

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.

OFFICIAL

Local Government Act 1993

CODE OF CONDUCT PANEL DETERMINATION REPORT

DERWENT VALLEY COUNCIL

C38207 - Complaint brought by Mr. Ron Sanderson (General Manager) against Mayor Michelle Dracoulis

Code of Conduct Panel

- David Sales (Chairperson)
- Andrew Paul (Local Government Member)
- Don Jones (Legal Member)

Date of Determination: **21 October 2025**

Content Manager Reference: C38207

Summary of the Complaint

A code of conduct complaint was submitted by Mr. Ron Sanderson (General Manager) to the Executive Manager Corporate of the Derwent Valley Council on 24 April 2025 (the Complaint).

The Complaint alleges that Mayor Dracoulis breached the following part of the Model Code of Conduct (the Code), by her action in dealing with Council's legal advisor beyond the authority granted to her.

PART 7 - Relationships with community, councillors and council employees

1.
2.
3. ***A councillor must not contact or issue instructions to a council contractor or tenderer without appropriate authorisation.***

Initial assessment

Following receipt of the Complaint, Ms. Amber Cohen, a legal practitioner, conducted an initial assessment in accordance with the requirements of section 28ZA of the Act. Ms. Cohen assessed the Complaint against the provisions of sections 28ZB and 28ZC of the Act.

Ms. Cohen determined on 23 May 2025 pursuant to section 28ZA(1)(e) of the Act that the whole Complaint was to be investigated and determined by the Code of Conduct Investigating Panel (the Panel). She assessed the allegations concerning Mayor Dracoulis' conduct, specifically against the part of the Code nominated in the Complaint, namely Part 7 (3) and was satisfied on the material

lodged with the Complaint, subject to the totality of material that may be put before the Panel, such Panel could find that Mayor Dracoulis was in breach of the Code.

Investigation

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

The Complaint related to advice the Mayor had received from the Council's lawyer and whether the Mayor had exceeded her authority in seeking this advice and therefore breached the Code.

The Panel in its investigation had access to several confidential documents which are covered by s338A of the Local Government Act 1993. The Panel was mindful of the status of these documents and used them only to confirm evidence otherwise tendered. No confidential information has been included in this report.

During 2024, two members of the Council's Audit Committee resigned and on 19 September 2024, the Acting Director of Local Government wrote to the Council expressing his concern about these resignations and in addition advised that the Office of Local Government had received numerous complaints from residents and resident businesses concerning the operation of the Derwent Valley Council (the Council).

The Acting Director inter alia stated

"... it is my view that the cumulative impact of these matters now indicate there are significant concerns and diverging views, both externally and internally about certain governance and decision-making of the Council. I believe a targeted, external independent assessment is warranted to provide the community, the Council and this Office with confidence and clarity that the Council is operating appropriately in several of its core domains".

The Council agreed to have the independent assessment undertaken and commissioned an independent consultant, Mr Paul West, to conduct the review. The Independent Review Report was received by the Mayor and Acting Director on 13 January 2025.

The Complainant indicated in the Complaint that:

"The Mayor advised that the Acting Director suggested that she receive legal advice about what could be released to the public in a 'public facing document'"

On 20 January 2025, the Mayor sought acknowledgement from the Complainant of her delegation to work with Council's lawyer to inform her how she should manage the Report and Council's response which the Complainant provided. Further details regarding this exchange are included later in the report.

The crux of the Complaint is that when the Council received the invoices from the lawyer, the Complainant realised that they contained a reference to discussions between the Mayor and the lawyer he considered exceeded his authorisation granted to the Mayor and as a result the Mayor had breached Part 7(3) of the Code.

There appears to be no dispute between the parties regarding the facts of the matter. It is therefore a matter for the Panel to determine whether a breach of the Code has occurred.

Material considered by the Panel

These documents have been considered by the Panel to consider as evidence in this matter.

- Local Government (Code of Conduct) Order 2024
- Local Government Act (hereinafter referred to as the “Act”)
- Code of Conduct Complaint (C38207) by Mr. Ron Sanderson against Cr. Michelle Dracoulis under Statutory Declaration dated 24 April 2025 accompanied by attachments (7 pages)
- Information supplied by Derwent Valley Council at the request of the Panel regarding:
 1. Any delegations that the Council has made to the General Manager;
 2. Any policy that the Council may have in respect of authorizing the cost of legal expenses or engaging lawyers generally;
 3. Extracts from the Agenda and Minutes of the Council Meeting of 27 March 2025 which relate to Council discussion on the Independent Review Report.
- A copy of the independent review Report dated 13 January 2025.
- Submission by Mayor M. Dracoulis in response to the Complaint accompanied by fifteen attachments under a Statutory Declaration dated 13 August 2025.
- Response to Mayor Dracoulis’ submission by Mr. Sanderson under a Statutory Declaration dated 25 August 2025 accompanied by one attachment.
- A further response from Mayor Dracoulis dated 26 August 2025 providing details of the proceedings of a Special General Meeting of Council held on 18 February 2024 because staff had been excluded from that Meeting and they could not provide the Panel with minutes of that meeting because of the confidentiality requirements.

Copies of all documentary evidence were supplied to both parties.

The Panel, after considering all the evidence submitted, determined there was no dispute regarding the facts of the Complaint and the Panel’s main task would be to analyse the evidence to determine whether a breach of the Code had occurred. The Panel formed a view a hearing may be unnecessary and sought the opinion of the parties as to whether they were seeking a formal hearing.

Both parties agreed that they would not be disadvantaged by not holding a hearing and consequently the Panel determined in accordance with s28ZG (2), that a hearing be not held.

The Determination Meeting

The Determination Meeting took place on 13 October 2025.

Although the facts were not disputed by the parties, the Panel considered that the Complaint raised several issues which it needed to resolve before it could reach a determination.

Firstly Part 7 (3) of the Code says that “A councillor must not contact or issue instructions to a council contractor or tenderer...”

The Code however does not define a contractor or tenderer. The Panel informed itself by considering s333B of the Act.

333B. Code for tenders and contracts

- (1) *A council must adopt a code relating to tenders and contracts under this Division by 1 January 2006.*
- (2) *The code must –*
 - (a) *be consistent with this Act; and*
 - (b) *include any prescribed matter; and*
 - (c) *promote any prescribed principles; and*
 - (d) *be reviewed at least once every 4 years.*
- (3) *A council must comply with its code.*
- (4) *The general manager is to make a copy of the council's code and any amendments to the code available –*
 - (a) *for public inspection at the public office during ordinary office hours; and*
 - (b) *for purchase at a reasonable charge; and*
 - (c) *on its internet site free of charge.*

This section describes a Code for tenders and contracts and by extension, for tenderers and contractors. In the absence of a different definition of tenderers and contractors in the Code, the Panel considers that it is appropriate to use this section as a guide.

The Council has, as required, adopted a Code for tenders and contracts and it is available on its website. The Panel is of a view that Part 7 (3) of the Code has been included in the Code to ensure transparency in the awarding of tenders and contracts by Council and to remove any perception that undue influence may have been used in the awarding of those tenders and contracts.

The Panel considers that the lawyer involved in the discussion with the Mayor would not be regarded to be either a tenderer or a contractor. Ipso facto, this would mean that the requirements of Part 7 (3) would not cover the circumstances of this complaint.

Secondly, the Panel considered the purported authorisation by the General Manager for the Mayor to seek legal advice regarding the progression of dealing with the Independent Review Report.

The email exchange was thus:

“Dear Ron

I write to request acknowledgement of my delegation to work with Council’s lawyer to inform how I manage the Independent Advisor’s Report and Council’s response.

Michelle Dracoulis Mayor”

“Hello Michelle

I acknowledge your delegation to work with Council’s lawyer to manage the Independent Advisor’s Report and Council’s response.

Cheers Ron”

The Complainant has alleged that the Respondent has gone beyond the extent of his delegation and discussed an issue which she was not authorised to do thus breaching the Code.

The Panel has considered this email exchange and is of a view that it is poorly worded for a document which purports to authorise the Mayor to hold discussions with the lawyer specifically relating to the Report.

Any reasonable person reading this exchange could be forgiven for thinking that no guard rails had been placed on the topics to be discussed at this meeting.

The Respondent has provided documentation which indicates that it was the lawyer himself who raised the future employment of the General Manager in these discussions which is the issue which it is alleged the Mayor was not authorised to discuss. In the circumstances, the Panel believes it is not surprising that the Mayor considered, based on the General Manager’s email, that she was authorised to pursue this discussion and the actions which emanated from it.

Thirdly, the Panel considered the implications of S27 of the Act which reads in part:

“27. Functions of mayors and deputy mayors

(1) The functions of a mayor are–

...

(g) to lead and participate in the appointment, and the monitoring of the performance, of the general manager; and

.....”

The relationship between a Mayor, the Council and the General Manager is complex. The General Manager is the only Council employee employed by the Councillors acting together (a Council resolution). They are responsible for his/her employment in accordance with the statutory provisions, the monitoring of performance and presumably termination. All other employees are employed by and responsible to the General Manager.

The legislators obviously foresaw the practical difficulty in expecting the Mayor and Councillors to employ and monitor the employment of the General Manager. The General Manager could not undertake this task himself because of the conflict of interest. They provided legislated requirements and in the absence of an alternative provided the Mayor with power as outlined in s27 of the Act to “lead” in this process.

The Panel believes that s27 of the Act provides the Mayor, in monitoring the employment of the General Manager, authorisation for holding discussions with the Council’s lawyer without any need for further authorisation by the General Manager.

Finally, the Panel also gave some consideration to s64 of the Act, specifically:

“64. Delegation by general manager

(1) *The general manager, in writing, may delegate to an **employee** of the council –“*

The Panel considered whether the Mayor was an employee and whether in fact the General Manager had the power of delegation to the Mayor or any councillor. In view of the conclusions that the Panel had reached, outlined immediately above, the Panel did not reach a view on this consideration.

Determination

Pursuant to section 28ZI of the Act the Panel dismisses the Complaint in relation to part 7 (3) of the Model Code.

Details of the determination

PART 7 - Relationships with community, councillors and council employees

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2.
3. *A councillor must not contact or issue instructions to a council contractor or tenderer without appropriate authorisation.*

The Panel has provided in some detail under the heading “The Determination Meeting” its reasoning in reaching this decision.

The Panel considers

- The discussion between the Mayor and the Council’s lawyer is not captured by this Part of the Code.
- If it was, the purported authority granted by the General Manager to the Mayor to hold discussions with Council’s lawyer was so imprecise that it would be reasonable for the Mayor to consider that she was authorised to discuss the monitoring of the General Manager’s performance.
- Regardless of the above, that s27 of the Act empowers the Mayor to lead in the monitoring of the General Manager’s performance and would authorise her to have discussions with Council’s lawyers pertaining to issues relating to the General Manager performance.

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 Initial Assessor’s determination on 23 May 2025 that the complaint is to be investigated.

The Panel has been unable to determine the complaint within 90 days, owing to -

- Unavailability of Panel Members
- Delay in timely responses

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.



David Sales
Chairperson



Andrew Paul
Member



Don Jones
Member