

*CODE OF CONDUCT PANEL*

**BRIGHTON COUNCIL CODE OF CONDUCT**

**Complaint by Councillor (Cr) Garlick against Councillor (Cr) Higgins**

**Determination made 14 June 2017**

***Local Government Act 1993***

Code of Conduct Panel: Jill Taylor, (Chairperson), Gretel Chen, (Legal Member) and Christine Fraser (Member).

**1. Summary of the complaint**

Cr Wayne Garlick, lodged a Code of Conduct Complaint (the Complaint), against Cr Keith Higgins dated 21 March 2017. Division 3A of the Local Government Act 1993 deals with complaints against Councillors and the investigation of those complaints by Code of Conduct Panels. In order for a complaint to fall within Division 3A it must relate to a Councillor. As some of the matters raised in the Complaint preceded Cr Higgins' term of office as a Councillor the Panel determined that it had no jurisdiction to deal with those matters. The investigation was therefore confined to those allegations said to have occurred during Cr Higgins' term of office as a Councillor which commenced on 3 November 2016.

The Complaint alleges that Cr Higgins contravened Parts 7.1 (a) (b) & (c) of the Brighton Council's Code of Conduct (the Code), which was adopted on 21 June 2016. Specifically, the Complaint alleges that during Cr Higgins' induction as a Councillor in early November 2016, he accused Cr Garlick of stealing and asked "what Council was going to do about it?" The accusation was alleged to have been made to Mr Ron Sanderson, General Manager, Brighton Council, and Ms Janine Banks, Governance Manager.

The Complaint further alleges that on 17 March 2017 whilst at the Council offices, Cr Higgins' spoke with Mr Sanderson and Mr Greg Davoren, Deputy General Manager and accused Cr Garlick of being a thief and asked why they had not sacked him?

The Complaint stated that a letter sent by Cr Garlick's legal practitioners, Murdoch Clarke, to Cr Higgins and dated 18 November 2016 had been mailed to Ms Helen Manser and the Brighton Councillors. Cr Garlick alleged that Cr Higgins was the only person who could have sent the Murdoch Clarke letter to each of those parties.

The following is the relevant extract from the Code of Conduct:

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

*1 A Councillor: -*

- a. must treat all persons with courtesy, fairness, dignity and respect; and*
- b. must not cause any reasonable person offence or embarrassment'; and*
- c. must not bully or harass any person.*

## 2. Investigation

The Chairperson of the Code of Conduct Panel (the Chairperson) conducted an initial assessment of the Complaint and determined on 27 March 2017 that it was to be investigated and determined by a Code of Conduct Panel (the Panel) in accordance with section 28ZA(1)(e) of the *Local Government Act 1993* (the Act).

The Panel determined that it would hold a hearing on the matter.

The Panel received and considered the following documents prior to the Hearing:

- The Complaint;
- The Code of Conduct;
- A letter from Murdoch Clarke addressed to Cr Higgins and dated 18 November 2016;
- A Statutory Declaration of Cr Barbara Curran dated 6 February 2017;
- A Statutory Declaration of Ms Janine Banks dated 21 March 2017; and
- A Statutory Declaration of Mr Greg Davoren dated 25 May 2017.

The following document was provided to the Panel during the hearing by Ms Janine Banks and given to Cr Garlick and Cr Higgins:

- An email dated 18 January 2017 from Ms Helen Manser to Ms Banks, Mr Sanderson and Cr Garlick with the following attachments:
  - The letter dated 18 November 2017 from Murdoch Clarke addressed to Cr Higgins;
  - A piece of paper containing, inter alia, the words “someone come forward and be honest about covering up and the thieving (sic) and fraud going on before a Current Affairs come down and do it for you”.

The Panel was advised by the parties and Ms Banks that Helen Manser is the manager of Jordan River Services. Jordan River Services conducts community services in the Brighton area from premises owned by the Brighton Council. One of the services conducted from the premises is “Pete’s Shed”.

### Summary of Hearing

The Hearing was convened on 14 June 2017 at the LINC Centre in Bridgewater. All witnesses were required to take an Oath or make an affirmation prior to giving evidence. In attendance throughout the Hearing were Cr Wayne Garlick and Cr Keith Higgins. Ms Banks, Mr Sanderson and Cr Curran all attended separately to give evidence. The Chairperson outlined the substance of the complaint and the procedure the Panel would follow, including options available to the Panel if the complaint was upheld.

Cr Garlick was asked to speak to his Complaint without interruption. He alleged that he became aware that Cr Higgins had claimed he was a thief on several occasions to various people. None of the allegations had been made directly to him by Cr Higgins and he had only heard from others that the allegations had been made. He stated that the allegations have affected him and his family to the extent that he consulted a lawyer. That consultation resulted in the letter from Murdoch Clarke dated 18 November 2016 being sent to Cr Higgins.

Cr Garlick told the Panel that one of his grandchildren used to like to collect his mail from his mail box but on one occasion found a piece of paper in his mailbox with words to the effect that “Cr Garlick is a thief”. The grandchild was so upset that he refused to collect the mail for a period thereafter. Cr Higgins denied that he had anything to do with placing the item in Cr Garlick’s letterbox.

Cr Garlick told the Panel that he had been a Councillor for 20 years and had worked and volunteered at Pete's Shed for 5 years. Cr Garlick had heard from others that Cr Higgins had alleged that he had stolen from Pete's Shed. Cr Garlick emphatically denied that he has ever stolen from Pete's Shed.

Cr Curran advised the Panel that Keith Higgins had told her Cr Garlick was a thief. Cr Higgins admitted that he had told Cr Curran that Cr Higgins was a thief. However, the evidence demonstrated that the statement was made before Cr Higgins' Declaration of Office and therefore was not made in his capacity as a Councillor.

Ms Janine Banks advised the Panel that she and General Manager Mr Ron Sanderson were present on 3 November 2016 for Cr Higgins' Declaration of Office. After the formalities, Cr Higgins asked both Ms Banks and Mr Sanderson what they were going to do about Cr Garlick who had been stealing from Pete's Shed. Both told Cr Higgins that the Council was not responsible for Pete's Shed as it was run by Jordan River Services and, if there was an issue of stealing, it should be reported to the Police. Ms Banks also told the Panel that she had heard Cr Higgins on two occasions saying to Mr Greg Davoren that Cr Garlick was a thief. Both occasions occurred after Cr Higgins became a Councillor.

Mr Ronald Sanderson, General Manager Brighton Council advised the Panel that about a week prior to Cr Higgins swearing in, Mr Higgins has said to him that Cr Garlick was a thief. Following his appointment as a Councillor Cr Higgins, repeated this allegation to Mr Sanderson. Mr Sanderson advised Cr Higgins that he needed to be careful in making such allegation now that he was a Councillor. Mr Sanderson told the Panel that he took this opportunity to point out to Cr Higgins that there were certain responsibilities as a Councillor that were different to him as a member of the community. Mr Sanderson added that Cr Higgins said to him and Ms Banks on 3 November 2016, that he was "going to shake things up".

Mr Sanderson also advised the Panel that he was in Mr Greg Davoren's office on 17 March 2017 when Cr Higgins came in and asked them both, when were they "going to sack Cr Garlick". Mr Sanderson said that he reiterated to Cr Higgins that they (Council management) could not sack Councillors and that if he had evidence that Cr Garlick was a thief he should go to the Police. Mr Sanderson said that Cr Higgins got angry that Cr Garlick had not been sacked and alleged that he (Mr Sanderson) and the Mayor of Brighton Council were corrupt. Mr Sanderson said that this verbal exchange lasted for about 10-15 minutes.

The Panel considered a statutory declaration from Mr Greg Davoren. Mr Davoren is the Deputy General Manager at Brighton Council. Mr Davoren was overseas at the time of the panel hearing and was unable to attend in person. Mr Davoren's statutory declaration was consistent with the evidence of Mr Sanderson. Specifically, the statutory declaration states that Cr Higgins had said, on several occasions in Mr Davoren's presence, that Wayne Garlick had been dismissed from Pete's Shed for stealing.

Cr Higgins was offered the opportunity to question each witness and respond to the Complaint.

Cr Higgins did not dispute the evidence of Ms Banks, Mr Sanderson or Mr Davoren apart from saying that he had used the word "removed" instead of "dismissed". He advised the Panel "I admit all this" and agreed that he had said the things alleged to have been said by him on 3 November 2016 and 17 March 2017. He also advised the Panel that he did

not dispute what Cr Garlick had said in his complaint. He closed by saying "My allegation is Cr Garlick is a thief".

The Panel asked Cr Higgins why he did not go to Cr Garlick and advise him that there were allegations of Cr Garlick being a liar and a thief thus providing Cr Garlick with an opportunity to respond. Cr Higgins said that he has the ability to decipher what is true and what is not.

Cr Higgins denied that he had circulated the letter he received from Murdoch Clarke dated 18 November 2016. He advised the panel that he does not know Cr Garlick's address, cannot type and cannot use email.

### **3. Determination**

The Panel determines the following:

#### **Part 7 – RELATIONSHIPS WITH COMMUNITY, COUNCILLORS AND COUNCIL EMPLOYEES**

*1 A Councillor: -*

- a. must treat all persons with courtesy, fairness, dignity and respect; and*
- b. must not cause any reasonable person offence or embarrassment; and*
- c. must not bully or harass any person.*

The Panel upholds the Complaint.

By his own admission, Cr Higgins, publicly called Cr Garlick and thief and a liar during his induction on 3 November 2016 and whilst speaking to the General Manager and Deputy General Manager on 17 March 2016. Despite receiving a letter from Cr Garlick's lawyer and being advised by the General Manager Mr Sanderson that he should refrain from repeating these allegations publicly, he continued to do so.

The Panel is not satisfied that Cr Higgins was responsible for circulating the Murdoch Clarke letter dated 18 November 2016 to any other party, and as such dismisses that aspect of the Complaint.

### **4. Sanction**

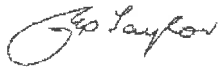
Cr Higgins was invited to provide a submission to the Panel regarding a sanction to be imposed by 5 July 2017. Cr Higgins did not avail himself of this option, therefore the Panel has determined the following sanction in accordance with Section 28ZI (2).

1. Cr Higgins be reprimanded for his actions on more than one occasion alleging Cr Wayne Garlick was a thief and a liar.
2. Cr Higgins is required to apologise to Cr Garlick in writing by at the next available Closed Council meeting, requirements of the apology are contained in the addendum to this determination.

Section 28ZM of the Local Government Act 1995 requires the Cr Higgins to comply with this sanction within the period specified in this report. Failure to do so may result in a fine not exceeding 50 penalty units.

## 5. Right to Review

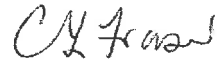
A person aggrieved by the determination of the Code of Conduct Panel is entitled under section 28ZP of the Act to apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination on the grounds that the Code of Conduct Panel has failed to comply with the rules of natural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



**Jill Taylor**  
Chairperson



**Gretel Chen**  
Legal Member



**Christine Fraser**  
Member

Code of Conduct Complaint by Cr Garlick against Cr Higgins  
Addendum to Determination dated 14 June 2017

Under Section 28ZI (2) of the Local Government Act 1995, the Code of Conduct Panel has determined that Cr Higgins is required to apologise to Cr Garlick at the next available closed Council meeting. The apology must be placed on the Agenda for the closed Council meeting and Cr Higgins is required to read the following apology.

“Dear Cr Garlick,

I sincerely and unreservedly apologise to you for any hurt or embarrassment that I have caused as a result of wrongly alleging to others that you are a thief.

Yours sincerely,

Cr Keith Higgins”