

RE: CITY OF BARRIE CODE OF CONDUCT COMPLAINT INVESTIGATION REPORT
#290224 Under the City of Barrie Council and Committee Member Code of Conduct
Concerning Councillor Clare Riepma

I. Overview

The City of Barrie sets out the rules for ethical decision-making through the adherence to the rules of the Council Member Code of Conduct (the “Code”). The Code contains rules regarding Improper Use of Influence, Conduct Respecting Staff and Discreditable Conduct.

The Complaint alleges that the Respondent improperly interfered with staff performing their duties in relation to a planning rezoning application contrary to Rules 5.7, 14.1, 19.3, 19.5, 19.6 and 20.7. I determined that Rule 19.9 was also engaged by the allegations of the Complaint.

After an investigation, I determined that the Respondent violated Rules 19.3, 19.5, 19.6, and 19.9 of the Code.

II. The Complaint

The Complainant made several allegations in respect of the Respondent’s improper use of influence, conduct respecting staff and discreditable conduct with respect to a Planning Rezoning application.

In particular, the Complaint alleges that the Respondent used the influence of his office as Ward Councillor of the City of Barrie to “coerce” staff to change their position with respect to a proposed development. The Complaint goes on to allege that the Respondent, a licensed planner, used his knowledge and status as a professional planner to request that staff change the approved policy parameters in order to generate data for consideration that was favourable to his opinion. The Complaint alleges that this action constitutes the Respondent’s improper use of influence of office through his attempt to interfere with the professional role of staff to advise based on political and objectivity and without undue influence from any individual member or faction of the Council.

In February 2024, I received a formal complaint under the Code. The Complainant wrote that they had reasonable grounds to believe that the Respondent had contravened listed Rules of the Code. The Complaint Form/Affidavit detailed the following particulars of his allegations:

- a. The Respondent used his influence of office to pressure a City employee to falsify planning data so he could use it to undermine the City planning staff position, which was the proposed Yonge Street development rezoning request be granted, with the object of having General Committee and Council reject the recommendation;

- b. The Respondent used his planning company email, when communication on this file, which is concerning in a few ways:
 - (i) It makes it so [the Respondent] cannot use the defense that “I didn’t do anything wrong on this file, I was just passionate about the file in my capacity as city councillor”, because using his for-profit company email to communicate on this file, means this wasn’t him being “extra passionate on this file”.
 - (ii) Using his for-profit planning company email, whether intentionally or unintentionally, has the effect of communication to the Members of Council and Staff members copied in the inappropriate correspondence that he is giving formal, Official Planning opinion (especially since he lists his RPP and MCIP designations in his email signature), which is a violation of the Code, and could be misconstrued by the parties cc’d as a formal planning Opinion by a Member of Council, and also a way to pressure those cc’d in the email to agree with his perspective, lest those City Staff members question a RPP and MCIP planner who also wields the power and influence of a twice elected City Councillor.

I conducted a preliminary review and concluded that I had jurisdiction over the timely complaint. I determined that the Complaint was not frivolous or vexatious and that there were grounds to investigate.

I determined the Complaint raises 2 issues:

1: Section 14 - whether the Respondent used the influence of his office for a purpose other than for the exercise of her or his official duties, in particular to improperly influence the decision of Planning staff to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties.

2: Section 19: whether the Respondent contravened section 19 of the Code, in particular, by directing staff to carry out particular functions and in doing so, attempting to direct staff to ignore approved planning policy guidelines; by being disrespectful of the role of staff to be advise based on political neutrality and objectivity and without undue influence from any individual member or faction of Council.

I determined that allegations regarding the Respondent’s use of his company email in official communications, did not rise to the level of a contravention of the Code. I do, however, strongly recommend that the Respondent take care to only use City of Barrie email accounts for official City of Barrie communications.

The Complaint also alleged a violation of Rules 5.7 and 20.7:

5.7 Members shall not engage in any activity, financial or otherwise, which is incompatible or inconsistent with the ethical discharge of Official Duties to the City or Local Board

20.7 Harassment or discrimination which occurs in the course of, or is related to, the performance of Official Duties by Members is subject to this Code. If an Employee, a member of the public or any individual brings forward a harassment or discrimination complaint against a Member, the complaint will be referred to the Integrity Commissioner and the complaint procedure under this Code will apply. Upon receipt of a complaint that relates to harassment or discrimination, if the Integrity Commissioner determines that a formal investigation is required, the Integrity Commissioner may forward the information subject of the complaint to Human Resources who will engage the services of a qualified third-party investigator to conduct the HR investigation. Upon receipt of the findings of the independent investigator, the Integrity Commissioner shall utilize the investigator's findings to make a determination under the application of the Code and decide whether to conduct a further investigation on the ethical conduct of the Member subject of the complaint. Depending upon the circumstances, the Integrity Commissioner may recommend that appropriate interim measures be implemented while the investigation is in progress. Such interim measures may include physically and/or operationally separating the complainant and the respondent until the investigation has been completed.

I determined that Rule 5.7 addresses actions that are inconsistent with the discharge of a Member's ethical duties of office insofar as the conduct is not within the sphere of official duties. I determined that the Respondent was carrying out his official duties at the time of the alleged misconduct. Accordingly, I did not pursue a review of the Respondent's conduct with respect to this Rule.

Similarly, I determined that Rule 20.7 of the Code setting out the prohibition against discrimination and harassment, was not engaged. The purpose of this Rule is to ensure that Members of Council adhere to the Respectful Workplace Policy of the City and don't engage in harassment or discrimination. This Policy exists to provide and maintain a working environment that is based on respect for the dignity and rights of everyone in the organization. While the Complaint alleged that the Respondent attempted to improperly influence City staff in the performance of their duties, I did not find evidence to support the claim that the Respondent's actions rose to the level of Workplace Harassment in contravention of Rule 20.

III. The Complainant's Supplementary Information

The Complainant provided further information that they believe support the allegations of the Complaint. The Complainant advised in written communication that:

Today was a tour of the Allandale train station that was offered to members of council only. Hard hats were provided if members didn't have one [...].

Councillor Riepma decide to wear his own hard hat branded with his private for-profit Riepma (Planning) Consultants logo.
[...]

It further confirms that his use of his @riepma.ca for profit email during the correspondence I have forwarded wasn't an innocent mistake, but a purposeful one.

The Complainant contends that this supplementary information supports the position that the Respondent has demonstrated a pattern of using the influence of his office for purposes other than for the exercise of his official duties. In other words, the Complainant advised that the Respondent wore his hard hat with his company logo to promote his private company during the Allendale train station tour and that this is an example of the Respondent improperly using the influence of his office for the private advantage of himself or friends or associates.

I understand that Members of Council were advised that hard hats would be provided for the Allendale train station tour. I do not find that it is unreasonable for the Respondent to have worn his own hard hat. The tour was offered to Members of Council only and there were no members of the public in attendance. It would have been preferable for the Respondent to have either accepted a hard hat at the venue or cover his company logo on the hat he wore, however, I do not see this occurrence as relevant to my consideration of the allegations of this Complaint.

IV. The Relevant Provisions of the Code of Conduct

The relevant Code provisions are:

14.1 No Member shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties.

19.3 Employees serve Council and work for the municipal corporation under the direction of the Chief Administrative Officer. Council directs staff through its decisions as recorded in the minutes and resolutions of Council. Members have no individual capacity to direct members of staff to carry out particular functions.

19.5 Only Council as a whole and no single member including the Mayor has the authority to direct staff, approve budget, policy, committee processes and other such matters, unless specifically authorized by Council.

19.6 Members shall be respectful of the role of staff to advise based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council. Accordingly, no member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of the staff of the City.

19.9 [...No Member shall use], or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with that person's duties, including the duty to disclose improper

With reference to section 14.1, the purpose of the above-noted Code rule with respect to improper use of influence is to ensure that no Member of Council use the influence of their office for any purpose other than for the exercise of their official duties. Such

conduct would include attempts to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties.

Sections 19.3, 19.5, 19.6 and 19.9, require that Members of Council respect that staff must act impartially and respect the professional expertise and subject matter independence of staff.

I considered section 20 with respect of findings in an integrity commissioner Code investigation¹, and found that typically harassment involves a *course of conduct* or pattern. This finding is consistent with Barrie's Respectful Workplace Policy, which defines harassment as "a course of vexatious comments or actions that are known, or ought reasonably to be known, to be unwelcome." Unless the incident is severe², generally a single incident does not amount to a course of conduct and therefore I have elected not to investigate the allegations with respect to section 20 of the Code involving harassment.

V. The Respondent's Reply to the Complaint

On April 17th, I provided the Respondent with Notice of Receipt of a Formal Code of Conduct Complaint and sufficient information to understand the Complaint against him. In reply to the Complaint, the Respondent states:

The following is in response to a complaint dated Feb. 24, 2024 from [the Complainant] in which he alleges that I have breached the City's Code of Conduct by:

1. "Conveying inappropriate requests that are asking staff to change policy parameters"
2. Using my company email to communicate with staff. More particularly using my RPP and MCIP designations in my signature.
3. I have a documented history of unusual and inappropriate interest in planning rezoning applications.
4. There is a documented history of City staff feeling pressured by me to alter their planning opinions.

My Response

1. The complaint does not provide a list of the alleged inappropriate requests and I have no way of responding to this allegation, except to say in general that to my knowledge I have never asked anyone to change policy parameters. I have certainly questioned staff about their opinions. At Affordability Committee only the Ward councillor is permitted to ask questions or comment on proposed developments. All other councillors are required to ask questions or make comments directly to staff. I do so on a regular basis. I have also made my comments to staff about the Official Plan and the Zoning Bylaw update. I believe that is part of my responsibility as a member of Council.

¹ *Dhillon v. Moore*, [2018 ONMIC 15](#), paragraphs 96-104

² *B.C. v. London Police Services Board*, [2011 HRTO 1644](#), at paras. [46-48](#)

2. I am an engineer and a professional planner. I believe that I am entitled to use my credentials in exactly the same way that the Complainant uses his degree in his email address. I however do not use any of my credentials in my City email signature line. Because the City computer that I have, often does not permit me to attach attachments, I have used my personal computer to send emails to staff with attachments. On at least one occasion I have told the staff member why I am using my personal computer. The fact that my signature on my personal computer includes my credentials, cannot be construed to suggest that this somehow is an attempt to pressure staff.

I recognize that my background is unique and gives me a greater insight into city planning than most citizens. However we all bring our particular expertise to the job of Councillor. Similarly it would be a loss to the public if an economist had to limit their comments on city financial matters or a teacher on traffic safety in school zones.

3. I am not aware of any documentation of unusual or inappropriate interest in rezoning applications. If such documentation exists it should have been provided.
4. I am not aware of any documentation concerning a history of pressuring staff to change their opinions. If such documentation exists it should have been provided. I have never to my knowledge asked or pressured staff to change their planning opinion. I have asked questions about the basis for their opinion and have on occasion disagreed with their interpretation of policies. That, however, is what honest discourse is all about.

With respect to the email that was provided, I recall that there was a discussion about what area should be included in a density calculation. I had asked what the density of the area would have been if only the Yonge Street frontage was used instead of a larger area. I recall that staff did the calculation and got back to me. I was satisfied with the number and there was no further discussion of that subject.

VI. My Investigation

In the course of my investigation, I spoke with staff and the Ward Councillor in which the development was proposed, another Member of Council and the Complainant. As detailed below, I received information about the general development application process and about this particular application.

(i) The City of Barrie Planning Department Development Application Process³

Once a development application has been received and confirmed as complete by the staff of the Department of Planning and Growth Management ("PDGM"), it is assigned to an individual File Manager. Public Notice is given to residents.

³ [Development Review Process | City of Barrie](#)

A formal Public Meeting about the application is to be held in front of the **Affordability Committee**, as required under the Planning Act. At this meeting, the applicant will present the proposed amendment and members of the public will have a chance to speak and ask questions. Members of the public can also make written submissions if they cannot attend the meeting. No decisions are made at this meeting.

Notice of the Public Meeting is sent by regular mail to property owners located within 120 metres of the subject lands and a sign is posted on the subject lands.

Following this review, Planning staff submit a report making a recommendation to **General Committee** regarding the proposed amendment. When Council sits as General Committee, any Member of Council may ask questions of staff and when planning applications are on the agenda, may seek clarification on planning matters. General Committee will consider the Planning Department's staff report recommendation, take into consideration points raised by Members of Council and then make a recommendation to City Council, which will decide on the application.

(ii) **Facts and Information about the Application**

I was advised by Staff that it is not out of the ordinary for a Member of Council to reach out to Planning Department staff with questions about staff reports at the Technical Review stage of the Planning Application process. I was advised, however, that generally, it is the local Ward councillor who contacts staff, and in the circumstance of the complaint before me, the Respondent was not the local Ward councillor. I was informed that it is rare for a Member of Council to get too involved in a planning project outside of their ward.

Generally, when the Council agenda is released, Planning staff will reach out to the Ward Councillor to provide them with an advanced advisement of the matter coming forward to Council. A 2018 Communications Policy ("2018 Policy") states:

Council is reminded to send any questions or concerns/issues directly to the CAO, or applicable General Manager or Executive Director in order to ensure the question or issue can be assigned to the appropriate staff in a timely manner and to ensure follow up. If contacting Directors via email please copy the appropriate GM or Executive Director; this will allow Executive Management Team (EMT) to track issues, identify trends and ensure appropriate follow up.

In this particular matter, the Staff Report was placed on the Council agenda. The report contained a Density Analysis (Unit per hectare targets), which according to Planning Staff is contained in almost every planning staff report for intensification projects. A witness explained that the Respondent sought to have Planning staff "redo the density calculation that we do in almost every staff report for intensification projects such as this. This is not a normal question. I think it is fair to say, [the Respondent] being a professional engineer and professional planner, would have a different understanding of this request than a lay person or other member of Council."

Witnesses testified that generally speaking, it is not uncommon for the City's Official Plan to show 300 unit per hectare density, with the application showing 800 units per hectare.

This was explained by staff witnesses to mean that while a specific application may appear to have a high density, taking into consideration to total City's Official Plan density, the dwellings would be spread out over a larger area than that of the application area. I received evidence that the issue was centered around a development proposal on Yonge Street in Ward 8 and that there was an effort from a resident (whose home backs onto the area and who is also a planner by profession) to create a case against the development based on planning technicalities. The witness stated that this effort was directed through the Respondent. The staff witness had attended a public community meeting at which the members told them that they had been advised by a Member of Council about different ways to conduct the density calculation. I did not receive evidence to confirm who the Member of Council was that provided the residents this information.

I received evidence that the Respondent had left a phone message to City Planning staff including questions to the effect of "what if you do the calculation a different way?" and "what if you take out the church?" and "can you run the numbers again without these?" I received evidence that Planning Staff responded to the Respondent's questions advising that they cannot submit the density calculations in the staff report without certain buildings. Uncomfortable with being asked to make such changes, Planning Staff had a meeting with the CAO and the General Manager to discuss this request. In the course of this investigation, the Respondent explained that he asked the question or made the suggestion "for [staff] to have in [their] back pocket because residents may inquire" and not to compel staff to make changes. However, Planning Staff advised that the density calculations have been done in the way set out in the staff report for years and staff had given the technical reasons for this formula.

In discussions with Planning staff, I was advised that following the suggestion of the Respondent would create a slightly higher units per hectare number than the number reflected in the staff report submitted. The staff planning witnesses advised that by requesting that Planning staff consider taking out the church land and thus, taking out "big chunks of land", would have resulted in higher density. I was advised that historically, when completing density calculations, City of Barrie Planning staff have 'spread' out the density of the proposed development across the neighbourhood to show how the overall density of the area will increase with the proposed development. Many times, when doing this, the overall density calculation is still quite low (because many subdivisions have quite low density), even if the proposal has a high density calculation on its own. I was advised by the planning staff whom I interviewed, that by 'taking out' any of the land in the density calculation, staff believed that the Respondent's request would have ended up in a higher density count for the entire area, which may have led to the conclusion that the proposal was not appropriate. The Respondent asked this question of staff after they had already published the staff report with their professional recommendations; those witnesses felt that the fact the Respondent was asking staff to 'redo' a density calculation that would counter staff's professional recommendations.

Staff advised that removing a building or land "would not necessarily impact approval"; however, "especially in an infill project, when one looks at unit per hectare, the infill is small so the density is high". As a result, the most likely conclusion to removing something would be that people trying to oppose the application project would claim that the project would cause density that was too high. The information that I received during this

investigation confirmed that the general position of the City of Barrie's Planning professionals is that density does not act on a "per site basis", but rather it is on the basis of the hectares around the proposed project. I was advised that sometimes if there is a church, or a plaza, the proposal specific area may have a high density, but the whole area would not be calculated as high density.

Occasionally, staff have run multiple density calculations for Council in reports where there were viable options that staff believed to be professionally sound. However, in the circumstances of this Complaint, a witness explained that the Respondent's question "almost felt as though [staff] was being asked to 'disprove' the recommendations in their own original report".

This planning proposal had "a lot of opposition in the community, including a planner who was in the area". The Respondent's comment to staff that "the other side was running their own calculations" and "what if you did it that way" was received by staff as using different methodology from the approved methodology of the City.

I received evidence that the Ward 8 Councillor was not aware that the Respondent was engaging with Planning Staff to suggest they change the density calculations. Certain Ward residents were opposed to the development application and while not required, generally Members of Council will include the Ward Councillor in concerns over a planning application in their Ward.

In their email to both the Ward 8 Councillor and the Respondent, in an effort to bring the Ward Councillor up to speed on the intervention on the Respondent, Planning Staff wrote:

Hi Councillor Riepma and Councillor Harris,
Councillor Riepma left me a phone message to get some different density calculations and I wanted to keep everyone on the same page as I get the team working on it.

Councillor Riepma asked for density calculations only for properties fronting onto Yonge Street, rather than the full study area staff used for the Appendix G in both staff reports. Councillor Riepma also suggested taking out Institutional / commercial land in the overall calculation. I will get the team to look at this but I am not sure how long it will take for them to get me a response. But as soon as I have it, I'll let you know.

In the meantime, below is a screen grab of the density chart and I just wanted to point out that while the study area is larger than Councillor Riepma is asking us to look at, we do differentiate between the densities using only residential lands in the calculations (yellow lines) and those densities when we have more land uses included (green). The residential only land gets a slightly higher units per hectare number than the "all in" land calculations. In addition, look at the notes that show what is not included, such as parks, etc.

VII. Analysis and Findings

Did the Respondent breach Rule 14.1 of the Code?

No.

Rule 14.1 states that no Member shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties.

The behaviour of the Respondent that was alleged to have contravened Rule 14 was the action of suggesting Planning staff change their recommendation report to Council to include different density calculations that would only consider certain residential area numbers and remove the institutional/commercial land from the calculations. The Respondent's suggestion was an attempt to improperly influence Town staff in the performance of their duties. While the Complaint alleges that the Respondent was using the influence of his office to support local residents (not in his Ward) in direct opposition to the recommendations contained in the Planning staff report, to be clear, simply supporting a position taken by a group of residents, is not a contravention of the Code. Only using one's official position to influence staff to change the content of a staff report to a position that staff could not support professionally is conduct that runs afoul of Rule 19 of the Code not Rule 14.

In his reply to the Complaint, the Respondent states:

I recognize that my [professional background as a planner] is unique and gives a greater insight into city planning than most citizens. However we all bring our particular expertise to the job of Councillor. Similarly it would be a loss to the public if an economist had to limit their comments on city financial matters or a teacher on traffic safety in school zones.

The Respondent either failed to appreciate or did not attend to the fact that his professional credentials together with his official position as a Member of Council, supporting a critic of the development, was giving credibility to that position based on his official position and his professional knowledge. I am by no means finding that a Member cannot use their unique professional expertise to bring a "greater insight into planning" matters being considered by Council. Rather, a Member cannot use their expertise in a subject area to supplant the expertise and recommendations of staff.

It was clear from the information that I received during the investigation, that other Members of Council are aware that the Respondent is a planning professional and receive his comments with a level of deference. His involvement went beyond representing constituents and what was reasonably appropriate conduct for a Member of Council. Prior to discussion at a Committee or Council meeting, the Respondent's conduct demonstrated his support for a position that was contrary to the staff's position. Having a different position from other Members of Council is allowed, including holding one adverse to a staff position. However, having an entrenched position on a matter to be discussed and decided

by Council to such an extent that a Member contacts staff to suggest they make changes to a staff report that would alter the density calculations that would be before Committee for discussion and decision, is inappropriate. If raised (and I am not condoning the suggestion by the Respondent), it would be more appropriately raised at a Committee or Council meeting where staff could publicly give reasons for their recommendations in the staff report. Coming from a planning professional, the suggestion may have carried more weight than of a Member who did not have subject matter expertise in the matter being considered by Council. City Council is a deliberative body and the City is a workplace. Recognizing the authority of Members of Council or of Local Boards and the power discrepancy between those individuals and staff persons, Council included in the Code of Conduct a provision requiring and reminding members to use appropriate channels to address concerns about staff. The Respondent ignored, and breached, those rules by going to planning staff and suggesting a significant change to density calculations policy, in so doing contravening the 2018 Policy that states:

the CAO, or applicable General Manager or Executive Director in order to ensure the question or issue can be assigned to the appropriate staff in a timely manner and to ensure follow up. If contacting Directors via email please copy the appropriate GM or Executive Director; this will allow Executive Management Team (EMT) to track issues, identify trends and ensure appropriate follow up.

I find that the Respondent reasonably ought to have known that suggesting to Planning Staff that certain institutional lands not be included in the density calculations was not being done "...for staff..." or so that staff "could have this ready in their back pocket" if questions came up. Whether or not the proposed development impacted the resident who is also a planner and whether this individual has expertise in planning matters, the fact is that Planning Staff are the City's subject-matter experts on City planning policy application, not the Respondent and his question to Planning Staff was an improper use of his position. However in order to make a finding of a breach of rule 14, I must determine that the Member used the influence of his office for a purpose other than that of the exercise of his official duties. There is no evidence that the Respondent used the influence as a Councillor for a purpose outside his official duties- he was operating within the ambit of asking questions about a matter before Council; however, the evidence is that the what he suggested of staff was inappropriate. Is this sufficient to give rise to a contravention of rule 14? While I find the Complainant's argument persuasive, a finding of contravention of rule 14 is only compelling if the Respondent was using his role or title for something outside of his official role. This was not the case in this instance.

Did the Respondent breach Rules 19.3, 19.5, 19.6 and 19.9 of the Code?

Yes.

The appropriate way for a Member to bring forward concerns or suggestions to a staff person, is at a properly constituted meeting of General Committee or Council or the Ward Councillor through adherence to the 2018 Policy. The public has a right to bring forward their concerns to their Ward councillor with respect to a proposed planning development. The process attempts to ensure that it is the local ward councillor who addresses matters

as the council representative for a particular area. When matters are raised with another Member of Council, typically, that Member would notify the relevant Ward councillor. Here, the Respondent attempted to go around the Ward councillor directly to staff to ask that they perform a calculation which would undermine their published staff report.

Rules 19.3 and 19.5 relate to councillor behaviour which inappropriately directs staff. Staff do not have an interest in the recommendations to Council, except for the best interest of the municipality, in accordance with the Official Plan and best practices in planning. As noted above, witnesses explained that it felt that staff was being asked to disprove their professional report. It is for this reason that staff spoke to the CAO and GM at the time, saying that they would not perform this calculation, and this was communicated to the Respondent in person. I was told by staff that that if the residents in the area wanted to hire their own planner to perform a different density calculation, they could have done so. However, even then, the position of City staff would be that “the calculation [being requested by the Respondent] would be like comparing apples to oranges as the methodology was not consistent”. I find that the Respondent improperly directed staff in a manner which was not authorized by Council.

Rule 19.6 requires members to be respectful of the role of staff who advise objectively and without influence from members or factions of Council. Rule 19.9 prohibits members from using or attempting to use their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with that person’s duties.

There is ample evidence to establish that staff felt that the Respondent was using or attempting to use his authority to influence staff with the intent of interfering with the staff’s duties and did so in a manner which was disrespectful of the objective and politically neutral role of staff. Suggesting that staff remove certain land from overall density calculations, when the staff report was already public and the question was not posed at a public meeting, was received by staff as disrespectful to their professional integrity and inappropriate.

The Ontario Municipal Councillor’s Guide⁴ sets out in describing a Municipal Councillor’s role, that:

Representative role

representative role of council is clearly indicated in section 224 of the Act. At first glance, the representative role appears to be fairly simple and straightforward. But what does it involve?

On one hand, you were elected by your constituents to represent their views when dealing with issues that come before council. Your constituents have many views and opinions, and you cannot represent all of them, all of the time.

⁴[1. Role of council, councillor and staff | The Ontario municipal councillor’s guide | ontario.ca](#)

On the other hand, election to office requires you to ***have a broader understanding of the issues that impact the municipality as a whole. You will have to consider conflicting interests and make decisions that will not be popular with everyone. Generally, evidence-based decisions are made by taking into account all available information.***

[...]

There is no single, correct approach to the representative role. On many issues you may find that you fall somewhere between two, sometimes opposing viewpoints. You will quickly develop a caseload of citizen inquiries that will need to be further investigated and, if possible, resolved. You may get these inquiries because of your background and interests or because of the issues in your particular ward, if your municipality operates with a ward structure.

Understandably, you will want to try to help your constituents. However, ***be sure to familiarize yourself with any policies or protocols that your municipality may have for handling public complaints and inquiries, and remember to consult municipal staff.***

There may also be circumstances where decisions are made by designated staff who operate at arm's length from the council, and where it could be inappropriate for elected officials to interfere or be seen to be interfering. Examples of this include decisions made by statutory officers such as the clerk, treasurer, fire chief, chief building official or medical officer of health. These individuals may also be acting in accordance with accountability provisions under other pieces of legislation, which may impact their advice to council.

A councillor who has made promises that they cannot keep may lose credibility with the public and strain their working relationship with staff. [...] (Emphasis added)

I received evidence through interviews during this investigation that Planning Staff do not “side with or against” a position of residents but rather apply the provisions of the Planning Act and City policies to the planning applications brought forward and provide Council with their best advice and recommendations in accordance with the provisions of the Planning Act, City policies and their own professional rules of the regulation profession of Planners and Engineers. Information that I received from subject matter witnesses, set out that Members of Council should not be involved in the determination of a professional planning recommendation. Staff advised that the Respondent did not ask “how do you do your density calculations” but rather said “what if you did it this way” in a manner which suggested that he was instructing them to change their calculations, particularly when it was well-known that the proposal faced opposition in the community.

The Planning Staff report had gone out on the public agenda, and the Respondent asked staff to change the density calculations. The Respondent did not press the issue after making the suggestion to staff and thus, from his perspective, his request was a simply

question and suggestion. "What would this look like if you didn't do this" to a layperson, is simply a question. I am advised that a professional planner or engineer knows what the questions suggested because density calculations are based on the hectares and not just the project. I was advised by witness planning staff that as a professional planner, the Respondent should have known not to ask staff to re-do the density calculations after the staff report was already posted and in the way that he suggested (also in the way that the group in opposition to the project, including a professional planner, had suggested) because he ought to have known that the calculations done in that way would give the appearance of a high density although the overall density would not be high.

On the City of Barrie, Planning Building and Infrastructure website, under Technical Review, Recommendation and Council Decision, it states⁵:

In addition to conducting their own technical review, Planning staff circulate the application to other City departments and to relevant outside agencies (such as Conservation Authorities or provincial ministries) for commentary.

Following this review, Planning staff submit a report making a recommendation to **General Committee** regarding the proposed amendment. General Committee will consider this report and then make a recommendation to City Council, which will decide on the application.

The role of Council in the planning process, generally speaking, is to set out the planning policies that City staff should operate within. To that end, a municipal Council has the responsibility to make a decision on a development application at the end of the development application or re-zoning process. The steps in this process include pre-consultation, public consultation: neighbourhood meeting; pre-submission review; complete application submission; public notice; public meeting and technical review, recommendation and Council decision.

The underlying premise of the obligation of Members of Council to avoid inserting themselves into the City planning process is to ensure the integrity of the development and rezoning process and fairness in the implementation of the Official Plan and the supporting City policies.

The Code provisions contained in Rule 19 are in place with a view to ensuring that Members of Council do not conduct themselves in a way that would cause a reasonable person to think that she/he would show preferential treatment to themselves or others or that she/he can be improperly influenced by a bias, in addition to respecting the professional subject-matter expertise of staff in the role in making professional recommendations to Council. As a Member of Barrie City Council, the Respondent is required to consider whether his relationships and affiliations could prevent him from acting fairly and objectively when performing their duties for the City. If he cannot be fair and objective because of his relationship with a member of the public or affiliation with a group or residents and his professional knowledge causing him to have an entrenched position, the Respondent should have refrained from participating in the discussion with planning staff, not at Committee and not insofar as he stood to gain financially, but rather

⁵ [Development Review Process | City of Barrie](#)

in relation to a real or *perceived* granting of favor towards an individual or group.

The Code recognizes that the decision-making authority for the municipality lies with Council, not an individual Councillor and that it is the role of staff of the municipality to implement Council's decisions. Members of Council recognize and respect the role of City staff and affirm that only Council as a whole has the capacity to direct staff members. Council as a whole must be able to review information, as brought forward by subject-matter experts staff and individual Members of Council may receive, comment and ask questions at Council, in order to fulfill decision-making duties and oversight responsibilities and this is a legitimate role of Council. However, this does not mean that an individual Member of Council may take it upon themselves to insert themselves into the process and make suggestions that are likely to be received as direction to staff in contravention of section 19 of the Code. The fact that the Respondent posed a question to staff, who ultimately refused to follow through on his request does not mean that his conduct did not amount to a breach of the Code. Attempts to use one's authority as a member to influence staff is a breach of Rule 19.9 of the Code. The Respondent's conduct of asking Planning staff to redo the density calculations after the staff report was made public, was not harmless. It was not acceptable to pose a question to Planning Staff outside of the public meeting that was inconsistent with past practice and according to one planning witness had the effect, for a planning professional, "of asking staff to disprove their recommendations in the staff report". This was not trivial or insignificant nor something that a planning professional should agree to do. The fact that there was no unpleasantness in the interaction between the Respondent and Planning staff, that the Respondent did not press the issue or make further attempts to compel staff to redo the calculations, does not remove the inappropriateness of conduct. Common sense dictates that people are usually able to foresee the consequences of their actions. Therefore, if a person acts in a manner which is likely to produce a certain result it generally will be reasonable to infer that the person foresaw the probable consequences of the act, In other words, if a person acted so as to produce certain predictable consequences, it may be inferred that the person intended those consequences.⁶

VIII. The Respondent's Comments to the Draft Findings

Upon receipt of the draft findings to the Complaint, the Respondent provided his comments. With respect to my draft findings that I received evidence from a witness that the opposition to the development proposal on Yonge Street Ward 8 by residents (led by a resident and planner whose home backs onto the area) to create a case against the development based on planning technicalities was directed through the Respondent, the Respondent stated that:

This is absolutely not true. And that statement appears to be fundamental to your analysis. It suggests that I involved myself inappropriately in this application and acted as a lobbyist to pressure staff to change their report. Nothing could be further

⁶ [R. v. Daley](#), 2007 SCC 53, 2007 CarswellSask 707 Supreme Court of CanadaSas

from the truth.

My findings did not conclude that the Respondent directed the community objections against the development or lobbied on behalf of any group. Based on the information that I received throughout the investigation, I determined that the Respondent's conduct undermined or attempted to undermine the independence of Planning staff.

The Respondent further set out that:

While I understand your reasoning and the conclusions that you came to, they are based on an incorrect understanding of the facts. While I was generally aware of the concerns expressed by the residents in the area of the proposal, I was genuinely trying to come to grips with the question of density. As you state on page 12 the question really was "what would it look like...?". More specifically my question was "what would the density calculation be if the area considered was more limited and excluded lands that were not designated for residential use?" Under the circumstances, it was a reasonable question to ask.

In his initial response to the Complaint, the Respondent stated that his question was what the density of the area would have been if only the Yonge Street frontage was used instead of a larger area. Given that the Yonge Street frontage contains non-residential uses, it is not clear which question the Respondent posed. Either way, it is clear that the Respondent was seeking to have staff perform updated calculations that would increase the density and support a finding that the application should be denied. In speaking with witnesses, including staff, the question was not viewed as trivial or insignificant nor something that a planning professional would agree to do.

IX. Findings

When evaluating the integrity and ethical conduct of a Member of Council, my role as Integrity Commissioner is to apply the rules of the Code to the facts gathered throughout the investigation. When making decisions on acceptable conduct, Members of Council are to follow the rules of the Code. The Respondent has attended the November 2022 Council Orientation Session and other information sessions at which the rules of the Code were covered, including section 14.1 Improper Use of Influence, section 19 Conduct Respecting Staff and the importance of Members familiarizing and adhering to the Procedural Bylaw and Council-Staff Relations Policy.

I find that conduct of the Respondent has undermined the independence of Planning Staff, through the improper insertion into the subject-matter expertise with respect to staff, which is discussed above.

In respect of these rules, I find that the Respondent has breached Rules 19.3, 19.5, 19.6 and 19.9 of the Code.

X. Integrity Commissioner Recommendations

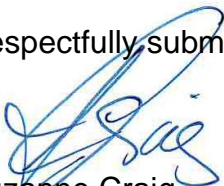
Section 27.3 of the Code sets out that if upon completion of the investigation the Integrity Commissioner finds that a breach of the Code occurred, the Commissioner may recommend that Council impose a penalty as set out in the *Municipal Act* of a reprimand; suspension of remuneration paid to the member for a period of up to ninety days, and/or remedial action as set out in subsection 27.3 (ii) of the Code. Examples of remedial actions include a verbal/written apology, or a requirement to repay or reimburse moneys received, removal from a Local Board or committee; loss of Chairmanship or any other remedial action recommended by the Integrity Commissioner.

The Respondent is in his second term of elected office. The Member has attended Council Education Sessions and received information bulletins from the Office of the Integrity Commissioner. The Respondent was not obligated to raise his concerns with the Ward Councillor, however his decision not to advise the Ward Councillor of his communication with Planning Staff, as well as his suggestion that Planning Staff remove certain lands from the overall density calculation cannot be received by this Office as having been committed by the Respondent through inadvertence or an error of judgement made in good faith. While the Planning Staff with whom I spoke advised that they have “thick skin” and are able to withstand inappropriate insertion of a Member of Council into the operations of the Planning Department, that should not be a requirement of their roles. Members of Council are required to understand their role and to follow the rules set out in the Planning policies and Council-Staff Relations Policy. The Respondent’s professional designation certainly provides him with a good understanding of planning matters that come before Council for discussion and decision and his knowledge and experience can bring a welcome perspective to the deliberation of Council. My findings in no way suggest that a professional planner or other professional should not allow their professional expertise to enhance decision-making. However, staff are the subject-matter experts and to posit the suggestion made by the Respondent did not take into consideration his question would be received as direction given his role as a Member of Council and his own experience as a planning professional.

I recommend that Council:

As set out in section 27.3(a)(i) of the Council and Committee Member Code of Conduct, impose a penalty of suspension of remuneration paid to the member for a period of 15 days.

Respectfully submitted by:



Suzanne Craig
Integrity Commissioner

September 26, 2024

