

**Local Government Act 1993**  
**HUON VALLEY COUNCIL CODE OF CONDUCT**  
**DETERMINATION REPORT\***

**Complaint by Mr Geoffrey Swan against Councillor Mike Wilson**

**Determination made on 2 July 2019**

**Code of Conduct Panel:**

Jill Taylor (Chairperson), Rob Winter (Legal Member) and Penny Cocker (Member).

**1. Summary of the complaint**

On 16 April 2019 Mr Geoffrey Swan lodged a Code of Conduct Complaint (the Complaint) against Councillor (Cr) Mike Wilson through Acting General Manager of the Huon Valley Council, Mr Wayne Thorpe.

Mr Swan alleged that Cr Wilson breached Part 7 1 (a), (b) and (c) of the Huon Valley Council Code of Conduct which was approved by Council on 27 April 2016.

Specifically, Mr Swan alleged that Cr Wilson contributed to a string of Facebook Posts on or about 4 February 2019, stating his support for comments made by a Frances Bender which were unfavorable to Mr Swan.

Part 7 of the Code of Conduct provides for the following-

***PART 7 – Relationships with community, Councillors and Council employees***

***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*

Mr Swan also alleged that Cr Wilson had breached Part 7 1 (a), (b) and (c) by virtue of some disparaging remarks about Mr Swan during an interview on community radio Huon FM with Andy Waterhouse on 28 September 2018.

During the initial assessment, the Chairperson wrote to Mr Swan seeking his recollection of a Facebook post which Mr Swan had claimed was subsequently removed. However, Mr Swan's response to this request was that the post that was removed was not one made by Cr Wilson but rather another Councillor against whom Mr Swan has also lodged a code of conduct complaint. Whilst Mr Swan indicated that Cr Wilson's comment was not as offensive as one made by another Councillor, it was in his (Mr Swan's) opinion a contravention of the Code.

An initial assessment undertaken by the Chairperson determined that further investigation was warranted in relation to the Facebook post on or about 4 February 2019. However, the complaint regarding the radio interview with Cr Wilson on 28 September 2019 was dismissed on the grounds that:

- i) Cr Wilson was not an elected member at the time, and

\* 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.

- ii) The interview took place outside of the 6-month period allowed for complaints to be made in accordance with Section 28V (3) (f).

A Code of Conduct Panel was formed to investigate the complaint relating to the Facebook post. By letter dated 8 May 2019, Cr Wilson was provided with a copy of the Complaint and invited to provide a response. Cr Wilson submitted a response by way of a statutory declaration dated 15 May 2019.

## **2. Investigation**

The Panel met on 7 June 2019 and determined that, in accordance with Section 28ZG (2) (b), a hearing was not necessary as an investigation was able to be conducted based on the submissions provided by Mr Swan (his complaint and attachments) and Cr Wilson (his statutory declaration and attachments dated 15 May 2019). The Panel therefore proceeded to consider the complaint on the basis of the evidence contained in those papers.

In his complaint, Mr Swan attached a series of Facebook posts. The first of the sequence was a post at 11.38am 4 February 2019 in which he stated that he had a chat with the Prime Minister and Premier at the Huon Valley PCYC. He said that he did not get a chance to mention climate change but “did tell Will the Russell River is looking the best we have ever seen it”. He added that “maybe Huon Aquaculture had turned off the taps at their fish farm for the moment”.

This apparently prompted a long response posted by Frances Bender on Facebook at 19.26 on 4 February 2019 (which includes reference to “a man – who knows who he is” and his disgraceful behavior. A number of people liked and/or responded to Ms Bender’s post. Among them was the following from Mike Wilson “Great Frances! Time we all let this person know what we all think this is a great valley with 99.9% of its people doing a great job and it’s about respect and this man has NIL”.

In his response to the complaint, Cr Wilson stated that he had not treated Mr Swan unfairly, nor had he bullied or harassed Mr Swan. Cr Wilson stated that Mr Swan enthusiastically participates in public debate and that he, as a councillor, is involved in community discourse. Cr Wilson stated that he and Mr Swan have differed (in opinion).

Cr Wilson did not deny the Facebook post attributed to him, stating that Mr Swan has criticised him personally, and that he is entitled to respond.

Whilst Mr Swan was not specifically identified in the Facebook posts, it was clear that many members of the community knew who Ms Bender was referring to, including Cr Wilson. Mrs Bender was clearly responding to the initial Facebook post by Mr Swan.

The panel was satisfied that Cr Wilson was referring to Mr Swan in his Facebook post.

## **3. Determination**

The Panel concluded that the facts in this matter were undisputed, but that the issue to be resolved was whether or not Cr Wilson had breached the Code by his comments in his post.

Although accepting that Mr Swan may have previously publicly criticised Cr Wilson, it does not follow that a similar response is appropriate by an elected member. The purpose of the Code of Conduct for Councillors is to set out expectations of how elected members should behave.

The Panel determined that an elected member is beholden to maintain a high standard of behaviour as a representative of Council. To this extent, a Councillor must avoid making public comment that can be

seen to take a particular side in debate on an issue that may be an item of Council business, or express negative views about a ratepayer.

As stated in this decision, whilst Mr Swan was not directly named in any of the Facebook posts, it was clear, following the trail of responses, that the “man” referred to was Mr Swan and this was well known in the community.

In this instance, by posting a comment supporting negative views of Mr Swan apparently held by many in the community, Cr Wilson has not maintained the standard expected of an elected member.

As a consequence of the evidence before it, the Panel upholds the complaint in respect of the Code of Conduct Part 7 1(a).

The Panel dismisses the complaint in respect of the Code of Conduct Part 7 1 (b) and (c).

The Panel was not satisfied that the post made by Cr Wilson would have caused Mr Swan personal offence or embarrassment. The content of his post did not initiate specific derogatory statements concerning Mr Swan. Furthermore, no evidence was provided by Mr Swan identifying the way the Facebook post had caused him such offence or embarrassment.

The Panel also concluded that Cr Wilson had not harassed or bullied Mr Swan. Although Mr Swan provided material regarding a fraught relationship over a period of time with Cr Wilson, the Panel ruled the evidence provided in support of this as inadmissible as it occurred at a time when Cr Wilson was not an elected member. The notion of bullying and harassment suggests constant unwanted behaviour towards a person and the one comment made by Cr Wilson does not constitute a breach of the Code.

#### **4. Sanction**

Cr Wilson’s breach was one involving a lack of judgment and use of disrespectful terminology. In the Panel’s view the breach is at the least serious end of the spectrum of possible breaches of Part 7 of the Code.

The Panel wrote to Cr Wilson on 25 June 2019 advising him that part of Mr Swan’s complaint had been upheld and asking him if he desired to comment on an appropriate sanction to be imposed by the panel in light of its finding that part of Mr Swan’s complaint had been upheld. The letter to Cr Wilson contained a list of sanctions available to the Panel under Section 28ZI (2).

On 28 June 2019, Cr Wilson responded to the correspondence of 25 June 2019. However, he did not directly address the issue of sanction, but rather stated his objections to the findings of the Panel.

Cr Wilson also questioned the appropriateness of the Chairperson’s role in hearing this complaint given her involvement in the Huon Valley Board of Inquiry in 2016. At the outset, the Chairperson had advised fellow panel members of her involvement in this matter and stated that as a significant period of time had elapsed, she came to this complaint without any bias or preconceived ideas. The determination in this matter was a unanimous decision by the Panel.

Cr Wilson only raised this issue once the Panel advised him of its decision. He had the opportunity to raise the matter when he was initially advised of Mr Swan’s complaint in the Chairperson’s letter of 8 May 2019 which included advice as to the composition of the Panel. He did not do so

The panel does not consider it is precluded or in any way compromised in its ability to fairly deal with this complaint by virtue of the matters raised by Cr Wilson in his letter of 28 June 2019.

In his letter of 28 June 2019 Cr Wilson again stated that his Facebook posts were by “Mike Wilson” and not “Cr Mike Wilson”. In his own words, Cr Wilson has served his community for many years and it


would thus be reasonable to conclude that the community would interpret public statements he made as a Councillor, unless he prefaced them by a statement to the effect that it was his personal opinion and not that of Council or a Councillor.

For the reasons previously stated, the Panel does not accept this proposition.

The Panel concludes that Cr Wilson should be cautioned in relation to this complaint. The Panel hopes that involvement in this complaint process will make Cr Wilson more acutely aware of the need to carefully consider whether, and when, to participate in social media communications, and when participating, to consider the content of his contributions to social media posts.

## **5. Right to Review**

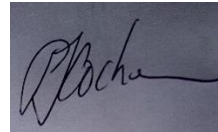
A person aggrieved by the determination of the Code of Conduct Panel is entitled under section 28ZP of the Act to apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination on the grounds that the Code of Conduct Panel has failed to comply with the rules of natural justice.



**Jill Taylor**  
**Chairperson**



**Rob Winter**  
**Legal Member**



**Penny Cocker**  
**Member**