

CODE OF CONDUCT PANEL

CENTRAL HIGHLANDS COUNCIL CODE OF CONDUCT

Determination made 13 June 2017

Local Government Act 1993

Code of Conduct Panel: Jill Taylor, (Chairperson), Phillip Zeeman, (Legal Representative) and David Sales.

1. Summary of the complaint

On 23 March 2017, Mayor Loueen Triffitt, Mayor of the Central Highlands Council (the Council) lodged a Code of Conduct Complaint (the Complaint), against Councillor (Cr) Robert Cassidy.

Mayor Triffitt alleges that Cr Cassidy breached Parts 2 (1), 3 (1), 7 (1)(a) & (b) 8 (5), (6) & (7) of the Central Highlands Council's Code of Conduct, dated 17 May 2016, (the Code) in that Cr Cassidy sent an "inappropriate" email to Council employee Ms Emma Riley, and secondly Cr Cassidy in replying to an email from Mr David Dyson, made "inappropriate comments about a fellow Councilor and Bothwell residents in general". The email response to Mr Dyson copied other people into it who were listed in Mr Dyson's original email.

The following are relevant extracts from the Code:

Part 2 – CONFLICT OF INTEREST

1 When carrying out his or her public duty, a councillor must not be unduly influenced nor be seen to be unduly influenced by personal or private interests that he or she may have.

Part 3 – USE OF OFFICE

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

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*

Part 8 – REPRESENTATION

5 A councillor's personal views must not be expressed in such a way as to undermine the decisions of the Council or bring the Council into disrepute.

6 A councillor must show respect when expressing personal views publicly.

7 The personal conduct of a councillor must not reflect, or have the potential to reflect adversely on the reputation of the Council

2. Investigation

The Chairperson of the Code of Conduct Panel (the Chairperson) conducted an initial assessment of the Complaint and determined on 29 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 met initially on 13 April 2017 and identified that Mayor Triffitt may not have been provided with a copy of Cr Cassidy's response to her Complaint. In the interests of procedural fairness, further consideration of the Complaint was adjourned to have this matter confirmed

The Panel was subsequently advised that Cr Cassidy's response had not been forwarded to Mayor Triffitt. Mayor Triffitt was then provided with a copy of Cr Cassidy's response on 13 April 2017 and requested if she wished to provide any she should do so by 26 April 2017. Mayor Triffitt contacted the Panel to request an extension of this timeframe until 8 May 2017 as she was unwell. This extension was granted. Mayor Triffitt provided the Panel with her submission on 7 May 2017, following consideration of Cr Cassidy's response to her Complaint. The Panel determined that it would not hold a hearing in relation to this Complaint in accordance with Section 28ZG 2 (b) of the *Local Government Act 1993*, in that it had sufficient written submissions before it.

The Panel received and considered the following documents in reaching its decision:

- The Local Government Code of Conduct Complaint lodged by Mayor Triffitt dated 23 March 2017 including a number of attachments;
 - Email from Emma Riley to CH councilors
 - Email from Cr Cassidy to Emma Riley
 - Map provided by Emma Riley, Director & Principal Planner
 - Letter dated 23 February 2017 from Mayor to Cr Cassidy
 - Email from David Dyson to numerous people including Cr Cassidy
 - Email from Cr Cassidy to David Dyson and others
 - A number of comments on Social Media
- Central Highlands Council Code of Conduct – adopted by Council on 17 May 2016;
- Cr Cassidy's response to the Complaint lodged by Mayor Higgins dated 1 April 2017 including a number of attachments:
 - Yahoo7 security notice
 - Email from Mayor Triffitt to Cr Cassidy dated 6 March 2017
 - Emails between Cr Cassidy and State Growth
 - Supportive documents from Katrina Brazendale and Richard Bowden OAM
 - Email from Insp George Cretu to Cr Cassidy advising trespass complaint not to proceed.
- Mayor Triffitt's reply dated 7 May 2017 to Cr Cassidy's response to her Code of Conduct Complaint

3. Summary of Panel's consideration

The essence of Mayor Triffitt's complaint is that she alleges Cr Cassidy breached the Code on 16 February 2017 by sending an inappropriate email to Ms Emma Riley and on 19 March 2017 Cr Cassidy sent a "reply all" email to a number of recipients making inappropriate comments about a fellow Councillor and some Bothwell residents. Mayor

Triffitt advised that she had sent a letter to Cr Cassidy on 23 February 2017, reminding him of his obligations as a Councillor under Parts 1 and 7 of the Council's Code of Conduct. In lodging her Complaint, Mayor Triffitt included a copy of an email exchange between Cr Cassidy and Mr David Dyson which Mr Dyson initiated and was addressed to a number of people including Cr Casidy. Mayor Triffitt claims that by responding to Mr Dyson's email which was also addressed to others, Cr Cassidy had further breached the Code.

Cr Cassidy responded to Mayor Triffitt's Complaint on 1 April 2017, denying that he had breached the Code. Cr Cassidy's response covered some Central Highlands Council's historical events and but the Panel did not take these into consideration in making its final determination. Getting to the substance of the Complaint, Cr Cassidy admitted to sending an email to Ms Emma Riley, indicating that she is not a Council employee or staff member, but rather a Planning Officer undertaking work for the Council. The purpose of his correspondence was to point out to Ms Riley, that a development application did not, in Cr Cassidy's opinion, comply with the Planning Scheme. Cr Cassidy indicated that he was not being disrespectful but rather wanted Ms Riley to be aware of concerns that had been expressed by some residents.

In relation to the allegation that he sent a "reply all" response to an email from Mr David Dyson, Cr Cassidy advised that he did not willingly send a "reply all" email in response, denying that he has never done this since 2009, and specifically since being elected as a Councillor in October 2014. Cr Cassidy attached a copy of an email from Yahoo7 Security indicating that emails sent to Yahoo users may have been affected by a security issue. However, the Yahoo advice was sent on 14 December 2016, prior to the "reply all" email dated 19 March 2017. Irrespective of his intention to "reply all" or otherwise, the Panel considered the contents of the email, whilst maybe outlandish, would not have in the Panel's opinion caused offence or embarrassment to any individual.

4. Determination

The Panel determines the following:

Part 2 – Conflict of Interest (1) – The Panel dismisses this complaint. Mayor Triffitt did not provide any evidence that Cr Cassidy was unduly influenced or seen to be unduly influenced by his personal or private interests. In sending the email to Ms Riley, Cr Cassidy has indicated that he was motivated by the overall community interests and wanted the development application to be assessed against all the requirements of the Planning Scheme. Furthermore, when responding to Mr Dyson's email, Cr Cassidy did so in what he believed was a personal exchange between two individuals, and not as a Councillor.

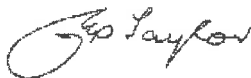
Part 3 – Use of Office (1) – The Panel dismisses this complaint. No evidence was provided that illustrated Cr Cassidy had bought the office of Councillor or the Council into disrepute. The Panel considered that Cr Cassidy's was simply bringing some related matters to Ms Riley's attention in the email he sent to her on 19 March 2017. The contents of that email could not be viewed as inappropriate in terms of its content or presentation. Cr Cassidy stated that he did not deliberately send "reply all" email to those persons listed in David Dyson's initial email to Cr Cassidy. The Panel concluded that irrespective, the contents of Cr Cassidy's reply were not of a serious enough nature to bring the role of Councillor or the Council into disrepute.

Part 7 – Relationships with Community Councillors and Council Employees (1) (a) and (b) – The Panel dismisses this complaint. Mayor Triffitt indicated in her complaint that she is receiving numerous complaints and concerns from the wider community, inferring about Cr Cassidy but did not provide any substantive evidence in relation to any specific breaches by Cr Cassidy. The Panel was not convinced that Cr Cassidy’s behaviour had caused embarrassment or offence to any members of the community. Cr Cassidy action in relation to the development application, in fact, was driven by what he described as in the best interests of the community. Contents of the email that inadvertently went to a number of recipients, whilst maybe construed by some as tactless or tasteless, did not individualise anyone to offend or treat inappropriately.

Part 8 – Representation (5), (6) and (7) – The Panel dismisses this complaint. In relation to both alleged incidents, the email to Ms Riley and the email response to David Dyson, in the opinion of the Panel, Mr Cassidy did not proffer any personal view which was opposed to any recent decisions approved or endorsed formally by the Central Highlands Council. It is accepted that individual Councillors may have differing opinions on many matters before Council and it is appropriate that they be entitled to put those views, especially when representing their community. The Code requires Councillors when expressing views publicly that they do not undermine decisions of Council nor bring it into disrespect. The Panel determined that Cr Cassidy did not do either.

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



Phillip Zeeman
Legal Member



David Sales
Member