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Local Government Act 1993

CODE OF CONDUCT PANEL DETERMINATION REPORT

HUON VALLEY COUNCIL CODE OF CONDUCT

Complaint brought by Ms Amy Robertson against Cr Jenny Cambers-Smith

Code of Conduct Panel

- Lynn Mason AM (Chairperson),
- Philip Cocker (Local Government Member)
- Don Jones (Legal Member)

Date of Determination: 31 May 2024

Content Manager Reference: C32914

Summary of the complaint

A code of conduct complaint was submitted by Ms Amy Robertson (now Councillor Robertson) against Councillor (Cr) Jenny Cambers-Smith to the Director Governance Strategy and Sustainable Development of the Huon Valley Council on 24 January 2024.

On 19 February 2024, the Executive Officer of the Code of Conduct Panel (the Panel) received additional information from Ms Robertson, with a request that it be included as part of the material submitted with the complaint. Under section 28X of the *Local Government Act 1993* (the Act) a complaint may be amended, provided that the investigation into the complaint has not commenced. As this investigation had not yet commenced, this material was included as part of the complaint.

The complaint alleged that a submission by Cr Cambers-Smith sent to the Tasmanian Planning Commission (TPC) as a response to the TPC's draft Local Provisions Schedule (LPS) process included statements that were incorrect and potentially damaging to Ms Robertson's reputation; namely,

- That a Forest Practices Plan (specifically FPP AXW0016) prepared by Ms Robertson for Mr Caleb Elcock was invalid;
- That Ms Robertson worked for Sustainable Timbers Tasmania; and
- That Ms Robertson was a long-time critic of Cr Cambers-Smith personally.

The complaint also related statements made in an email sent by Cr Cambers-Smith to the Huon Valley Zoning Association on 22 September 2024.

The complaint alleged that Cr Cambers-Smith breached the following parts of the *Huon Valley Council Code of Conduct relating to the conduct of Councillors*, version 4, reviewed February 2023:

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.

Initial assessment

Following receipt of the complaint, the Chairperson of the Panel 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. In reaching this assessment the Chairperson relied on an email exchange between Cr Cambers-Smith and Ms Robertson that occurred on 16 January 2024;
- the complaint substantially related to a contravention of the *Huon Valley Council Code of Conduct relating to the conduct of Councillors*;
- part of 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, the respondent councillor will have been found to have treated a member of the community unfairly, and caused that person offence or embarrassment;
- 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.¹

The Chairperson dismissed the complaint that Cr Cambers-Smith had breached Part7(1)(c) of the Code. Insufficient evidence was provided in this complaint to indicate long-term harassment or sustained bullying of Ms Robertson by Cr Cambers-Smith.

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

The complainant, respondent councillor and the Director Governance Strategy and Sustainable Development were notified of the outcome of the initial assessment by letter dated 22 March 2024.

Investigation

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

Cr Cambers-Smith was invited in the initial assessment to respond to the complaint by 5 April 2024, and this was duly received and sent to Ms Robertson.

The Panel met on 8 April 2024 to consider the complaint and the response from Cr Cambers-Smith. The Chairperson had also requested the General Manager of the Huon Valley Council to provide information about a compliance order, which it was alleged had been imposed on a property relevant to the complaint, within the Huon Valley municipality. This was provided on 5 April 2024 and was considered by the Panel at its meeting on 8 April 2024.

The Panel decided that the investigation should proceed to a hearing. Ms Robertson and Cr Cambers-Smith were invited to inform the Panel if they wished to call witnesses, and to inform the Panel if they wished to have a support person present at the hearing. On 12 April 2024 Cr Cambers-Smith advised the Panel in writing that she had decided for personal reasons not to attend the hearing.

Ms Robertson requested that Mr Caleb Elcock be called as a witness at the hearing. Mr Elcock provided a witness statement on 12 April 2024, and this was sent to Cr Cambers-Smith. A further statement in response to this was received from Cr Cambers-Smith on 16 April 2024.

The Panel based its investigations on the following documentation:

- *The Huon Valley Council Code of Conduct relating to the conduct of Councillors*, 23 February 2023;

¹ 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.

- The complaint from Ms Robertson, dated 22 January 2024, 22pp, accompanied by a statutory declaration, including an amendment to the complaint, 1 pp, accompanied by a statutory declaration, 29 January 2024;
- The response to the complaint from Cr Cambers-Smith, sent on 5 April 2024, 9pp, accompanied by a statutory declaration;
- Information provided by Huon Valley Council regarding a compliance order imposed on the owner of the land at 106 Mitchells Road Crabtree;
- An amendment to the response, sent by Cr Cambers-Smith, received 8 April 2024, 1pp;
- An email from Ms Robertson, and response from Mr Sean McPhail, Assistant Director, State Planning Office, regarding 'associated development and FPPs';
- Minutes of the meeting of Huon Valley Council, 27 March 2024, with attention drawn to a question asked by Cr Cambers-Smith;
- Witness statement by Mr Caleb Elcock, 12 April 2024, 4pp;
- Response from Cr Cambers-Smith, 16 April 2024, 13pp;
- Statutory Declaration from Cr Cambers-Smith to cover response sent on 16 April 2024, with photograph attached, sent 17 April 2024, 2pp.
- Submission on sanction from Cr Cambers-Smith, 17 April 2024, 1 p;
- Submission on possible adverse outcome from Cr Cambers-Smith, 3 May 2024.

Hearing

The hearing was conducted in Hobart on 18 April 2024. Ms Robertson read the Affirmation for a witness, and subsequently confirmed that she was not recording the hearing. No support persons were invited.

Cr Cambers-Smith did not attend, indicating in writing her intention not to attend.

Mr Caleb Elcock appeared as a witness for Ms Robertson and having taken the Affirmation, affirmed his written statement as being true and correct at the time it was made and remained so. He was questioned by the Panel and by Ms Robertson and at the conclusion of his evidence sought leave to withdraw from the hearing.

Post Hearing

On 29 April 2024, Cr Cambers-Smith was advised of the possibility that the complaint could be upheld, and asked if she wished to respond to that eventuality. Her response was received on 3 May 2024. On 9 May 2024 Cr Cambers-Smith sent further information to the Panel. The material was reasonably considered by the Panel, and deemed not relevant to the complaint. Cr Cambers-Smith was informed that no further submissions were required.

Determination

As per section 28ZI of the Act the Code of Conduct Panel determines that Cr Cambers-Smith breached Part 7.1(a) and Part 7.1(b) of the Code of Conduct, and therefore the Code of Conduct Panel upholds the complaint.

Reasons for determination

Part 7.1 A Councillor -

(a) must treat all persons fairly

Cr Cambers-Smith's objection to Representation 39 to the Huon Valley Council draft LPS stated that Cr Cambers-Smith believed that *"the Forest Practices plan (FPP) included in Mr Elcock's later submission (10 July 2023) is invalid and should be inadmissible as evidence to the hearings. Amy Robertson, who works for Forestry Tasmania (trading as Sustainable Timbers Tasmania), created and certified this FPP on 17 January 2023, approximately 2 years **after** the clearing took place"* (Page 1 of Cr Cambers-Smith's submission objecting to the draft LPS, made on 25 August 2023.)

Subsequently, after lodgement of the complaint and in her response to it on 5 April 2024, Cr Cambers-Smith maintained her conviction that the FPP, prepared by Ms Robertson for Mr Elcock, and certified in January 2023, was created 'after the fact'. Cr Cambers-Smith stated that *it is my contention that any reasonable non-forestry industry person, would believe that FPP was written in response of the clearing that actually took place in the summer of 2018-19, and therefore justifies my statement that the FPP was 'after the fact'. It was indeed written 'after the fact' of the original unapproved clearing.*

The critical point is that while the relevant FPP was written after the clearing of part of Mr Elcock's land in 2018-19, it was not written to validate that clearing. The Panel notes that Mr Elcock's witness statement said that the January 2023 FPP prepared by Ms Robertson was *to support a suite of forest practices activities associated with the commercial apiary (on his property) and other non-apiary related forest practices that I engage with on my property.*

Due to the allegations raised by Cr Cambers-Smith, Ms Robertson lodged a complaint with the Forest Practices Authority to ask the authority to investigate the validity of the relevant Forest Practices Plan.

In evidence submitted by Ms Robertson (accepted as an amendment to the complaint), the Panel noted that in a response to Ms Robertson's complaint, the Chief Forestry Practices Officer of the Forest Practices Authority undertook a review of the matter, and informed Ms Robertson in writing on 8 February 2024 as follows:

The FPA compliance program reviewed the FPP AXW0016 and found:

- 1. No issue of non-compliance in the construction of the FPP, and*
- 2. That the FPP was certified by a person who has been delegated powers by the Authority under Section 19 of the Forest Practices Act to certify Forest Practices Plan.*

This statement by the Chief Forestry Practices Officer was supplied to Cr Cambers-Smith. Cr Cambers-Smith should therefore have been aware that the FPP was not invalid before writing her response to the complaint, and reiterating her assertion that the FPP was 'after the fact', as had been asserted in her Objection to Representation 39. Clearly it was not invalid. Despite this, Cr Cambers-Smith persisted with expressing her view that the plan was invalid.

The Panel determined that Cr Cambers-Smith's statement was not 'justified' and was factually incorrect. It is incumbent on any person who wishes to make statements that may be detrimental to another person to exercise due diligence and make full and proper enquiries to ensure their information is factually correct. Cr Cambers-Smith's attempt to justify her stance by submitting it was a reasonable assumption to make, is fatuous. To make statements about a person's integrity should not be made on an assumption. It is clear in this case that the comments were unfair to Ms Robertson, who is a businesswoman running her own business; such comments could impact on her livelihood. It is unfair to suggest that the Plan, such as in this case, is invalid, when clearly the main independent body, the Forest Practices Authority, has ruled the Plan valid after a review.

Nor does the Panel accept that Ms Robertson was a long-time critic of Cr Cambers-Smith at a personal level. Cr Cambers-Smith stated in her response of 5 April 2024 that the description of Cr Cambers-Smith's political views as 'forestry bashing', in a letter by Ms Robertson to the Huon News in December 2023, constituted personal long-term criticism by Ms Robertson. Other material cited by Cr Cambers-Smith is not supported by witness statements. Cr Cambers-Smith also made reference to a number of behaviours and words directed at her over a period of time, but no detail was provided. It is not the role of this Panel in determining this code of conduct to validate these claims nor to apply them as excuse or mitigation.

The Panel accepts that there are significant differences of opinion between Ms Robertson and Cr Cambers-Smith, particularly on forestry and associated planning issues. However, the Panel was not persuaded that Ms Robertson's letter to the Huon News in December 2023 could be seen as personal criticism by Ms Robertson over a long period.

The Panel therefore upholds the complaint that Cr Cambers-Smith breached Part 7.1(a) of the code of conduct.

(b) must not cause any reasonable person offence or embarrassment

Ms Robertson alleged that she was professionally embarrassed by the assertion that she was employed by Forestry Tasmania (trading as Sustainable Timbers Tasmania) when she prepared the Plan. She had not worked for that organisation since 2011, although she had undertaken a minor consultancy for Sustainable Timbers Tasmania (STT) in 2023. This is a matter Cr Cambers-Smith could have easily investigated rather than relying on an assumption. Ms Robertson asserted that as an independent auditor in forestry regulation and certification, she had to maintain her independence to avoid conflicts of interest. Her assertion that she believed she had lost work because of the allegation made against her could not be proven, but the Panel accepted that Ms Robertson was professionally embarrassed by the claim that she had prepared the Plan while employed by STT. Such an allegation or assumption is an attack on the integrity of Ms Robertson, and it is not unreasonable to find that such comments could cause some to question her independence and integrity, which would cause her embarrassment, not just with existing clients but also potential clients.

The Panel rejects Cr Cambers-Smith's submission that her assumptions were reasonable.

Many of the other submissions put forward by Cr Cambers-Smith were irrelevant to the determination to be made; however, all submissions tendered were read to ensure principles of natural justice or procedural fairness were followed.

The Panel therefore upholds the complaint that Cr Cambers-Smith breached Part 7.1(b) of the code of conduct.

Sanction

The Panel notes that Cr Cambers-Smith submitted that if any part of the complaint were upheld, it should not warrant a severe sanction, such as suspension. The Panel accepts that submission, and notes in addition that Cr Cambers-Smith is a relatively inexperienced councillor.

In accordance with section 28ZI(2) of the Act, the Panel imposes a caution on Cr Cambers-Smith, and requires her to apologise in writing to Ms Robertson for her assertion that Ms Robertson worked for STT, and her persistent wrongful assertion that FPP AXW0016 was invalid and made 'after the fact'. This apology is to be made without reservation at the ordinary council meeting in which this determination report is tabled. In the event that either Ms Robertson or Cr Cambers-Smith is unable to attend the meeting, the apology is to be made by Cr Cambers-Smith at the next council meeting attended by Ms Robertson.

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



Philip Cocker
Member



Don Jones
Legal Member

DATE: 31 May 2024