

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  
NORTHERN MIDLANDS COUNCIL CODE OF CONDUCT**

**Complaint brought by Councillor Paul Terrett against Councillor Alison Andrews AM**

**Code of Conduct Panel**

- Lynn Mason AM (Chairperson),
- Jill Taylor (Local Government Member)
- Audrey Mills (Legal Member)

Date of Determination: 24 April 2024

Content Manager Reference: C31745

**Summary of the complaint**

A code of conduct complaint was submitted by Councillor (Cr) Paul Terrett to the General Manager of the Northern Midlands Council on 29 November 2023.

The complaint related to Councillor (Cr) Allison Andrews' participation in the council meeting held on 20 November 2023, and specifically, the consideration of Item 11.6 PLN23-0188 Longford Streetscape Project development application. It was alleged that Cr Andrews was the owner of the property at 50 Wellington Street Longford, a property which may have been directly affected if the development application were approved.

The complaint alleged that Cr Andrews breached the following parts of the Northern Midlands Council Code of Conduct, updated on 20 October 2023, during Item 11.6 of the Ordinary Council Meeting held on 20 November 2023:

**Part 1 – Decision Making**

- 1. A councillor must bring an open and unprejudiced mind to all matters being decided upon in the course of his or her duties, including when making planning decisions as part of the Council's role as a Planning Authority.*
- 2. A councillor must make decisions free from personal bias or prejudgement.*

**Part 2 - Conflict of interests that are not pecuniary**

- 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.*
- 2. A councillor must act openly and honestly in the public interest.*
- 5. A councillor must avoid, and remove himself or herself from, positions of conflict of interest as far as reasonably possible.*
- 6. A councillor who has an actual, potential or perceived conflict of interest in a matter before the Council must: –*

*a) declare the conflict of interest and the nature of the interest before discussion of the matter begins; and*

*b) act in good faith and exercise reasonable judgement to determine whether a reasonable person would consider that the conflict of interest requires the elected member to remove himself or herself physically from any Council discussion and remain out of the room until the matter is decided by the Council.*

The Chairperson of the Code of Conduct Panel (the Panel) determined in her assessment that the complaint disclosed possible breaches of the following additional clauses of the Code:

## **Part 2 - Conflict of interests that are not pecuniary**

*3. A councillor must uphold the principles of transparency and honesty and declare actual, potential or perceived conflicts of interest at any meeting of the Council and at any workshop or any meeting of a body to which the elected member is appointed or nominated by the Council.*

*4. A councillor must act in good faith and exercise reasonable judgement to determine whether he or she has an actual, potential or perceived conflict of interest.*

These clauses were also considered in the investigation.

### **Initial assessment**

Following receipt of the complaint, the Chairperson conducted an initial assessment of the complaint in accordance with the requirements of section 28ZA of the Act. Having assessed the complaint against the provisions of sections 28ZB and 28ZC of the Act, the Chairperson determined that:

- the complainant had made a reasonable effort to resolve the complaint. While Cr Terrett did not make any direct effort to resolve the matter of the complaint, the vote had been taken in a past council meeting, so there was not a question of whether the matter could be 'resolved' by discussion between the complainant and the respondent. The Mayor had reminded all Councillors at the start of the meeting of their obligations to declare actual or potential conflicts of interest in any item on the agenda.
- the complaint substantially related to a contravention of the Northern Midlands Council's Code of Conduct;
- the complaint could not be dismissed on the grounds that it was frivolous, vexatious or trivial. The reasons for this conclusion were that if upheld, an undeclared conflict of interest, whether perceived or actual, could impede the Council's decision making processes;
- having made enquiries of the Code of Conduct Executive Officer, there was no relevant direction under section 28ZB(2) or 28ZI of the Act that would apply to the complainant and the complaint.<sup>1</sup>

On this basis, the Chairperson determined to investigate the complaint.

The complainant, respondent councillor and the General Manager were notified of the outcome of the initial assessment by letter dated 12 January 2024.

### **Investigation**

In accordance with section 28ZE of the Act, the Code of Conduct Panel investigated the complaint.

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<sup>1</sup> Section 28ZB(2) and 28ZI of the Act enable the Chairperson or the Panel (as applicable) to issue a direction to a complainant in prescribed circumstances not to make a further complaint in relation to the same matter unless the complainant provides substantive new information in the further complaint.

Cr Andrews had been invited in the initial assessment to provide a response to the complaint, and this was received on 22 January 2024. The Panel met on 30 January 2024 to begin its investigation, and considered both the complaint and the response. The Panel determined that no further information needed to be sought from either party, and Cr Andrews' response was sent to Cr Terrett, inviting him to respond if he wished to do so. His statement was received by the Panel on 2 February 2024.

The Panel based its investigations on the following documentation:

- The complaint from Cr Terrett, accompanied by a Statutory Declaration dated 29 November 2023, 25pp;
- Response from Cr Andrews, accompanied by a Statutory Declaration dated 22 January 2024, 3 pp;
- • Response from Cr Terrett to Cr Andrews' submission of 22 January 2024, accompanied by a Statutory Declaration dated 31 January 2024, 14 pp;
- The Northern Midland Council's Code of Conduct for Elected Members, adopted on 30 January 2023 and updated on 20 October 2023.

In accordance with section 28ZG(2)(b) of the Act, the Code of Conduct Panel considered that a hearing would be unnecessary in the circumstances because the investigation could be determined on the basis of the of the written material provided and, in the Panel's view, neither party would be disadvantaged.

By letters dated 5 February 2024, the complainant and respondent councillor were notified of the Panel's intention to proceed to determine the complaint without a hearing. Both parties were invited to provide any objection in writing within seven days. No objections were received.

### **Determination**

As per section 28ZI of the Act the Code of Conduct Panel determines that Cr Andrews breached Part 2.3, Part 2.4, Part 2.5, and Part 2.6 the Code of Conduct, and therefore the Code of Conduct Panel upholds the complaint. The Panel determines that the alleged breaches of Part 1.1, Part 1.2, Part 2.1, and Part 2.2 are dismissed.

### **Matters not in dispute**

- In her response to the complaint, Cr Andrews agreed that she owned property and lived on Wellington Street, the thoroughfare in question for this agenda item.
- Cr Andrews did not declare an interest in the relevant item, and voted for a motion which stated, in part, that *application PLN-23-0188 be refused and reviewed and further consultation with all interested parties and a revised application be submitted.*

### **Reasons for determination**

In her response, Cr Andrews noted that there had been ongoing discussion about the Longford Streetscape Project for months, including during the period prior to her election to Council. She stated that she did not declare an interest in Item 11.6 because it had never occurred to her that she needed to do so. She said this failure to declare an interest was not a 'deliberate decision', but rather, the error was made accidentally.

Cr Andrews' response indicated that she did bring an open and unprejudiced mind to the matter, and did not show personal bias in her actions. The Panel therefore dismisses the allegation that she breached Part 1.1 and Part 1.2, in accordance with section 28ZI(1)(c) of the *Local Government Act 1993* (the Act).

The Panel notes that the motion to refuse the application was passed by seven Councillors (including Cr Andrews) with two other Councillors voting against the motion. There was no evidence that Cr Andrews' actions resulted in any personal benefit to her.

The Panel was not persuaded that Cr Andrews was influenced by any personal or private interests that she had; nor that she acted in any way that was not in what she believed to be in the public

interest. The Panel therefore dismisses the allegation that she breached Part 2.1 and Part 2.2, in accordance with section 28ZI(1)(c) of the Act.

However, the Panel determines that by failing to state that she owned property on Wellington Street in the area marked for change, Cr Andrews did not exercise reasonable judgement about whether she might have an actual or perceived conflict of interest, thus breaching Part 2.3 of the Code. And with this failure, Cr Andrews also breached Part 2.4, Part 2.5, and Part 2.6, flowing on as they do from the breach of Part 2.3.

Cr Andrews committed in her response to making herself more familiar with the Conflict of Interest provisions in both the Code and the Act, and stated that if the complaint was upheld on the grounds that she had not withdrawn for the item, then she apologised.

### **Sanction**

While the Panel upholds part of the complaint against Cr Andrews, it notes that as per section 28ZI(2) of the Act, it is not mandatory for the Code of Conduct Panel to impose a sanction on Cr Andrews. The Panel notes that Cr Andrews has been on Council for only one year, and that in her response to the complaint, she has committed to becoming more familiar with the application of conflict of interest provisions for councillors. She has also apologised in the event that she breached the Code.

The Panel therefore imposes no sanction on Cr Andrews.

### **Right to review**

A person aggrieved by the determination of 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.



Lynn Mason AM  
**Chairperson**



Audrey Mills  
**Legal Member**



Jill Taylor  
**Member**

DATE: 24 April 2024