

**GEORGE TOWN CODE OF CONDUCT DETERMINATION REPORT \*  
RELATING TO THE CONDUCT OF COUNCILLORS**

Complaint made by Councillor Heather Barwick against Mayor Gregory Kieser

Reference : c20054

Determination made on 18 August 2020

**CODE OF CONDUCT PANEL:**

Robert Winter (Chairperson), Graeme Jones (Legal Member), Liz Gillam (Member).

**1. Summary of the Complaint:**

On 10 January 2020 Councillor Heather Barwick (Councillor Barwick) lodged a code of conduct complaint (the Complaint) against Mayor Gregory Kieser (Mayor Kieser) through Mr Shane Power, the General Manager of the George Town Council (the Council).

Mr Power referred Councillor Barwick's complaint to the Executive Officer of the Code of Conduct Panel on 14 January 2020.

In her complaint, Councillor Barwick alleged that Mayor Kieser had breached Parts 7.1 (a), (b), (c), and Part 7.2 of the Council's Code of Conduct (the Code) which was approved by the Council on 21 January 2019.

Specifically, Councillor Barwick alleged that Mayor Kieser had breached the Code during exchanges between them in a closed session of Council on the afternoon of 17 December 2019.

The relevant parts of the Code are listed below:

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

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.
2. A councillor must listen to and respect the views of other councillors in Council and committee meetings, and any other proceedings of the Council, and endeavour to ensure that issues, not personalities, are the focus of debate.

An initial assessment by the Chairperson determined that further investigation was warranted in relation to Councillor Barwick's complaint.

\* 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.

A Code of Conduct Panel (the Panel) was formed to investigate the Complaint made by Councillor Barwick. On 17 February 2020, Mayor Kieser was provided with a copy of the Complaint, and invited to provide a response.

Mayor Kieser provided his response to the Complaint under cover of a statutory declaration sworn on 27 February 2020.

On 10 March, Mayor Kieser provided a statutory declaration from Brent Daire, a Council employee, sworn 10 March 2020.

On 19 March, Councillor Barwick provided a statutory declaration, with attachments, from Councillor Justine Brooks sworn 19 March 2020

On 18 March, Councillor Barwick provided a further statutory declaration sworn 18 March 2020.

On 24 March, Councillor Barwick provided a statutory declaration from Councillor Christopher Barraclough sworn 24 March 2020.

Via email on 16 April 2020, Mayor Kieser advised the Executive Officer of the Panel that he did not wish to make any comment in relation to the content of the statutory declarations of Councillors Brooks, Barraclough and Councillor Barwick.

## **2. Investigation:**

The Panel met on 24 April 2020 to consider the complaint and determined, in accordance with s28ZG (2) (a) and (b) of the *Local Government Act 1993* (the Act) that the Complaint could be investigated without a hearing as in its view neither Councillor Barwick nor Mayor Kieser would be disadvantaged by this approach.

This was communicated to both Councillor Barwick and Mayor Kieser by correspondence dated 30 April 2020. Both were requested to respond.

Via email on Tuesday 5 May 2020, Councillor Barwick indicated that she had no objection to the Panel making its decision based on the documents in its possession.

Via email on 13 May, Mayor Kieser responded to the Chair's correspondence of 30 April 2020 by providing a statutory declaration from Councillor Gregory Dawson sworn 13 May 2020.

A copy of this statutory declaration was provided to Councillor Barwick, who responded via email on 19 May 2020. In that email Councillor Barwick advised;

*"...Given the Mayor has clearly gone out and solicited additional witness statement, content of which I strongly refute, I now believe a hearing is in order so I may have the opportunity to question further all witnesses."*

As a consequence of Councillor Barwick's email of 19 May 2020, processes were put in place for a hearing to be conducted at the George Town Council Chambers on the morning of Friday 31 July 2020.

### 3. Summary of Hearing:

The hearing took place on 31 July 2020. Neither Councillor Barwick nor Mayor Kieser had a support person present. It was agreed that Councillor Barwick would give her evidence and then call Councillor Brooks and Councillor Barraclough as part of her case. It was agreed that Mayor Kieser would call Mr Brent Daire and Councillor Dawson as part of his case.

The Chair outlined the process to be followed, stating that the Panel had before it the following documents, and confirmed that both the Complainant and the Respondent had received copies of those documents:

- George Town Council Code of Conduct as amended 22 January 2019
- Complaint form (5 pages submitted under cover of Councillor Barwick's statutory declaration dated 10 January 2020 (1 page), and four attachments (1,5,4 and 5 pages respectively)
- Mayor Kieser's response to the complaint submitted under cover of a statutory declaration dated 27 February 2020 (3 pages)
- Brent Daire's witness statement submitted under cover of a statutory declaration dated 10 March 2020 (4 pages)
- Further statement from Councillor Barwick submitted under cover of a statutory declaration dated 18 March 2020
- Councillor Justine Brooks' witness statement submitted under cover of a statutory declaration dated 19 March 2020 (4 pages)
- Councillor Christopher Barraclough's witness statement, submitted under cover of a statutory declaration dated 24 March 2020 (1 page)
- Mayor Kieser's email of 13 May 2020 including statutory declaration dated 13 May 2020 from Councillor Greg Dawson
- Councillor Barwick's email of 19 May 2020 concerning the necessity for a hearing.

As the circumstances of the Complaint occurred during a closed session of Council on 17 December 2019, the audio recording of the open Council meeting of 17 December 2019 was not considered relevant to the matters before the Panel.

After taking an oath, Councillor Barwick confirmed the contents of her complaint dated 10 January 2020, her statutory declaration sworn 18 March 2020 and the matters set out in her email of 19 May 2020. Councillor Barwick was questioned by Mayor Kieser. The Panel notes that Mayor Kieser did not challenge the evidence contained in Councillor Barwick's statutory declarations.

Councillor Barwick called Councillor Justine Brooks, who took an Oath and confirmed her statutory declaration sworn 19 March 2020.

The Panel is of the view that Councillor Brooks presented as a forthright and credible witness.

She confirmed that she had authored the document referred to as Attachment 1 to her statutory declaration sworn 19 March 2020. She gave evidence that she typed the document on 27 December 2019, from the contemporaneous notes she had taken during the closed meeting on 17 December 2019. Councillor Brooks stated that she had been so upset with what transpired between Councillor Barwick and Mayor Kieser at the closed meeting on Council on 17 December 2019, that she authored and sent an email to Mayor Kieser and the General Manager of the Council that same evening. She confirmed that she had not received a response from either person. The email is Attachment 2 of her statutory declaration sworn 19 March 2020. The email reads:

*"Hi Greg*

*I've been reflecting this afternoon about the exchanges between yourself and Cr Barwick today and I feel very unsettled about it. I'm specifically referring to the way you spoke to her on two occasions and I am disappointed in myself for not coming to her aid at that time.*

*I realise she presents a difficult challenge to interact with sometimes but today's exchange was particularly confronting and I imagine would have left her humiliated and further disassociated from the team. This was further compounded by some of the reactions by other Councillors.*

*Cr Barwick has a lot of knowledge and was in fact correct to suggest we put aside standing orders as they had already been put aside through the multiple discussions occurring at once. She was actually trying to assist you.*

*I believe Cr Barwick is owed an apology after today's events. Failing to do so will result in deepening feelings of distrust and increased opposition and conspiracy theories."*

Councillor Brooks gave evidence that from her observations Mayor Kieser's conduct towards Councillor Barwick in the closed meeting "had gone too far". She said that Councillor Barwick was "almost in tears" as a consequence.

Councillor Brooks was questioned by Mayor Kieser. The Panel notes that Mayor Kieser did not challenge Councillor Brooks in relation to the notes she made following the closed meeting, the contents of her email to him of the 17 December 2019, or the contents of her statutory declaration.

Councillor Barwick called Councillor Barraclough who, after taking an Oath, confirmed the contents of his statutory declaration sworn 24 March 2020.

After making an affirmation, Mayor Kieser opened his case by confirming the contents of his statutory declaration sworn 27 February 2020. He was questioned by Councillor Barwick.

Mayor Kieser did not accept Councillor Barwick's categorisations of his behaviour. Whilst he accepted that he had raised his voice and had used hand gestures towards her, he asserted it was a consequence of her known hearing difficulties and his desire to limit Councillor Barwick's questioning. He stated that by controlling her it would enable other Councillors to ask questions in relation to the matter before the Council. He

stated that he could have ejected Councillor Barwick from the meeting because of her behaviour, but did not do so as he wanted her to vote on the motion before the Council at that time.

The evidence disclosed that Mayor Kieser had only been Mayor for a few months with the Council meeting of 17 December 2019 being his fourth Council meeting as Mayor. He acknowledged that his indications to Cr Barwick, in the meeting, that she only had the opportunity to ask three questions, was incorrect.

Councillor Greg Dawson gave evidence, confirming the contents of his statutory declaration affirmed 13 May 2020. The Panel notes the evidence contained in Councillor Dawson's statutory declaration was brief and that it was almost six months after the meeting that he was asked to recall the events. Councillor Dawson agreed the meeting "needed to be reset", that Mayor Kieser did use some hand gestures but did not believe he did anything unreasonable towards Councillor Barwick.

Mr Brent Daire, a Council employee, gave evidence for Mayor Kieser. Mr Daire was requested to do so by Mayor Kieser, with the agreement of the General Manager of the Council.

After confirming the contents of his statutory declaration sworn 10 March 2020, Mr Daire was questioned by Councillor Barwick. Mr Daire believed Mayor Kieser's conduct in attempting to bring the meeting to order was "firm and clear" and "not aggressive". Mr Daire noted that Mayor Keiser did use hand gestures towards Councillor Barwick, although he described them as indicating her to stop. Mr Daire conceded the topic became heated and Councillors were speaking while others were speaking.

Both Councillor Barwick and Mayor Kieser were given an opportunity to sum up their case. Councillor Barwick submitted that she did not believe she had been treated fairly by Mayor Kieser and that the evidence presented to the Panel was supportive of her allegations that Mayor Kieser's actions had breached the Code.

Mayor Kieser stated that he was remorseful for how Councillor Barwick was feeling, but rejected any assertion of dealing with Councillor Barwick differently to any other Councillor. He submitted that he had acted appropriately when attempting to control the meeting, by limiting Councillor Barwick's questioning to enable other Councillors to have their say. Mayor Keiser denied that he pointed at Councillor Barwick during the exchange, but rather had used an open hand gesture. Mayor Keiser conceded that he said to Councillor Barwick on a number of occasions "you are done". He submitted that although he could have ejected Councillor Barwick from the meeting due to her behaviour, he had not done so as he wished her to remain present to allow her to vote on the matter.

#### **4. Determination**

The Panel upholds the complaint against Mayor Kieser for breaches of Part 7.1 (a) and (b) of the Council's Code of Conduct and dismisses the complaint against Mayor Kieser for breaches of Part 7.1 (c) and Part 7.2 of the Code.

## 5. Reasons for Determination

The Panel considered all of the documents submitted by the parties and the evidence provided at the hearing on 31 July 2020.

### *Alleged breaches of Part 7.1 (a) and (b)*

The Panel accepts the account of the Mayor's behaviour provided by Councillor Barwick, which has been corroborated and supported by the evidence of Councillor Brooks and, to a large extent, by Councillors Barraclough and Dawson. In reaching that finding the Panel notes that Mayor Kieser did not challenge the evidence contained in Councillor Barwick's statutory declarations when he had the opportunity to question her. In relation to the impact of Mayor Kieser's behaviour on Councillor Barwick, the Panel finds the evidence of Councillor Brooks compelling, given she made notes at the relevant time and used those notes to prepare her statutory declaration. Mayor Kieser's failure to reply to Councillor Brooks' email of 17 December 2019, or challenge her about the contents of that email, is quite telling.

The Panel finds that at the closed meeting on 17 December 2019 Mayor Kieser treated Councillor Barwick unfairly and by doing so caused offence and embarrassment. He raised his voice and directed it at Councillor Barwick on a number of occasions at which time he used hand gestures directed at her and used the words "you are done" on several occasions. The Panel finds this was disrespectful and unfair behaviour which caused Councillor Barwick considerable offence and embarrassment.

### *Alleged breach of Part 7.1 (c)*

The Panel dismisses this part of the complaint. Having considered all of the evidence, but in particular the evidence given at the hearing on 31 July 2020, this part of the complaint has not been sustained as Mayor Kieser's behaviour in the closed meeting on 17 December 2019 did not meet accepted tests to establish bullying or harassment.

### *Alleged breach of Part 7.2*

The Panel dismisses this part of the complaint. Having considered all of the evidence, but in particular the evidence given at the hearing on 31 July 2020, this part of the complaint has not been sustained.

The Panel finds that the closed meeting had become heated with Councillors talking over one another. Further, that Councillor Barwick contributed to that by continuing to ask questions, even though she may have been entitled to.

From the evidence it is clear the Mayor did not have control of the meeting and it was part of his function or duty to get control. The Panel accepts that Mayor Kieser was attempting to gain control of the meeting although, for the reasons advanced above, he did so in a way that was inconsistent with Part 7(1) of the Code.

## 6. Sanction:

In accordance with section 28ZI (2) of the Act, the Panel may impose one or more of a number of sanctions on a Councillor against whom a complaint has been upheld.

In the determination of this complaint, the Panel has decided to impose a caution on Mayor Kieser.

## **7. Reasons for Delayed Determination.**

By virtue of s28ZD of the Act, the Panel's determination is to be concluded within 90 days of the Chair's decision, pursuant to s28ZA, to investigate and determine the whole complaint. The 90 day period for this complaint expired on or about 17 May 2020.

By virtue of s28ZD (2) if that cannot occur, the panel is, in its determination decision, to provide the reasons for the delay.

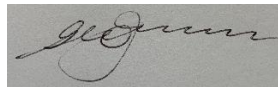
In this case, the delay between 17 May 2020 and the date of this determination was occasioned by the impacts of the CoVid-19 pandemic on the administration and management of this complaint, and also the submission of further evidence which occasioned Councillor Barwick's decision of 19 May 2020 to seek a hearing of the complaint, when the Panel had, by that time, formed a belief that it could determine the complaint on the materials it had before it.

## **8. 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.



**Rob Winter**  
(Chairperson)



**Graeme Jones**  
(Legal Member)



**Liz Gillam**  
(Member)