

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 Ms Sophie Reid against Councillor Michelle Dracoulis

Code of Conduct Panel

- Jill Taylor (Chairperson),
- Roseanne Heyward (Local Government Member)
- Graeme Jones (Legal Member)

Date of Determination: 14 March 2025

Content Manager Reference: C35692

Summary of the complaint

A code of conduct complaint was submitted by Ms Sophie Reid to the General Manager, Derwent Valley Council on 2 September 2024.

The complaint alleges that Councillor (Cr) Michelle Dracoulis breached the following parts of the Derwent Valley Council Code of Conduct, version 6.2 approved in July 2024 on her Facebook page during a period immediately prior to 24 July 2024. This was the date Derwent Valley Arts (DVA) wrote to Cr Dracoulis and Mr Ron Sanderson, General Manager, Derwent Valley Council in relation to the Facebook posts.

Part 3 – Use of Office

1. *The actions of a Councillor must not bring the Council or the Office of Councillor into disrepute.*

Part 5 – Use of information

1. *A councillor must only use or access Council information needed to perform his or her role and not for personal reasons or nonofficial purposes*

Part 7 – Relationships with community, councillors and Council employees

1. *A councillor must –
 - a. Treat all persons fairly; and
 - b. Not cause any reasonable person offence or embarrassment; and
 - c. Not bully or harass any person*

Part 8 – Representation

4. *A councillor must clearly indicate when he or she is putting forward his or her personal views.*
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.*
6. *A councillor must show respect when expressing personal views publicly.*

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 complainant had made a reasonable effort to resolve the complaint. The Chairperson arrived at this conclusion having regard to the letter sent by DVA to Cr Dracoulis and the General Manager dated 24 July 2024.
- the complaint substantially related to a contravention of version 6.2 of the Derwent Valley Council's Code of Conduct, approved by Council in July 2024.
- part of the complaint should not be dismissed on the grounds that it was frivolous, vexatious or trivial. The reasons for this conclusion were that sufficient evidence was presented as an attachment to the complaint dated 16 August 2024.
- 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

On that basis, the Chairperson determined to investigate part of the complaint, namely alleged breaches of Parts 5.1, 7.1(b), 8.4 and 8.6. The Chairperson dismissed Parts 3.1, 7.1 (a) and (c), 8.5 and 8.7 of the Code as insufficient evidence was provided to warrant further investigation of these parts.

The complainant, respondent councillor and the General Manager were notified of the outcome of the initial assessment by letter dated 18 December 2024.

Investigation

In accordance with section 28ZE of the Act, the Code of Conduct Panel (the Panel) investigated the complaint.

The following documents were presented to the Panel to consider as evidence in this matter:

- Ms Reid's complaint dated 16 August 2024 under cover of a statutory declaration dated 16 August 2024 including the following attachments –
 - photoshoots of Cr Dracoulis' personal Facebook page;
 - a letter from DVA dated 24 July 2024 to Mr Ron Sanderson (GM) and Cr Dracoulis; and
 - an email from Ron Sanderson to the DVA dated 25 July 24 sent at 2.29pm
- Response to Ms Reid's complaint from Cr Dracoulis dated 13 January 2025 under cover of a statutory declaration dated 13 January 2025 including –
 - a copy of an email dated 16 October 2022 from Ann Salt to DVA; and
 - two pieces of artwork

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.

- An email from Ms Reid dated 5 February 2025 sent at 8pm providing comments on Cr Dracoulis' response dated 13 January 2025, including the following attachments –
 - An undated Facebook comment by Michelle Dracoulis; and
 - One copy of artwork

- A final submission from Cr Dracoulis dated 22 February 2025 under cover of a statutory declaration dated 26 February 24 including –
 - a screenshot of her Facebook page dated 13 October 2022;
 - a copy of the DVA letter dated July 2024 and a copy of an email sent to DVA by Mr Sanderson 25 July 2024 (these two documents were attached to Ms Reid's complaint);
 - “Sites of Conscience” support letter dated 26 November 2024 (this document postdated the complaint and was not accepted into evidence); and
 - email appointing Cr Dracoulis to “Ten Days on the Island Board” sent on 6 February 2025 at 11.45am (this document postdated the complaint and was not accepted into evidence).

- Derwent Valley Council, Councillor Code of Conduct, version 6.1, approved in July 2024.

The Panel met on 21 January 2025 and found that there was no dispute on the facts. Accordingly, having regard to Section 28ZG (2) (a) and (b) of the Act the Panel determined that neither party would be disadvantaged if the matter did not proceed to a hearing. On 23 January 2025, the Panel wrote to the parties advising them, that in its opinion the matter could be determined on the written material before it. The parties were advised that if they objected to this decision, they should advise within 14 days and provide reasons for their objection. The parties were also advised that should they wish, they could submit a final submission within the same 14-day period.

Neither party objected to the Panel determining the complaint on the written evidence with Ms Reid submitting an email on 5 February 2025 and Cr Dracoulis providing a final submission dated 22 February 2025.

The complaint lodged by Ms Reid claimed that the Facebook comments by Cr Dracoulis on her personal Facebook page were not true and damaged the brand and reputation of DVA. Ms Reid claimed that whilst Cr Dracoulis made these posts on her personal Facebook page by making references to her position as mayor, she blurred the distinction between these two personae. Further, Ms Reid added that because she is the mayor, her comments are more likely to carry weight in the community and as a result people would develop a negative attitude towards DVA.

In her response, Cr Dracoulis said that her comments stemmed from her concern about the content of a proposed exhibition and given her own personal experience with the nature of the exhibition, she felt compelled to make a post on her personal Facebook page. Cr Dracoulis pointed out that she has two Facebook pages; a personal one and her Mayoral page. Cr Dracoulis refuted the claim that she had damaged the Derwent Valley Council and the local art community because of the content of her posts.

The Panel has acknowledged that Cr Dracoulis may have been under the impression that her personal Facebook page could not be accessed by the wider community. However, this was not the case and consequently individuals other than her personal friends were

able to access the content. Facebook provides for an authentication process for users to enact if they wish to limit access to a select group. However, this does not appear to have been done by Cr Dracoulis on this occasion.

Determination

The Panel met on 5 March 2025, via Teams, to determine this matter. In accordance with section 28ZI of the Act the Code of Conduct Panel determines that Councillor Michelle Dracoulis has breached the Code of Conduct in relation to Part 8.4 but dismisses the complaint in relation to Parts 7.1 (a) and (b) and 8.6.

Reasons for determination

Part 7.1 (a)

This part of the Code requires an elected member *to treat all persons fairly*. The content of Cr Dracoulis' Facebook posts does not single out any person or individual or, indeed any organisation, for critical comment. Whilst she does make a range of comments about the Arts sector generally, in the Panel's view no person or individual has been treated unfairly by Cr Dracoulis in the Facebook posts. The Panel dismisses this part of the complaint.

Part 7.1 (b)

This part of the Code requires that an elected member must *not cause any reasonable person offence or embarrassment*. For the same reasons referred to in Part 7.1 (a) above, no person has been identified in the Facebook posts made by Cr Dracoulis on her personal Facebook page. The Panel dismisses this part of the complaint.

Part 8.4

In relation to Part 8.4, the Panel accepts that Cr Dracoulis believed that, only individuals that she had identified (personal group), would be able to access her personal Facebook page. This was clearly not the case as third parties managed to access the Facebook posts. The Panel has considered the content of the Facebook posts in question. In her posts Cr Dracoulis described in detail her experience and involvement in the Arts sector from the point of developing an interest, then pursuing that interest academically through to her participation in the sector. However, in the posts which are the subject of this complaint, she refers to her role as Mayor and provided some commentary on the Derwent Valley Council. Whilst on the face of it, these comments were about matters that were in the public arena and were not confidential issues that she became informed of in her role on Council. However, Part 8.4 states that a councillor "*must clearly indicate when he or she is putting forward his or her personal views*". In this instance Cr Dracoulis failed to do that and it is conceivable that a reasonable person may not have been able to determine whether her comments were her personal views or those of those of an elected member. The Panel upholds this part of the complaint.

Part 8.6

Part 8.6 state that "*a councillor must show respect when expressing personal views publicly*". In the first instance Cr Dracoulis was under the impression that she was communicating with a select group of individuals, although the Panel finds that was not the case as others were able to access the Facebook posts. However, as the Panel has determined above, no person or individual or specific organisation was the subject of any disrespectful comments made by her in the Facebook posts. The Panel dismisses this part of the complaint.

Sanctions

Section 28ZL (2) states that the Panel may impose one or more of the following sanctions

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- a) *a caution;*
- b) *a reprimand;*
- c) *a requirement to apologise to the complainant or other person affected by the contravention of the code of conduct;*
- d) *a requirement to attend counselling or a training course;*
- e) *a suspension from performing and exercising the functions and powers of his or her office as a councillor for a period not exceeding 3 months.*

The Panel wrote to Cr Dracoulis on 23 January 2025 inviting her to make any submission regarding what, if any, sanction should be imposed if the whole or part of the complaint was upheld. Cr Dracoulis responded by email on 26 January 2025 sent at 7.04pm stating that she was now more aware of the need to distinguish between her Facebook pages as a councillor and an individual. Cr Dracoulis suggested that a caution would be a suitable sanction.

The Panel considered Cr Dracoulis' submission regarding sanction but has also had regard to the very nature of the content on her personal Facebook page and the fact that no person, individual or organisation was cited in her remarks. This has been considered by the Panel in conjunction with her admission that she is now fully aware of the distinction between these two roles. In the circumstances the Panel has determined not to impose a sanction in relation to this complaint.

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.

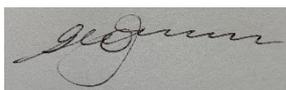
The Panel has been unable to determine the complaint within 90 days, owing to granting an extension to the respondent to respond to the complaint and the intervention of the Christmas/New Year period where Panel members were not available for periods of time.

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



Jill Taylor
Chairperson



Graeme Jones
Legal Member



Roseanne Heyward
Member

DATE: 14 March 2025