

Section 28ZK (7) of the *Local Government Act 1993* requires that any person who receives a determination report must keep the determination report confidential until the report is included within an item on the agenda for a meeting of the relevant council. Failure to do so may result in a fine of up to 50 penalty units.

*Local Government Act 1993*

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

### **NORTHERN MIDLANDS COUNCIL CODE OF CONDUCT**

**Complaint brought by Councillor Mary Knowles and Mr Ian Goninon against Councillor Matthew Brooks**

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

- Jill Taylor (Chairperson),
- Liz Gillam (Local Government Member)
- Jennifer O'Farrell (Legal Member)

Date of Determination: 06 February 2023

Content Manager Reference: C25505

#### **Summary of the complaint**

A code of conduct complaint was submitted by Councillor (Cr) Knowles of the Northern Midlands Council and Mr Goninon against Councillor (Cr) Matthew Brooks to the General Manager of the Northern Midlands Council on 1 November 2022.

The complaint alleged that on 15 October 2022 and during the Longford Show, Cr Brooks breached the following parts of the Northern Midlands Council's Model Code of Conduct for Elected Members, adopted on 20 January 2020:

*Part 3.1 – The actions of a councillor must not bring the Council or the office of councillor into disrepute.*

*Part 3.2 – A councillor must not take advantage, or seek to take advantage, of his or her office or status to improperly influence others in order to gain an undue, improper, unauthorised or unfair benefit or detriment for himself or herself or any other person or body.*

*Part 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 alleged, amongst other things, that during the Longford Show, Cr Brooks asked a Mr Russell Redmond to assist in a 'clean-out' of Council. Cr Brooks and Mr Redmond were both candidates in the 2022 Northern Midlands Council elections. At the time the alleged comments were made, voting in the elections was open.

#### **Initial assessment**

Following receipt of the complaint, the Chairperson conducted an initial assessment of the complaint in accordance with the requirements of section 28ZA of the *Local Government Act 1993* (the Act). Having assessed the complaint against the provisions of sections 28ZB and 28ZC of the Act, the Chairperson determined that:

- the complainant had made a reasonable effort to resolve the complaint. The Chairperson arrived at this conclusion based on the statement contained in the joint complaint that "I have spoken in the past to Cr Brooks but his ongoing attitude is that the Council is not managed well and I don't believe this attitude will change no matter how much effort is made to resolve the complaint". (At the hearing Cr Knowles confirmed this statement);

- the complaint in relation to parts 3.1, 3.2 and 8.7 of the Northern Midlands Council's Code of Conduct for Elected Members should be further investigated;
- these parts of the complaint should not be dismissed on the grounds of being frivolous, vexatious or trivial. The reasons for this conclusion were that, if proven, Cr Brooks may have brought the Council and office of councillor into disrepute; and
- having made enquiries of the Code of Conduct Executive Officer, there was no relevant direction under sections 28ZB (2) or 28ZI of the Act that would apply to the complainant and the complaint.

On this basis, the Chairperson determined that the complaint be further investigated by the Code of Conduct Panel (the Panel).

The complainants, respondent councillor and the General Manager were notified of the outcome of the initial assessment by letter dated 17 November 2022.

In addition to the Chairperson (Ms Jill Taylor), Ms Jennifer O'Farrell, legal representative and Ms Liz Gillam, community representative were appointed to the Panel and in accordance with section 28ZA(3)(iii) were provided with copies of the complaint. Cr Brooks submitted his response to the complaint on 25 November 2022. Both the complainants and Cr Brooks each provided statutory declarations from two witnesses.

### **Investigation**

In accordance with section 28ZE of the Act, the Code of Conduct Panel investigated the complaint and determined in accordance with section 28ZG(1) that a hearing be held.

It proved difficult to reach agreement with the parties and the four witnesses (two for both the complainants and the respondent) for a mutually convenient time to hold the hearing. The Panel determined that a Directions Conference should be held to ascertain whether the parties were of a mind to cross-examine the other party's witnesses. This was held on 15 December 2022 and all parties agreed that they did not wish to cross-examine the third-party witnesses.

The following documents were presented to the Panel to consider as evidence in this matter:

- The complaint by Cr Knowles and Mr Goninon dated 1 November 2022 under cover of statutory declarations by both complainants dated 1 November 2022
- Statutory declaration by Mr Brian Mitchell MP dated 2 November 2022
- Statutory declaration by Ms Kristy Springer dated 4 November 2022
- Response from Cr Brooks dated 25 November 2022 under cover of statutory declaration dated 25 November 2022
- Statutory declaration by Mr Paul Terrett dated 24 November 2022
- Statutory declaration by Mr Russell Redmond dated 24 November 2022
- Northern Midlands Council Code of Conduct for Elected Members adopted on 20 January 2020

### **Hearing**

As per section 28ZH of the Act, a hearing into this complaint was held on 18 January 2023. Panel members attended the Office of Local Government offices in Hobart and Cr Knowles and Mr Goninon attended virtually from the Northern Midlands Council offices with Cr Brooks attending virtually from a separate location. The Chairperson outlined the procedure for the hearing and the process that would follow at the conclusion of the hearing. At the commencement of the hearing Cr Knowles, Mr Goninon and Cr Brooks affirmed to tell the truth in relation to the evidence they would submit at the hearing.

Cr Knowles spoke first stating that on the date of the incident, she received a phone call from then Cr Goninon (now Mr Goninon – the joint complainant), in which he expressed concerns that Cr Brooks and another person, Russell Redmond, were 'canning' Council over the loudspeaker at the Longford Show. At the

time, both Cr Brooks and Mr Redmond were candidates in the Council elections. Voting was open in those elections.

This prompted her to contact others who were at the event, including Ms Kristy Springer (the Secretary of the Longford Show). Ms Springer said that she had not actually heard the words allegedly spoken by Cr Brooks, but that Mr Brian Mitchell had conveyed to her what Cr Brooks had said. Cr Knowles said that Ms Springer told her that Cr Brooks had been given a five-page script to follow as the announcer at the event and she asked him to keep to the script. Cr Knowles said that in the lead up to the Council election there had been a “concerted campaign against most of the existing councillors” and indicated that, in her opinion, Cr Brooks was involved in this campaign.

Cr Knowles alleged that Cr Brooks interviewing Mr Redmond was “politically motivated” and part of that campaign. Cr Knowles said that the Longford Show was a local event for local people to enjoy and that it was not the place for campaigning. She said another event, which took place at the Longford Town Hall, as identified by Cr Brooks during the hearing, was set up for the purpose of questioning candidates.

In response to Cr Knowles’ evidence, Cr Brooks asked if she had proof that there was a five-page script given to the announcer because he had never had one and he had been a volunteer announcer at that event for over a decade. Cr Knowles said that she got that information from Ms Springer. Later in the hearing in response to a question from the Panel, Cr Brooks described the “running sheet” as a list of sponsors with some information about them so that he could “plug” their business in return for their sponsorship. It also contained the timing and place of events for him to announce. Cr Brooks then asked what evidence Cr Knowles had to state that it was a “nasty campaign”. Cr Knowles said that it was evident from “a Facebook page” which promoted Cr Brooks and some other selected candidates. Cr Brooks refuted that he had any involvement in this Facebook page.

Mr Goninon was then given the opportunity to reference his complaint. Mr Goninon referred to Cr Brooks’ statement where he stated that Mr Brian Mitchell and other people (including himself) were members of the Australian Labor Party. Mr Goninon stated that this was not true in relation to him. Mr Goninon said that he supported Cr Knowles’ complaint and evidence, and he believed that all the witnesses had stated that Cr Brooks had referred to the need for “new blood” in Council.

The complainants were asked by the Panel whether they thought describing the incident at the Longford Show as “horrific” was over stating the incident. Cr Knowles said that it was how Cr Lambert described it to her.

In response to the complaint, Cr Brooks stated that he had been an announcer at the Longford Show for longer than he has been a councillor and that he volunteered for this role as a supporter of his community. He said that it was not part of his councillor’s role but that of a private citizen. In this role Cr Brooks told the hearing that he is like a roving reporter and does not have a list of people to interview. He added that he meets up with different people who agree to be interviewed on the spot. He said that the interviews were light-hearted. Cr Brooks said that over the years he has interviewed politicians of all persuasions. During the 2022 show Cr Brooks came across Mr Redmond and, knowing he was a candidate for Council elections, decided to interview him. This was spontaneous and not planned. Cr Brooks said that if he had come across other candidates, he would have given them the opportunity to be interviewed as well. He added that there was no political motivation behind the interview with Mr Redmond and that Cr Brooks did not recall Mr Redmond or himself saying that the Council needed to be “cleaned out”.

Cr Brooks stated that Cr Knowles’ statutory declaration is hearsay and should be disregarded. Additionally, he points to Ms Springer’s statutory declaration which is also hearsay. It sets out what Mr Mitchell told Ms Springer and his recollection of what he had heard.

Cr Brooks denied that he had made or supported any statement that “Council needed a clean-up” or words to that effect. Cr Brooks said that neither Cr Knowles nor Mr Goninon made any attempt to discuss this matter with him. In the complaint, it was stated that Cr Brooks had been spoken to previously about his ongoing role in campaigning against Council and that they did not believe any effort to resolve the complaint with Cr Brooks would have made a difference. Cr Brooks said that he was confident if an external mediator had been appointed, the matter would have been resolved.

In response to a question from the Panel as to whether Ms Springer asked him to “stick to the script”, Cr Brooks said that she came to him and told him to refrain from any political announcements. Cr Brooks took that to mean not to interview Mr Mark Shelton (Liberal Party), Mr Brian Mitchell (Labor Party) and Ms Jacqui

Lambie (JL Network), which he usually did each year. He told the hearing that he had complied with Ms Springer's request. In response to another question from the Panel about the detail of the conversation with Mr Russell Redmond regarding Council needing "young blood", Cr Brooks said that he wasn't promoting Mr Redmond as he would have been doing himself a disservice, being a candidate himself. Cr Brooks went on to say he was supportive of young people putting themselves forward, saying that mostly there were older people then on Council. When asked if he thought he was one of the councillors who should be replaced he replied by saying "if the community saw fit not to re-elect me then I would have accepted that". Cr Brooks said that because of his work in the community he has been re-elected without spending a significant amount of money.

When offered the opportunity to question Cr Brooks, Cr Knowles told the hearing that a Facebook page was set up by a third person which promoted certain candidates, including Cr Brooks. Cr Brooks responded by saying that whilst his name might have been on the list, he did not post that information on Facebook.

Cr Knowles put it to Cr Brooks that he had a "distinct negative view of our Council" and in previous conversations she had with him, Cr Brooks told her "there is a lot I can say about other councillors, the gloves are off". Cr Brooks refuted these allegations, adding that he had often emailed the General Manager but did not get responses from him and that it was Cr Brooks who initiated conversations with Cr Knowles.

Cr Knowles then asked Cr Brooks whether the statement he made in his statutory declaration "in fact, it would be far more damning were this matter to go further..." was a threat. Cr Brooks replied by saying it was meant to convey that should the details of this complaint become public it would bring the Council into disrepute.

Mr Goninon acknowledged that Cr Brooks did not initiate the Facebook post that contained his name, but asked whether Cr Brooks had requested his name be removed. Cr Brooks stated that he did not see it.

During her submissions to the Panel, Cr Knowles said that she would like Cr Brooks to undertake to act professionally when performing duties as a councillor, that he complies with the Code of Conduct and does not continue to bring Council into disrepute. Mr Goninon supported the comments made by Cr Knowles and said that he believed Cr Brooks needed some professional support to assist him in his role as councillor.

In his submissions to the Panel, Cr Brooks re-iterated that he constantly gives time to community through the various roles he undertakes. He said that from time to time there may be a slip up but there is never any malice intended nor does he push any political agenda. He added that he has been a councillor for thirteen years and has never had a Code of Conduct complaint against him. He said he was flabbergasted and disappointed that this complaint has been made by the Mayor and former councillor.

## **Determination**

Pursuant to section 28ZI(1)(b) of the Act, the Panel determines that the complaint against Cr Matthew Brooks be dismissed.

### **Reasons for determination**

The Panel concluded that it was not clear exactly what was said by Cr Brooks in his role as announcer at the Longford Show. The evidence produced by Cr Knowles, Mr Goninon and Ms Springer was hearsay reported to them by others. Mr Mitchell stated that he heard Cr Brooks state that he agreed with Mr Redmond that the Council needed a "clean up". Cr Brooks refuted saying the Council needed to be cleaned up or words to that effect. Cr Brooks did agree he supported Mr Redmond's view that younger people are needed on Council. However, Cr Brooks said that this was not a statement of support to promote Mr Redmond's candidacy, but a general view of the need for younger people to stand for Council. In all, the evidence as to who said what was unclear and subject to differing views. The Panel also considers that the conversation between Cr Brooks and Mr Redmond was likely to be light-hearted and 'tongue-in-cheek', given the context in which it occurred.

In relation to each of the parts of the code the Panel finds as follows:

#### **Part 3.1 – The actions of a councillor must not bring the Council or the office of councillor into disrepute.**

Cr Brooks told the hearing that the role he performed at the Longford Show was as a private citizen and not a councillor. The Panel accepts Cr Brooks explanation, however, notes that there is a fine line once a person is

known in their community as a councillor a reasonable person may not make this distinction in circumstances such as that occurring at the Longford Show. That aside, it was the Panel's decision that none of the evidence presented brought the Council or office of councillor into disrepute. In the context in which they were made, the comments were, on Cr Brooks' evidence, light-hearted. The Panel accepts this is likely to be the case. Neither complainant was personally present to be able to give evidence to the contrary. This part of the complaint is dismissed.

**Part 3.2 – A councillor must not take advantage, or seek to take advantage, of his or her office or status to improperly influence others in order to gain an undue, improper, unauthorised or unfair benefit or detriment for himself or herself or any other person or body.**

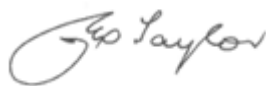
Cr Brooks confirmed that he during his conversation with Mr Redmond at the Longford Show, he made a statement to the effect that Council needed "young blood". However, he said he was not promoting himself or Mr Redmond for the upcoming Council election. The evidence presented to the Panel and in particular the context in which those comments were made, do not lead to the conclusion that Cr Brooks used his position as a councillor to seek advantage for himself or Mr Redmond. This part of the complaint is dismissed.

**Part 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 has concluded, based on the evidence before it, including the context in which the alleged comments were made, that the performance of Cr Brooks as an announcer at the Longford Show did not reflect or have the potential to reflect adversely on the reputation of the Council. This part of the complaint is dismissed.

### **Right to review**

A person aggrieved by the determination of the Code of Conduct Panel, on the ground that the Panel failed to comply with the rules of natural justice, is entitled under section 28ZP of the Act to apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination. In accordance with section 17 of the *Magistrates Court (Administrative Appeals Division) Act 2001*, an appeal must be lodged within 28 days of the date of receipt of this determination.



**Jill Taylor**  
Chairperson



**Liz Gillam**  
Member



**Jennifer O'Farrell**  
Member

Date: 06 February 2023