

**COUNCILLOR CONDUCT PANEL (CCP)**

HEARING PURUANT TO DIVISON 1B OF THE *LOCAL GOVERNMENT ACT* (1989) (AS  
AMENDED)

Applicant: Cr Ed Cox, Mayor Moira Shire Council

Respondent: Cr Garry Jones

Council: Moira Shire Council

Hearing location: Moira Shire Council, Cobram

Date of Application: 28 May 2010

Date of Hearing: 14 July 2010

Panel Members: Ms Jo-Anne Mazzeo (Chair), Ms Jane Nathan

CCP Registrar: Ms Chris Cowley

Witnesses: Mr Tim McCurdy  
Mr Wayne Magee  
Ms Danielle Blatchford  
Mr Gary Cleveland

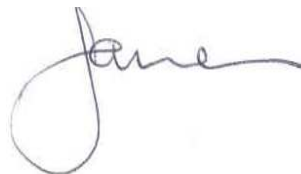
**The Decision**

The decision of the Panel is that the actions of Councillor Garry Jones do not constitute misconduct within the meaning of section 81A of the *Local Government Act* 1989.

The decision of the Panel is that the actions of Councillor Garry Jones do not constitute a breach of his obligations in clauses 2.1(a), 2.2(b), 2.2(f), 2.2(g), 3.2.1, 3.2.1, 3.2.3 and 3.2.4 of the Moira Council Councillor Code of Conduct.



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**Jo-Anne Mazzeo**  
Legal Member



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**Jane Nathan**  
Municipal Governance Member

Date: 19 July 2010

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### **Statement of Reasons for the Decision**

#### **The Application:**

1. An Application dated 28 May 2010 was made by Cr Ed Cox, Mayor of the Moira Shire Council.
2. The subject of the application was Cr Garry Jones.
3. The Application sought a finding of misconduct.
4. The Grounds of the Application were stated as:
  - a. Possible breaches of clauses 2.1(a), 2.2(b), 2.2(f), 2.2(g), 3.2.1, 3.2.1, 3.2.3 and 3.2.4 of the Moira Shire Councillor Code of Conduct; and
  - b. Possible breaches of ss76B(a), 76BA(f) and 76BA(g) of the *Local Government Act* 1989.
5. The circumstances which lead to the Application were as follows:
  - a. It has been alleged that on 12 April 2010, Cr Jones informed business owners on Dillon Street Cobram that the extension of Dillon Street would not occur unless the log cabin was removed. It was alleged that Cr Jones urged them to support the removal of the log cabin on this basis.

- b. The allegations were provided to council in writing from two business owners on Dillon Street.
- c. Cr Jones was aware that the extension of Dillon Street was not contingent on the removal of the log cabin.
- d. Cr Jones was asked to respond to the allegations and subsequently provided a written response. In his response, Cr Jones categorically denied the allegations in this matter.
- e. Councils Code of Conduct provides a process for resolving internal disputes between Councillors. However, there was no dispute between Councillors in this matter, and as such it was not appropriate to use such provisions to resolve the matter.
- f. Council received legal advice recommending that due to the involvement of external parties, it was appropriate to seek a Councillor Code of Conduct Panel to review the matter.

Material Provided to the Councillor Conduct Panel:

- 6. The following documents were provided to the Panel:
  - a. Letter dated 22 April 2010 from Mr Tim Coonan to the Moira Shire Council;
  - b. Letter dated 22 April 2010 from Mr Wayne Magee to the Moira Shire Council;
  - c. Moira Shire Council Councillor Code of Conduct;
  - d. Moira Shire Council Federation Park Concepts Submission Form;
  - e. Report on the Federation Park Concept prepared for the Moira Shire Council;
  - f. Legal Advice provided to Moira Shire Council dated 26 May 2010;
  - g. Letter dated 22 May 2010 from Cr Garry Jones to Cr Ed Cox, Mayor.

Evidence provided at hearing:

- 7. Oral evidence was given at hearing by:
  - a. Cr Ed Cox;
  - b. Cr Garry Jones;
  - c. Mr Tim McCurdy
  - d. Ms Danielle Blatchford
  - e. Mr Wayne McGee

f. Mr Gary Cleveland

The Panel:

8. A Councillor Conduct Panel was constituted by the Municipal Association of Victoria comprising Ms Jo-Anne Mazzeo (Chair) and Ms Jane Nathan, with Mr Chris Cowley as the CCP Registrar.

The Hearing:

9. The Councillor Conduct Panel conducted a hearing on 14 July 2010 at the Offices of the Moira Shire Council, Cobram.

The Reasons:

10. Evidence was received from Cr Ed Cox, Cr Garry Jones, Mr Tim McCurdy, Ms Danielle Blatchford, Mr Wayne Magee and Mr Gary Cleveland.
11. It was agreed that Cr Jones had been involved in discussions with members of the public and had done community presentations in relation to the proposed Federation Park as his role as a council representative.
12. In his evidence to the Panel, Cr Cox gave an overview of events that led to the Application being made. He advised the Panel that the Application was made on the recommendation of legal advice provided to Council.
13. Cr Cox told the Panel that the day after Cr Jones Presented at the Rotary Club Meeting, he received a telephone call from members of the public saying that they were “disgusted at what Cr Jones had presented at the meeting.”
14. In response, Cr Cox contacted Mr Gary Cleveland, a Past Rotary President who was at the said Meeting. Mr Cleveland advised Cr Cox that Cr Jones had conducted himself in a professional manner. Cr Cox did not take the matter any further, until he received notification of the letters to Council by Mr Tim Coonan and Mr Wayne McGee.
15. Mr Cleveland provided evidence to the effect that Cr Jones had conducted himself in a professional manner at the Rotary Club Presentation, discussing the Federation Park Concept plan in line with the Submission Form and attached Design Notes.
16. Mr McCurdy provided evidence to the Panel as to his involvement in Federation Park, and in particular his role as Chair of the Cobram Centenary of Federation Park Committee (which was formed in 2009, and to which Cr Jones was also a member). Mr McCurdy had no knowledge of the allegations until he was advised by Cr Cox in the lead up to the hearing.
17. In his evidence to the Panel, Cr Jones categorically denied that he had misled anyone. In response to the letter of Mr Tim Coonan, Cr Jones advised the Panel that he did not canvass any local business on 12 April 2010 (as claimed by Mr Coonan), as he worked in the morning and attended a Councillor Briefing Session in the afternoon.
18. Cr Jones confirmed that he did speak with Mr Coonan on another day, but denied that he said that Dillon Street could only be extended if the log cabin was removed.

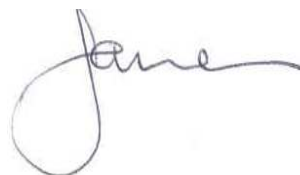
19. In relation to the letter to Council from Mr Wayne Magee, Cr Jones told the Panel that Mr Magee was acting on hearsay, without any direct evidence. Mr Magee was simply relying on what other individuals had told him, individuals who did not choose to attend the Panel hearing and give evidence themselves.
20. At no stage during the hearing was it demonstrated that Cr Jones provided members of the public with material other than that approved by Council, namely the Federation Park Submission Form with attached diagram and design notes. Cr Jones submitted a sketch that he believed had been circulated that was not the official council approved document. Cr Jones confirmed that he did not circulate this document, but was aware of its existence. In his evidence, Mr Magee confirmed that the second sketch was the sketch that the local business owners had been referring to, and had in fact been circulated. He could not recall who circulated the document. Cr McCurdy and Cr Cox confirmed in evidence that they had not seen the second sketch prior to it being submitted at the Panel hearing.
21. At no stage during the hearing was evidence provided that demonstrated Cr Jones had made statements that were inaccurate. The only statements that the Panel heard evidence of Cr Jones making were in line with the approved Council recommendations.
22. There was no evidence provided to the Panel that Cr Jones had breached his obligations in clauses 2.1(a), 2.2(b), 2.2(f), 2.2(g), 3.2.1, 3.2.1, 3.2.3 and 3.2.4 of the Moira Council Councillor Code of Conduct.
23. There was no evidence provided to the Panel that Cr Jones had breached the provisions in ss76B(a), 76BA(f) and 76BA(g) of the *Local Government Act 1989*.
24. The Panel is of the view that whilst Cr Jones was robust in his engagement on the particular issue of Federation Park, and his communication style may have appeared to be forthright, no evidence of misconduct was established.

The Decision:

25. The decision of the Panel is that the actions of Councillor Garry Jones do not constitute misconduct within the meaning of section 81A of the *Local Government Act 1989*.
26. The decision of the Panel is that the actions of Councillor Garry Jones do not constitute a breach of his obligations in clauses 2.1(a), 2.2(b), 2.2(f), 2.2(g), 3.2.1, 3.2.1, 3.2.3 and 3.2.4 of the Moira Council Councillor Code of Conduct.



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**Jo-Anne Mazzeo**  
Legal Member



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**Jane Nathan**  
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Date: 19 July 2010