

**HUON VALLEY COUNCIL CODE OF CONDUCT PANEL DETERMINATION REPORT \***  
**RELATING TO THE CONDUCT OF COUNCILLORS**

(Reference C 20299)

Complaint made by Mr Geoffrey Swan against Cr Michael Newell

**Date of Determination:** 8 June 2020

**Code of Conduct Panel:**

Lynn Mason (Chairperson), Katherine Schaefer (community member with experience in local government), Sam Thompson (legal member)

**Summary of the Complaint**

The complaint made by Mr Swan was referred to the Executive Officer of the Code of Conduct Panel (the Panel) on 4 March 2020.

Pursuant to section 28ZA(1)(e) of the *Local Government Act 1993* (the Act), The Chairperson advised on 6 April 2020 that the complaint should be referred to a Panel for investigation. The complaint detailed four occasions on which it was alleged that Cr Newell had breached the Huon Valley Council Code of Conduct relating to the Conduct of Councillors (the Code): on 10 September 2019, 22 September 2019, 4 October 2019, and 25 February 2020.

The Code in force at the time of the alleged breaches was approved by Council in March 2019. The sections of the Code which Mr Swan alleged Cr Newell breached are:

*PART 3 – USE OF OFFICE*

1. *The actions of a Councillor must not bring the Council or the office of Councillor into disrepute.*

*PART 7 – RELATIONSHIPS WITH COMMUNITY, COUNCILLORS AND COUNCIL EMPLOYEES*

7.1. *A Councillor –*

- (a) must treat all persons fairly; and*
- (b) must not cause any reasonable person offence or embarrassment; and*
- (c) must not bully or harass any person.*

*PART 8 – Representation*

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**

1. The complaint alleged that in a Facebook post on 10 September 2019, Cr Newell stated that he had deleted a particular Facebook post of his within a group. It is further alleged that this statement by Cr Newell was a lie, as the post had been deleted by the group's Administrator.

\* 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.

2. The complaint alleged that Cr Newell lied publicly about the timing of his resignation from the Call out the Huon Valleys (sic) Biggest Whingers Facebook group, and that during his time in the group, he was complicit in inciting hatred, discrimination, fear and harm to Mr and Mrs Swan.
3. The complaint alleged that in a letter written by Cr Newell on or about 4 October 2019 to a community member, Cr Newell lied about his continued participation in the Call out the Huon Valleys (sic) Biggest Whingers Facebook group, and actively participated in exchange and ridicule of Mr Swan in the public arena.
4. The complaint alleged that in a Facebook post on 25 February 2020, Cr Newell abused a Huon Valley resident on Facebook.

## Procedure

Cr Newell was requested to provide a response to the Panel by 21 April 2020. Following a further request from the Executive Officer, the Panel received Cr Newell's response in a letter dated 22 April 2020. The Panel accepted the response.

The Panel met on 20 April 2020 to consider the complaint. Cr Newell's response to the complaint, received on 22 April, responded specifically only to the alleged breach of the Code on 10 September 2020.

Meanwhile on 30 March 2020, the Panel received further material from Mr Swan, and this was sent to Cr Newell. After considering this material and Cr Newell's response, the Panel wrote to Mr Swan on 30 April 2020, requesting that he provide clearer copies of the material provided on 30 March 2020, and requesting also that the redactions in that material be removed. Clearer copies of the material, unredacted, were received by the Panel on 5 May 2020. On 3 May 2020 the Panel also received Mr Swan's comments on Cr Newell's response to the complaint.

On 29 April 2020, pursuant to section 28ZG (1) of the Act, the Panel advised the parties that a hearing into the matter was to be conducted on 13 May 2020. Both parties were requested to provide any further information relevant to the investigation to the Panel prior to the hearing. Mr Swan sent further material on 8 May 2020.

The hearing was conducted on 13 May 2020, using a web-based meeting platform. No witnesses were called. Mrs Swan attended as a support person for Mr Swan. Both parties took the Oath before giving evidence, and both Mr and Mrs Swan, and Cr Newell, swore that they were not recording the hearing.

## Material considered by the Panel

- The Huon Valley Code of Conduct relating to the conduct of Councillors, March 2019;
- The Complaint by Mr Swan, 3 March 2020, 16pp;
- Additional material from Mr Swan, 30 March 2020, 17pp;
- Letter from Cr Newell to the Panel, 22 April 2020, 1 p;
- Letter from Mr Swan to the Executive Officer, 3 May 2020, 4pp;
- Unredacted and clearer files provided by Mr Swan, 3 May 2020, including
  - Undated screen shots of Facebook posts, headed 'Cr Newell evidenced as supporting an abusive post about Swan', 1p;
  - Date of Incident 4 October 2019, 5 pp;
  - Date of Incident 22 September 2019, 2pp;
  - Date of Incident 25 February 2020, 2 pp;

- Date of Incident 10 September 2019, 4 pp;
- Sample Facebook posts (screen shots) from the Call out the Huon Valleys (sic) Biggest Whingers Facebook group, 36pp.
- Letter from Mr Swan to the Chairperson, Code of Conduct Panel, 8 May 2020, 3 pp;
- Submission on sanction from Cr Newell, 25 May 2020, 1p.

## Determination

Pursuant to section 28ZI (1)(b), the Code of Conduct Panel dismisses parts of the complaint against Cr Newell, and upholds the remainder.

## Reasons for the Determination

### 1. 10 September 2019

The complaint alleged that in a Facebook post on 10 September 2019, Cr Newell stated that he had deleted a particular Facebook post and that this statement by Cr Newell was a lie, as the post had been deleted by the Administrator. The complaint alleged that this constituted a breach of parts 3 (1), 7 (1) and 8 (7) of the Code.

The Facebook posts relating to this incident showed a post by the Administrator stating that he had deleted the offending post. When the Panel asked Mr Swan to confirm this, the Panel was given no evidence that the Administrator had done so. The Administrator was not called to give evidence, nor did he make a statutory declaration. Cr Newell repeatedly swore that he had deleted the post himself. Cr Newell submitted that the Administrator may have made a further comment after the Administrator's initial post. The Panel determined that it could not be satisfied that Cr Newell lied about deleting the post.

It follows that the Panel is not satisfied that Cr Newell breached the Code in the ways alleged by the complainant. Pursuant to section 28ZI(1)(b), this part of the complaint is dismissed.

### 2. 22 September 2019

The complaint alleged that Cr Newell lied publicly about the timing of his resignation from the Call out the Huon Valleys (sic) Biggest Whingers Facebook group, and that during his time in the group, he was complicit in inciting hatred, discrimination, fear and harm to Mr and Mrs Swan. The complaint alleged that this constituted a breach of parts 3 (1), 7 (1) and 8 (7) of the Code.

On 22 September 2019 Cr Newell wrote to a member of the public, stating that he was not a member of the group to which she was referring, viz., the Call out the Huon Valleys (sic) Biggest Whingers Facebook group. He said that he had left the group *when it started to get nasty*. When questioned by the Panel, Cr Newell said that he was unsure of the exact timing of his departure from the group, but that he thought it was between mid-September 2019 and the end of that month. Mr Swan provided evidence that both he and another community member were named and described in disparaging and disrespectful terms in a series of posts made on 26 August and 27 August 2019. Cr Newell was a founding member of the group and was therefore a member from its inception on 19 August 2019 until at least mid-September 2019.

Mr Swan provided material showing Facebook posts made on unspecified dates as evidence to support his allegation that the site was inciting hatred against Mr and Mrs Swan, was advocating harm to them and discriminating against them, and was inducing fear for their personal safety.

The Panel was told by Cr Newell that he did not personally contribute any comments about Mr and Mrs Swan and that, as he belonged to a large number of Facebook groups, he could have been unaware of the nature of the posts on the site.

The Panel determines that while it may be unwise for Cr Newell to be a member of approximately 140 Facebook groups (in his evidence), with the result that he may not be aware of the nature of posts being made thereon, this is not of itself a breach of the Code. For a breach to have occurred, Cr Newell must have instigated the actions which breach sections 3 (1), 7 (1), and 8 (7) of the Code. It is the conduct of Cr Newell, not the conduct of others in the group, which is relevant. The Panel has no evidence that Cr Newell was aware of the relevant posts made on 26 and 27 August 2019, nor that he made any contribution to any of those posts.

The Panel finds that Cr Newell was still a member of the Call out the Huon Valleys (*sic*) Biggest Whingers Facebook group on 18 September 2019. He wrote to a community member via Facebook on 22 September 2019 at 12.21 pm, stating that he had left the group 'when it started to get nasty'. The Panel determines that because it is possible that Cr Newell left the Facebook group between 18 September and 22 September 2019, it cannot be satisfied that Cr Newell lied in his email of 22 September 2019.

Pursuant to section 28ZI(1)(b), this part of the complaint is dismissed.

### 3. 4 October 2019

The complaint alleged that in a letter written by Cr Newell on or about 4 October 2019 to a community member, Cr Newell lied about his having left the Call out the Huon Valleys (*sic*) Biggest Whingers Facebook group 'as soon as it started to get nasty', and actively participated in exchange and ridicule of Mr Swan in the public arena on 28 September 2019. The complaint alleged that this constituted a breach of parts 3 (1), 7 (1) and 8 (7) of the Code.

The Panel has considered above whether Cr Newell lied about when he left the Facebook group. For the reasons given above, this part of the complaint is dismissed.

On or about 18 September 2019 Mr Allan Ford, a founding member of the Huon Valley Call out the Huon Valleys (*sic*) Biggest Whingers Facebook group, posted that at the Huon Valley Council meeting on 18 September 2019, it was *Lord Mayor I Swan out For a duck Last night*. In the same series of posts, Mr Ford posted that *He started talking and the mayor said some words witch (sic) I did not understand but it put him in his place fast*. Cr Newell signified on Facebook that he thought these posts were amusing.

This Facebook group has several hundred members, so Cr Newell's response to this ridicule of Mr Swan is in the public domain. In addition, the ridicule was based on an interaction between the Mayor and Mr Swan immediately after a council meeting which Cr Newell attended, in the council meeting chamber.

The Panel determines that by approving this ridicule of Mr Swan, Cr Newell brought the office of councillor into disrepute. The Panel determines that this treatment of Mr Swan was unfair and likely to cause Mr Swan offence and embarrassment. The Panel further determines that an elected member ridiculing a community member who is legitimately participating in the affairs of his local council reflects adversely on the reputation of the Council.

The Panel determines that by his approval of the Facebook post made by Mr Allan Ford shortly after the Huon Valley Council ordinary Council meeting on 18 September 2019, Cr Newell breached parts 3 (1), 7 (1) and 8 (7) of the Code. Pursuant to section 28ZI(1)(b), this part of the complaint is upheld.

### 4. 25 February 2020

The complaint alleged that in a Facebook post on a site intended to promote the re-election of a member of Parliament, Cr Newell breached the Code in responding to a question by that community member. The resident asked Cr Newell, who strongly supported the member of Parliament, to list what the parliamentarian had done in the past six years. Cr Newell's response included the words

*“Why don’t you ask Robert yourself Shane or better still have the guts to stand to put your own hand up for public office instead of sitting behind a keyboard and sniping others who have the courage to do it.”*

The complaint alleged that this constituted a breach of parts 3 (1), 7 (1) and 8 (7) of the Code.

Pursuant to section 28ZI(1)(b), this part of the complaint is dismissed. While the remarks are intemperate and could be offensive, they were made in the context of a political contest, and the Panel considers that this generally allows more robust exchange of views. The Panel notes that though Cr Newell must have been well aware that the community member had in fact stood unsuccessfully for the Huon Valley Council in the same election as Cr Newell; his Facebook post implies that this has never happened.

## Conclusion

The Panel heard that Cr Newell considered that he identifies on Facebook only as Mick Newell, not as Cr Newell, and that therefore his actions were not in breach of the councillors’ code of conduct. Given his profile as a radio announcer, as a Councillor who received over 5000 votes in the 2018 council elections, and a person who has had a public profile since 2013 because of his participation in a popular television show, the Panel does not accept that the community will fail to associate any comments from him with his role as a Councillor. He is a Councillor and the Panel is of the view that the role brings with it responsibilities in public life beyond those of ordinary citizens; and Facebook is part of public life. In accordance with section 28 of the Act, the role of a Councillor in part is to act in the best interests of the community, and to facilitate communication by the council with the community. These functions do not relate only to those sections of the community who gave a Councillor votes in the most recent elections, but apply to fair and equitable treatment of all community members.

## Sanction

In accordance with section 28ZJ (2) of the Act, if the Panel decides to impose a sanction after upholding a complaint, it may impose one or more of a number of sanctions on a councillor.

In determining an appropriate sanction, the Panel took into account that Cr Newell has had two previous complaints in part upheld against him since his initial election to Council in November 2018, and was issued with a caution in the Determination Report of 2 September 2019.

The Panel therefore imposes a reprimand on Cr Newell.

## 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)



Sam Thompson  
(Legal member)



Katherine Schaefer  
(Community member with  
experience in local government)