

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 Councillor Winston Archer against Councillor Greg Kieser**

**Code of Conduct Panel**

- Jill Taylor (Chairperson),
- Roseanne Heyward (Local Government Member)
- David Palmer (Legal Member)

Date of Determination: 26 April 2024

Content Manager Reference: C31538

**Summary of the complaint**

A code of conduct complaint dated 2 November 2023 was submitted by Councillor (Cr) Winston Archer against Mayor, Councillor (Cr) Greg Kieser to the General Manager George Town Council on 02 November 2023.

The complaint alleges that Cr Greg Kieser breached the following parts of the George Town Council's Code of Conduct, approved by Council on 28 February 2023 as set out below. Although not stated with precision in his complaint dated 2 November 2023, Cr Archer asserted in his submissions including oral submissions made at hearing held on 28 March 2024 in effect as follows: The basis of Cr Archer's allegations is that Cr Kieser moved a motion to grant the General Manager a new salary package before the performance assessment process had been completed. Furthermore, that Cr Kieser was in possession of information that he did not share with his fellow councillors which Cr Archer believed was relevant to the performance assessment process.

Cr Archer alleged that Cr Kieser had breached the following parts of the Code -

**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 2 – Conflict of Interests that are not Pecuniary**

2. *A Councillor must act openly and honestly in the public interest.*
3. *A Councillor must uphold the principles of transparency and honesty and declare actual, potential or perceived conflicts of interest at any meeting of the Council and at any workshop or any meeting of a body to which the Councillor is appointed or nominated by the Council.*

4. *A Councillor must act in good faith and exercise reasonable judgement to determine whether he or she has an actual, potential or perceived conflict of interest.*
  
6. *A Councillor who has an actual, potential or perceived conflict of interest in a matter before the Council must –*
  - a. *declare the conflict of interest and the nature of the interest before discussion on the matter begins; and*
  
  - b. *act in good faith and exercise reasonable judgement to determine whether the conflict of interest is so material that it requires removing himself or herself physically from any Council discussion and remaining out of the room until the matter is decided by the Council.*

### **Part 3 – Use of Office**

2. *A Councillor must not take advantage, or seek to take advantage, of his or her office or status to improperly influence others in order to gain an undue, improper, unauthorised or unfair benefit or detriment for himself or herself or any other person or body.*

### **Part 8 – Representation**

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 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 based this conclusion having regard to Cr Archer's advice that he had attempted to raise his concerns about the process at a workshop on 11 July 2023, the Council meeting held on 25 July 2023 and in a phone call with Cr Kieser (no date provided).
- part of the complaint substantially related to a contravention of George Town Council's Code of Conduct, approved by Council on 28 February 2023.
- 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 the allegations made by Cr Archer, if proven, were likely to result in a breach of the parts of the Code accepted for further investigation.
- 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>

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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.

On this basis, the Chairperson determined to investigate parts 1.3, 3.2 and 8.2 and dismissed parts 2.2, 2.3, 2.4 and 2.6.

The complainant, respondent councillor and the General Manager were notified of the outcome of the initial assessment by letter dated 22 November 2024.

### **Investigation**

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

The Panel determined that further information was required to investigate the complaint.

The Panel wrote to the Cr Archer on 15 January 2024 requiring the following information:

- details of how Cr Kieser limited "free talk" about the General Manager's performance review
- date Cr Kieser "encouraged councillors to give the GM a remuneration package"
- date the review of GM performance was provided to councillors
- details of the "factual inaccuracies" in the closed meeting and confirmation of meeting date
- details of what Cr Archer did not understand about the "contract" and which contract was he referring to
- why the vote on the General Manager's proposed remuneration, in general terms, must require consideration of the "contract" you refer to (if that is what you allege, and of not alleged, please explain).

The Panel also wrote to Cr Kieser on 15 January 2024 requesting the following information—

- the date that you recommended Council approved the new remuneration package for the General Manager
- the date when Blackadder completed its review of the General Manager's performance and date when councillors were advised.

In his response to the Panel's request for further information, dated 24 January 2024, Cr Archer provided dates on which councillors met to discuss the General Manager's performance assessment. He also provided an outline of the meeting workshop held on 21 June 2023 saying that it was a "very structured session" which in his opinion did not allow for open discussion. By way of example, Cr Archer said there was no opportunity for councillors to make any comment in relation to the General Manager's performance that did not relate specifically to the assessment criteria.

Regarding factual inaccuracies, Cr Archer identified what he alleged was an inaccuracy in an item of expenditure in the actual assessment that had formed part of the General Manager's performance. On the issue of the Mayor and Deputy Mayor negotiating with the General Manager regarding his package, Cr Archer alleged that Council did not approve them to negotiate a 12% increase, but rather an increase of up to 12%.

The final point made by Cr Archer was that the performance assessment was incomplete on 25 July 2023 as the staff survey had not been finalised and provided to councillors. In

his response, Cr Archer referred to a conversation with Cr Jason Orr following the workshop on 21 June 2023, where Cr Orr told Cr Archer that he didn't feel able to raise an issue relating to the General Manager's performance during the workshop.

The Panel decided to call Cr Orr as a witness.

In response to questions put to Cr Kieser, he advised that following the workshop on 21 June 2023, the Council authorised him and the Deputy Mayor to discuss the remuneration package with the General Manager. Cr Kieser said that *"for all intents and purposes the review by Blackadder was completed on 21 June 2023"*. On that basis, Cr Kieser advised that the recommended increase of 12% salary package was moved and passed at the Council meeting held on 25 July 2023 by a majority decision.

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

1. George Town Code of Conduct approved by Council on 28 February 2023
2. Complaint by Cr Winston Archer under cover of a statutory declaration dated 2 November 2023.
3. Response from Cr Kieser under cover of a statutory declaration dated 7 December 2023
4. Email request to Cr Archer dated 15 January 2024 requesting further information
5. Email request To Cr Kieser dated 15 January 2024 requesting further information
6. Email response from Cr Kieser date 15 January 2024 responding to request for further information
7. Response from Cr Archer dated 24 January 2024 responding to request for further information
8. Statutory declaration from Ms Simone Lowe dated 15 February 2024
9. Statutory declaration from Cr Heather Barwick dated 15 February 2024.
10. Statutory declaration from Mr Gregory Dawson dated 15 March 2024
11. Statutory declaration from Mr Winston Mason dated 8 March 2024
12. Statutory declaration from Ms Heather Ashley dated 11 March 2024
13. Statutory declaration from Ms Cheryl Hyde dated 7 March 2024
14. Statutory declaration from Ms Kristen Desmond dated 12 March 2024

## Hearing

The role of the Panel is not to review details of the actual performance assessment of the General Manager, but rather to establish whether, as alleged by Cr Archer, there had been procedural deficiencies that may have breached parts of the Code of Conduct.

As per section 28ZH of the Act the Code of Conduct Panel held a hearing on 28 March 2024 at the Executive Building, 15 Murray Street Hobart. Both Cr Archer and Cr Kieser appeared in person.

The witness, called by the Panel, Cr Jason Orr appeared at the hearing by video link.

The Panel decided not to call the two witnesses provided by Cr Archer and the five witnesses provided by Cr Kieser. Unsurprisingly the evidence of those witnesses supported the relevant councillor who sought and adduced in evidence their witness statement. All witness statements, however, were accepted into evidence by the Panel and provided to both Cr Archer and Cr Kieser. Each of Cr Archer and Cr Kieser were, at hearing, given the opportunity to comment on, respond to, and if necessary, criticise the witness statement adduced by each other.

At the outset of the hearing the Chairperson outlined how the hearing would be conducted and the process to be followed at the completion of the hearing.

Prior to giving evidence, Cr Kieser, Cr Archer and Cr Orr all made an affirmation attesting to the truth of their evidence.

Cr Archer commenced his evidence by commenting on each of Cr Kieser's witness statements. He pointed to some comments made by some of the witnesses that he disputed. He largely claimed that his expectation of the process of was different to that expressed by some of Cr Kieser's witnesses. When questioned by the Panel as to whether others could have a different perspective to him, and that in the end when a vote was taken it as the result of a fair and democratic process. Cr Archer agreed.

Cr Archer told the hearing that process of undertaking the performance assessment of the General Manager started at a Council workshop on 14 March 2023 and "*ended with a sub-par result.*" When elaborating on the process, Cr Archer said he was inexperienced in such processes and didn't feel that there was sufficient opportunity for him and some other councillors to have input as the agendas for the workshop and meetings were tightly structured. Cr Archer inferred that such restrictions impeded the process and its ultimate outcome.

Cr Archer alleged that at no time did Council give its approval for Cr Kieser (the Mayor) and the Deputy Mayor to negotiate an increase to the General Manager's salary package of 12%. When questioned by Cr Kieser whether all councillors were asked their opinion as to the quantum of the increase in the General Manager's salary package, Cr Archer agreed that they did. However, he added that those responses indicated various levels for an increase of between 3% and 12%. It was Cr Archer's view that Council had agreed to the Mayor and Deputy Mayor negotiating a figure of "up to 12%" with the General Manager, not that 12% was the starting point, which he alleged was Cr Kieser's position. Cr Archer felt strongly that the appointment of Mr Stephen Blackadder (who has been engaged previously for similar performance assessments) had a conflict of interest as he was also the consultant assisting a neighbouring council (West Tamar) to select a new General Manager. Several councillors became aware during the performance assessment process that the George Town General Manager (the subject of this performance assessment) was an applicant for the position at West Tamar Council. At one meeting Cr Kieser indicated that the General Manager was a "*flight risk*" but did not elaborate on this. When questioned during the hearing why he did not reveal what he knew (that the General Manager was an applicant), Cr Kieser said that "*it was a highly confidential*" matter.

In response to Cr Archer's complaint, Cr Kieser stated that the performance assessment process was "*robust*". He stated that Mr Stephen Blackadder was a facilitator and had no decision-making capacity in relation to the final decision. Cr Kieser stated that Mr Blackadder's role at George Town and West Tamar were unrelated, and each were being conducted in a highly confidential manner. He explained that the assessment period for the General Manager was from April 22 to April 23 prior to the selection process for the

General Manager, West Tamar. Although he did acknowledge that Mr Blackadder was undertaking work with the West Tamar Council the day before the George Town Council's workshop (to discuss the performance assessment) held on 21 June 2023.

In response to a question from the Panel, Cr Kieser said he was aware that the General Manager was an applicant for the West Tamar position as he had provided a reference for him. The Panel then asked Cr Kieser why he didn't tell his fellow councillors the reason for his comment about the General Manager being a "flight risk". Cr Kieser said that he felt divulging this information would breach confidentiality. Cr Archer disputed this saying Cr Kieser could have shared this information with all councillors in a closed Council meeting that is governed by confidentiality.

Cr Kieser told the hearing that the assessment of the General Manager's performance was undertaken against a set of assessment criteria. When asked by the Panel whether a flight risk was part of that criteria, Cr Kieser said it wasn't, but it was a factor to consider.

Cr Kieser disagreed with Cr Archer's view that he and the Deputy Mayor had a starting point of 12% in their negotiations with the General Manager but rather said any increase in the salary package was limited to 12%. This appears to be consistent with the following documents that were in evidence: The Minutes of the Closed Council meeting held on 26 July 2023 whereby the majority of Councillors on a 6:3 majority vote approved, inter alia, an *"...increase to the General Manager's...Total Remuneration package...effective 24.4.23...representing a CPI adjustment of 7% and a performance increase of 5%"*, and which an increase of up to 12% was previously discussed, proposed and approved on 21 June 2023 at the General Manager's "Performance Review" workshop, attended by Councillors including the respondent Cr Kieser and the complainant Cr Archer.

This approval is also noted the antecedent document titled *"GM Performance Review 22/23"* which had been circulated to Councillors, recording matters approved at the prior 21 June 2023 "workshop" meeting of Councillors, attended by Cr Archer and Cr Kieser amongst others, and which was in evidence as annexed to the Statutory Declaration of the respondent Cr Kieser sworn 7 December 2023,

The Panel told Cr Kieser that it had requested a copy of the procedures for undertaking a performance review of the General Manager and was advised that no such document existed. Cr Kieser agreed this was the case and said perhaps this could be something for Council to consider.

### **Witness Councillor Jason Orr**

In the statement supplying further information to the Panel, Cr Archer mentioned that Cr Orr had approached him after the workshop on 21 June 2023 saying that he, Cr Orr, had wanted to raise some concerns about the General Manager but did not have the opportunity to do so. The Panel decided to call Cr Orr as a witness, given the views he expressed to Cr Archer about the process.

Cr Orr told the hearing that he had been asked about the George Town General Manager, by people from West Tamar. When he queried whether they were asking as the George Town General Manager was an applicant for the West Tamar job, they said that they could *"neither confirm nor deny"*.

Cr Orr said that he was a very inexperienced councillor of less than six months standing when the performance assessment of the General Manager began. He said that the process was new to him, and he did not feel there was an opportunity to raise some concerns he had about the General Manager's performance.

In cross examination, Cr Kieser pointed to item 5 on the meeting agenda which was listed as general discussion and asked Cr Orr whether that was the opportunity for him to raise

any issues. Cr Orr indicated that he felt the meeting was structured so that he didn't feel comfortable raising an issue about the General Manager and a concern that he had about him. This was coupled with the fact that he was an inexperienced councillor going through an unfamiliar Council process. Cr Orr said that if he was in a similar position now, he would definitely raise the issue.

In his summary and responding to a statement from the Panel that it was somewhat irrelevant in that the General Manager was not successful in his application for the West Tamar job, Cr Archer said he was offered the job but declined it. As a result of the performance assessment, the General Manager's salary package was \$10,000 more than the advertised position at West Tamar Council. Cr Archer said that this was the basis of his concern about Stephen Blackadder being involved in both processes. The Panel acknowledges Cr Archer's concern, but no evidence was presented that Mr Blackadder had influenced either outcome.

At the conclusion of the hearing, Cr Archer provided a folder of documents to the Panel. The Panel agreed that it would peruse these documents and if any were accepted into evidence he would be advised, and Cr Kieser provided with a copy. Only one document was identified, Schedule 1 – Terms and Conditions (of employment) being the document marked as "N" in the bundle tendered by Cr Archer, and Cr Kieser was provided with a copy.

### **Determination**

As per section 28ZI of the Act the Code of Conduct Panel determines that Cr Greg Kieser has not breached the Code of Conduct, and therefore the Code of Conduct Panel dismisses the complaint.

### **Reasons for determination**

The Code of Conduct Panel considered the information provided by Cr Archer and Cr Kieser, along with supporting statutory declarations presented by witnesses, in addition to the evidence given by Cr Archer, Cr Kieser and Cr Orr at the hearing. The Code of Conduct Panel therefore concludes that Cr Greg Kieser did not breach Parts 1.3, 3.2 and 8.2 of the Code of Conduct which was current at the time of the performance assessment process from March 2023 to July 2023.

Whilst the Panel concluded that Cr Kieser had not breached the Code, it accepts that Cr Archer genuinely felt that the performance assessment process was flawed, and that Cr Kieser behaviour had contributed to this. Cr Archer may have reached this conclusion due to his inexperience coupled with the fact that there was no forum provided by Council for inexperienced councillors to be taken through the process of performance assessment and given the opportunity to raise issues and questions.

Cr Kieser told the hearing of his 25 years' experience when assuring the Panel of his commitment to a robust process and that Council had engaged the services of an experienced Human Resources Consultant, Mr Stephen Blackadder. However, Council, as a whole, is responsible for the terms and condition of the General Manager's employment, and it is imperative that all councillors have a good understanding of their role and responsibilities in this area.

An internal policy document outlining requirements for performance assessment of a General Manager may be something to consider by Council in the future.

The Panel's findings in relation to each of the alleges breaches of the Code follows –

### Part 1.3

The Panel accepts that Cr Kieser did have confidential information regarding the General Manager's interest in the position at a neighbouring council but at the commencement of the performance assessment process he considered it inappropriate to share with his fellow councillors. Whilst he shared the fact that the General Manager was a "flight risk" he felt that was as much as he could reveal under the circumstances. The Panel was satisfied that the basis of the General Manager's performance assessment was made against a pre-determined criteria which was provided to all councillors. No evidence was provided that Cr Kieser had not given genuine and impartial consideration during this process and in recommending to Council an increase of 12% to the General Manager's salary package. The Panel dismisses this part of the Code.

### Part 3.2

The complainant, in his written submissions and statements at the hearing, indicated that he considered that some undue influence had been brought to bear by Cr Kieser during this process to bring about a desired outcome to the benefit of the General Manager. However, whilst there may be some improvements that could be made as noted above to debunk such a perception, no firm evidence was produced that supported Cr Archer's contention that this part of the Code was breached. The Panel dismisses this part of the Code.

### Part 8.2

The complainant alleged that Cr Kieser had misrepresented information by not providing them with details of why he made the statement that the General Manager was a "flight risk" during the performance assessment process. The Panel accepts that Cr Kieser acted in good faith wanting to respect the confidentiality of the General Manager's situation. The Panel dismisses this part of the Code

### 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, for the following reasons –

- The invention of the Christmas/New Year holiday period
- The need to seek additional information from the complainant and respondent
- Additional time for witness statutory declarations to be provided
- Finding a mutually convenient date to hold the hearing

### 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**  
DATE: 26 April 2024



David Palmer  
**Legal Member**



Roseanne Heyward  
**Member**