

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

West Tamar Council CODE OF CONDUCT

Complaint brought by Ms Kristen Desmond against Councillor Joshua Manticas

Code of Conduct Panel

- Jill Taylor (Chairperson),
- Greg Preece (Local Government Member)
- Jennifer O'Farrell (Legal Member)

Date of Determination: 12 December 2024

Content Manager Reference: C33441

Summary of the complaint

A code of conduct complaint was submitted by Ms Kristen Desmond to the Director, People, Culture and Governance– West Tamar Council on 1 March 2024 as Ms Desmond was the incumbent General Manager.

The complaint alleges that Councillor (Cr) Joshua Manticas breached the following parts of the West Tamar Council's Council Code of Conduct, approved on 21 February 2023, by publishing incorrect information on his Facebook page (a copy of which is annexed) and circulating a letter to long-term residents of the Beauty Point Tourist Park, which is undated, regarding the West Tamar Tourist Park, which is undated, regarding the West Tamar Council.

PART 2 – CONFLICT OF INTEREST THAT ARE NOT PECUNIARY

5. A councillor must avoid, and remove himself or herself from, positions of conflict of interest as far as reasonably possible.

PART 7 - RELATIONSHIPS WITH COMMUNITY, COUNCILLORS AND COUNCIL EMPLOYEES

7.1 A councillor –

- (a) must treat all persons fairly; and*
- (b) must not cause any reasonable person offence or embarrassment; and*
- (c) must 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 an elected member 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 not taken steps to resolve the complaint as she felt it was inappropriate, given that the responding councillor stated that he intended to take legal action against the Council;
- the complaint substantially related to a contravention of West Tamar council's Code of Conduct, namely Parts 2.5, 7.1 (a), (b) & (c), 8.4, 8.5, 8.6 and 8.7;
- the complaint should not be dismissed on the grounds that it was frivolous, vexatious or trivial. Ms Desmond provided supporting evidence with her complaint; and
- 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 this basis, the Chairperson determined to investigate the complaint except for Part 7.1 (c) which was dismissed after the Chairperson's initial assessment. The complainant, respondent councillor and the Director, People, Culture and Governance were notified of the outcome of the outcome of the initial assessment by letter dated 22 April 2024.

Investigation

In accordance with section 28ZE of the Act, the Code of Conduct Panel investigated the complaint. The Panel determined that further information was required to investigate the complaint. The Panel wrote to the both the complainant and respondent as detailed below.

On 21 May 2024, the Panel requested that Ms Desmond provide the following information:

- evidence of where Cr Manticas has demonstrated a conflict of interest; and
- details of any enforcement procedures under relevant legislation that the West Tamar Council has taken against the Beauty Point Tourist Park including the date of any such action.

Ms Desmond provided a response to this request on 29 May 2024 with a voluminous amount of documentation which did not appear to address the specific request of the Panel. A further letter was sent on 14 June 2024 which stated, amongst other things, that:

"It is not the role of the Panel to sift through all this documentation, nor is it a good use of Council resources which are inevitably charged for the Panel's time. In fact, the Panel has not actually considered this documentation which on a cursory glance does not appear to comply with our request of 15 May 2024."

In response to this request by the Panel, Ms Desmond provided a statement under cover of a statutory declaration dated 21 June 2024. The Panel accepted into evidence Ms Desmond's statement of 21 June 2024 and did not accept the document submitted on 29 May 2024.

¹Section 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.

On 15 May 2024, the Panel requested Cr Manticas to provide a response to the following under cover of a statutory declaration within 14 days:

- Details of any Council meetings that you attended where any matter relating to caravan/tourist parks or similar have been tabled for discussion and whether you declared a conflict of interest and removed yourself from the discussion.
- You state in your response dated 1 May 2024, that “it is crucial to distinguish my roles as Councillor and Managing Director”. Would you please provide advice on how you ensure this occurs.

Cr Manticas did not provide a statement under cover of a statutory declaration but did submit an email response on 27 May 2024 at 11.50am as follows:

“In relation to the first part of requested further information a register of declared conflicts of interests can be requested from the Chief Executive of the council who is the complainant in this case. The chief executive officer who is the complainant in this case has asked me to leave workshops on multiple occasions – I can only assume this was to discuss matters they may relate to my declared conflicts – this could be confirmed by the Chief Executive officer. To my knowledge Ms. Desmond has not alleged or has not been clear of what the alleged code of conduct offence is in reference to the further information that is being requested.

In relation to the second part of further information I keep my roles separate by employing a range of mitigating tactics, if there is a specific allegation put to me as to how I've breached the code of conduct I will be in a position to respond more appropriately. Just merely saying I have without a specific allegation or providing evidence to refute is not appropriate.”

The Panel determined that in accordance with section 28ZG a hearing into this complaint should be held having regard to the following evidence:

- *Complaint by Ms Desmond under cover of statutory declaration date 1 March 2024 with the following attachments –*
 - *Undated post on Josh Manticas - Councillor for West Tamar Facebook*
 - *Email sent on 21/2/24 at 6.30 pm from Cr Manticas to Ms Desmond and reply from Ms Desmond to Cr Manticas with no date or time*
 - *Notification dated 26 February 2024 to Long Term Fortnightly Casual Site Occupants sent by the Beauty Point Tourist Park*
 - *Undated ABC news article featuring John Lowe*
- *West Tamar Council Code of Conduct approved on 21 February 2023*
- *Response to complaint from Cr Manticas under cover of statutory declaration dated 1 May 2024*
- *Letters sent to Ms Desmond and Cr Manticas by Chairperson dated 15 May 2024 seeking further information.*
- *Response from Ms Desmond under cover of statutory declaration dated 21 June 2024 with attachments 1, 2, 3a, 3b, 4 and 5.*
- *Email from Cr Manticas sent on 8 July 2024 at 7.00 am*

Hearing

As per section 28ZH of the Act the Code of Conduct Panel held a hearing on 26 September 2024 at the Windsor Community Precinct in Riverside.

Ms Desmond and Cr Manticas were advised of this by letter on 19 September 2024 which included details of the evidence before the Panel. No witness statements were submitted in relation to this matter.

On 20 September 2024, Cr Manticas advised:

“The advice of my legal team is to not attend a hearing and not to provide any further information to the panel.”

Ms Desmond attended the hearing. Prior to the commencement, Cr Manticas was called in the foyer of the Windsor Community Precinct but was not present.

At the hearing, Ms Desmond re-iterated her complaint that Cr Manticas had posted information on his social media that was untrue, and this caused offence to her and was embarrassing to the Council as a whole. When questioned by the Panel, Ms Desmond advised that Cr Manticas was part-owner of the Beauty Point Tourist Park and as such had the potential for a conflict of interest.

Specifically, Ms Desmond stated that the advice to long-term residents from the Tourist Park dated 26 February 2024 contained inaccurate information by saying that *“Council were presently investigating numerous building compliance matters”*. Whilst this circular was not signed personally, the Panel understood it was asserted that it could be assumed that Cr Manticas knew or authored the document. Furthermore, on his Facebook page titled “Josh Manticas – Councillor for West Tamar” Cr Manticas suggests that the Council had made incorrect assertions *‘regarding the alleged violation of our Beauty Point Tourist Park’s violation of our planning permit...’*. A copy of the statement on Cr Manticas’ Facebook page is annexed to this decision.

Ms Desmond said that at the time of these statements, Council had received some complaints in relation to the Tourist Park but had not got to the stage of determining an investigation was warranted and that Cr Manticas, as a councillor, would have been aware of this, thus making his statements inaccurate and misleading. This had the effect of causing concern to some residents, such as those John Lowe expressed in an interview with the ABC, which was published on the ABC’s website on 1 March 2024.

Ms Desmond added that she was also fielding questions from community members which put her in a difficult position by trying to respond accurately without criticising Cr Manticas for his unfounded portrayal of the situation. Additionally, Ms Desmond said that these publications by Cr Manticas prompted significant interest by local media and she had been approached by Channel 7.

Cr Manticas responded to Ms Desmond’s complaint in his statutory declaration dated 1 May 2024. Cr Manticas denied that he had any conflict of interest as a councillor as he had “been closed out” of any discussions and meetings regarding the Tourist Park. In response to the allegation that he had treated Ms Desmond unfairly, he again denied this by suggesting that Ms Desmond was unhappy with the statement made by a private company. Cr Manticas further claimed that the letter (presumably the one of 26 February 2024) was sent out *“by a company exercising lawful operation of their business.”* Cr Manticas stated that it was *“crucial to distinguish my role as councillor from Managing Director”*. Cr Manticas asked by the Panel on 15 May 2024 to provide details on how he managed this situation. He responded on 27 May 2024 as follows:

“I keep my roles separate by employing a range of mitigating tactics, if there is a specific allegation put to me as to how I’ve breached the code of conduct I will be in a position to respond more appropriately. Just merely saying I have without a specific allegation or providing evidence to refute is not appropriate.”

This exchange with Cr Manticas did not give the Panel confidence that he fully understood the implications of potential conflict of interest. It would appear that Cr Manticas understands that participating in Council debate regarding the Tourist Park may lead to a conflict of interest and that is why he has not participated in such discussions. However, he does not appear to see that public comment on his branded councillor social media account containing statements which

allege, amongst other things, that Council had made '*misleading assertions*' and '*baseless claims*' which '*lack merit*'.

The Panel asked Ms Desmond whether there had been any attempts to mediate this matter with Cr Manticas. Ms Desmond said that Cr Manticas had been hassling her with questions, and she did not think mediation would be useful.

During the hearing Ms Desmond made reference to two documents that had not been included in the evidence. At the request of the Panel Ms Desmond submitted the documents under cover of a statutory declaration dated 26 September 2024. The documents are –

- The full article ABC article published on 1 March 2024 that she referred to in her complaint;
- A copy of a letter sent to West Tamar Council from Douglas and Collins on behalf of Beauty Point Trading Pty Ltd dated 4 March 2024.

Ms Desmond also confirmed in her statutory declaration that the date of the Facebook Post by Councillor Manticas referred to in her complaint was posted at approximately 9.25 am on the 29th of February 2024.

Cr Manticas was provided with a copy of Ms Desmond's statutory declaration and attachments and invited to comment or alternatively indicate whether he considered the hearing should reconvene to consider this evidence. On 2 October 2024, Cr Manticas wrote back requesting further clarification, which was provided.

On 4 November 2024, Cr Manticas submitted a statutory declaration seeming to stress the difference between his role in a private company stating that it does not fall under Council's '*jurisdiction*'. Again, Cr Manticas appears not to have insight into how there can be a public perception that he is seen in the community as a councillor and, whilst he can certainly make statements in his private capacity, that must be differentiated from his role as a councillor. Cr Manticas did not comment on the additional evidence, nor did he request the hearing reconvene.

Determination

As per section 28ZI of the Act the Code of Conduct Panel determines that Cr Joshua Manticas has breached Parts 8.4 and 8.7 of the Code of Conduct and it dismisses parts 2.5, 7.1(a), 7.1 (b), 8.5 and 8.6.

Reasons for determination

The Code of Conduct Panel considered the information provided by Ms Kristen Desmond and the responses by Cr Joshua Manticas along with supporting statutory declarations.

Part 2.5 – A councillor must avoid, and remove himself or herself from, positions of conflict of interest as far as reasonably possible.

Whilst the Panel considers that that Cr Manticas does not fully comprehend how the role of councillor on the one hand and business owner on the other has the potential to create a conflict of interest, no evidence was presented showing that this part of the Code had been breached. In fact, Cr Manticas stated in his evidence that he did not participate in any interactions of Council where the Tourist Park was the subject of debate. The Panel dismisses this part of the Code.

Part 7.1 – A councillor –

- (a) Must treat all persons fairly;*
- (b) Must not cause any reasonable person offence or embarrassment.*

Ms Desmond told the Panel during the hearing that she considered Cr Manticas' behaviour towards her as unacceptable and offensive resulting in a breach of this part of the Code. In the Panel's view, however, whilst the evidence points to Cr Manticas being critical of the Council, in

relation to the evidence provided to the Panel, none of his public commentary has singled out Ms Desmond specifically.

The Panel dismisses this part of the Code.

Part 8.4 – A councillor must clearly indicate when he or she is putting forward his or her personal views

Based on the evidence before it, the Panel determined that Cr Manticas does not have an appreciation of the need for him to distinguish between the two roles he performs: viz, that of a business owner and a councillor. Given his situation and private business interests, it is more critical that when making any statements in relation to Council business, Cr Manticas must clearly identify when making a personal statement. By placing the negative commentary about Council (annexed) on his Facebook page titled “Joshua Manticas – Councillor for West Tamar”, a reasonable person would assume he is making a statement as a councillor. He did not clearly indicate that he was putting forward his personal views. The Panel upholds this part of the Code.

Part 8.5 – A councillor’s personal views must not be expressed publicly in such a way as to undermine the decision of the Council or bring the Council into disrepute

No evidence was provided to substantiate that Cr Manticas had undermined any decision of Council. Cr Manticas did provide commentary in relation to what he believed was a current situation between the Council and his business, but there was insufficient evidence to demonstrate that this was in such a way to bring the Council into disrepute. The Panel dismisses this part of the Code.

Part 8.6 – A councillor must show respect when expressing person views publicly

Whilst Ms Desmond submitted that Cr Manticas had been disrespectful to her by his constant questioning of her, in the Panel’s view no evidence was provided that Cr Manticas’ public statements were disrespectful. The Panel dismisses this part of the Code.

Part 8.7 – The personal conduct of an elected member must not reflect, or have the potential to reflect adversely, on the reputation of Council

The tone and content of Cr Manticas’ Facebook page is highly critical of Council and by extension councillors, of which he is one. The post was his ‘personal’ conduct. In the Panel’s view it is reasonable for members of the community to conclude that council had acted wrongly or unfairly. It suggests that Council was dysfunctional and ineffective in its administration. Certainly, in the Panel’s view, his Facebook post has the potential to reflect adversely on the reputation of Council. The Panel upholds this part of the Code.

Sanctions

Section 28Z1 (2) states that

(1) After completing its investigation of a code of conduct complaint, the Code of Conduct Panel is to determine the complaint by –

(a) upholding the complaint; or

(b) dismissing the complaint; or

(c) upholding part of the complaint and dismissing the remainder of the complaint.

(2) If the code of conduct complaint or part of it is upheld, the Code of Conduct Panel may impose one or more of the following sanctions on the councillor against whom the complaint is made:

(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 Manticas on 11 November 2024 indicating it was upholding part of Ms Desmond's complaint in relation to Parts 8.4 and 8.7 and inviting him to make a submission on what, if any sanctions should be imposed. Cr Manticas replied by email on 20 November 2024 stating, "I am unable to provide any view until I see written decisions for the proposed determination."

Following Cr Manticas' response, the Panel met to discuss what sanction would be appropriate in this matter. The Panel acknowledges Cr Manticas is a first term councillor and, in some circumstances, it might issue a caution as an appropriate sanction.

However, in light of the various responses provided by Cr Manticas during the investigation of this complaint, the Panel formed the view that he was having difficulty in differentiating his role as a business owner and that of a councillor. This confusion is demonstrated in his undated Facebook page where he identifies as a councillor for the West Tamar Council but provides commentary about Council as a business owner.

It is the Panel's decision that the most appropriate sanction for Cr Manticas is to require him to undergo training that enables him to fulfill his respective roles whilst maintaining a clear separation of the two. The training should include the appropriate use of social media by an elected member. The training should commence within 4 weeks of the determination being tabled in an open Council meeting.

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 (EG – granting extension for responses, other commitments by members preventing preparation of the final report.

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



Greg Preece
Member



Jennifer O'Farrell
Legal Member

DATE : 12 December 2024

Code of Conduct Panel Determination Report

West Tamar Council – Ms Kristen Desmond against Councillor Joshua Manticas

Appendix 1

Josh Manticas - Councillor for West Tamar
489 followers • 0 following

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Intro

All content that I express or share are my personal views and not the official council position.

- Page - Personal blog
- 1 windsor drive
- JCM.WTC@gmail.com
- Always open

Photos

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Posts

Filters

Josh Manticas - Councillor for West Tamar is in Beauty Point, TAS. 29m · 🌐

Beauty Point Tourist Park Affirms Compliance with Planning Permit and Land Use Rights; Questions Council's Recent Interference

Beauty Point Tourist Park categorically refutes recent claims and assertions by West Tamar Council regarding the alleged violation of our planning permit and the purported issuance of permits for structures within our premises. We assert our unwavering commitment to adhering to all regulations and guidelines while operating within the scope of our established land use rights.

Contrary to the misleading assertions made by West Tamar Council, Beauty Point Tourist Park operates fully within the boundaries of our valid planning permit and existing land use rights. Our land use rights, which precede the formation of the council, afford us the legal standing to accommodate guests without any restrictions on the duration of their stay.

These rights have been meticulously upheld throughout our tenure, and we remain steadfast in our dedication to operating in compliance with all relevant laws and regulations.

Furthermore, we recently challenged West Tamar Council in TASCAT (Tribunal) Tasmania regarding conditions of length of stay imposed on a recent permit. We successfully had these conditions removed, affirming our existing land use provisions. Notably, West Tamar Council withdrew these conditions after I can only assume receiving legal advice, raising questions about the basis of their current assertions.

The baseless claims made by West Tamar Council not only lack merit but also amount to reputational damage to our existing lawful business. As a result, we are now exploring legal options to pursue in respect to this matter.

We vehemently reject the council's baseless claim that occupants on our sites will have the ability to apply for permits for permanent structures. It is preposterous for West Tamar Council to insinuate such a notion, considering they lack the authority of the landowner.

As the rightful landowner,

Beauty Point Tourist Park maintains full jurisdiction over the premises and the structures therein. We emphasize that every occupant resides in a removable van and annex, a practice that has been consistently upheld to align with our land use rights. If council has a different view on the removable Vans and Annexes and takes the route of compliance, we will have no choice but to comply by having any non-compliant vans and annex removed off our property.

Occupation of our sites is a privilege and not a right subject to the adherence of our in-house park rules. As you can appreciate from time to time there is a need to remove people off our property and we make no apologies for ensuring a safe workplace and business for both our staff and other visitors alike.

Beauty Point Tourist Park stands resolute in protecting our position and upholding the integrity of our operations. We remain committed to working collaboratively with West Tamar Council to address any concerns while ensuring the continuation of our compliant and responsible management practices.

No Further comments will be made at this time.
Beauty Point Tourist Park