

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 (the Act)

CODE OF CONDUCT PANEL DETERMINATION REPORT

NORTHERN MIDLANDS COUNCIL - CODE OF CONDUCT COMPLAINT

Complaint brought by Mayor Mary Knowles and Deputy Mayor Janet Lambert (the Complainants) against Councillor Andrew McCullagh (the Respondent)

Code of Conduct Panel

- David Sales (Chairperson),
- Roseanne Heyward (Local Government Member)
- Graeme Jones (Legal Member)

Date of Determination: 1 July 2025

Content Manager Reference: C29873

Summary of the Complaint

A Code of Conduct Complaint was submitted jointly by Mayor Mary Knowles and Deputy Mayor Janet Lambert to the General Manager of the Northern Midlands Council on 7 August 2023.

The Complaint alleges that Cr. Andrew McCullagh breached parts Part 7.1 ((a), (b) and (c) of the Northern Midlands Council Code of Conduct, (the Code) adopted by the Northern Midlands Council (the Council) on 30 January 2023. The Complaint relates to a series of emails dated 6/2/23, 14/2/23, 15/2/23, 18/4/23, 21/4/23, 27/4/23, 5/5/23, 10/5/23, 18/5/23 31/5/23 and 5/6/23 (2) and a Facebook posting on 19/5/23 in relation to correspondence sent or published by the Respondent to the General Manager, Mr. Des Jennings. .

PART 7 - RELATIONSHIPS WITH COMMUNITY, COUNCILLORS AND COUNCIL EMPLOYEES

7.1 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 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:

- because of the history of complaints made by both parties against each other there was no possibility of a successful mediation prior to lodging the Complaint.
- the Complaint substantially related to a contravention of the Northern Midlands Council's Code of Conduct adopted 30 January 2023
- the Complaint should not be dismissed on the grounds that it was frivolous, vexatious or trivial, because, if proven, the allegations relate to a breach of the Code.
- 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 Complainants and the Complaint.¹

After examination, the Chairperson determined that the Complaint against Cr. McCullagh in relation to the alleged breaches of Parts 7.1 (a) (b) and (c) should be further investigated as they substantially relate to a contravention of the Code.[Click or tap to enter a date..](#)

The Complainants, Respondent Councillor and the General Manager were notified of the outcome of the initial assessment on 30 August 2023.

Investigation

In accordance with section 28ZE of the Act, the Code of Conduct Panel investigated the Complaint. The Complainants allege the Respondent sent emails and caused or permitted postings to his Facebook page which were in breach of the Code.

These emails and the posting were alleged to varying degrees to have been critical of the manner in which the General Manager fulfilled the role of General Manager, were unfair and caused him offence and embarrassment. Further, because they occurred over an extended period of time, they amounted to bullying and harassment.

Whilst conducting this investigation the Panel encountered several procedural problems.

Initially the Complaint was forwarded to the Respondent electronically, but the Respondent indicated he had not received the same. When the Complaint was delivered by a process server, the Respondent refused to accept service. The Executive Officer

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.

sought information in relation to the manner of service. The Panel accepts the advice it received from the Executive Officer that the Complaint was properly served.

This process took a considerable period of time due to the fact that the Respondent was granted a number of periods of leave of absence from Council during 2024 and the Mayor took leave from her role for a period of time. The following is a summary of the interaction with the Respondent during that period.

- On 30 August 2023, the Executive Officer electronically advised the Respondent of the Complaint and requested him to provide a response within 14 days.
- On 10 October 2023, the Executive Officer emailed the Respondent asking him to respond to the Complaint.
- Subsequently, on 10 October 2023, the Respondent advised the Executive Officer that he had not received the Complaint.
- On 1 December 2023, the Executive Officer lodged all the correspondence in relation to this Complaint with Australia Post for transmission to the Respondent's residential and postal address, as well as informing him via email what had occurred. He was requested to provide a response by 18 December 2023.
- Subsequently, on 1 December 2023, the Executive Officer received an email from the Respondent in which he indicated that this was not an acceptable means of service and asked the Panel to refer the matter to a court for determination.
- On 5 December 2023, the Executive Officer received a further response from the Respondent saying that the Executive Officer had tried to serve him illegally and if the matter is pursued, it will be referred to the Magistrates Court for review and appeal. The Panel has considered the Respondent's email response and deemed it as irrelevant information in relation to the Complaint lodged against him.
- On 10 January 2024, the Executive Officer sent the Respondent a further email extending the time for his response until 19 January 2024. The Panel noted the Respondent's email response to the Executive Officer on the same day where he said that he had not been served appropriately and was expecting to be served personally through Derwent Mercantile.
- On 5 March 2024, the Executive Officer wrote to the Respondent asking that he respond to the Complaint within 7 days of receipt of that letter. No response was received to that correspondence.
- On 20 March 2024, the Executive Officer received an email from the Respondent indicating the document had not been received at the Swansea Post Office and that if the matter is pursued in his absence, he will refer the matter to the Magistrates Court.
- On 2 April 2024 at 12:26pm and 12:37 pm, the Executive Officer received two emails from the Respondent advising that he had received correspondence on 2 April 2024 advising that he had been officially notified under the Acts Interpretation Act 1931 that he had been served with the Panel's correspondence.

The Panel received correspondence from the Respondent making allegations against the Complainants in relation to the way the Complaint was prepared by the Complainants. He alleged that this should invalidate the Complaint. The allegations, if true, suggested a potential breach of the Act and the Panel understands they have been directed to the Acting Director of Local Government for investigation. The Panel has not taken these allegations into consideration in its investigation of the Complaint.

During the remainder of 2024, the Respondent took leave from Council on a number of occasions and the Mayor was on leave for a period of time, and during that time it was not possible to progress this investigation.

The written evidence that the Panel had before it is:

- A copy of the Northern Midlands Council's Councillor Code of Conduct adopted 30 January 2023
- A Code of Conduct Complaint by Mayor Knowles and Deputy Mayor Lambert against Cr. McCullagh dated 7 August 2023. (including 10 attachments)

The Respondent failed to provide any response to the Complaint.

The Panel considered the provisions of s28ZG of the Act in conjunction with the documentary evidence which it had before it. The evidence being limited to the Code and the Complaint. On 4 December 2024, the Panel wrote to the parties seeking their views on whether a hearing would be necessary to determine this Complaint. On 21 (Knowles) and 22 (Lambert) December 2024, the Complainants advised that they had no objection to the Complaint being determined without a hearing. No response was received from the Respondent.

A Code of Conduct Panel may determine that a code of conduct complaint may be investigated without a hearing if it reasonably considers that-

(a) Neither the complainant nor the councillor against whom the complaint is made will be disadvantaged if a hearing is not held and it is appropriate in the circumstances not to hold a hearing; or

(b) A hearing is unnecessary in the circumstances because the investigation can be adequately conducted by means of written submissions or examination of documentary evidence, or both.

In accordance with section 28ZG of the Act, the Panel considered whether a hearing was necessary in the circumstances. It determined that further investigation could be adequately conducted by the examination of the documentary evidence which was limited to the actual Complaint lodged by the Complainants. The Complaint itself was quite detailed attaching copies of the emails which it was alleged breached the Code. In doing so, it noted that the Respondent had not responded to the Complaint or to the request that he provide his views in relation to the need for a hearing. In the circumstances the Panel determined in accordance with s28ZG (2) (b) of the Act that the Complaint would

be determined without a hearing being held because it believed that neither party would be disadvantaged if a hearing was not held.

Determination

The Panel has considered the Code of Conduct and the Complaint (with annexures).

Pursuant to section 28ZI of the Act the Panel determines that Cr Andrew McCullagh has breached Parts 7.1(a), (b) and (c) of the Code.

Reasons for determination PART 7 - RELATIONSHIPS WITH COMMUNITY, COUNCILLORS AND COUNCIL EMPLOYEES

7.1 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.

The Complainants have attached eleven emails to the Complaint. These were sent by the Respondent to the General Manager of the Council. Further, there are a number of Facebook publications. These were posted by the Respondent in relation to the General Manager. The Complainants allege that each email and Facebook posting treated the General Manager unfairly and caused offense and embarrassment. Further, they amounted to bullying and harassment. It is further alleged that because almost all were copied to other persons this increased the level of offense and embarrassment for the General Manager.

The Panel notes that the General Manager was an employee of the Council. Clause 15 (2) (a) of the Local Government (Meeting Procedures) Regulations 2015 provides that personnel matters including complaints against employees are one of the matters which may be dealt with in closed council when being considered by Council. The Panel is of view that if the Respondent had a complaint regarding the performance of the General Manager, there was an established procedure to be followed which does not involve the public release of these complaints. The Respondent should have submitted an agenda item which would have been considered by Council in camera.

The Panel has examined each of the emails and Facebook postings in order to determine whether any or all are in breach of the Code.

Email dated 6 February 2023 to the General Manager

Cc to all Councillors and a Council employee.

Inter alia, this email stated, “*Stop treating people like idiots... will be referred to integrity...*”. The Panel finds this was clearly a reference to the competency of the General

Manager. The Panel is of the view that to put this in an email to the General Manager and to publish it to others was inappropriate, intimidatory and disrespectful. The Panel finds it was unfair and would cause offence and embarrassment to a reasonable person especially as it was copied to other persons.

The Panel upholds this part of the Complaint.

Email dated 14 February 2023 to the General Manager

Cc to the Premier, Minister of Local Government (the Minister) and all Councillors.

Inter alia, this email stated “*The ongoing feud between ourselves is escalating... I can only see this escalating further, and with far greater consequences.....*”. The Panel considers the use of these words were meant to intimidate the General Manager. Further, there is a threat of “*greater consequences*”. The Panel is of the view that the statement is unfair and would cause offence and embarrassment to a reasonable person especially as it was copied to other persons.

The Panel upholds this part of the Complaint.

Email dated 15 February 2023 to the General Manager

Cc to the Premier, Minister, Director of Local Government (the Director) and all Councillors.

Inter alia, this email stated “*....Simply put you are a disgrace....*”. The Panel considers that this email to be highly offensive to the General Manager and shows a lack of respect. It is also intimidatory. The Panel is of the view that the statement is unfair and would cause offence and embarrassment to a reasonable person especially as it was copied to other persons.

The Panel upholds this part of the Complaint.

Email dated 18 April 2023 to the General Manager

Cc to the Premier, Minister, Director, Integrity Commission and all Councillors.

Inter alia, this email stated “*... it seems if you upset Mr. Jennings, he will make sure it comes back to haunt you....*” The Panel considers that this email infers without proof that Mr Jennings is vindictive and further implies misconduct by Mr. Jennings. The Panel is of the view that the email is unfair and would cause offence and embarrassment to a reasonable person especially as it was copied to other persons and also the Integrity Commission.

The Panel upholds this part of the Complaint.

Email dated 21 April 2023 to the General Manager

Cc to the Premier, Minister, Director, Integrity Commission and all Councillors.

This was an email which made a range of allegations against the General Manager as well as casting aspersions on the Mayor and other Councillors. The manner in which the email is written is aggressive, intimidating and threatening. The Panel regards this email as perhaps the most offensive and embarrassing of the series. The Panel is of the view that the email is unfair and would cause offence and embarrassment to a reasonable person especially as it was copied to other persons including the Integrity Commission.

The Panel upholds this part of the Complaint.

Email dated 27 April 2023 to the General Manager

Cc to the Premier, Minister, Director, Integrity Commission and all Councillors.

This email was threatening in that the Respondent indicated that he would go to the Integrity Commission unless the General Manager carried out a certain action. This was not respectful and entirely inappropriate. The Panel is of the view that the email is unfair and would cause offence and embarrassment to a reasonable person especially as it was copied to other persons including the Integrity Commission.

The Panel upholds this part of the Complaint.

Email dated 5 May 2023 to the General Manager

Cc to a Council employee and all Councillors.

This email, inter alia, accuses the General Manager of an “*erratic and self interested approach*” and not having “*integrity and vision*”. The Panel finds this email rude and offensive. The Panel is of the view that the email is unfair and would cause offence and embarrassment to a reasonable person especially as it was copied to other persons.

The Panel upholds this part of the Complaint.

Email dated 10 May 2023 to the General Manager

Cc to the Premier, Minister, Director, Integrity Commission and all Councillors.

The Panel finds the tone of this email was relatively mild compared to some of the others. Nonetheless, it was peremptory in tone and the General Manager in all likelihood would find it offensive. The Panel is of the view that the email is unfair and would cause offense and embarrassment to a reasonable person especially as it was copied to other persons including the Integrity Commission.

The Panel upholds this part of the Complaint.

Email dated 18 May 2023 to the General Manager

Cc to the Premier, Minister, Director, Integrity Commission and all Councillors.

This email alleges that the General Manager would ignore Council resolutions and do as he pleased. It implied that the General Manager acted improperly and contrary to the powers provided to him under the Act. The Panel is of the view that the email is unfair and would cause offence and embarrassment to a reasonable person especially as it was copied to other persons including the Integrity Commission.

The Panel upholds this part of the Complaint.

Facebook post-dated 19 May 2023.

The Respondent published a post on Facebook with the comment *"This was some dealings in my first few days in office"* The Respondent then posted extracts from various emails which referred to the General Manager viz. *"our tenuous relationship"*, *"hostile working environment"*, *"your role is subservient:"* *"explosive environment"*. This posting took place in May 2023 and refers to matters which took place shortly after the Respondent's election to Council in October 2022. The General Manager is described as *"inept and inadequate"* and as *"dragging the reputation of NMC to an all time low"*. The Panel finds this clearly indicated that the Respondent was elected to Council with some animosity to the General Manager and the situation was unchanged some six months later. The fact that this was published on Facebook meant that it reached a far wider audience and was consequently more offensive and embarrassing to the General Manager. The Panel is of the view that the posting is unfair and would cause offence and embarrassment to a reasonable person.

The Panel upholds this part of the Complaint.

Email dated 31 May 2023

Cc to the Premier, Minister, Director, Integrity Commission, Tasmanian Civil and Administrative Tribunal and all Councillors.

This email, inter alia, alleges the General Manager damages *".....the reputation of Council....and endeavour to avoid scrutiny..."*. The email continues *"... it (the email) resonates vitriol..."* The Panel believes the email is inappropriate in tone and is rude, offensive and disrespectful to the General Manager. The Panel is of the view that the email is unfair and would cause offence and embarrassment to a reasonable person especially as it was copied to other persons including the Integrity Commission and the Tasmanian Civil and Administrative Tribunal.

Emails (2) dated 5 June 2023 to the General Manager

Cc to the Premier, Minister, Director and all Councillors.

The first email on June 5 stated, inter alia, *“I have had enough of your inept and inadequate performance and dragging the reputation of NMC to an all time low. I note in Saturday’s paper there’s a job at Meander Valley that appears to be available in a short while...”* The second stated inter alia *“Either the incompetency level of the NMC is at all time high or it keeps being done deliberately!!!”* The second email was also posted to Facebook. It was alleged that these emails were rude and offensive in alleging the General Manager is incompetent or deliberately obstructive. As with the previously referred to emails, the Respondent provides no evidence to support his assertions. The Panel is of the view that the statement is unfair and would cause offence and embarrassment to a reasonable person especially as it was copied to other persons.

The Panel upholds this part of the Complaint.

The Panel has considered the meaning of bully and harass in Part 7 of the Code of Conduct.

7.1 A councillor –

(c) must not bully or harass any person

The Panel has considered what sort of behaviour might constitute bullying or harassment. Bullying is a pattern of recurring behaviour in which one party behaves unreasonably towards another usually involving behaviour which is intimidating, humiliating, degrading or ridiculing another person. Frequently there is an imbalance of power in the relationship. Harassment typically involves a course of conduct that causes annoyance or upset to a person, that is persistent over a period. It will be more clearly apparent where it includes aggressive pressure or intimidation.

The Panel has considered the emails and the Facebook postings and has determined they breach the Code of Conduct (Part 7.1). All have been found to have treated the General Manager unfairly and to have caused him considerable offence and embarrassment. The Panel considers that the Respondent’s behaviour towards the General Manager over a significant period has been intimidating, humiliating and degrading. No evidence has been offered by the Respondent to explain his extraordinary behaviour. Any reasonable person would conclude that this behaviour is intimidatory and would cause annoyance and upset to the General Manager. Further, there are two significant aggravating factors. The General Manager being an employee of the Council and the Respondents’ publication of these emails to, inter alia, other Councillors and Ministers of the Crown. In the Panel’s view this amounts to bullying and harassment in relation to each publication.

The Panel upholds the Complaint.

Sanction

The Panel considers that the evidence discloses a prolonged and systematic behaviour on the part of the Respondent which endeavoured to intimidate, humiliate, threaten, offend, disrespect and belittle the General Manager. The Respondent appears to have endeavoured to exaggerate the effect of his missives by copying in a range of other persons including in the case of the Facebook posts, members of the public. In the circumstances the Panel views the behaviour of the Respondent as disgraceful.

In considering a sanction the Panel has considered s28ZI and the following matters:

- a) The extended period over which the breaches have occurred (approx. six-month period);
- b) The number of breaches and incidences involved;
- c) The likely impact on the General Manager; and
- d) The relationship of General Manager/Councillor.

The Respondent was requested to make any submissions in relation to sanction if the allegations were proven. He did not respond.

Pursuant to section 28ZI (2) of the Act, the Panel imposes the following sanctions on Cr McCullagh.

- a) a suspension from performing and exercising the functions and powers of his office as a councillor for a period of three months. The suspension is to commence on the day following the date of the Council meeting in respect of which the determination report is included within an item on the agenda, in accordance with section 28ZK of the Act.
- b) a requirement to apologise to the General Manager in writing, with the apology to be tabled at the next ordinary meeting of the Council immediately following the conclusion of the suspension outlined in (a).
- c) a requirement to attend a training course in the roles and functions of a councillor, to be determined and notified by the Director of Local Government.

Timing of the Determination

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

The Panel has been unable to determine the Complaint within 90 days, owing to the failure of the Respondent to accept service of the Complaint and to respond to correspondence forwarded to him on numerous occasions, the many extended periods of leave of absence from Council granted to the Respondent, a period when one of the Complainants was overseas and on leave and an extended period of illness of a Panel Member.

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 Tasmanian Civil and Administrative Tribunal for a review of the determination on that ground.

A handwritten signature in purple ink, appearing to read 'Sales'.

David Sales

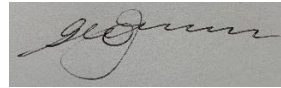
Chairperson

Date: 1 July 2025

A handwritten signature in blue ink, appearing to read 'R. Heyward'.

Roseanne Heyward

Member

A handwritten signature in black ink, appearing to read 'Graeme Jones'.

Graeme Jones

Member