

## **CODE OF CONDUCT PANEL DETERMINATION REPORT\***

### **MEANDER VALLEY COUNCIL COUNCILLOR CODE OF CONDUCT**

Complaint brought by Mr Martin Gill (General Manager, Meander Valley Council)  
against Cr Rodney Synfield

**Date of Determination:** 8 July 2019

#### **Code of Conduct Panel:**

Lynn Mason (Chairperson)

Sue Smith (community member with experience in local government)

Anthony Mihal (legal member)

#### **Summary of the Complaint**

The complaint from Mr Gill was submitted to the Executive Officer of the Code of Conduct Panel (*the Panel*) on 20 September 2018. The Chairperson of the Panel undertook an initial assessment of the complaint and advised on 16 October 2018 that she had determined that the whole of the complaint was to be investigated and determined by the Panel. The Panel's jurisdiction to investigate the complaint was curtailed when Cr Synfield failed to retain his seat on Meander Valley Council (*the Council*) in the October 2018 local government elections.

Cr Synfield returned as a Councillor following the resignation of a sitting Councillor in April 2019. The Complainant was advised as a matter of courtesy that the Code of Conduct Panel again had jurisdiction to hear the complaint, and would do so, provided that he did not wish to withdraw the complaint. Mr Gill advised that he did not wish to withdraw the complaint. The Panel subsequently recommenced its investigation.

Cr Synfield was notified on 8 May 2019 that the investigation into the complaint had been reopened, and documents pertaining to the complaint were sent to him again.

The Council adopted a revised version of the Code of Conduct (*the Code*) on 12 March 2019. Panel investigated the complaint in accordance with the Code adopted by Council on 12 July 2016, which was in force at the time of the alleged breaches.

The sections of the Code which Mr Gill alleged Cr Synfield breached are:

#### *Part 7 Relationships with community, Councillors, and council employees*

##### *7.1 A Councillor*

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

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\* Section 28ZK (7) of the *Local Government Act 1993* requires that any person who receives a determination report must keep the determination report confidential until the report is included within an item on the agenda for a meeting of the relevant council.

7.5 *A Councillor must not contact an employee of the council in relation to council matters unless authorised by the General Manager of the council.*

#### **Part 8 Representation**

8.7 *The personal conduct of a Councillor must not reflect, or have the potential to reflect, adversely on the reputation of the council.*

### **The Complaint**

Mr Gill alleged that Cr Synfield's behaviour towards a female council employee (*the employee*) over a period of months had led to her specifically requesting Cr Synfield to restrict his contact with her to work related matters. This occurred on 18 July 2018. Cr Synfield responded to the employee on the same day, stating that he had wanted to give her a birthday present *100% as a private person, caring about someone else (you); and referring to the interest we have already expressed about and for each other.* In a second message five days later, in reply to Cr Synfield's email of 18 July 2018, the employee stated that *I think you have misunderstood the meaning and intent of my email to you. I feel a boundary has been crossed and it is important to me that you respect my previous request.* She also said that the interaction between herself and Cr Synfield was *professional, and nothing beyond that.*

On 2 August 2018 Mr Gill, as General Manager, emailed Cr Synfield at 11.58 am, stating in summary:

- That he (Mr Gill) was the only person within the Council who was aware of all the details of the situation between Cr Synfield and the employee;
- That the employee had been uncomfortable in her encounters with Cr Synfield because she detected differences between the way she viewed her relationship with Cr Synfield, and Cr Synfield's view of it;
- That the employee felt no anger or malice towards Cr Synfield; and
- That he wanted to consider how Cr Synfield could return to his duties as a Councillor.

Mr Gill went on to instruct Cr Synfield on his expectations of the Councillor's future behaviour towards all council employees, viz.,

- *You make all initial contact with me when you have questions or enquiries, or ask the Mayor to make an enquiry on your behalf;*
- *If you do need to see a director you make an appointment;*
- *You do not come into the staff area without an appointment or without a director having come to accompany you through the staff area.*

Mr Gill concluded his email by offering whatever support within Council's power that Cr Synfield needed to assist him to return to his duties as a Councillor. Cr Synfield did not respond to the General Manager.

Mr Gill alleged that on or about 3 August 2018, Cr Synfield approached the employee as she sat in her car in a public street. Cr Synfield did not dispute that this had occurred. As a result of this approach, the employee asked Mr Gill, as General Manager of the Council, to discuss the situation with the directors (senior management of the Council).

On 7 August 2018, Mr Gill wrote again to Cr Synfield. He received no response.

Mr Gill alleged that on 19 August 2018, Cr Synfield went to where the employee was feeding her horses alone in the evening. Cr Synfield did not dispute that this had occurred. Both the employee and Cr Synfield agreed that the employee was so startled that she screamed when he

appeared unexpectedly. At this time, Cr Synfield had made no contact with the General Manager in response to his emails.

On 21 August 2018, the General Manager wrote again to Cr Synfield asking him to *stop to reflect and consider what impact you are having* on the employee.

On 24 August 2018 the General Manager advised Cr Synfield in writing that he had sought legal advice regarding the situation with the employee and *her ability to feel safe*.

Mr Gill alleged that on 26 August 2018, without the General Manager's permission, Cr Synfield approached another female council employee at a supermarket to ask her about a Council matter. Cr Synfield did not dispute that this had occurred. On 27 August, the General Manager advised Cr Synfield in writing that this employee had told him of Cr Synfield's approach to her (in a public place and without seeking permission from the General Manager), and that the matter of Cr Synfield's situation vis-à-vis council employees (including the employee) would be discussed at a Council workshop on 28 August.

Cr Synfield did not respond to any of the General Manager's emails. He did not dispute that he had received all of them.

On 20 September 2018, the General Manager, Mr Gill, lodged his complaint against Cr Synfield.

### **Procedure (including the hearing)**

Under s28ZD (1) (a), the Panel is to make every endeavour to investigate and determine a complaint within 90 days of the Chairperson's determining to investigate the whole of the complaint. The Panel could not complete its investigation in respect of this complaint within that time. The reason for that was that the Panel was without jurisdiction to investigate and determine the complaint between September 2018 and April 2019, owing to the failure of Cr Synfield to retain his seat as a Councillor. The investigation was resumed as soon as practicable after Cr Synfield resumed his role as a Councillor.

Cr Synfield responded to the initial notification of the complaint on 24 October 2018 by requesting that he be given further time to respond to the complaint. The Panel acceded to this. On Cr Synfield's return to Council in April 2019, the investigation reopened.

The Panel met on 10 May 2019 to consider the complaint and response from Cr Synfield. Following that meeting, the Panel requested information from Mr Gill as follows:

- *The Panel has received a document entitled 'Extract from Employee Statement to Council Solicitor'. Please provide the full statements provided by (the employee), or any other party, relative to the complaint;*
- *Please provide a copy of the brief given to Edge Lawyers in the matter of the complaint, the brief which resulted in the letter from Edge Legal to the General Manager dated 23 August 2018;*
- *Please advise the Panel of any leave from Council taken by Cr Synfield during the period covered by the complaint;*
- *When did Cr Synfield return as a Councillor following the recount?*
- *Is (the employee) still employed by the Council, and if so, in what capacity? If she has left Council's employment, please tell the Panel of the date her employment terminated.*
- *Please provide any other evidence you consider relevant to the complaint.*

The Panel determined to conduct a hearing as part of its investigation of the complaint. In response to the Panel's request Mr Gill provided further documents before the hearing. The parties were given copies of all of the written material considered by the Panel before the hearing.

The hearing was held on 30 May 2019, when it was adjourned after three hours, and concluded on 5 June 2019. Cr Synfield called two character witnesses and two witnesses with knowledge of Cr Synfield's role on council and in the community: Mr Ian Mackenzie and Cr John Temple. Mr Gill called one witness, the employee. The employee provided her evidence by telephone.

The Panel heard both character witnesses attest to their relationship with Cr Synfield.

Mr Gill then made his statement to the Panel, and provided written submissions, including:

- Details of three incidents which he considered demonstrated contravention of the Code by Cr Synfield –
  - Incident 1, 3 August 2018<sup>1</sup>, when Cr Synfield approached the employee while she sat in her car awaiting traffic movement in a public street;
  - Incident 2, 19 August 2018, when Cr Synfield approached the employee while she was feeding her horses in an isolated rural area; and
  - Incident 3, 26 August 2018, when Cr Synfield followed a senior female council employee to the supermarket and spoke to her there about a council matter;
- Copies of emails between the parties pertinent to the above incidents.

Cr Synfield was provided with copies of the above material at the hearing.

Mr Gill requested that as a result of the Panel's investigation of the complaint, Cr Synfield acknowledge in writing that his behaviour was inappropriate, and acknowledge in writing and abide by the direction that he have no contact with Council employees.

The employee tabled a chronology of the events from March 2017 to 19 August 2018, and included a number of emails which had been exchanged between herself and Cr Synfield during that time.

The employee also stated that:

- The situation had been going on for almost 12 months and had taken a significant amount of time to manage;
- That from approximately mid-2018, Cr Synfield's phone calls to her had become more frequent, so that she began to screen his calls and send them to voice mail;
- That from approximately June 2018, Cr Synfield's emails had become more concerned with matters outside council business, and that 'the intensity of his level of concern for me' began to be worrying;
- She had been and continued to be the subject of discussion and opinion, and that she was embarrassed and distressed by this occurring in her place of employment;
- Her role as an employee had of necessity been curtailed, so that she no longer attended Council meetings, no longer presented at Council workshops, and no longer attended Council events.

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<sup>1</sup> This may have been Thursday 2 August 2018. Mr Gill sent his first relevant email to Cr Synfield on 2 August 2018. This incident occurred later on that day or very shortly afterwards.

Cr Synfield considered that his relationship with the employee had three elements: employee to Councillor, community member to Councillor, and private person to private person. Cr Synfield disputed that he used Council matters as a vehicle for 'other' interaction.

Cr Synfield said that his only motivation in contacting the employee after her email to him on 23 July 2018 was not because he accepted that he had 'crossed the line' as a Councillor with an employee, but because of his care and concern for her, and if his care and concern had caused her angst and concern, he wanted to apologise to her. He tried to do this in the street on or about 3 August 2018.

Mr Gill became involved in the issue because as General Manager, the employee appealed to him for assistance. Cr Synfield was asked by the Panel whether he considered that he might have tried to resolve the matter of a possible apology by contacting the General Manager or another senior member of staff, or another Councillor. Cr Synfield said that between 3 August 2018 and 19 August 2018 he had tried to apologise through the auspices of Cr Temple, but was told that the employee had not wanted to hear such an apology: she 'wanted to put the matter behind her'. He said that he did not consider it was necessary to use the context of Council to make an apology to the employee, as again, he did not consider that he had breached the boundaries of acceptable Councillor to employee behaviour, but rather, that he had caused the employee angst and concern as a private individual relating to another private individual.

He regarded the incident on 19 August 2018 as 'organic': an opportunity which arose accidentally, and which he saw as another opportunity to apologise for causing the employee angst and concern. He did not see this as an incident between a Councillor and an employee, but rather as 'person to person'.

Mr Mackenzie appeared as a witness for Cr Synfield. He stated that the times at which Cr Synfield could pick up fodder from his property for his farm varied according to his own commitments, and therefore he disputed that Cr Synfield deliberately timed his trips to collect fodder so that he could contact the employee while she was attending to her horses on agistment.

Cr Temple appeared as a witness for Cr Synfield. When he was asked by Cr Synfield to apologise on his behalf to the employee, he had asked the General Manager to be permitted to speak to the employee, and this was approved. Later that day the General Manager told Cr Temple that the employee did not wish to receive the apology from him. He believed that Cr Synfield believed that the matter was based on a misunderstanding.

Cr Synfield tabled emails in groups numbered from 11 to 33, dated from 12 January 2018 to 23 July 2018.

The hearing was adjourned at approximately 12.30 pm and resumed on Wednesday 5 June 2019. In the interim between adjournment and resumption, the emails tabled by Cr Synfield were copied and sent to the Panel and to Mr Gill.

Cr Temple resumed giving evidence on 5 June 2018. Cr Temple then left the hearing.

Cr Synfield's response, in summary, made the following points:

- There had been occasions when the employee had contacted him as a Councillor about matters not directly related to her role as an employee, but rather, as a member of the community;

- There had been occasions when the employee and Cr Synfield had conversations about farming and other subjects;
- He had been stunned to receive the employee's email on 23 July 2018;
- On the occasion of the contact which occurred in the street on or about 3 August 2018, he had said in conclusion, 'I'm sorry';
- In his later evidence he referred to this as 'an aborted apology';
- The employee had told him that she did not consider the incident on 3 August 2018 as a 'confrontation';
- His contact with the employee on 3 August 2018 was 'as a private person';
- He agreed that in any public area, any Councillor is a Councillor 'all the time';
- He reiterated that at the horse agistment area on 19 August 2018 he was not apologising as a Councillor but as one private person to another;
- He stated that on 19 August, it was his view that he was not having contact with a member of staff, and that the General Manager's emails of 2 August 2018 and 7 August 2018 were 'misconceiving' and 'inflammatory';
- He was not sorry that he had interacted with the employee after 2 August 2018;
- He did not think that he had breached the Code by raising a council matter with a council employee at a supermarket on 26 August 2018, but said that he discussed an upcoming Council meeting with her, for which he did not have the General Manager's permission;
- He did not respond to the General Manager's invitations to discuss the primary matter with the employee because that would give 'some imprimatur to what was being said', and also, it would have required him to respond to the General Manager.

Mr Gill and Cr Synfield were invited to make submissions on sanction. Cr Synfield made no submission on this matter at the hearing. Mr Gill indicated that the Council would arrange and pay the cost of appropriate training in the event that the Panel ordered Cr Synfield to undertake such training.

The Panel considered possible sanctions in the event that the complaint were to be upheld. On 18 June 2019 Mr Gill and Cr Synfield were invited to comment on an order for training with Rachel Moore Consulting as a possible sanction on Cr Synfield. Cr Synfield requested to be allowed to provide further information to the Panel, and this was allowed. On 3 July 2019 the Panel met to consider the additional information provided by Cr Synfield and the submissions provided by Mr Gill and Cr Synfield on sanction. The Panel did not consider it necessary to give Mr Gill an opportunity to respond to the additional material provided by Mr Synfield before making its determination of the complaint.

### **Material considered by the Panel**

- Statement made by the employee to Edge Legal, undated, 6 pp
- Extract of statement made by the employee to Edge Legal, undated, 3pp
- Email from the employee to Cr Synfield, 0915, 18 July 2018, and forwarded the same day to the General Manager
- Email from Cr Synfield to the employee, 1442, 31 May 2018
- Email from the employee to Cr Synfield, 1454, 31 May 2018
- Email from Cr Synfield to the employee, 1751, 31 May 2018
- Email from Cr Synfield to the employee, 2 June 2018
- Email from Cr Synfield to the employee, 4 June 2018
- Generic email response from employee, 4 June 2018
- Email from the employee to Cr Synfield, 6 June 2018

- Email from Cr Synfield to the employee, 15 June 2018
- Email from the employee to Cr Synfield, 20 June 2018
- Email from Cr Synfield to the employee, 27 June 2018
- Email from Cr Synfield to the employee, 1 July 2018
- Email from Cr Synfield to the employee, 4 July 2018
- Email from the employee to Cr Synfield, 4 July 2018
- Email from Cr Synfield to the employee, 12 July 2018
- Email from Cr Synfield to the employee, 17 July 2018
- Email from the employee to Cr Synfield, 0915, 18 July 2018
- Email from Cr Synfield to the employee, 1349, 18 July 2018
- Email from the employee to Cr Synfield, 0922, 23 July 2018
- Email from Martin Gill, General Manager, to Cr Synfield, 2 August 2018
- Email from Martin Gill, General Manager, to Cr Synfield, 7 August 2018
- Email from Martin Gill, General Manager, to Cr Synfield, 19 August 2018
- Advice from Edge Legal to the General Manager, dated 23 August 2018, entitled Complaint by the employee regarding behaviour of Cr Synfield
- Email from Martin Gill, General Manager, to Cr Synfield, 24 August 2018
- Email from Martin Gill, General Manager, to Cr Synfield, 27 August 2018
- Email exchange between Lynette While, Council's Director Community and Development Services, and the General Manager, 27 August 2018
- Email from Cr Synfield to two council officers, 4 October 2018
- Email from Martin Gill, General Manager, to Cr Synfield, 4 October 2018
- Meander Valley Council file note dated 16 October 2018, 3 pp
- A List of Events sent by the employee to Martin Gill, 16 October 2018, 2 pp
- Email from Cr Synfield to the Executive Officer, Code of Conduct Panel, dated 27 May 2019, regarding his witnesses for the hearing
- Statutory Declaration from Martin Gill regarding witness statement from the employee, 27 May 2019
- Statutory Declaration from Robyn Pearl Receveur, 27 May 2019, 3pp
- Statement to the Panel by Martin Gill, with four appendices, tabled 30 May 2019
- Statement of chronological events from the employee, tabled by Martin Gill, 30 May 2019
- Statement by Cr John Temple, tabled 5 June 2019
- Email from Mr Gill re possible sanction, 18 June 2019
- Email from Cr Synfield re possible sanction, 25 June 2019
- Submission from Cr Synfield, 27 June 2019

## **Determination**

The Code of Conduct Panel upholds the complaint against Cr Synfield.

## **Reasons for the Determination**

### *Part 7 Relationships with community, Councillors, and council employees*

#### **7.1 A Councillor**

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

The Panel finds that Cr Synfield did not comply with the explicit requests of the employee sent to him on 18 July 2018, and reiterated on 23 July 2018. The employee stated categorically that their relationship must be on a professional basis, limited to professional interactions between a Councillor and a council employee. The Panel finds that Cr Synfield failed to respect the wishes of the employee by approaching her on or about 3 August 2018 and again on 19 August 2018, and that his behaviour caused her embarrassment.

The Panel finds that the actions of continuing to approach the employee outside the Council offices, without permission from the General Manager, after she had requested that he desist, and the General Manager had instructed him to desist, constituted harassment of the employee. The Panel heard Cr Synfield's view that his approaches were undertaken as a private person, not as a Councillor. The Panel did not consider that Cr Synfield's defense was valid, given the intercession into the matter by the General Manager as the person responsible for the welfare of the employee as an employee of Meander Valley Council.

*7.5 A Councillor must not contact an employee of the council in relation to council matters unless authorised by the General Manager of the council.*

The Panel finds that on two occasions, Cr Synfield contacted the employee without the permission of the General Manager, and on one occasion, contacted a different employee, also without permission from the General Manager. All three events occurred after the General Manager had specifically instructed Cr Synfield not to do this. The Panel finds that while Cr Synfield put forward the view that his contacts with the employee were not on council matters, the issue had definitively become a council matter from the time that the General Manager, as the employer, intervened to support his employee. The Panel is satisfied that what Cr Synfield discussed with the second employee, by own account, amounted to council matters.

## *Part 8 Representation*

*8.7 the personal conduct of a Councillor must not reflect, or have the potential to reflect, adversely on the reputation of the council.*

The Panel finds that Cr Synfield's behaviour has the potential to reflect adversely on the reputation of the Council, given his position as an elected person, the role of the employee within the Council, and the subsequent restriction of her role across the organisation.

## **Sanction**

The Panel imposes a reprimand on Cr Synfield, and requires him to undertake training in the competencies of Emotional Intelligence. This training is to be organised by Council and provided by Rachel Moore Consulting. The Panel requires Cr Synfield to attend at least three, and up to five sessions with Ms Moore. Training is to commence on or before 9 August 2019 and be concluded by 30 September 2019.

The reasons for the imposition of the sanction are: the serious nature of the breaches; the Councillor's disregard of the General Manager's approaches which were designed both to protect the employee and make Cr Synfield aware of his obligations under the Code of Conduct; and the lack of awareness and understanding of those obligations that Cr. Synfield showed during the Panel's investigation. The Panel hopes that with further training, Cr Synfield might gain that



understanding and continue to fulfil his duties as a Councillor without committing further similar breaches of the Code.

### **Right to Review**

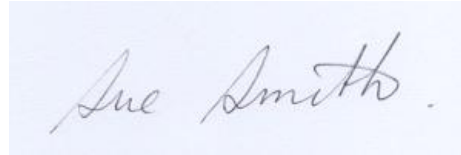
Under s28ZJ of the Act, a person aggrieved by the determination of the Panel is entitled to apply to the Magistrates Court (Administrative Appeals Division) for a review of the determination on the ground that the Panel has failed to comply with the rules of natural justice.



**Lynn Mason**  
(Chairperson)



**Anthony Mihal**  
(Legal Member)



**Sue Smith**  
(Community Member with  
experience in local government)