

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 made by Mr Andrew McCullagh against Councillor Richard Goss**

**Code of Conduct Panel**

- Lynn Mason AM (Chairperson)
- David Sales (Local Government Member)
- David Palmer (Legal Member)

Date of Determination: 30 January 2023

Content Manager Reference: C25287

**The complaint**

The complaint relates to Councillor (Cr) Richard Goss's alleged disclosure of confidential council information to a member of the public. The incident is alleged to have occurred on or about 27 August 2022, at the Longford market. The complaint also alleged that Cr Goss had endeavoured to interfere with the election process, presumably, the election process governing the Tasmanian Local Government elections, which were to be conducted in October 2022.

The complaint alleged that the following section of the Aldermanic Code of Conduct, adopted by the Northern Midlands Council on 29 January 2019, was breached:

***Part 5 – Use of Information***

*2. A councillor must only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation.*

**Initial assessment of the complaint**

Following receipt of the complaint, the Chairperson invited Mr McCullagh (now Cr McCullagh) to provide further information about the allegation that Cr Goss had endeavoured to interfere with the election process; specifically, how Cr Goss had done this. No response was received from Mr McCullagh. That part of the complaint was therefore dismissed in accordance with section 28ZB(1) of the *Local Government Act 1993* (the Act).

The Chairperson then conducted an initial assessment of the remaining part of the complaint in accordance with the requirements of section 28ZA(1) of the Act. Having assessed the part of the complaint against the provisions of sections 28ZB and 28ZC of the Act, the Chairperson determined that:

- the complaint was not frivolous, vexatious or trivial. The complaint appeared to relate to matters of substance under the Council's Code of Conduct and did not appear to be trifling, insignificant or a misuse of the Panel's resources;
- the reasons for not attempting to resolve the complaint directly with the respondent were adequately explained; and
- the complaint was not made in contravention of
  - a determination made by the Chairperson under subsection (2); or
  - a determination of the Code of Conduct made under section 28ZL(3).

The Chairperson determined that the complaint should be investigated and determined by the Code of Conduct Panel (the Panel) as the allegation substantially related to alleged contraventions of the Code. If proven, they were capable of constituting breaches of the Code.

The complainant, respondent Councillor and the General Manager of Northern Midlands Council were notified of the outcome of the initial assessment by letter dated 28 October 2022.

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

- The Northern Midlands Council Code of Conduct for Elected Members, approved 20 January 2020;
- The complaint from Mr McCullagh, 12 pp, dated 25 September 2022, attached to a Statutory Declaration;
- The response from Cr Goss, 2 pp, on a Statutory Declaration dated 14 November 2022;
- The Statutory Declaration received from Mr. Terrett regarding the contents of the discussion between Cr Goss and himself, 1 p, dated 25 November 2022<sup>1</sup>;
- Information supplied by Council Officers on 1 December 2022, viz., the minutes of the Ordinary Meeting of Council – Closed Council GM Review dated 16 May 2022, including minute No. 22/174<sup>2</sup>.

### **Procedure**

In accordance with section 28ZE of the Act, the Panel investigated the complaint.

The Panel met on 21 November 2022. On the same day Mr McCullagh was invited to provide further information, specifically, particulars of the information about the General Manager's contract which Cr Goss was alleged to have disclosed – information which was not otherwise available to the public. On 22 November 2022 Mr McCullagh responded by email that Cr Goss had been speaking to a council candidate for the upcoming elections, Mr Paul Terrett (now Cr Terrett), and that it was Mr Terrett who was directly privy to the conversation. Mr McCullagh was then asked to request Mr Terrett to provide evidence of the incident as part of, or attached to, a Statutory Declaration, and to have said evidence to the Panel by 28 November 2022.

The Statutory Declaration from Mr Terrett was received on 25 November 2022.

The Panel met on 29 November 2022 and determined that in accordance with section 28ZG(1) of the Act, it would conduct a hearing into the matter, and that it would call Mr Paul Terrett as a witness. The parties were notified of this decision on 14 December 2022.

### **The Hearing**

The hearing was conducted by video conference on 17 January 2023. Cr Goss was permitted to have his wife in attendance as his support person.

The complainant, the respondent and his support person were all sworn/affirmed at the outset of the hearing.

Mr McCullagh and Cr Goss gave evidence and each was permitted to question the other. The Panel asked questions of the parties. The Panel called Mr Terrett as a witness, and he read the affirmation prior to answering questions from the complainant and respondent, and from the Panel. Neither Mr McCullagh nor Cr Goss called witnesses.

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<sup>1</sup> The Statutory Declaration is part of the Addendum, to be dealt with in closed council, in accordance with section 28ZK(5) of the Act.

<sup>2</sup> The information provided by Council officers is part of the Addendum, to be dealt with in closed council, in accordance with section 28ZK(5) of the Act.

The parties then made closing submissions, after which Cr Goss was offered the chance to make a submission on sanction, in the event that the complaint was upheld. Cr Goss submitted that he would abide by any decision reached by the Panel.

## **Determination**

Pursuant to section 28ZI(1)(a), the Panel upholds the complaint against Cr Goss.

### **Reasons for determination**

The Panel noted that there was a discrepancy between the date of the incident according to Cr Goss and Mr McCullagh, and the date of the incident given by Mr Terrett. The Panel determined that this discrepancy was not material to the outcome of its investigation.

The Panel's decision rested on the evidence provided by Cr Goss and Mr Terrett. Although Mr McCullagh was the complainant, he was not a witness to the event at the Longford market, and therefore could not provide any evidence regarding the words used by Cr Goss in speaking to Mr Terrett.

Neither Cr Goss nor Mr Terrett disputed that an exchange had taken place at the Longford market, and that reference had been made to the Council's General Manager, and specifically, to his contract of employment. The Panel therefore had to decide whether on the balance of probabilities, and in addition, whether it had a sense of actual persuasion that Mr Terrett's recollection of the words spoken was more likely to be accurate than Cr Goss's recollection, and that the conversation with Cr Goss had in fact occurred as Mr Terrett alleged in his statutory declaration and in his oral evidence given as a witness at hearing.

At the hearing, Mr. Terrett gave his evidence in a clear and definite manner, repeating the information contained in his statutory declaration. When questioned he reiterated that specific information relating the General Manager's contract was mentioned by Cr Goss.

Cr Goss was less definite in giving his evidence and said he could not remember the specific terms of the General Manager's contract, despite being present at the Council Meeting when the decision was made, and when the decision was made that the details of the agenda item should remain confidential.

In the circumstances the Panel felt it should give more weight to the evidence of Mr. Terrett.

The Panel was of the view that specific information relating to the Contract was mentioned in the discussion between Cr Goss and Mr Terrett which occurred (according to Mr Terrett) on or about 30 July 2022, and that the only place that this information could have been obtained was in the confidential session of the Council Meeting which occurred relatively close in time on 16 May 2022, as recorded in the Council's minutes of meeting of that date, and which were in evidence.

The Panel noted that Cr Goss stated that even at the time of the hearing, he could not say with any certainty what the nature of one of the most important details of the General Manager's contract was. This was despite the fact that the General Manager's contract was discussed on 16 May 2022 by the Councillors in the closed council meeting, which Cr Goss attended and during which he voted.

The Panel concluded that in the face of this uncertainty about an important subject debated in the closed session of the council meeting of 16 May 2022, and Cr Goss's uncertainty about what he had said to Mr Terrett, it was satisfied that the version of the interchange provided in Mr Terrett's very clear verbal and written evidence was more accurate.

The Panel however was of the view that Cr Goss had not intended to disclose confidential information concerning the renewal of the General Manager's Contract, nor breach the Code of Conduct.

## **Sanction**

Under section 28ZI(2) of the Act, the Panel may impose one or more of the sanctions listed therein. The Panel considers that the details revealed by Cr Goss were details which would become known within the community within a relatively short period of time. The consequences of the breach of the Code were

therefore minor. The Panel also takes into consideration Cr Goss's good record of long service to the Council, and considers that the breach was unintentional and unlikely to be repeated.

The Panel therefore does not impose any sanction on Cr Goss.

### Timing of the Determination

The time taken to reach a determination in this matter has exceeded 90 days. The delay was owing to the occurrence of the Christmas/New Year holiday period before the hearing could be conducted.

### 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.



Lynn Mason AM  
Chairperson



David Palmer  
Legal Member



David Sales  
Member

Date: 30 January 2023