

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.

## *Local Government Act 1993*

# **CODE OF CONDUCT PANEL DETERMINATION REPORT CENTRAL HIGHLANDS COUNCIL CODE OF CONDUCT**

Joint Investigation of complaints brought by:

Councillor Robert Cassidy, Councillor Jim Allwright, Councillor Yvonne Miller, Councillor John Hall and Councillor David Meacheam

Against Mayor Loueen Triffitt

### **Code of Conduct Panel**

- Rob Winter (Chairperson),
- Roseanne Heyward (Local Government Member)
- Frank Neasey (Legal Member)

Date of Determination: [INSERT date]

Content Manager Reference: C33840, C34069, C34181, C33854 & C33853

### **Summary of the complaint**

This is the Panel's determination report concerning its joint investigation into the alleged conduct of Central Highlands Council ("the Council") Mayor, Ms Loueen Triffitt.

The history leading to the initiation and conduct of this joint investigation is detailed below:

### **Initial Assessments:**

Between 2nd May 2024 and 2nd June 2024, the Executive Officer of the Local Government Code of Conduct Panel appointed the Chairperson to conduct initial assessments of complaints made by the following Councillors of the Council on the following dates:

1. Councillor Cassidy – 22nd April 2024 (C33840)
2. Councillor Hall – 2nd May 2024 (C33854)
3. Councillor Meacheam – 23rd April 2024 (33853)
4. Councillor Allwright – 29th May 2024, (C34069) and
5. Councillor Miller – 27th April 2024

All complaints were assessed by the Chairperson as requiring further investigation, and a panel was appointed to conduct these investigations. ("the Panel")

During the initial assessment process, on 30th May 2024 the Chairperson determined that pursuant to s28ZA(1)(d) of the *Local Government Act 1993* ("The Act"), and referencing s28ZC(1)(b) of the Act, part of Councillor Cassidy's complaint should be referred to the Director of the Local Government Division ("the Director"), as it was considered that that part of Councillor Cassidy's complaint would be more appropriately dealt with by the Director.

On the 19th June, the Chairperson determined pursuant to s28ZA (1)(d) of the Act, and referencing s28ZC(1)(b) of the Act, that part of Councillor Allwright's complaint should be referred to the Director as it was considered that that part of Councillor Allwright's complaint would be more appropriately dealt with by the Director.

Respectively, on the 11th June 2024, and 12th July 2024, pursuant to s28ZC(2)(a) of the Act, the Director accepted the Chairperson's referral of these parts of both Councillors Cassidy and Allwright's complaints.

Following these initial assessment processes, and after the Director had accepted the referrals referred to above, the Panel met.

As it was considered that the complaints by Councillors Cassidy, Hall, Meacheam, Allwright and Miller were in relation to the same contravention of the Council's Code of Conduct, as adopted by the Council on the 16th December 2022 ("the Code"), the Panel's attention was drawn to s28ZF(1), as a consequence of which it determined pursuant to s28ZF (2) of the Act that it would seek to ascertain the wishes of all complainant councillors and Mayor Triffitt regarding the conducting of a joint investigation.

Correspondence to this effect was forwarded to all complainant councillors and Mayor Triffitt. All subsequently indicated that they had no objection to the Panel conducting a joint investigation.

On 9<sup>th</sup> July during a Panel meeting, it determined to conduct a joint investigation of all complaints pursuant to s28ZF (1) of the Act.

During this meeting the Panel also considered that as the total number of councillors involved in the joint investigation was six, the total number was more than half of the Council's councillors (six out of nine).

Because of this, with the total number of councillors involved being more than half of the Council, pursuant to s28ZF (3) of the Act, on the 17th July 2024, the complaints were referred to the Director.

By letter dated 13th August 2024 the Director advised the Panel that he had determined to refuse to accept the referral of the complaints pursuant to s28ZF (4) of the Act, citing the following as his reasons.

- Without forming a view on the veracity of the allegations being made in the Code of Conduct complaints, this office has already been involved in this matter and explored the extent to which the Mayor's recent conduct amounts to clear breaches of the provisions of the Act under my jurisdiction.
- In other respects, the conduct related concerns being raised by the complainants are matters outside my, or the Minister's primary jurisdiction. That is, the alleged breaches of a code can be more appropriately dealt with by the code of conduct framework. I note Complainant/s who raised issues with the panel are also seeking sanctions such as an apology (should any sanctions be appropriate after objective determination), which are within the Code of Conduct framework only.
- There are a range of historical issues raised in the documentation provided in the complainants' associated response, such as the failed General Manager recruitment process. I am aware of many of these issues, and the Office of Local Government has spent considerable time exploring how the Council can move forward and function effectively to resolve current issues collectively and develop more effective relationships. On 18<sup>th</sup> June I provided a letter of recommendations to the Council to support the resolution of several historical issues. These recommendations included immediate mediation, the development of a respectful relationships policy, an independent WHS review to respond to alleged bullying and harassment, and the appointment of an independent monitor/advisor to attend and objectively support council in improving meeting procedures, council processes,, and implement the other recommendations. (Council has since undertaken to implement

these recommendations and for this reason it may be that many matters extraneous to the core complaint but provided in associated materials all the same). Productivity being addressed by Council.

Upon the receipt of this advice, the Panel met on the 19th September to determine its next course of action.

During this meeting, the Panel reviewed all of the evidence before it (discussed subsequently in this Determination Report), and determined that it considered, pursuant to s28ZG(2)(a) and/or (b) of the Act that it may be able to jointly investigate the complaints without a hearing as it considered that neither the complainants nor Mayor Triffitt, would be disadvantaged if a hearing was not held and it was appropriate in the circumstances not to hold a hearing, and a hearing was unnecessary in the circumstances because the joint investigation could be adequately conducted by means of written submissions or examination of documentary evidence, or both.

To accord with its procedural fairness obligations, the Panel instructed the Executive Officer to forward a letter seeking each of the councillors' attitudes to the resolution of the joint investigation without the need for a hearing. This did not occur until the 1st October, 2024.

At this time, the Panel also instructed the Executive Officer to send a letter to Mayor Triffitt seeking her attitude to the conduct of the joint investigation without a hearing, and also seeking her submissions as to what she considered would be an appropriate sanction pursuant to s28ZI of the Act if, after determining the complaints, the Panel upheld any one or more complaint (or part thereof).

Having not heard from the Executive Officer as to any response received from any of the complainant councillors, nor Mayor Triffitt, follow-up correspondence was forwarded to all Councillors and Mayor Triffitt on the 10th October. Between the 16th October and the 18th October, all councillors bar Councillor Miller indicated that they were generally in agreement with the Panel proceeding to determine the complaints under joint investigation on the documentary evidence provided to it.

On the 19th October Councillor Millar emailed the Executive Officer to advise that she also was content for the complaints to be investigated without a hearing.

On the 21st October the Panel made a formal determination pursuant to s28ZG (2) that the complaints be investigated without a hearing, having no reason to change its preliminary views on this issue after receipt of submissions from all relevant councillors.

To ensure an expeditious resolution of the joint investigation, and without having made any determination in accordance with s28ZI of the Act, on the 28th October the Panel requested that the Director provide the Panel with a summary of all action taken by the Office of Local Government in relation to the Council, particularly in relation to Mayor Triffitt, on the basis that these actions may have some relevance to any action the Panel might take if it upheld any one or more complaint, or any part thereof.

On the 31st October the Director responded to the Panel's request, providing copies of the following documents:

- Performance Improvement Direction issued by Minister Street to Mayor Triffitt
- Covering letter from Minister Street to Mayor Triffitt
- Email from the Director to all CHC councillors summarising discussions held regarding governance issues and Mayor Triffitt's public comments.
- Letter from the Director to all CHC councillors providing broad governance advice.
- Letter from the Director to Mayor Triffitt responding to some concerns she had raised in conversation.

This documentation is discussed subsequently in this Determination Report.

## Investigation

In accordance with section 28ZF (1) of the Act, the Panel investigated the complaints. The following documents have been presented to the Panel to consider as evidence in this matter.

1. Councillor Cassidy: Complaint dated 22nd April 2024, Mayor Triffitt's response to this complaint dated 14th June 2024 and Councillor Cassidy's response to Mayor Triffitt's response dated 2nd September 2024.
2. Councillor Allwright: Complaint dated 29th May 2024; Mayor Triffitt's response dated 6th July 2024 and Councillor Allwright's response to Mayor Triffitt's response dated 11th September 2024.
3. Councillor Hall: Complaint dated 2nd May 2024. Mayor Triffitt's response dated 27th June 2024 and Councillor Hall's response to Mayor Triffitt's response dated 3rd September 2024.
4. Councillor Meacheam: Complaint dated 23rd April 2024, Mayor Triffitt's response dated 28th June 2024 and Councillor Meacheam's response to Mayor Triffitt's response dated 10th September 2024.
5. Councillor Miller: Complaint dated 27th April 2024. Mayor Triffitt's response dated 27th June 2024 and Councillor Hall's response to Mayor Triffitt's response dated 10th September 2024

The Panel also had access to, and listened to, the audio recording of the Special Council Meeting of the Council, held at Bothwell on Friday 5th April 2024.

## Determination

As per s28ZI (1) of the Act the Code of Conduct Panel determines the complaints against Mayor Triffitt by, in the case of each of the 5 complaints, upholding part of the complaint and dismissing the remainder of the complaint.

## Reasons for determination

### 1. Summary of Complaints

The Complainants' complaints of alleged breaches of the Code.

1. Councillor Robert Cassidy alleged that Mayor Triffitt had breached Part 1 - Decision Making, clauses 1, 2, 3, and 4; Part 2 – Conflicts of Interest that are not Pecuniary, clauses 1,2,3,4 and 6; Part 3 – Use of Office, clause 1; Part 7- Relationships with Community, Councillors and Council Employees, clauses 1(a) and (b) and 2 and Part 8 - Representation, clauses 5 and 7 of the Code. This complaint related to Mayor Triffitt's involvement with the Performance Review of the Council's General Manager, Ms Kim Hossack in the period January 2024 to April 2024, and particularly her alleged behaviour in the Special Council meeting of the 5th April 2024, and the Council meeting on 16th April 2024.
2. Councillor David Meacheam alleged that Mayor Triffitt had breached Part 3 – Use of Office, clause 1; Part 7 - Relationships with Community, Councillors and Council Employees, clauses 7(1)(a) and (b) and Part 8 - Representation, clauses 5 and 7 of the Code. The complaint related to Mayor Triffitt's involvement with the Performance Review of the Council's General Manager, Ms Kim Hossack in the period January 2024 to April 2024, and particularly her alleged behaviour in the Special Council meeting of the 5th April 2024, and the Council meeting on 16th April 2024.
3. Councillor John Hall alleged that Mayor Triffitt had breached Part 1 - Decision Making, clauses 1, 2, 3 and 4; Part 2 – Conflicts of Interest that are not Pecuniary, clauses 1, 2 and 3; Part 3 – Use of Office, clause 1 and Part 8 - Representation, clauses 5 and 7 of the Code. The complaint related to Mayor Triffitt's involvement with the Performance Review of the Council's General Manager, Ms Kim Hossack in the period January 2024 to April 2024, and

particularly her alleged behaviour in the Special Council meeting of the 5th April 2024, and the Council meeting on the 16th April 2024.

4. Councillor James Allwright alleged that Mayor Triffitt had breached Part 3 – Use of Office, clauses 1 and 2 Part 7- Relationships with Community, Councillors and Council Employees, clauses 1(a), (b) and (c) and Part 8 - Representation, clause 2 of the Code. The complaint related to Mayor Triffitt's involvement with the Performance Review of the Council's General Manager, Ms Kim Hossack in the period November 2023 to April 2024, and particularly her alleged behaviour in the Council meeting of the 19th March 2024, the Special Council meeting of the 5th April 2024, and the Council meeting on 16th April 2024.
5. Councillor Yvonne Miller alleged that Mayor Triffitt had breached Part 7-Relationships with Community, Councillors and Council Employees, clauses 1(a), (b) and (c) of the Code. The complaint relates to Mayor Triffitt's involvement with the Performance Review of the Council's General Manager, Ms Kim Hossack in the period January 2024 to April 2024, and particularly her alleged behaviour in the Council meeting of the 19th March 2024 and in the Special Council meeting of the 5th April 2024.

### **Findings of Fact**

Having considered all of the evidentiary material provided to it during this joint investigation, the Panel is satisfied of the following facts to the requisite standard:

- The background to all complaints relates to issues concerning the handling of the performance review process for the Council's General Manager (Kim Hossack).
- At the conclusion of the Council meeting on the 19th March 2024 and despite her denials, accepting the evidence of Councillors Miller and Allwright, the Panel is satisfied that Mayor Triffitt did say to the General Manager "you're the problem", causing her to become upset.
- The facts relating to Councillor Allwright's allegations arising out of the 19th March 2024 Council Meeting are set out in the addendum to this Determination Report.
- It was appropriate given the difficulties with the General Manager performance review process, for the Council to retain the services of Mrs Lynne Mason, an expert in local government and an individual who had previously undertaken similar type work for the council, to conciliate in this process.
- The Panel finds that the special meeting of the 5th April 2024 was a lawfully convened and constituted meeting of the Council.
- On all the evidence before it, and despite Mayor Triffitt's concerns regarding the way the special meeting of the Council on the 5th April 2024 was requested, and the extent to which there was strict compliance with the *Local Government (Meeting Procedures) Regulations 2015*, in relation to Motions before the meeting, the Panel is satisfied, having closely listened to the audio recording of this meeting, that the legal advice Mayor Triffitt had sought from the Council's solicitor, Mr David Morris of Simmons Wolfhagen, prior to this meeting (and who was present at the meeting), was misrepresented by Mayor Triffitt – something Mr Morris felt compelled to, and in fact did – verbally challenge in the meeting. Further, having closely listened to the audio recording of this meeting, the Panel is satisfied that Mayor Triffitt made the following comments:
  - That the meeting was "an abuse of power of every single Councillor at this meeting"
  - "Allwright and Cassidy and others behave in a manner which to me seems like a personal and emotional attachment to the General Manager".
  - "...and I have no faith in your ability to participate on a professional level"

- "...reeks of collusion and possible corruption"
- 'perceived collusion of councillors'
- Reiterates her "concerns for collusion and corruption."
- With regard to the meeting of 16th April:
  - The council meeting of 16th April was conducted in public.
  - Motion 15.1 – Notice of Motion – Deputy Mayor J Allwright sought the following:
    1. That the Mayor formally retracts her allegations of collusion, corruption by all councillors, the general manager and Ms Lyn Mason and a personal or emotional attachment to the general manager by some councillors which was made at the special meeting of Council held on Friday 5th April, 2024
    2. That at her own expense and forthwith, the Mayor has published in the Highlands Digest and the New Norfolk and Derwent Valley News, a Notice of her retraction in relation to the same matters.
      - 
      - When this Motion was proposed Mayor Triffitt commenced reading from a prepared statement, which the Panel finds did not accurately represent all of which was said in the meeting of the 5th April 2024.
      - With some amendments this Motion was carried seven votes to two with Mayor Triffitt voting against it and Councillor Honnor abstaining.

There was no evidence before the Panel that the allegations were specifically retracted by Mayor Triffitt

### **3. Findings re alleged breaches of the Code.**

Upon all the material before the Panel, and having regard to the Panel's findings of fact, set out below are the Panel's findings regarding the breaches of the Code as alleged by each of the complainants.

19th March 2024 Meeting.

**Councillor Miller** – alleged breach of Part 7(1)(a) of the Code.

The Panel is satisfied on the evidence before it that Mayor Triffitt breached this provision of the Code in her dealings with the General Manager after this meeting by not treating Ms Hossack fairly by saying to her 'you're the problem'. This alleged breach of the Code is substantiated. There is clear evidence from Crs Miller and Allwright of Cr Triffitt's use of these words, which the Panel accepts despite Mayor Triffitt's denial of their use.

**Councillor Allwright** – re alleged breach of Part 3 (1) and (2) and Part 8 (2) – refer to addendum to this Determination Report.

5th April 2024 Meeting

**Councillors Cassidy and Hall** – alleged breach of Part 1 (1)(2),(3) and (4) of the Code – decision-making.

On the evidence before it the Panel finds that Mayor Triffitt came to the Special Meeting on the 5th April 2024 without an open and unprejudiced mind on all matters to be discussed and decided upon during this meeting, being in the course of her duties. The Panel is satisfied of this in particular as it was clear from the audio recording that Mayor Triffitt was reading from a pre-prepared script whereby, she not only mis-represented the legal advice she had been provided with by Mr Morris, but used accusatory words and phrases in respect of other councillors clearly indicative of the views she had already formed. The Panel finds that a breach of Part 1 (1) is substantiated.

There being no evidence of any actual decision being made at this meeting, the tenor of all the complaints by all complainants against Mayor Triffitt relating to her conduct in this meeting, the Panel is unable to find as substantiated any breaches of Part 1 (2), (3) and (4).

**Councillors Cassidy and Hall** –(collectively) alleged breaches of Part 2(1), (2), (3), (4) and (6) of the Code – Conflicts of interest which are not pecuniary.

There was no evidence put before the Panel by either of these complainants, and in the Panel's view there isn't any, that at the time of the meeting on the 5th April 2024 (nor at any other time), Mayor Triffitt had any relevant non-pecuniary conflict of interest.

The Panel finds that the alleged breaches of Part 2 of the Code by these complainants are unsubstantiated.

**Councillors Cassidy, Meacheam, Allwright and Hall** – collectively alleged breaches of Part 3(1) and (2) of the Code – use of office.

Based on the clear content of the audio recording of the meeting of the 5th April 2024 and given that they occurred in the part of the meeting that was open to the public, the Panel is satisfied that Mayor Triffitt's actions in this meeting did bring the Council and/or the Office of Councillor into disrepute. The actions to which the Panel refers are the making of the derogatory comments in respect of other councillors present at the meeting as set out above under the heading 'Findings of Fact', comments the Panel is satisfied had no proper basis to be made.

The Panel finds the alleged breach of Part 3 (1) of the Code to be substantiated.

As to the alleged breach of Part 3(2) of the Code, the Panel is not satisfied that there is any evidence in Cr Triffitt's conduct at the meeting of 5th April 2024 of any improper influence of others in the manner described in that clause and accordingly does not find this alleged breach to be substantiated.

**Councillors Cassidy, Meacheam, Allwright, Miller** (not Councillor Hall) – collectively alleged breaches of Part 7 (1) (a), (b) and (c) and (2) of the Code – relationships with Community Councillors and Council employees.

The Panel finds on all the available evidence, that Mayor Triffitt did not treat the Councillors present at the meeting of the 5th April (the subject of her comments as referred to above), Ms Mason and Mr Morris, fairly. The audio recording clearly indicates her talking over other people and preventing them from speaking. The Panel notes the clear and emphatic contradiction of Mayor Triffitt's assertions about Ms Mason by that person at the meeting and the clarification of his legal advice by Mr Morris following Mayor Triffitt's misrepresentation of it.

The Panel finds the alleged breach of Part 7 (1)(a) is substantiated.

For the reasons indicated above, the Panel also finds that Mayor Triffitt's conduct did cause the same persons offence or embarrassment, such persons the Panel finds as reasonable.

The Panel finds the alleged breach of Part 7 (1)(b) is substantiated.

Although there is evidence of Mayor Triffitt seeking to excessively control the meeting/debate which limited opportunities for those present to speak, the Panel is not satisfied that her conduct amounted to bullying and harassing behaviour.

The Panel does not find the alleged breach of Part 7 (1)(c) to be substantiated.

Regarding the alleged breaches of Part 7 (2), on all the available evidence, particularly the audio recording of the meeting of the 5th April 2024, it is clear that during a properly constituted council meeting, Mayor Triffitt did not listen to or respect the views of other councillors who were participating.

The Panel finds the alleged breach of Part 7 (2) is substantiated.

### **Councillors Cassidy, Meacheam, Hall – Part 8 (5) and (7) of the Code – Representation.**

With regard to Part 8 (5), on the available evidence the Panel was not satisfied that Mayor Triffitt's personal views were being expressed publicly in such a way as to undermine the decisions of the Council. The Panel does however refer to its previous finding that by her conduct in this meeting Mayor Triffitt was in breach of Part 3 (1) and for the reasons expressed in relation to that finding, the Panel also finds that Mayor Triffitt expressed her personal views publicly at the meeting of 5th April in such a way as to bring the Council into disrepute.

The Panel finds the alleged breach of Part 8 (5) is substantiated.

Regarding Part 8 (7), the Panel finds on all the available evidence, particularly the evidence discussed in respect of the breach of Part 3(1), that the personal conduct of Mayor Triffitt at the meeting of 5th April did reflect, or at least had the potential to reflect adversely on the reputation of the Council.

The Panel finds the alleged breach of Part 8 (7) is substantiated.

16th April 2024 Meeting:

### **Councillors Cassidy and Hall – alleged breach of Part 1 (1), (2), (3) and (4) of the Code – Decision Making.**

On all available evidence, the Panel finds that Mayor Triffitt came to the meeting on 16<sup>th</sup> April without an open and unprejudiced mind, particularly in relation to Motion 15.1 (referred to previously in this Determination Report). The Panel is satisfied of this in particular as it was clear from the audio recording that Mayor Triffitt was again reading from a pre-prepared script in which she refuted or attempted to ameliorate the comments she made in the meeting of 5<sup>th</sup> April, which the Panel has found to be inaccurate. The Panel finds that a breach of Part 1 (1) is substantiated.

The decision of Mayor Triffitt to vote against the motions was not unexpected, in all of the circumstances confronting her during this meeting. Mayor Triffitt voted as one would have expected, in accordance with her own position and as she was entitled to do. Given that the motions were concerned with her own prior conduct, and therefore an element of bias was inevitably involved in her voting, in the Panel's view simply voting against them cannot comprise a breach of Part 1(2) of the Code.

Although a decision (i.e. the passing of the Motion) was made at this time, and in that respect this situation differs from the events of the 5th April 2024 meeting, the Panel finds the allegation of a breach of Part 1 (2) unsubstantiated.

For the reasons indicated regarding Part 1 (2), the Panel finds the alleged breaches of Part 1 (3) and (4) are unsubstantiated.

**Councillors Cassidy and Hall** (collectively): - alleged breaches of Part 2 (1)(2)(3) (4) and (6) of the Code – Conflicts of Interest which are not pecuniary.

For the same reasons for its finding in relation to these alleged breaches of the Code relating to the events of the meeting of 5th April 2024, the Panel finds that there is no evidence before it from any of these complainants that, at the time of this meeting, Mayor Triffitt had any relevant non-pecuniary conflict of interest.

The Panel finds that none of the alleged breaches of Part 2 are substantiated.

**Councillors Cassidy, Meacheam and Hall** (collectively) alleged breaches of Part 3(1) and (2) of the Code- Use of Office.

As the meeting of the 16th April occurred with members of the public and council staff present and as the Panel has found that Mayor Triffitt repeated and misrepresented what was said in the meeting of the 5th April 2024 (which was clearly recorded), even with her attempts to ameliorate her comments by referencing her use of the words “possible” or “perceived” “corruption/collusion”, the Panel is satisfied that her actions during this meeting did bring the Council and/or the office of councillor into disrepute. This allegation is substantiated.

As with its findings in relation to this allegation concerning the meeting of the 5th April 2024, in relation to the alleged breach of Part 3 (2) of the Code, the Panel is not satisfied that there is any evidence in Mayor Triffitt’s conduct at the meeting of the 16th April 2024 of any improper influence of others in the manner described in that clause and accordingly finds this alleged breach unsubstantiated.

**Councillors Cassidy, Meacheam, Allwright, Miller** (not Councillor Hall) – collectively alleged breaches of Part 7 (1) (a) (b) (c) and (2) of the Code – relationships with community, councillors and council employees.

As with its findings in relation to Mayor Triffitt’s behaviours in the meeting of the 5th April 2024, on all of the evidence available to it, the Panel finds that Mayor Triffitt did not treat the councillors present at the meeting of the 16th April fairly. The audio recording clearly indicates Mayor Triffitt talking over councillors and preventing them from speaking as she read from a clearly pre-prepared script.

The Panel finds the alleged breach of Part 7 (1) (a) is substantiated.

For the reasons indicated above, the Panel also finds that Mayor Triffitt’s conduct did cause those persons offence or embarrassment, such persons the Panel finds as reasonable.

The Panel thus finds the alleged breach of Part 7 (1) (b) is substantiated.

As with the findings regarding the meeting of the 5th April 2024, the Panel is not satisfied that Mayor Triffitt’s conduct during this meeting amounted to bullying and embarrassing behaviour.

The Panel does not find the alleged breach of Part 7 (1) (c) to be substantiated.

With regard to the alleged breach of Part 7 (2) on all of the available evidence, particularly the audio recording of the meeting of the 16th April 2024, it is clear to the Panel that Mayor Triffitt did not listen to, nor respect the views of the other councillors who were participating in the debate relating to Motion 15.1.

The Panel finds the alleged breach of Part 7 (2) substantiated.

**Councillors Cassidy, Meacheam, Hall** – Part 8 (5) and (7) of the Code – Representation.

With regard to Part 8 (5), on the available evidence the Panel was not satisfied that Mayor Triffitt’s personal views were being expressed publicly in such a way as to undermine the decisions of the Council. The Panel does however refer to its previous finding that by her conduct in this meeting Mayor Triffitt was in breach of Part 3 (1) and for the reasons expressed in relation to that finding,

the Panel also finds that Mayor Triffitt expressed her personal views publicly at the meeting of the 16th April in such a way as to bring the Council into disrepute.

The Panel finds the alleged breach of Part 8 (5) is substantiated.

Regarding Part 8 (7), the Panel finds on all the available evidence, particularly the evidence discussed in respect of the breach of Part 3(1), that the personal conduct of Mayor Triffitt at the meeting of the 16th April did reflect, or at least had the potential to reflect adversely on the reputation of the Council.

The Panel finds the alleged breach of Part 8 (7) is substantiated.

## **Sanction**

Section 28ZI (2) states that

*(1) After completing its investigation of a code of conduct complaint, the Code of Conduct Panel is to determine the complaint by –*

*(a) upholding the complaint; or*

*(b) dismissing the complaint; or*

*(c) upholding part of the complaint and dismissing the remainder of the complaint.*

*(2) If the code of conduct complaint or part of it is upheld, the Code of Conduct Panel may impose one or more of the following sanctions on the councillor against whom the complaint is made:*

*(a) a caution;*

*(b) a reprimand;*

*(c) a requirement to apologise to the complainant or other person affected by the contravention of the code of conduct;*

*(d) a requirement to attend counselling or a training course;*

*(e) a suspension from performing and exercising the functions and powers of his or her office as a councillor for a period not exceeding 3 months.*

*(3) If the code of conduct complaint or part of it is dismissed, the Code of Conduct Panel may determine that the complainant may not make a further complaint in relation to the same matter for a period not exceeding 12 months unless the complainant provides substantive new information in the further complaint.*

In their initial complaints, the complainants have indicated the following desired outcomes.

1. Cr Cassidy - that Mayor Triffitt recants her assertions of abuse of power, corruption and collusion and resigns, but that if she refuses to, she be subject to specified targeted training to improve her behaviour as a Mayor.
2. Cr Hall seeks a withdrawal or retraction of the words used by Mayor Triffitt in the 5th April 2024 meeting, in addition to her undertaking further training as a Mayor and acting in a more appropriate manner to Councillors and staff, especially the General Manager.
3. Cr Meacheam seeks a retraction of the words used by Mayor Triffitt in the 5th April 2024 meeting, published in the media, along with appropriate corrective action and a Performance Improvement Direction, or a suspension of up to three months.
4. Cr Allwright seeks a three-month suspension.
5. Cr Miller seeks a public apology, and a retraction of what Mayor Triffitt said in the meeting of the 5th April 2024, in the New Norfolk News, and Mercury.

In the Panel's consideration of the material provided by the Director under cover of his email of 3rd October 2024, particularly the Performance Improvement Direction ("PID") given to Mayor Triffitt pursuant to s214M of the Act by the then Minister for Local Government, the Honourable Nick Street MP, dated 2nd August 2024, and the content of Schedule 2 to the PID entitled "Actions Required for Improved Performance (S214M) (3)(a) of the Act", the Panel sought clarification from the Director as to whether or not Mayor Triffitt had complied with the four directed actions within the timeframe specified in the PID.

Subsequent advice from the Director was that both actions 1 and 2 (relating to Mayor Triffitt being required within 30 days of the PID to undertake specific Mayoral training), had been complied with.

In this advice the Director also confirmed that actions 3 and 4 – directing Mayor Triffitt to refrain from making unfounded public statements alleging any abuse of power, collusion or possible corruption (or words to that effect) by Councillors and/or Council staff and to refrain from making public statements that are contrary to qualified legal advice given to council, were binding and remained in place for the entirety of the Mayor Triffitt's current term in office.

As a consequence, should Mayor Triffitt fail to comply with either of these remaining two requirements of the PID, the Minister may exercise the power to suspend the councillor from office of councillor for a period not exceeding six months, pursuant to s214O (1)(a) of the Act (see Schedule 4 to the PID.)

In the Panel's view, this "Sword of Damocles" provides significant motivation for Mayor Triffitt to behave in an appropriate way, and not contrary to these directions of the PID, and in particular to not repeat the conduct that the Panel has found amounted to the substantiated breaches of the Code.

In light of this, the Panel has determined that the most appropriate sanction for Mayor Triffitt as a result of the substantiated breaches of the Code, is that she be reprimanded.

The Panel gave careful consideration to imposing on Mayor Triffitt a requirement to apologise to the complainants but decided that there would be little utility in all the circumstances in imposing this sanction.

There is evidence before the Panel of Mayor Triffitt asserting that she had apologised. There is also evidence from the complainants that this is disputed, or of any such apology not being accepted by the complainants.

Additionally, there is no evidence of Mayor Triffitt retracting the allegations she had made in the meeting of 5th April 2024.

In any event, even if the Panel had determined to impose a requirement to apologise, the Panel considered that it did not have the power to prescribe the words/form of any such apology, nor did it have the power to order the comments made by Mayor Triffitt in the meeting of 5th April 2024 to be retracted.

The Panel also wishes to make it clear that but for the PID issued by the Minister for Local Government on 2nd August 2024, with potential sanctions remaining in place for the entirety of Mayor Triffitt's current term in office as discussed, (i.e. the potential for her to be suspended for up to six months in the event of non-compliance with the remaining directions), the Panel would have in all the circumstances imposed a period of suspension on Mayor Triffitt as an appropriate sanction for the substantiated breaches of the Code.

### **Timing of the Determination**

In accordance with section 28ZD (1)(a) a Code of Conduct Panel is to make every endeavour to investigate and determine a code of conduct complaint within 90 days of the chairperson's

determination that the whole complaint is to be investigated and determined. This applies in the case of the complaints by Councillors Hall, Meacham and Miller.

In accordance with section 28ZD (1)(b) a Code of Conduct Panel is to make every endeavour to investigate and determine a code of conduct complaint within 120 days of the chairperson's determination that part of the complaint is to be investigated and determined, but to refer to a person or other authority another part of the complaint. This applies in the case of the complaints by Councillors Cassidy and Allwright.

The Panel has been unable to investigate and determine any of the complaints within the required time, because of the number of complainants, the determination to undertake a joint investigation of all complaints, delay receiving a response to the Panel's referral of the complaints to the Director pursuant to s28ZF (3) of the Act and the volume of material to be considered by the Panel.

### Right to Review

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



Robert Winter

**Chairperson**



Frank Neasey

**Member**



Roseanne Heyward

**Member**

DATE 12 November 2024