

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  
GEORGE TOWN COUNCIL CODE OF CONDUCT**

**Complaint brought by Mr Graeme Neilsen against Mayor Greg Kieser**

**Code of Conduct Panel**

- David Sales (Chairperson),
- Liz Gillam (Local Government Member)
- Graeme Jones (Legal Member)

Date of Determination: 23 April 2024

Content Manager Reference: C31316

**Summary of the complaint**

A code of conduct complaint was submitted by Mr Graeme Neilsen to the General Manager of the Georgetown Council on 4 October 2023.

The complaint related to the manner in which Mr Neilsen was dealt with by the Mayor, Councillor Greg Kieser during Public Question Time (PQT) at the ordinary meeting of Georgetown Council held on 26 April 2023.

The complaint alleged that Councillor Kieser breached the following parts of the Georgetown Council Code of Conduct, (the Code) adopted on 28 February 2023:

**Part 1 – Decision Making**

*3. In making decisions, a Councillor must give genuine and impartial consideration to all relevant information known to him or her, or of which he or she should have reasonably been aware.*

**Part 3 – Use of Office**

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

**Part 7 – Relationships with Community, Councillors and Council Employees**

*1. A Councillor –  
(a) must treat all persons fairly; and  
(b) must not cause any reasonable person offence or embarrassment; and*

...

**Part 8 – Representation**

*1. When giving information to the community, a Councillor must accurately represent the policies and decisions of the Council.*

*2. A Councillor must not knowingly misrepresent information that he or she has*

*obtained in the course of his or her duties.*

## **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 *Local Government Act 1993* (the Act). Having assessed the complaint against the provisions of sections 28ZB and 28ZC of the Act, and in accordance with section 28ZA(1)(b) of the Act, the Chairperson determined that:

- the complainant had made a reasonable effort to resolve the complaint. He provided a chain of emails subsequent to the meeting endeavouring to initiate mediation on the matter;
- part of the complaint substantially related to a contravention of the Georgetown Council's Code of Conduct;
- the complaint could not be dismissed on the grounds that it was frivolous, vexatious or trivial. The reasons for this conclusion were that if upheld, Councillor Kieser would be shown to have breached a number of clauses of the Code of Conduct;
- 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.<sup>1</sup>

As a consequence, the Chairperson determined that the whole of the complaint should be investigated.

## **Investigation**

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

Councillor Kieser was invited following the initial assessment to provide a response and his response was received on 21 January 2024. Councillor Kieser's response was sent to Mr Neilsen, who responded on 22 January 2024. This was sent to Councillor Kieser. The Panel met on 30 January 2024 to consider the matter. The Panel determined to seek a copy of the audio recording of Public Question Time from the Council Meeting on 26 April 2023. This was received on 31 January 2024 and a copy was sent to both parties.

On 6 February 2024 both Mr Neilsen and Councillor Kieser were informed by letter that the Panel was of the view that the matter could be determined on the basis of the information and submissions available to the Panel. Both parties were invited to make a submission to the Panel if either party considered that he would be disadvantaged if a hearing were not held. Mr Neilsen indicated that he desired that a hearing be held to determine the complaint.

The Panel noted in its investigation and consideration of the material, that the Complainant appeared to have relied on the Panel to formulate the particulars of the complaint from the voluminous attachments to the complaint provided by the Complainant in support of his allegations of breaches of the Code. Section 28V(3)(e) of the Act requires that the complaint must contain details of the behaviour of the councillor that constitutes the alleged contraventions of the Code.

The Panel takes seriously its responsibility in reading and considering the material sent to it. However, it is a basic requirement both under the Act and for the purpose of procedural fairness to the respondent for the complaint to particularise with some precision the conduct alleged by the Complainant. The Panel should not be required to undertake the task of sorting through a wealth of material in order to determine the behaviour which may conceivably amount to a breach of the Code. That is for the Complainant to do. The Complainant should not only specify with clarity the

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<sup>1</sup> 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.

conduct complained of, but also provide a clear link between the actions of the councillor and the specific clause or clauses of the Code which are alleged to have been breached by those actions. The Panel's task in this matter was made difficult by the Complainant's failure to do so.

### **Details of the Complaint**

The complainant alleged that;

- Councillor Kieser did not give genuine and impartial consideration to all the relevant information known to him or of which he should have been reasonably aware contrary to Part 1(3) of the Code;
- Councillor Kieser by deferring his response to the complainant's question, and by agreeing to take a payment in trust from the developer, rather than require the developer to provide open space, brought the Council and the office of Counsellor into disrepute contrary to Part 3(1) of the Code;
- He was treated unfairly by Councillor Kieser which caused him offence and embarrassment and amounted to a denial of procedural fairness during PQT contrary to Part 7(1)(a) and (b) of the Code; and
- Councillor Kieser when giving information to the meeting did not accurately represent the policies and decisions of the Council or knowingly misrepresented information that he had obtained in the course of his duties contrary to Part 8(1) and (2) of the Code.

### **The Hearing**

The Panel advised that the following documents had been received in evidence and that these documents had been circulated to all parties and the parties had acknowledged receipt thereof: -

- Code of Conduct Complaint from Mr G Neilsen against Councillor G Kieser (including attachments).
- Response to Code of Conduct Complaint from Councillor G Kieser dated 20 December 2023.
- Correspondence dated 22 January 2024 from Mr G Neilsen in reply to Councillor Kieser's response.
- The Georgetown Council Elected Member Code of Conduct adopted 28 February 2023.
- An audio file of Public Question Time at the Georgetown Council's Meeting on 26 April 2023.

The Panel advised it had listened to the audio recording referred to.

The hearing was scheduled for 11 a.m. Thursday, 4 April 2024 at the Georgetown Council Chambers.

Mr Neilsen made an affirmation and Councillor Kieser swore an oath to the effect that the evidence each would submit would be the truth.

Mr Neilsen spoke to his complaint and presented his evidence. It became evident to the Panel that Mr Neilsen wished to raise a number of matters which essentially related to the justification of his question at the meeting. These matters did not relate directly to the complaint or to the alleged behaviour of Councillor Kieser during PQT. In essence they were matters which were not covered by the Code and were considered by the Panel to be irrelevant to the complaint. Mr Neilsen was informed by the Chairperson of the scope of the Code and the matters that the Panel could consider. Mr Neilsen concluded his evidence.

Councillor Kieser made a submission. He indicated that he merely wanted to say that he believed that at all material times he had acted in accordance with the Code. Further, that he endeavoured to treat all persons fairly, including Mr Neilsen.

Prior to the hearing Mr Neilsen had requested the General Manager of the Council be available to give evidence and arrangements were made for him to be available to give evidence if required.

At the conclusion of Councillor Kieser's evidence, the Panel asked Mr Neilsen whether he wished to call the General Manager to give evidence. Mr Neilsen outlined the questions he wished to put to the General Manager. The Chair informed Mr Neilsen that the questions he proposed were outside the scope of the complaint. Mr Neilsen then reconsidered and decided not to call him as a witness.

Mr Neilsen then addressed the Panel with his submissions indicating the manner in which he believed that Councillor Kieser had breached the Code. He was followed by Councillor Kieser who reiterated that he did not believe he had breached the Code.

### **Determination**

As per section 28ZI(1)(b) of the Act, the Panel dismisses the complaint.

### **Reasons for determination**

1. During PQT at the Ordinary Meeting of Georgetown Council held on 26 April 2023, Councillor Kieser was not participating in a process where Council was called upon to make decisions on matters raised for discussion, that is, that part of the meeting where a council considers reports and recommendations, and makes decisions. Part 1 of the Code does not refer to statements made by Councillor Kieser when answering questions in PQT. Therefore, the Panel has determined that the allegations in the complaint and the evidence provided by the Complainant at the hearing do not establish a breach of this part of the Code. The allegation that Councillor Kieser breached Part 1.3 of the Code is dismissed.
2. The Panel has listened to the audio tape of PQT of the Council Meeting on 26 April 2024 and considered the evidence submitted by the Complainant at the hearing on 4 April 2024. The audio tape provided the best evidence and is accepted by the Panel. The Panel is of a view that Councillor Kieser allowed the Complainant considerable leeway when asking his question and conducted himself in a courteous and fair manner, and further in accordance with the Council's PQT Guidelines. The Panel finds that the actions of Councillor Kieser have not brought the Council or the office of Councillor into disrepute. There is simply no evidence to support such an allegation. The allegation that Councillor Kieser breached Part 3.1 of the Code is dismissed.
3. As stated above, the Panel has listened to the audio tape of the meeting which provided clear evidence that the PQT guidelines were observed in a courteous and fair manner. The Mayor was lenient in allowing Mr Neilsen considerable time to ask his question. This was reasonable owing to the complexity and length of the question. It was then a matter for Councillor Kieser to decide whether he could answer the question or take the question on notice and respond at a later time. He elected the latter. The Panel has determined that Councillor Kieser treated Mr Neilsen fairly and his actions would not have caused any reasonable person offence or embarrassment. The allegation that Councillor Kieser breached Part 7.1 (a) and (b) of the Code is dismissed.
4. Mr Neilsen's Question on Notice related to a matter which the Council was going to discuss later in the meeting. There was no policy or decision relating to this matter determined at the time Mr Neilsen asked his question. As there had been no decision made at that time, Councillor Kieser could not have misrepresented a decision of Council. In addition, no evidence has been presented to the Panel that Councillor Kieser knowingly misrepresented information that he had obtained in the course of his duties. The allegation that Councillor Kieser breached Part 8 1 and 2 of the Code is dismissed.

### **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.

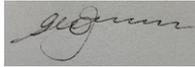
The Panel has been unable to determine the complaint within 90 days, owing to the unavailability of Panel Members and delays in receiving responses from the parties.

### **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.



David Sales  
**Chairperson**



Graeme Jones  
**Legal Member**



Liz Gillam  
**Member**

DATE: 23 April 2024