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Local Government Act 1993 (the Act)

CODE OF CONDUCT PANEL DETERMINATION REPORT

NORTHERN MIDLANDS COUNCIL - CODE OF CONDUCT

Complaint brought by Cr. Mary Knowles (Mayor) against Cr. Andrew McCullagh

Code of Conduct Panel

- David Sales (Chairperson),
- Elizabeth Gillam (Local Government Member)
- David Palmer (Legal Member)

Date of Determination: 12 May 2025

Content Manager Reference: C31714

Summary of the Complaint

A Code of Conduct Complaint was submitted by Councillor Mary Knowles (Complainant) to the General Manager of the Northern Midlands Council on 04 December 2023.

The Complaint alleges that Cr. Andrew McCullagh (Respondent) breached the following parts of the Local Government Model Code of Conduct, (the Code) adopted by the Northern Midlands Council on 30 January 2023. The alleged breaches relate to postings on Cr. McCullagh's Facebook page during the period 31 August 2023 to 25 November 2023.

PART 2 - CONFLICT OF INTERESTS THAT ARE NOT PECUNIARY

2.1 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.

2.2 A councillor must act openly and honestly in the public interest.

2.3 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 councillor is appointed or nominated by the Council.

2.4 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.

PART 3 - USE OF OFFICE

3.1 The actions of a councillor must not bring the Council or the office of councillor into disrepute.

3.2 A councillor must not take advantage, or seek to take advantage, of his or her office or status to improperly influence others in order to gain an undue, improper, unauthorised or unfair benefit or detriment for himself or herself or any other person or body.

3.3 In his or her personal dealings with the Council (for example as a ratepayer, recipient of a Council service or planning applicant), a councillor must not expect nor request, expressly or implicitly, preferential treatment for himself or herself or any other person or body

PART 5 - USE OF INFORMATION

5.1 1 A councillor must only access or use Council information needed to perform his or her role and not for personal reasons or non-official purposes.

5.2 A councillor must only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation

PART 8 - REPRESENTATION

.....
8.2 A councillor must not knowingly misrepresent information that he or she has obtained in the course of his or her duties

....
8.5 A councillor's personal views must not be expressed publicly in such a way as to undermine the decisions of the Council or bring the Council into disrepute.

8.6 A councillor must show respect when expressing personal views publicly.

8.7 The personal conduct of a councillor must not reflect, or have the potential to reflect, adversely on the reputation of the Council.

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 Northern Midlands Council's Code of Conduct adopted 30 January 2023
- all of 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 Complainant and the Complaint.¹

After examination, the Chairperson determined that the part of the Complaint against Cr McCullagh in relation to alleged breaches of Parts 2.1, 2.2, 2.3, 2.4, 3.1, 3.2, 8.2, 8.5, 8.6 and

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.

8.7 should be further investigated as they substantially relate to a contravention of the Northern Midlands Council Councillor Code of Conduct (the Code) adopted on 30 January 2023.

Further the Chairperson, in accordance with section 28ZA(1)(b) of the Act, determined that the allegation that Parts 3.3 5.1 and 5.2 had been breached is dismissed for the following reasons.

PART 3 - USE OF OFFICE

3.3 In his or her personal dealings with the Council (for example as a ratepayer, recipient of a Council service or planning applicant), a councillor must not expect nor request, expressly or implicitly, preferential treatment for himself or herself or any other person or body

The Complaint alleges that Cr. McCullagh sought preferential treatment for himself. No evidence has been provided that Cr. McCullagh has sought such preferential treatment. This part of the Complaint is therefore dismissed, on the basis that it is vexatious, i.e., without substance.

PART 5 - USE OF INFORMATION

5.1 A councillor must only access or use Council information needed to perform his or her role and not for personal reasons or non-official purposes.

5.2 A councillor must only release Council information in accordance with established Council policies and procedures and in compliance with relevant legislation

These parts of the Code relate to misuse of Council information. None of the various documents attached to the Complaint which are alleged to have been published by Cr. McCullagh would be classified as Council documents and therefore this part of the Complaint is dismissed as not being covered by the Code.

The Complainant, Respondent Councillor and the General Manager were notified of the outcome of the initial assessment on 17 January 2024.

Investigation

In accordance with section 28ZE of the Act, the Code of Conduct Panel investigated the Complaint. The Complainant alleged the Respondent had caused or permitted postings to his Facebook page which breached the Code.

These postings could be generally arranged into 5 groups as follows; -

- The posting of a previous Code of Conduct Complaint and its Initial Assessment prior to its determination. The posting of these documents was subsequently repeated.
- The posting of two notices of motion which were submitted by Cr. McCullagh for consideration by open Council and correspondence from the Acting General Manager relating to these notices of motion.
- A press release by Cr. McCullagh which resulted in ABC Radio requesting the Mayor to be interviewed to discuss the allegations in the press release.
- Screenshots of postings by third parties to Cr. McCullagh's Facebook page.
- A posting by Cr. McCullagh which contained allegations of misconduct by the Mayor.

With the exception of the final posting, generally only the documents referred above were posted and there was no further personal comment by Cr. McCullagh.

In conducting this investigation, the Panel encountered several procedural problems.

Initial details of the Complaint were forwarded to the Respondent electronically but the Respondent indicated he had not received this information. When the details of the Complaint were forwarded by a process server, the Respondent refused to accept service. After making relevant enquiries, the Panel was satisfied that the Complaint had been served on the Respondent.

This process was extended over 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.

The following details the interaction with Cr. McCullagh:

- On 17 January 2024, the Executive Officer lodged with Australia Post the Chairperson's initial letter and a copy of the complaint to be sent to Cr. McCullagh, inviting a response to the complaint. No response was received from Cr. McCullagh.
- On 14 March 2024, the Chairperson forwarded a further letter to Cr. McCullagh via Australia Post following up on the non-response by Cr. McCullagh to the Chairperson's initial letter. No response was received to this correspondence.
- On 20 March 2024, Cr. McCullagh sent an email to the Executive Officer which the Panel did not take into consideration as the content was not material to the complaint.
- On 02 April 2024, Cr. McCullagh sent a second email to the Executive Officer which was not considered as evidence as the content of the email was not material to the complaint.
- On 24 July 2024, Cr. McCullagh advised the Executive Officer that he would be on leave of absence from Council until mid-September 2024 and would be unable to attend any hearing.
- On 4 December 2024, Cr. McCullagh was advised that it was the Panel's view that the matter could be determined without holding a hearing and he was also advised to make a submission if he believed that a hearing should be held because he may be disadvantaged if a hearing was not held. He was also invited to make a submission on a possible sanction if the complaint or part of it was upheld.
- On 4 December 2024, Cr. McCullagh informed the Executive Officer that he was overseas and on Leave of Absence from Council and had no idea what the Complaint was about.
- On 13 March 2025, the Panel wrote to Cr. McCullagh advising that, based on Cr. Knowles' response that she had no objection to there not being a hearing and Cr. McCullagh's failure to respond to the email sent by the Panel on 4 December 2024, the Panel had determined not to hold a hearing.
- On 13 March 2025, Cr. McCullagh sent an email to the Executive Officer indicating that he was not aware of the Complaint's details and asking what it was all about.

- On 24 March 2025, the Panel wrote to Cr. McCullagh setting out the Panel's investigation procedures, the numerous attempts to contact him and the fact that no relevant responses had been received from him in relation to Cr. Knowles' complaint. Cr. McCullagh was again advised that the Complaint would be determined without a hearing.

At no time during the investigation did the Respondent submit any responses, submissions or correspondence of any kind relating directly to the investigation of the Complaint.

It also should be noted that the Complaint alleged that a copy of a previous Code of Conduct Complaint as well as its Initial Assessment against Cr. McCullagh had been posted on his Facebook page prior to its determination despite the admonition that it should be treated as confidential. All correspondence relating to that complaint requested the recipient to treat the details of that complaint as confidential. At the time of submission of the Complaint there was no legal authority to enforce this confidentiality requirement. An amendment to the Act, in late 2024 altered this situation, however the Panel had to determine the Complaint on the basis of the legislation which existed at the time of submission of the Complaint.

The Panel noted in its investigation and consideration of the material, that the Complainant appeared to have largely relied on the Panel to formulate the particulars of the Complaint from the voluminous attachments to the Complaint provided by the Complainant in support of her allegations of breaches of the Code. Section 28V(3)(e) of the Act requires that a complaint must contain details of the behaviour of the councillor that constitutes the alleged contraventions of the Code.

The Panel takes seriously its responsibility in reading and considering the material sent to it. However, it is a basic requirement both under the Act and for the purpose of procedural fairness to a respondent for a complaint to particularise with some precision the conduct alleged by the complainant. The Panel should not be required to undertake the task of sorting through a wealth of material in order to determine the behaviour which may conceivably amount to a breach of the Code. That is for a complainant to do. A complainant should not only specify with clarity the conduct complained of, but also provide a clear link between the actions of the councillor and the specific clause or clauses of the Code which are alleged to have been breached by those actions.

Cr. Knowles submitted the Complaint with 10 attachments and although she had linked the attachments to the breaches of the Code, little attempt had been made to directly link the specific breaches that it is alleged that Cr. McCullagh committed by publishing the posts on Facebook, to the applicable clauses of the Code. This made it more difficult for the Panel to undertake the 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
- Code of Conduct Complaint by Cr. M. Knowles against you dated 4 December 2023. (including 10 attachments)

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 December 2024, the Complainant

advised that she had no objection to the Complaint being determined without a hearing. No response was received from the Respondent.

In accordance with section 28ZG(2)(b) of the Act, the Panel considered whether a hearing may be unnecessary in the circumstances because the investigation could be determined on the basis of the written material provided, noting that Cr McCullagh had not responded to several requests to provide a response to the Complaint. The Panel determined in the circumstances and in accordance with s28ZG (2) (b) of the Act that the Complaint would be determined without a hearing being held.

Determination

The Panel re-iterates that it has confined its deliberations to the two documents listed above and in the absence of any rebuttal from Cr McCullagh, it makes its determination based on that evidence before it.

The Panel met on 24 April 2025 to determine the Complaint. Pursuant to section 28ZI of the Act the Panel determines that Cr Andrew McCullagh has breached part 8.2 and 8.6 of the Code of Conduct. The Panel dismisses the Complaint in relation to Parts 2.1, 2.2, 2.3, 2.4, 3.1, 3.2, 8.5 and 8.7 of the Code.

Reasons for determination

PART 2 - CONFLICT OF INTERESTS THAT ARE NOT PECUNIARY

2.1 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.

An elected member should maintain a high standard of behaviour as a representative of Council. This applies not only to a councillor's conduct in a council meeting or at council events, but also to a councillor's public commentary such as Facebook posts. Councillors may hold strongly held views. They are elected representatives and have political functions. Matters of political debate often involve vehemently held opinions and strongly opposed positions being debated by electors and by the elected. Feelings can run high and sensitivities are heightened. Such is the nature of politics.

The Panel notes that the core issue in this matter is one on which the Respondent does hold a very strong view and he has used social media to advance that strongly held view. In most cases the posts are merely of other documents which would in due course be in the public domain. Councillors will often publicly proclaim their strongly held views on political matters and the Panel does not regard this as being influenced by personal or private interests.

The Panel dismisses this part of the Complaint.

2.2 A councillor must act openly and honestly in the public interest

Taking into account the reasoning outlined in 2.1 above, the Panel is of the opinion that the Respondent believed he was acting in the public interest

The Panel dismisses this part of the Complaint.

2.3 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 councillor is appointed or nominated by the Council.

No reference is made to any decision of Council in the Complaint. That being the case, this clause of the Code is not applicable to this Complaint.

The Panel dismisses this part of the Complaint.

2.4 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

Again, based on the reasoning in 2.1 above, the Panel was of a view that the Respondent was endeavouring to bring before the public a situation he believed should be in the public domain and the Panel can see no actual, potential or perceived conflict of interest.

The Panel dismisses this part of the Complaint.

PART 3 - USE OF OFFICE

3.1 The actions of a councillor must not bring the Council or the office of councillor into disrepute.

Councils are part of the Australian political system and the public would expect to see robust debate on matters of significant interest from its participants. The Panel observes that most of the posts are of other documents which at the time they were posted were not confidential and therefore the Panel is of the opinion that their posting did not bring the Council or the office of Councillor into disrepute.

The Panel dismisses this part of the Complaint.

3.2 A councillor must not take advantage, or seek to take advantage, of his or her office or status to improperly influence others in order to gain an undue, improper, unauthorised or unfair benefit or detriment for himself or herself or any other person or body

As indicated in 3.1 above, the Panel believes the public would expect to see robust debate between Councillors and matters of public interest introduced into the public domain. The Panel cannot see any advantage to Cr McCullagh in having these matters posted on Facebook. They were his attempts to bring a situation about which he had very strong views to public attention.

The Panel dismisses this part of the Complaint.

PART 8 - REPRESENTATION

8.2 A councillor must not knowingly misrepresent information that he or she has obtained in the course of his or her duties.

The Panel has examined the posts made to Cr. McCullagh's Facebook page and, save for the Inference referred to at 8.6 below, can find no evidence that he has knowingly misrepresented information contained in those posts.

The Panel upholds that part of the Complaint as it relates to the Inference referred in 8.6 below, only.

8.5 A councillor's personal views must not be expressed publicly in such a way as to undermine the decisions of the Council or bring the Council into disrepute

No evidence was provided that Cr McCullagh undermined Council decisions or brought the Council into disrepute by expressing a personal view on a range of matters before Council. Council is a deliberative polity, and councillors are charged with dealing with at times contentious issues.

The Panel dismisses this part of the Complaint.

8.6 A councillor must show respect when expressing personal views publicly.

As has been noted elsewhere in this determination, the majority of posts to Cr. McCullagh's Facebook page were merely posts of other documents. However, in a post (25 November 2023), the Respondent after outlining the history of this matter goes on to make some personal comments regarding the matter. Under the heading comments, Cr. McCullagh goes on to say *"So with all of the above, it has been confirmed that the Mayor has been fully responsible for taking tens of thousands of dollars of Ratepayers monies....."*

The Panel can only interpret this comment in one way, given the Panel's understanding that the Mayor at the time was acting in accordance with what she believed was a valid Council resolution. To state that the Mayor engaged in *"taking tens of thousands of dollars of Ratepayer's monies"* infers that such *"taking"* was unauthorised, and that she therefore had acted in a dishonest way which was to her own financial benefit (*"Inference"*). In the opinion of the Panel this Inference was disrespectful to the Mayor.

The Panel upholds this part of the Complaint.

8.7 The personal conduct of a councillor must not reflect, or have the potential to reflect, adversely on the reputation of the Council.

The Panel is of the opinion that a reasonable person would view the postings made by Cr McCullagh on his Facebook page as his own personal views and by extension would not link these statements to Council's position. The Panel repeats its observations about Council being a deliberative polity and a councillor's role.

The Panel dismisses this part of the Complaint.

Sanction

This Complaint was a result of a robust public exchange between two elected members. A council is a political body and it is to be expected that such exchanges take place. The Panel however is of the opinion that the Respondent's characterisation of the Complainant went beyond what may be regarded as acceptable in the circumstances.

Pursuant to section 28ZI (2) of the Act, the Panel imposes the sanction of a caution on Cr McCullagh.

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 respond to correspondence forwarded to him on numerous occasions, the numerous extended periods of leave of absence from Council granted to the Respondent, a

period when the Complainant was overseas and an extended period of illness of a Panel Member.

Right to review

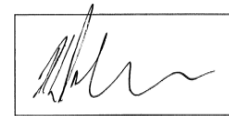
A person aggrieved by the determination of the Code of Conduct Panel, on the ground that the Panel failed to comply with the rules of natural justice, is entitled under section 28ZP of the Act to apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination



David Sales
Chairperson



Liz Gillam
Member



David Palmer
Legal Member

Date: 12 May 2025