

Local Government Act 1993

CODE OF CONDUCT PANEL REPORT

MEANDER VALLEY COUNCIL COUNCILLOR CODE OF CONDUCT

Complaint against Cr Andrew Connor

Date of Determination: 21 May 2018

Code of Conduct Panel:

Lynn Mason (Chairperson), Christine Fraser, Anthony Mihal (legal member)

Summary of the Complaint

The complaint was submitted on 1 March 2018 by Mr Scott Newsum, and relates to a statement made by Cr Connor in a meeting of the Meander Valley Council on 16 January 2018. The section of the Code which the Complainant alleges Cr Connor breached is

7.1 A councillor-

(b) must not cause any reasonable person offence or embarrassment.

The complaint also alleges breach of s28S(g) of the *Local Government Act 1993*. The Code of Conduct Panel may only consider alleged breaches of the relevant Code of Conduct. Section 28S mandates that a model code of conduct made under the Act must make provision for certain matters, but does not of itself create any obligations for councillors. In any event, the Panel has no jurisdiction to consider that alleged breach and declines to do so.

The Complaint

Mr Newsum alleges that at the council meeting of 16 January 2018 (Item 13), Cr Connor described some representations to an application for a planning permit as “*emotive arguments bordering on xenophobia*”. Mr Newsum describes this as a “*brash and unjust generalisation*” which caused “*emotional pain and un-just [sic] embarrassment to many of the members of the community who took their time to write responses, in good faith...*”. Mr Newsum says that Cr Connor’s statement was reported in The Examiner newspaper on 18 January and 19 January 2018.

Preliminary Procedure

The complaint was referred to the Code of Conduct Panel (the Panel) on 13 March 2018. The Chairperson of the Panel informed Mr Newsum and Cr Connor on 23 March 2018 that she had assessed the complaint as a whole, and in accordance with s28ZA(1)(e) of the Act, determined that the complaint was to be investigated and determined by the Code of Conduct Panel for the following reasons:

1. The complaint substantially related to an alleged contravention of the Meander Valley Council's Code of Conduct; and
2. The complaint did not appear to be frivolous or vexatious in nature.

On 7 April 2018 the Panel advised Cr Connor that should he wish to respond to the complaint, he could do so in writing before 27 April 2018.

The Panel met on 10 May 2018 to consider the complaint, Cr Connor's response, and accompanying documentation which included:

- A letter from Mr Newsum to the General Manager, Meander Valley Council, 20 January 2018;
- An excerpt from the minutes of the council meeting, 16 January 2018;
- A letter from Cr Connor to Mr Newsum, 27 February 2018;
- An email from Cr Connor to the General Manager, Meander Valley Council, 27 February 2018;

In a letter on 10 May 2018 Mr Newsum was provided with a copy of Cr Connor's response to the complaint and was invited to provide further information to support his complaint by 18 May 2018. The Panel considered Mr Newsum's statement, received on 18 May 2018, and all other information provided to it, and determined that under s28ZG (2) (b) of the Act, it did not need to conduct a hearing into the complaint, but would conduct its investigation by means of the written submissions and examination of the documentary evidence provided. The reason for the decision was that Cr Connor does not dispute that he made the statement referred to in the complaint, or that the statement was repeated twice in The Examiner newspaper. Mr Newsum and Cr Connor were informed of this decision on 21 May 2018.

Determination of the Code of Conduct Panel

The Code of Conduct Panel dismisses the complaint.

Reasons for the Determination

The Panel concluded that on the evidence presented, Cr Connor's statements at the council meeting on 16 January 2018 would not have caused a reasonable person offence or embarrassment. The Panel considered that Cr Connor's comments in the council meeting referred to the representations council had received, and were not personal in nature. A reasonable person making a representation in respect of an application for a planning permit should expect that his or her representation may be publicly criticised, even in robust terms.

The Panel noted that no evidence was provided to support the statement made in the complaint that Cr Connor's statement had caused *emotional pain and un-just* (sic) *embarrassment to many members of the community*, and that Mr Newsum had not been present at the council meeting on 16 January 2018.


The Panel noted that on 27 February 2018, Cr Connor had apologised by letter to Mr Newsum for giving him offence by the words he used to describe some of the representations made to the planning proposal.

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)



Christine Fraser



Anthony Mihal