember it, and it wasn't reported by anyone who witnessed it. Collectively, these statements all minimised Mr Williams' actions.
- 5.11 Given the serious letter of censure DCC had unanimously issued, I consider these statements had the impact of undermining DCC's position on the incident and were inconsistent with DCC's position.

- 5.12 In making his comments to RNZ, Mayor Radich said he was acting consistently with s 6.1 of the Code of Conduct, which states the mayor is the first point of contact for an official view on any issue. Given my finding that Mayor Radich's statements were inconsistent with DCC's position, I find his comments were expressing his personal view. Mayor Radich has breached s 6.2 of the Code of Conduct, which relates to media comment on a member's own behalf, in the following ways:
- a. Mayor Radich did not state it was a personal view, given the comments were contrary to DCC's decision.
  - b. Mayor Radich disclosed confidential information. This is covered above.
- 5.13 In my view, Mayor Radich's actions do amount to a breach of s 5.3 of the Code of Conduct. This section requires members to act in a way which upholds the reputation of DCC. The 2 October 2023 opinion piece in the ODT and other media articles demonstrate Mayor Radich's statements have impacted on the reputation of DCC.
- 5.14 I don't consider any of Mayor Radich's actions breach s 3 or 5.1 relating to values and relationships between members. While other members of council were disappointed with Mayor Radich's comments, I don't consider it rose to the level of failing to meet any requirements in s 3 or 5.1, given the absence of intention.
- 5.15 I acknowledge Mayor Radich apologised to councillors and issued a mayoral statement the following day. In my view, the mayoral statement did not sufficiently address the impact of the initial statement, nor is it likely any apology or statement could have done this.

## **6 Findings**

- 6.1 Having analysed the evidence, I find the Complaint is upheld and the following sections of the Code of Conduct have been breached:
- a. Section 5.3: *'Relationship with the public'*.
  - b. Section 6.2: *'Media comment on a member's own behalf'*.
  - c. Section 7.1: *'Confidential information'*.
- 6.2 I have not found s 3: *'Values'* and s 5.1: *'Relationships between members'* have been breached as alleged by the Complaint.
- 6.3 Having investigated the matter as a potential material breach and having found there was a breach of the Code of Conduct, I have re-assessed whether the breach, in totality, was in fact a material breach. I find it was a material breach. That is a high threshold, but this behaviour reaches it. I consider it brings Mayor Radich and DCC into disrepute as outlined above.
- 6.4 I note other people may have a different perspective as to whether Mayor Radich's comments brought him or DCC into disrepute. However, I consider on the whole the test has been met.

- 6.5 Some people may consider the Complaint being made may reflect negatively on DCC. This is not within scope of the investigation.

**Jordan Boyle**

Partner

Dyhrberg Drayton Employment Law