

## **CODE OF CONDUCT PANEL**

### **WEST COAST COUNCIL CODE OF CONDUCT**

Determination made 19 September 2016.

*Local Government Act 1993*

Code of Conduct Panel: Sue Smith Chairperson, Jill Taylor, Gretel Chen.

#### **1. Summary of the complaint**

A code of conduct complaint was lodged by Mr Dirk Dowling General Manager – West Coast Council on 4 July, 2016 (the Complaint).

The Complaint alleges that on 13 April 2016 at the West Coast Council Chambers, Queenstown in Tasmania Cr. Robyn Gerrity breached:

- Sections 3.1, 3.2
- Section 4 (a)
- Section 8.3(b),(c) and (d)

of the West Coast Council Code of Conduct (the Code of Conduct) by saying to Council employee, Matthew Snow, "You can shove your fucking ipad up your fucking arse" or words to that effect.

The Code of Conduct was replaced by a subsequent Code of Conduct which was adopted by the West Coast Council (Council) on 21 June 2016. The Complaint was investigated, heard and determined on the basis of the provisions of the Code of Conduct that were in force on 13 April 2016. The Complaint was otherwise dealt with in accordance with the *Local Government Act 1993* (the Act).

#### **2. Investigation**

The Chairperson of the Code of Conduct Panel (the Chair) conducted an initial assessment of the Complaint and determined on 7 July 2016 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 Act.

The Panel received and considered the following statutory declarations:

1. Mr Dirk Dowling declared 14 July 2016
2. Mr Matthew Snow declared 12 July 2016
3. Ms Susan Janet Pitt declared 11 July 2016
4. Ms Caitlin Clarke declared 13 July 2016
5. Mr Phillip David Vickers declared 14 July 2016
6. Ms Robyn Joy Gerrity declared 19 July 2016
7. Mr Scott Stringer declared 13 July 2016

Because the versions of events contained in some of the statutory declarations differed markedly in material respects, the Panel determined to convene a hearing. Hearings were held on 4 August 2016 and 8 September 2016.

### 3. Summary of Hearing

The hearing was initially convened on August 4<sup>th</sup> 2016 at the Queenstown LINC Video Conferencing Room with the Chairperson present and the remaining two Panel members hearing the matter via video link from Hobart.

During the course of the first day's hearing it became apparent that Cr Gerrity and the Complainant had not been provided with copies of all of the statutory declarations that were before the Panel. The hearing was adjourned and copies of statutory declarations and other documents before the Panel were provided to both parties. Both parties were offered the opportunity to re-call and question any witness who had already given evidence and submit further evidence. Cr Gerrity requested that the Complainant and Mayor Phillip Vickers be re-called.

The hearing reconvened on 8 September 2016 at which time the Complainant and Mayor Vickers were re-called. Again the Chairperson was present in Queenstown and the remaining two Panel members heard the matter via video link from Hobart.

The Complainant and Cr Gerrity appeared at the hearing. Cr Gerrity was accompanied by a support person, Mr Mike Fry.

The Complainant's evidence was that he did not directly observe the alleged incident on 13 April 2016 but was advised of it by three Council staff, Mr Snow, Ms Pitt and Ms Clarke. He lodged the Complaint in his capacity as General Manager. He gave evidence that he made efforts to deal with the alleged incident informally by approaching Mayor Vickers, and seeking an apology from Cr Gerrity.

Emails and letters between the Complainant, the Mayor and Cr Gerrity dated 15 and 21 April 2016 support that version of events. The evidence of the Mayor and Cr Gerrity was also consistent with that version of events. Cr Gerrity questioned the Complainant as to why he waited 80 days to lodge the Complaint. The Complainant responded that he had wished to give every chance to enable the matter to be dealt with informally and it was only when it became clear that was not possible that he lodged the Complaint.

The Panel heard from Mr Matthew Snow. Mr Snow's statutory declaration stated that he was verbally abused by Cr Gerrity after being told she would be given an ipad. His oral evidence was that he is the Administration and Finance Officer of Council. Part of his role includes responsibility for Council's information technology (IT). He gave evidence that over the course of several hours on the morning of 13 April 2016 he had been conducting IT training for Councillors. Cr Gerrity had participated in that training.

After the IT training had concluded Mr Snow was at the customer service counter of the Council chambers with fellow employees, Ms Susan Pitt and Ms Caitlin Clarke. Cr Gerrity approached Mr Snow and asked him questions about how to print documents from an ipad. Cr Gerrity was in the company of Cr Scott Stringer at the time. Mr Snow's evidence was that Cr Gerrity was "irate" about Council's intended move to a "paperless" system and was

unhappy that she would no longer be provided with "physical documentation". Mr Snow's evidence was that he advised it would be possible for Cr Gerrity to use a wireless printer if she wished to print documents from her ipad. He reported that she then told him "I could shove my fucking ipad up my fucking arse". According to Mr Snow, Cr Gerrity left the area shortly afterwards.

Mr Snow estimated the conversation lasted between five and ten minutes and said that Cr Stringer was present during the entire exchange but made no comment or acknowledgement in connection with Cr Gerrity's alleged verbal outburst.

Evidence was then heard from Ms Susan Pitt, an employee in Council's Finance and Administration section. Ms Pitt's statutory declaration stated that on the day in question she heard Cr Gerrity say to Mr Snow "he could shove his fucking ipad up his fucking arse". Ms Pitt's oral evidence was consistent with her statutory declaration and that of Mr Snow. She said that Cr Stringer was present during the conversation at the customer service counter and that the entire exchange lasted five to ten minutes.

A third Council employee, Ms Caitlin Clarke gave evidence via telephone on 8 September 2016. Ms Clarke had also provided a statutory declaration. Ms Clarke was present at the customer service counter during the alleged incident. Ms Clarke described Cr Gerrity as being upset about not being able to print documents from her ipad. Ms Clarke said she expressed sympathy towards Cr Gerrity as she too was uncomfortable without physical documents. She said that Cr Gerrity was quite angry and leaned over the counter and said "you can shove your fucking ipad up your fucking arse". Ms Clarke could not recall where Cr Stringer was at that time. Ms Clarke's oral evidence was consistent with her statutory declaration.

The Panel heard from Cr Stringer. He had also provided a statutory declaration in which he stated that on 13 April 2016 he was present at the front desk of the Council chambers during a conversation between Cr Gerrity and "Matthew"(sic). He stated that Cr Gerrity appeared apprehensive. He described the conversation as relating to Cr Gerrity's internet access as the current modem was no longer working. Cr Stringer's statutory declaration states that Cr Gerrity "asked if she could print from the ipad to which both Mathew (sic) and I said yes with the appropriate printer. At that point I departed the building. I do not recall any use of inappropriate language whilst I was present."

In oral evidence Cr Stringer said he did not recall Cr Gerrity saying anything untoward during his presence. He recalled that Mr Snow was present at the time but could not recall if any other staff members were present. He said the conversation with Mr Snow lasted less than a couple of minutes. When questioned whether he could recall Cr Gerrity using the words "you can shove your fucking ipad up your fucking arse" Cr Stringer initially said "I don't recall" and then later said "certainly not while I was present".

Cr Gerrity denies that she said the words "you can shove your fucking ipad up your fucking arse" to Mr Snow on 13 April 2016. Her denial is contained in an undated letter to the Mayor which was received by him on 19 April 2016. The denial is repeated in her statutory declaration dated 19 July 2016. In oral evidence, Cr Gerrity admitted that, during the conversation with Mr Snow on 13 April 2016, she was frustrated and not happy. She had been unable to access electronic correspondence for over a week. She stated that Mr Snow said to her that, if she wanted a printer, she would need to talk to the GM. Cr Gerrity said

that she then spoke to the GM and then left the Council chambers. She denied that she said the words attributed to her. She said that Cr Stringer was with her during the conversation "because I am not technical".

Cr Gerrity stated that she held Mr Snow in high regard and could not think of any reason for him to make false allegations against her. Similarly, she could provide no explanation as to why Ms Clarke or Ms Pitt would make false allegations against her.

Having considered all the evidence of all five witnesses to the incident in question, the Panel prefers the evidence of Mr Snow, Ms Pitt and Ms Clarke. The three Council employees presented as honest, straightforward and credible witnesses. Their evidence was consistent in all material respects and they were all able to recall details of the incident when questioned. There was no evidence to suggest that they were colluding or motivated by ill will. The evidence of Ms Clarke was that all three were directed by the Complainant not to discuss the matter, and they complied with that direction.

The Panel found Cr Stringer's evidence to be inconsistent with the Council employees' evidence in material respects and less persuasive. Whilst he said in both his statutory declaration and initially in his oral evidence that he *did not recall* Cr Gerrity using the words alleged, he later said that the words were *certainly not said* whilst he was present. More generally his recollection of events was not as clear as that of Mr Snow, Ms Pitt and Ms Clarke. He could not recall who was present during the conversation and his estimate of the length of the conversation differed to those of the other witnesses.

The Panel was not persuaded by Cr Gerrity's denial. All witnesses gave evidence to the effect that Councillor Gerrity was frustrated and agitated at the time – Cr Gerrity conceded as much. On balance and taking into account the evidence of all witnesses the Panel finds that Cr Gerrity did say the words "you can shove your fucking ipad up your fucking arse" to Mr Snow on 13 April 2016.

#### 4. Determination

The Panel determines the following:

##### ***"3 – General Conduct Obligations***

*Councillors, in performing functions and in exercising their powers:*

*1 – will act honestly and in accordance with the law, the Code of Conduct and relevant Council policies and administrative procedures;"*

The Panel is not satisfied that the conduct established amounts to dishonesty or a breach of the law. There was no evidence put forward as to Council's policies and procedures and as such the Panel can make no finding in this respect. The Panel does find, however, that the conduct amounts to a breach of the Code of Conduct. Accordingly, it upholds the Complaint in respect to subsection 3.1 of the Code.

### ***"3 – General Conduct Obligations***

*Councillors, in performing functions and in exercising their powers:*

*3.2 will show respect and courtesy when dealing with other Councillors, Council employees and the public and refrain from any form of conduct which may cause any person offence or embarrassment"*

The Panel upholds the Complaint in respect to subsection 3.2 of the Code on the basis that Cr Gerrity did not show respect and courtesy when dealing with Council employee Mr Snow.

### ***4 – Use of Office of Councillor, Mayor and Deputy Mayor***

*4 (a) – "In accordance with section 339 of the Local Government Act 1993 Councillors will not take advantage (or seek to take advantage) of their position or status to improperly influence other Councillors or staff in the performance of their duties or functions, in order to gain an undue, improper, unauthorised or unfair benefit for themselves or any other person."*

The Panel is not satisfied that the conduct complained of amounts to a breach of subsection 4(a) of the Code. Accordingly, it dismisses the Complaint so far as it relates to a breach of subsection 4(a) of the Code.

### ***"8 – Relationships with the Community, other Councillors and Employees.***

*Councillors' relationships with the community, other Councillors and Council employees should generate community trust and confidence in them as individuals and enhance the role and image of the Council and Local Government generally.*

*8.3(b) – Councillors will not contact members of staff (excluding management) unless prior arrangements have been made with the General Manager or by a resolution of Council.*

*8.3 (c) – Councillors must not direct pressure or influence, or attempt to direct pressure or influence, a member of staff in the exercise of their role and responsibilities. –*

*8.3 (d) – Councillors will not act in a manner which a member of staff would be likely to consider intimidatory, threatening, abusive or rude."*

The Panel is not satisfied that Cr Gerrity's conduct amounts to a breach of subsection 8.3(b) of the Code. The evidence was that Cr Gerrity had been in a three hour IT workshop jointly conducted by Mr Snow immediately prior to the incident in question. The subject conversation immediately followed the workshop and related to the matters to which the workshop was directed. Accordingly, the Panel is not satisfied that Cr Gerrity's interaction with Mr Snow amounted to contacting him in breach of the subsection. The Panel finds that the interaction is more properly characterised as a continuation of the discussion that was occurring in the course of the Council Workshop. For this reason it dismisses the complaint so far as it relates to subsection 8.3(b) of the Code.

The Panel is not satisfied that Cr Gerrity's conduct amounts to a breach of subsection 8.3(c) of the Code. There was no evidence that Cr Gerrity engaged in any of the conduct set out in subsection 8.3(c). For this reason it dismisses the complaint so far as it relates to subsection 8.3(c) of the Code.

The Panel is satisfied that Cr Gerrity's conduct amounts to a breach of subsection 8.3(d) of the Code. The Panel accepts that the manner in which Cr Gerrity spoke to Mr Snow was intimidating, threatening, abusive and rude. For this reason it upholds the Complaint so far as it relates to subsection 8.3(d) of the Code.

## 5. Sanction

The Panel upholds the Complaint in relation to subsections 3.1, 3.2 and 8.3(d) of the Code, it otherwise dismisses the Complaint in relation to subsections 4(a), 8.3(b) and 8.3(c).

In deciding an appropriate sanction, the Panel has taken into account that this is the first time that Cr Gerrity has been found to have breached the Code. The Panel also takes into account, however, that Cr Gerrity's behaviour towards Council employee Mr Stone was rude, inappropriate and abusive.

Accordingly, the Panel has decided to issue the following caution to Cr Gerrity that:

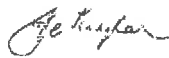
1. She must act in accordance with the Code of Conduct;
2. She must show respect and courtesy when dealing with other Councillors, Council employees and the public and refrain from any conduct which may cause any person offence or embarrassment, in performing her functions and exercising her powers;
3. She must not act in a manner which a member of staff would be likely to consider intimidating, threatening, abusive or rude.

## 6. 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.



Sue Smith  
Chairperson



Jill Taylor  
Member



Gretel Chen  
Member