

*Local Government Act 1993*  
**SORELL COUNCIL CODE OF CONDUCT DETERMINATION REPORT \***  
**RELATING TO THE CONDUCT OF COUNCILLORS**

(ref : C 20247)

**Complaint by Ms Sharon Fotheringham against Councillor Deborah De Williams**

**Determination made on 24 June 2020**

**Code of Conduct Panel:**

Ms Sue Smith AM – Chairperson and a person with experience in Local Government

Mr Richard Grueber - Legal Representative

Ms Liz Gillam as a person with experience in Local Government

**Summary of the Complaint**

This Code of Conduct Panel has been convened to investigate a complaint made by the Complainant, Ms Sharon Fotheringham, against the Respondent Councillor (Cr) Deborah De Williams. The complaint was referred on 25 February 2020 by Mr Robert Higgins, General Manager of Sorell Council, in accordance with Section 28Z of the *Local Government Act 1993* (the Act).

The complaint alleges that on 18 February 2020 Cr De Williams breached the following provisions of the Sorell Council Code of Conduct:

*Part 3.1 The actions of a Councillor must not bring the Council or the Office of Councillor into disrepute.*

*Part 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.*

The Chairperson undertook an initial assessment of the complaint and on 12 March 2020 advised the complainant, the respondent and the General Manager that further investigation was warranted. Cr De Williams was provided with a copy of the complaint and was invited to respond.

A Code of Conduct Panel was convened to investigate the complaint.

**INVESTIGATION**

In accordance with s28ZE of the Act, the Panel conducted an investigation on the evidence before it. Ms Fotheringham, by Statutory Declaration, detailed the incident alleged to have taken place in the tea room next to the Sorell Council Meeting Chamber. She alleges that Cr De Williams entered and after several seconds made the comment “*I want to get out of here as quickly as possible away from a certain person*”. Ms Fotheringham believed the comment was directed at her and she found it offensive and embarrassing, that she was not treated fairly and that the action was bullying. Ms Fotheringham declared witnesses with a knowledge of the incident were Cr Kerry Degrassi, and Jessica Radford, Manager of Community Services and HR.

\* 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.

Ms Fotheringham further alleged that when she stood to address the Council during Public Question Time at the Council meeting, Cr De Williams immediately turned her back. Ms Fotheringham found that an act of rudeness which caused her offence and embarrassment.

Cr De Williams in her responding Statutory Declaration stated that the two occurrences were misinterpreted by Ms Fotheringham. Cr De Williams said that at the time she was '*mentally engaged and focused on council business and other personal matters*'. She was running late due to a highly stressful situation involving her daughter. She noticed Cr Degrassi and Ms Fotheringham engaged in discussion. She recalled Cr Degrassi addressing her by the fridge but due to parental mental focus did not engage. Cr De Williams did not recall what Cr Degrassi said but because of her focus at the time without much thought said '*I have got to get out of here*'. Cr De Williams maintained the statement was not directed or intended towards Ms Fotheringham.

In relation to the chair turning incident Cr De Williams explained the configuration of the Council table and the position of the public gallery and that her position in Chamber requires her to turn her chair when looking at the Mayor during Public Question Time. As the questions from the public are addressed to the Mayor, Cr De Williams stated she looked to the Mayor. Cr De Williams included Statutory Declarations from Ms Rachel Hart, Engender Equality (Therapist), outlining the personal stress she was under, and Cr Carmel Torenus outlining her dealings with Ms Fotheringham in relation to previous issues surrounding Leave of Absence.

In light of the differing views of the incident, the Panel requested the Mayor, Cr Vincent and Cr Degrassi to provide Statutory Declarations. The Mayor provided a succinct explanation of the Chamber seating where '*Councillors do need to turn slightly to face the Public Gallery then swing back the opposite way if they wish to be looking at me during my response*'. The Mayor also commented that after the meeting Cr Degrassi stayed back to mention '*there had been some tension in the tea room before the Council meeting*.' Cr Degrassi was not clear on what had actually been said but that '*Sharon took it personally and was quite upset*'. The Mayor raised the matter with Mrs Jessica Radford, Manager of Community Services and HR, who had entered the tea room at that point. Her recollection was '*she noticed some tension in the room when she walked in but was not sure of details*'. The Mayor phoned Ms Fotheringham to discuss the issue but could not achieve a resolution.

On 27 April 2020 Cr Degrassi was asked to provide evidence in respect of the complaint. Unfortunately no statement from Cr Degrassi has been forthcoming, despite follow up by the Executive Officer of the Code of Conduct Panel. Given that the Panel is not bound by the rules of evidence and may inform itself as it sees fit, and in light of:

- a. the Mayor including in his Statutory Declaration a summary of his conversation with Cr Degrassi;
- b. restrictions imposed because of the covid-19 pandemic; and
- c. Cr Degrassi's health issues

the Panel agreed not to pursue the request for a statutory declaration from Cr Degrassi.

## Determination

Pursuant to s28ZG(2)(b) of the Act, the Panel determined that a hearing was unnecessary in the circumstances, because the investigations could be adequately conducted by means of written submissions. The Code of Conduct Panel considered the information provided by the complainant and the response from Cr De Williams, along with supporting Statutory Declarations.

The Panel concludes that in relation to the allegations concerning Cr De Williams' actions during Question Time, there was no breach of Part 3.1 or Part 7.1. The Mayor's Statutory Declaration explains how a Councillor must react to hear the Mayor's response at Public Question Time and the Panel is not satisfied that Cr De Williams showed any action that could be construed as bringing the Council or the Office of Councillor into disrepute. Cr De Williams' actions in the Chamber could not be construed as treating Ms Fotheringham unfairly, causing offence or embarrassment or bullying and harassment. The Panel dismisses that part of the Complaint.

As regards the tea room incident, the Panel finds in favour of the Complainant. There is dispute as to the words spoken. Ms Fotheringham quotes Cr De Williams as saying "*I want to get out of here as quickly as possible away from a certain person*". Cr De Williams says that "*without much thought I said I got to get out of here*". Both the Complainant and the Respondent accept that an incident happened.

The Statutory Declaration from the Mayor indicates that:

- a. Cr Degrassi stayed back after the Council meeting to mention to him that there had been some tension in the tea room before the Council meeting due to Cr De Williams' words, which Ms Fotheringham had taken personally and was quite upset.
- b. As he was aware that a staff member had entered the tea room at the time of the incident, the Mayor raised the issue with that staff member. The staff member commented that she had noticed some tension in the room when she walked in but was not sure of further details.

Councillors are required by the Sorell Council Code of Conduct to ensure any actions do not bring the Council or Office of Councillor into disrepute, and that a Councillor must treat all persons fairly and not cause any reasonable offence or embarrassment. Cr De Williams' Statutory Declaration states "*at the time of the alleged incidents I was mentally engaged and focused on Council business and other personal matters.*" She also states "*In hindsight, due to my personal situation, I would have been best not to attend the Council Meeting and been there for my little girl. My personal values and obligation to my community were the reason I did attend the February 2020 Council Meeting*". With the significant decisions made by elected Councillors it is essential that all Councillors have total concentration on their Council responsibilities and the Panel agrees with Cr De Williams that sometimes the best option is not to attend a Council Meeting but to record an apology if personal issues are forefront at the time.

The Panel considers that the words spoken in the circumstances caused Ms Fotheringham offence and embarrassment, were spoken in circumstances where they reasonably appeared to be directed at Ms Fotheringham and were such as might cause a reasonable person offence and embarrassment.

As an aside, the Panel considered it somewhat surprising, in an era of a heightened awareness of security, that the public, staff and Councillors were all using the same tea room before the Council meeting.

## Sanction


As per s28ZL(2) of the Act, the Panel imposes a Caution on Cr De Williams and requires that she write a personal apology to Ms Fotheringham for any distress she may have felt as a result of the incident in the tea room. The apology is to be actioned within 30 days of the receipt of this report.

### Delay in determining complaint

Section 28ZD (1)(a) of the Act requires the determination to be made within 90 days after the initial determination by the Chairperson to investigate and determine the complaint or provide reasons why this requirement could not be met. In this instance the 90-day period concluded on 10 June 2020. Reasons for exceeding this timeframe include the timeframe for obtaining witness statements and delays occasioned by the restrictions imposed in relation to the covid-19 virus.

### 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.



Sue Smith  
Chairperson



Richard Grueber  
Legal Member



Liz Gillam  
Member