

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 Tarrant Derksen against Councillor Michelle Dracoulis**

**Code of Conduct Panel**

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

Date of Determination: November 2023

Content Manager Reference: C29063

**Summary of the complaint**

A code of conduct complaint against Councillor (Cr) Michelle Dracoulis was submitted by Mr Tarrant Derksen to the Acting General Manager of the Derwent Valley Council on 5 June 2023.

The complaint alleged that a Facebook post made by Cr Dracoulis on 26 May 2023 breached the following parts of the Derwent Valley Council Elected Member Code of Conduct, adopted in March 2022 by the Derwent Valley Council (the Council):

*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.*

*Part 8 (2) A councillor must not knowingly misrepresent information that he or she has obtained in the course of his or her duties.*

*Part 8 (5) A councillor's personal view must not be expressed in such a way as to undermine the decisions of the Council or bring the Council into disrepute.*

*Part 8 (6) A councillor must show respect when expressing personal views publicly.*

*Part 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 the following parts of the complaint should be investigated and determined by the Code of Conduct Panel (the Panel):

In relation to section of the Facebook post headed 'SALE', the alleged breach of Parts 7 (1), Parts 8 (1), (2), (5) and (6).

In relation to the section of the Facebook post headed 'JOBS', the alleged breach of Part 7(1) and Part 8 (6).

The remainder of the complaint was dismissed.

The complainant, respondent councillor and the Acting General Manager were notified of the outcome of the initial assessment by letter dated 14 July 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's complaint submitted under cover of statutory declaration 5 June 2023.
- Cr Dracoulis' response to the complaint, submitted under cover of a statutory declaration 28 July 2023.
- Mr Derksen's response to the Cr Dracoulis' response – dated 17 August 2023.
- Derwent Valley Council Meeting 25 May 2023 – audio recording.
- Derwent Valley Council Meeting 25 May 2023 – Minutes.

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, in the section of Facebook post made on 26 May 2023 entitled 'SALE', breached the following Parts of the Code:

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

*Part 8 (6) A councillor must show respect when expressing personal views publicly.*

The remainder of the complaint is dismissed.

## Reasons for determination

1. In relation to section of the Facebook post headed 'SALE', the alleged breach of:

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

The complaint alleged that the statement 'I cannot support backroom, handshake deals that compromise our modest budget or put us in a position of potential future disadvantage':

- Was offensive in that implied that the New Norfolk Distillery proponents (the proponents) had asked for some sort of backroom, handshake deal, and
- Was embarrassing in that indicated that the proponents were asking for something that would put the community at disadvantage.

Cr Dracoulis has stated that this comment should be read in the context of the full paragraph in which it sits and that she was seeking to make clear to the community that the Council must make decisions in a transparent and informed manner:

*"Committing to the sale of these buildings after the advice that was provided would have been irresponsible and I voted as I always do, according to the information and advice I have been given and not according to*

*hearsay. Council is not a court of popular opinion, we are a level of government, and as such emotion and personal favour should play no part in our deliberations. Everything we do as a council should be transparent and informed, and I cannot support backroom handshake deals that compromise our modest budget or put us in a position of potential future disadvantage.”*

The Panel recognises the right of free speech, guaranteed in the Australian Constitution. It also recognises that in the cut and thrust of political debate some latitude will generally be accepted. However, the Panel feels that Cr Dracoulis could have made the point about the importance of transparent and informed decision-making just as clearly without making the comment ‘*I cannot support backroom handshake deals that compromise our modest budget or put us in a position of potential future disadvantage.*’

In using this expression, Cr Dracoulis has taken her comment from a robust expression of integrity to one that could raise suspicion in the mind of a reasonable person reading the Facebook post that there had been some backroom deal requested by the proponents and/or that the proposed deal might have been disadvantageous to the community.

The Panel agree that it is reasonable for the complainant to be offended and embarrassed at the possibility of that either or both of these perceptions might be raised by reading the Facebook post.

The Panel therefore finds that Cr Dracoulis has breached Part 7 (1) of the Code in making the comment:

*‘I cannot support backroom handshake deals that compromise our modest budget or put us in a position of potential future disadvantage.’*

The importance of taking extreme care in the use of language in any form of written communication, whether it be as an official or an individual, cannot be over-emphasised. Before publication it is always useful to ask the question how the language used might be interpreted and whether such interpretation might cause offence or embarrassment to any person.

*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 the phrase ‘disposal by sale’ was not transparent or informed because the decision (to sell) had already been made. The Panel notes that the future use of the Willow Court Precinct was still actively being considered by the Council, on the basis of current circumstances and professional advice and that previous Council decisions might be revised as part of this process. The Panel notes that the Agenda Item at the Council meeting on 25 May 2023 was specifically in relation to sale of part of that precinct to the New Norfolk Distillery Expansion Project proponents, rather than disposal by sale generally. That aside, Cr Dracoulis’ Facebook post reflects the approach that she took to this agenda item.

The Panel does not consider this was misrepresenting the policies and decisions of Council.

*Part 8 (2) A councillor must not knowingly misrepresent information that he or she has obtained in the course of his or her duties.*

The complaint alleged that the claims that the comments:

- the proponents ‘requested the sale go on the meeting agenda’
- the costs of the subdivision were unknown were misleading.

The material provided to the Panel indicates that the New Norfolk Distillery Expansion Project proponents were keen for a conditional sale price for that part of the precinct they wished to purchase to be considered by the Council ‘sooner rather than later’ ie to be placed on the Council agenda. This was done for the next Council meeting following this email exchange.

In relation to subdivision costs, the Panel accepts Cr Dracoulis’ submission that the projected costs were unknown, in particular as costings from Tas Networks and TasWater had not been received.

The panel does not consider that Cr Dracoulis has misrepresented information obtained in the course of her duties.

*Part 8 (5) A councillor's personal view must not be expressed in such a way as to undermine the decisions of the Council or bring the Council into disrepute.*

The complaint alleged that the comment 'committing to the sale of these buildings after the advice that was provided would have been irresponsible and I voted as I always do, according to the information and advice I have been given' undermines the previous decision of Council to sell the buildings.

As the Panel noted previously, the future and use of the Willow Court Precinct was still actively being considered by the Council, on the basis of current circumstances and professional advice and that previous Council decisions might be revised as part of this process. The Panel further notes that the Agenda Item at the Council meeting on 25 May 2023 was specifically in relation to sale to the New Norfolk Distillery, rather than disposal by sale generally.

The Panel does not consider that Cr Dracoulis' statement was undermining a previous decision of Council.

*Part 8 (6) A councillor must show respect when expressing personal views publicly.*

The complaint alleged that the implications that the proponents had asked for some sort of backroom, handshake deal was disrespectful.

The Panel's comments under Part 7 (1) apply.

The Panel therefore finds that Cr Dracoulis has also breached Part 8 (6) of the Code in making the comment;

*'I cannot support backroom handshake deals that compromise our modest budget or put us in a position of potential future disadvantage.'*

2. In relation to the section of the Facebook post headed 'JOBS', the alleged breach of:

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

*Part 8 (6) A councillor must show respect when expressing personal views publicly.*

The complaint alleged that saying the proponents are cruel and offering false hope is offensive, embarrassing and disrespectful to them.

The Panel notes the Facebook post 'I believe it is cruel to pretend that this project is currently in a position to offer jobs to our community. People are doing it tough and false hope is no-one's friend', ie there is no accusation that New Norfolk Distillery Expansion Project proponents are cruel and offering false hope.

Cr Dracoulis has submitted that her intention 'was not to criticise any other person, but to explain why I would not be supporting any claims that the project was likely to create jobs in the near future'.

Mr Derksen argues in response that 'what the mayor says publicly is often taken at face value by the public, even if her intended language or intent may be more nuanced'.

The Panel considers that Cr Dracoulis, whilst her language may have been a little emotive, appeared to be taking a realistic view of the current status of the project and does not consider that in so doing would cause a reasonable person offence or embarrassment.

## **Sanction**

In accordance with section 28ZI (2) of the Act, if the Panel decides to impose a sanction after upholding a complaint, or part of a complaint, it may impose one or more of a number of sanctions on a Councillor.

In the determination of this complaint, the Panel has imposed a caution on Cr Dracoulis.

### 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.

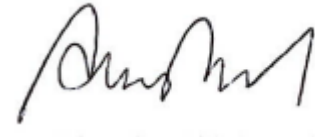
### Right to review

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**

27 November 2023