

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 Andrew McCullagh against the Mayor, Councillor Mary Knowles OAM**

### **Code of Conduct Panel**

- Lynn Mason AM (Chairperson),
- David Sales (Local Government Member)
- Graeme Jones (Legal Member)

Date of Determination: 1 October 2024

Content Manager Reference: C31377

### **Summary of the complaint**

A code of conduct complaint was submitted by Councillor (Cr) Andrew McCullagh on 28 August 2023.

The complaint alleged that Cr Knowles *completely misled the Minister for Local Government (and) made representations of the council that are untrue and without authority, and the council had no understanding of the matter.* This was alleged to have occurred at a council presentation to the Local Government Board on the Future of Local Government, held in Campbell Town on 10 August 2023.

In supporting documents the complainant cited a letter from Councillor (Cr) Mary Knowles to the Minister for Local Government, stating that the Council had *committed to funding the repurposing component of the project* (to create a Neighbourhood House and associated facilities in Longford) *at an estimated cost of \$450,000 and Council proposes the annual operating cost of the Hub – estimated at \$200,000 – be funded by equal contributions by the State Government, Council, and the community sector.*

### **Initial assessment of the complaint**

The complaint alleged that Cr Knowles had breached the following sections of the Code of Conduct (the Code):

#### **PART 2 - CONFLICT OF INTERESTS THAT ARE NOT PRECUIINARY**

#### **PART 3 - USE OF OFFICE**

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

#### **PART 8 - REPRESENTATION**

*8.1 When giving information to the community, a councillor must accurately represent the policies and decisions of the Council.*

*8.2 A councillor must not knowingly misrepresent information that he or she has obtained in the course of his or her duties.*

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 alleged breaches of Part 3.1 and Part 8.1 and 8.2 of the Code should be further investigated, as they substantially related to possible contraventions of the Northern Midlands Council's Code of Conduct updated on 30 June 2023;
- If the allegations in relation to the above-named Parts were proven, they were capable of constituting a breach in relation to the Council's Code of Conduct;
- The complaint accepted for further investigation 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 complainant had not made any reasonable effort himself to resolve the issue that was the subject of the complaint. The reason cited for this was 'irreconcilable difference' between himself and the Mayor, and the Chairperson allowed that this would prevent efforts towards resolution;
- The complaint had not been made in contravention of a determination of the chairperson of a Code of Conduct Panel under section 28ZB(2) of the Act or a determination of the Code of Conduct Panel under section 28ZI(3) of the Act.<sup>1</sup>
- The Chairperson determined that the complaint in relation to the alleged breaches of Part 2 of the Code was dismissed. The reason for the dismissal of this part was that Part 2 of the Code refers to conflicts of interest, and the material presented with the complaint did not provide any evidence that Cr Knowles was unduly influenced by any personal or private interests that she may have had; thus, it had not been shown that Cr Knowles had a conflict of interest in this matter. This part of the complaint was dismissed on the grounds that it was frivolous, i.e., lacking in substance.

The complaint also alleged that Cr Knowles had breached section 27(c) and section 27.1(a) of the *Local Government Act 1993* (the Act). The Code of Conduct Panel is unable to investigate possible breaches of the Act. Thus, the allegation that Cr Knowles breached part of section 27 of the Act was dismissed. The complainant was advised that such allegations could be referred to the Director of Local Government.

The complainant and the respondent councillor were notified of the outcome of the initial assessment by letter dated 4 December 2023.

## **Investigation**

In accordance with section 28ZE of the Act, the Code of Conduct Panel (the Panel) investigated the complaint.

Cr Knowles was invited in the initial assessment to respond to the complaint by 18 December 2023. Her response was received by the Panel on 15 December 2023. This was sent to Cr McCullagh and he was invited to provide his response to it by 7 February 2024. As nothing had been received from Cr McCullagh by that date, he was sent a reminder by the Executive Officer on 14 February 2024, granting an extension to 16 February 2024.

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<sup>1</sup> Sections 28ZB(2) and 28ZI of the Act enable the Chairperson or the Panel (as applicable) to issue a direction to a complainant in prescribed circumstances not to make a further complaint in relation to the same matter unless the complainant provides substantive new information in the further complaint.

On 14 February 2024 Cr McCullagh informed the Executive Officer that he was relying on legal advice on a different matter (also involving Cr Knowles) before making any response to Cr Knowles's submission. As nothing had been received from Cr McCullagh, on 7 March 2024 Cr McCullagh was asked if he intended to make any further response in the matter of his complaint against Cr Knowles, and given until 19 March 2024 to do so. In response, Cr McCullagh emailed the Executive Officer, stating that *you may proceed if you wish with the hearing, but I will not attend nor will I submit evidence, and will appeal any outcome not in my favour through the Magistrates Court if required.*

The Panel met on 4 March 2024 and again on 27 March 2024, to consider the complaint, Cr Knowles's response, and the matters raised by Cr McCullagh.

On 2 April 2024 Cr McCullagh informed the Panel that he would consider this complaint and respond within 14 days. Nothing was received from Cr McCullagh at this time.

On 7 May 2024 the Panel notified both Cr McCullagh and Cr Knowles that it intended to conduct a hearing into the complaint, to take place on 20 June 2024. Both parties were invited to name witnesses should they wish to call any, and were invited to have a support person and/or an advocate in attendance at the hearing. The delay in calling the hearing took into account that Cr McCullagh was on leave from Council and unavailable until after 17 June 2024. Both parties agreed that they would be available to attend a hearing on 20 June 2024. Cr McCullagh was then called up for jury duty from 17 June to 1 July 2024, and therefore the hearing on 20 June was deferred.

Further delays occurred with the unavailability of Cr Knowles for the month of July 2024, so a new hearing date was set for 16 August 2024, with both parties agreeing to that date. However, on 24 July 2024, the Panel was informed that Cr McCullagh had been granted leave from Council from 1 August 2024 to 17 September 2024, and would not be able to attend a hearing during that time.

The Panel set a fresh hearing date for 19 September 2024.

The Panel based its investigations on the following documentation:

- The complaint from Cr Andrew McCullagh, submitted under cover of statutory declaration, dated 28 August 2023, 35 pp;
- The response from Cr Knowles, submitted under cover of a statutory declaration, dated 15 December 2023, 2pp;
- Witness statement from Ms Lorraine Green, Project Officer of Northern Midlands Council, accompanied by a Statutory Declaration, 24 May 2024, 6pp;
- The Northern Midlands Council Code of Conduct for Elected Members, updated 30 June 2023.

The Panel noted in its investigation and consideration of the material, that the complainant appeared to have relied on the Panel to formulate the particulars of the complaint from the voluminous attachments to the complaint provided by the complainant in support of his allegations of breaches of the Code. Section 28V(3)(e) of the Act requires that the complaint must contain details of the behaviour of the councillor that constitutes the alleged contraventions of the Code.

The Panel takes seriously its responsibility in reading and considering the material sent to it. However, it is a basic requirement both under the Act and for the purpose of procedural fairness to the respondent for the complaint to particularise with some precision the conduct alleged by the complainant. The Panel should not be required to undertake the task of sorting through a wealth of material in order to determine the behaviour which may conceivably amount to a breach of the Code. That is for the complainant to do. The complainant should not only specify with clarity the conduct complained of, but also provide a clear link between the actions of the councillor and the specific clause or clauses of the Code which are alleged to have been breached by those actions. The Panel's task in this matter was made difficult by the complainant's failure to do so. The complainant's failure to respond specifically to the matters raised by Cr Knowles in her response of 15 December 2023 also made the Panel's task more difficult.

## Hearing

The hearing was held on 19 September 2024. Cr McCullagh failed to attend. Cr Knowles was attended by a support person and called Ms Lorraine Green as her witness. Cr Knowles and Ms Green took the Oath, and Cr Knowles's support person read the Affirmation.

Cr Knowles spoke in response to the complaint, reiterating that it was never her intention to mislead either the Minister for Local Government or the Local Government Board. Ms Green, as her witness, provided information about the duration of the Council's desire to have a Neighbourhood House or similar community facility within the municipality. Both the Mayor and Ms Green emphasised that the need for such a facility had been made even more obvious during the Covid epidemic of 2020-2021.

Cr Knowles was asked if she wished to make a submission on sanction, in the event that the Panel determined to uphold any part or all of the complaint. Cr Knowles submitted that she continued to believe that she had not breached the Code, but should the Panel uphold part or all of the complaint, a caution would be the appropriate sanction.

## Determination

The Panel upholds the complaint that Cr Knowles breached Part 8.1 and 8.2 of the Norther Midlands Council Code of Conduct and dismisses the complaint that she breached Part 3.1 of the Code.

### Reasons for determination

#### Part 3 – Use of Office

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

Cr Knowles made a presentation to the Local Government Board (the Board), in which she stated that if the vacant Tasmania Police building next to the Council Chambers in Longford were to be gifted to the Council, then Council *commits to funding the repurposing component of the project at an estimated cost of \$450,000.*

In a letter to the Minister for Local Government on 8 February 2023, Cr Knowles stated that Council had *committed to funding the repurposing component of the project (to create a Neighbourhood House or similar facility) at an estimated cost of \$450,000.*

The Panel established that while the sum of \$450,000 had been approved by Council as a supplementary item in the 2023-2024 Budget, it would be essential for the Council to approve the transfer of moneys from the supplementary budget to the Operating Budget, and that therefore, while the majority of Councillors were supportive of the project and content to set funds aside in case a suitable property became available, it was not correct to say that the funds had actually been committed to convert the Tasmania Police building into a Neighbourhood House.

When other councillors brought to the Mayor's attention that some of the statements in her letter to the Minister and in her presentation to the Board could have been misinterpreted, the Mayor promptly responded to both the Minister and the Board to correct any misunderstanding. Cr Knowles, in a letter to another Councillor written on 24 August 2023, stated that *upon reflection the power point slide for the LG Board presentation could have been better worded.* The Panel agrees with that view.

However, the Panel determines that no evidence was presented by Cr McCullagh to establish that the Council was brought into disrepute by the statements made by Cr Knowles to the Minister and to the Board. Nor was any evidence provided to show that the office of councillor had been brought into disrepute. The letter to the Minister was not for general publication.

The Panel therefore dismisses the complaint that Cr Knowles breached Part 3.1 of the Code.

## **Part 8 – Representation**

*8.1 When giving information to the community, a councillor must accurately represent the policies and decisions of the Council.*

As above, Cr Knowles made a presentation to the Local Government Board, in which she stated that if the vacant Tasmania Police building next to the Council Chambers in Longford were to be gifted to the Council, then Council *commits to funding the repurposing component of the project at an estimated cost of \$450,000.*

While only the Council was able to make representations to the Board at that meeting on 10 August 2023, the meeting was open to the public. When the possibility of misunderstanding the actual position of Council in the matter of the funding was raised with the Mayor by another Councillor, Cr Knowles promptly wrote to the Board to explain the situation. However, there were members of the public present, and the inaccuracy of the statement, however well intentioned, was not explained to the public. Should a future Council decide not to proceed with the conversion of the Tasmania Police building for the purposes described on 10 August 2023, it could appear that Council had gone back on a firm undertaking to create a Neighbourhood House on that site in Longford.

The Panel therefore upholds the complaint that Cr Knowles breached Part 8.1 of the Code.

*8.2 A councillor must not knowingly misrepresent information that he or she has obtained in the course of his or her duties.*

In writing to the Minister and presenting to the Board, Cr Knowles was undertaking her role as Mayor of the Council. As such she considered the letter and the presentation which had been prepared for her by council officers. She accepted the wording in both the letter and the presentation as given to her.

The Panel determines that Cr Knowles should have realised that her statements that Council had committed the funding for the Neighbourhood House project could have been misunderstood, and she should have asked for the wording of those statements to be amended. Cr Knowles is an experienced councillor and an experienced Mayor. Cr Knowles knew that another decision would be required from the Council before any moneys could be spent on repurposing the Tasmania Police building, and that therefore, to state that Council had already committed the funding for that project was not correct.

The Panel accepts that Cr Knowles was acting, as she believed, in the best interests of Council, and putting the best case she could to achieve a successful outcome for the municipality. However, the information that she presented to the Board and to the Minister was a misrepresentation of the matters still to be decided by the Council when a suitable facility became available. Only then could Council commit the funding. At the time of the presentation to the Board, and the letter to the Minister on 8 February 2024, this had not occurred and the funding had not been committed to the project.

The Panel therefore upholds the complaint that Cr Knowles breached Clause 8.2 of the Code of Conduct.

### **Sanction**

Under section 28ZI(2) of the Act, the Panel may impose a sanction on a councillor where a complaint has been upheld. In this matter, the Panel imposes a caution on Cr Knowles.

The Panel takes into account that at all material times the Mayor was acting in good faith, but failed to exercise sufficient care with the documents prepared for her, and trusted the drafting of her staff in the preparation of both the presentation and the letter to the Minister. The Panel determines that the Mayor's prompt actions to correct any misunderstandings that may have arisen with the Minister or the Board substantially mitigate in her favour.

## Timing of the Determination

In accordance with section 28ZD (1) a Code of Conduct Panel is to make every endeavour to investigate and determine a code of conduct complaint within 90 days of the chairperson's determination that the complaint is to be investigated. The Panel has been unable to determine the complaint within 90 days, having regard to delays in receiving responses from Cr McCullagh, the granting of a number of extensions of time, leave taken by the parties and other commitments by the parties preventing the hearing of the complaint.

## Right to review

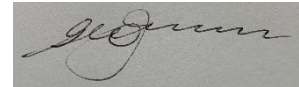
A person aggrieved by the determination of the Code of Conduct Panel, on the ground that the Panel failed to comply with the rules of natural justice, is entitled under section 28ZP of the Act to apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination.



Lynn Mason AM  
**Chairperson**



David Sales  
**Member**



Graeme Jones  
**Legal Member**

DATE: 1 October 2024