

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
DERWENT VALLEY COUNCIL CODE OF CONDUCT**

Complaint brought by Mr Kelvin Derksen-Luelf against Councillor Michelle Dracoulis

Code of Conduct Panel

- Liz Gillam (Chairperson)
- Andrew Paul (Local Government Member)
- Steve Bishop (Legal Member)

Date of Determination: 15 November 2023

Content Manager Reference: C2390062

Summary of the complaint

A code of conduct complaint against Councillor (Cr) Michelle Dracoulis was submitted by Mr Kelvin Derksen-Luelf to the Acting General Manager of the Derwent Valley Council on 6 June 2023.

The complaint alleged that, in answering a question without notice at the Derwent Valley Council meeting on 27 April 2023, and the subsequent Media Release on 28 April 2023, Cr Dracoulis breached the following parts of the *Derwent Valley Council's Councillor Code of Conduct* (the Code) adopted by the Derwent Valley Council (the Council) in March 2022:

Part 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 (1) The actions of a councillor must not bring the Council or the office of councillor into disrepute.

Part 7 (1) A councillor must not cause any reasonable person offence or embarrassment.

Part 8 (1) When giving information to the community, a councillor must accurately represent the policies and decisions 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:

the complaint relating Part 7 (1) and Part 8 (1) of the Code should be investigated and determined by the Code of Conduct Panel (the Panel), and

the complaint relating to Part 2 (4) and Part 3 (1) of the Code should be dismissed.

The complainant, respondent councillor and the Acting General Manager were notified of the outcome of the outcome of the initial assessment by letter dated 14 June 2023.

Investigation

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

The Panel met on 26 September 2023 to consider the complaint and review the following documentation:

- Mr Derksen-Luelf's complaint submitted under cover of Statutory Declaration 6 June 2023.
- Cr Dracoulis' response to the complaint, submitted under cover of a Statutory Declaration 28 July 2023.
- Mr Derksen-Luelf's comments on Cr Dracoulis' response – dated 17 August 2023.
- Derwent Valley Council Meeting 27 April 2023 – audio recording.
- Derwent Valley Council Meeting 27 April 2023 – Minutes.
- Derwent Valley Council Meeting 25 May 2023 - Agenda

The Panel wrote to the parties on the 29 September 2023 that it was of the view that neither party would be disadvantaged if a hearing was not held as the investigation in this matter could be adequately conducted on an examination of the documents referred to above.

On the basis of the responses received from the parties, the Panel proceeded without hearing. The Panel met on 3 November 2023 by Zoom to determine the complaint.

Determination

As per section 28ZI of the Act the Panel determines that Cr Dracoulis has not breached the Code of Conduct, and therefore the Panel dismisses the complaint.

Reasons for Determination

Part 7 (1) *A councillor must not cause any reasonable person offence or embarrassment.*

The complaint alleged that Cr Dracoulis' actions caused offence and embarrassment to the proponents of the New Norfolk Distillery Expansion Project because she said that there was no formal partnership agreement between the Distillery and the Council when answering a question at the 27 April 2023 Derwent Valley Council meeting.

On the following day, Mr Derksen-Luelf emailed all councillors and the Acting General Manager querying Cr Dracoulis' statement that there was no 'formal partnership' between the Council and the New Norfolk Distillery Expansion Project proponents.

The following documents were listed in the email by Mr Derksen-Luelf as demonstrating a formal partnership existed:

- Development application decision – May 2019
- Disposal decision – June 2019
- Lease agreement – signed August 2019
- Licence agreement – signed August 2019
- Partnership prospectus – endorsed by the Council August 2020
- Advocacy document – endorsed by the Council March 2021
- Building permit – May 2021
- Sub-division Willow Court – Council decision January 2022
- "Our Willow Court Partners" document

Mr Derksen-Luelf, in his response of 17 August 2023, asks the questions 'if the formal significance of these documents is deemed minimal, what foundational purpose do they serve within the legal and operational framework' and 'How does the community find reassurance in discerning the authentic nature of partnerships when documents presented lack formal gravitas traditionally associated with legally binding agreements?'

The Panel notes that the words ‘partner’ and ‘partnership’ are used colloquially in some of these documents, demonstrating that the parties were working collaboratively. However, they are not intended to be legally binding documents. The Media Release on 28 April 2023 clearly confirms the intention to continue this collaboration.

Whilst some other of these documents might create specific legal rights and obligations, none of them creates a formal partnership agreement between the Council and the New Norfolk Distillery Expansion Project proponents. Where a public body, such as a council, is committing to a partnership with any person or organisation, a specific signed document to that effect, signed by the parties, would be expected.

As a result, Cr Dracoulis’ response in the Derwent Valley Council Meeting on 27 April 2023, and the subsequent Media Release on 28 April, were technically correct in saying there was no formal partnership. In the Panel’s view making this correct statement cannot, in the circumstances, cause a reasonable person offence or embarrassment. A reasonable person would simply recognise the correctness of the statement and not take offence or be embarrassed. Put differently, the Panel holds that it would be unreasonable to take offence to this statement given its correctness.

Part 8 (1) When giving information to the community, a councillor must accurately represent the policies and decisions of the Council.

The complaint alleged that Cr Dracoulis engaged in misrepresentation by disregarding certain decisions made by the Council and subsequently distorting them in communications with the community.

It is apparent to the Panel that the Council was still working through the process of determining the future of the Willow Court precinct. Whilst decisions may have been made by the Council in the past, the current Council is fully within its rights to reconsider these in the light of current advice and circumstances.

The Panel does not consider that Cr Dracoulis was misrepresenting Council policies and decisions.

Timing of the Determination

In accordance with section 28ZD (1) a Code of Conduct Panel is to make every 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 granting an extension for responses and the requirement to reschedule meetings owing to other commitments of Panel members.

The parties were notified of the delay on 23 August 2023.

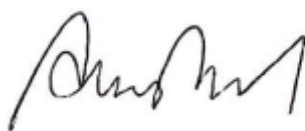
Right to review

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.



Liz Gillam

Chairperson



Andrew Paul

Member



Steve Bishop

Legal Member

DATE – 15 November 2023