

**KINGBOROUGH COUNCIL CODE OF CONDUCT**

**Complaint by Mr Malcolm Mars against Deputy Mayor Jo Westwood.**

**Determination made on 1 May 2019**

**Code of Conduct Panel:**

Jill Taylor (Chairperson), Gretel Chen (Legal Member) and Penny Cocker (Member).

**1. Summary of the complaint**

On 11 December 2018 Mr Malcolm Mars lodged a Code of Conduct Complaint (the Complaint) against Deputy Mayor (Cr) Jo Westwood.

Mr Mars alleged that Cr Westwood had breached the following Parts of the Kingborough Councillors Code of Conduct (the Code):

Part 1 - Decision making, Sections 1-4

Part 2 - Conflict of Interest, Sections 1-6

Part 7 - Relationship with Community, Councillors and Council employees, Section 1

The conduct the subject of the Complaint was alleged to have occurred during the course of a Kingborough Council meeting on 26 November 2018 whilst Council was considering the issue of Declared Areas under the *Dog Control Act*.

On 3 January 2019, the Chairperson advised the result of the initial assessment undertaken in relation to the Complaint. The Chairperson dismissed the parts of the Complaint relating to Part 1 - Decision making, and Part 7 - Relationship with Community, Councillors and Council employees. The Complaint relating to Part 1 was dismissed because Mr Mars lodged no information or material that demonstrated that Cr Westwood did not have an open mind when considering the issue of Declared Areas under the *Dog Control Act*. In relation to the Complaint relating to Part 7, the material lodged by Mr Mars indicated that Cr Westwood had engaged with him on the subject matter but had apparently reached a point where she determined that further communication on the matter would be fruitless. The Chairperson formed the view, based on the material lodged, that Cr Westwood's treatment of Mr Mars was fair and reasonable in the circumstances and did not warrant any further consideration.

In relation to Part 2 - Conflict of Interest, the Chairperson determined that this part of the Complaint should be investigated.

A Code of Conduct Panel was formed to investigate the Complaint. Cr Westwood was provided with a copy of the Complaint and invited to provide a response.

Cr Westwood submitted a response to the Complaint and a covering statutory declaration dated 29 January 2019.

**2. Investigation**

The Panel met on 19 February 2019 and agreed that a hearing should be held.

On 2 April 2019, Mr Mars emailed the Executive Officer advising that he wished the matter to be heard on the papers, and did not want to attend a hearing. Cr Westwood was advised of Mr Mars' request and asked if she had any objections to the matter being determined on the papers. She did not.

Therefore on 10 April 2019 the Panel considered the Complaint, including the following material:

- The Complaint dated 11 December 2018 together with attachments
- Cr Westwood's response dated 29 January 2019
- Kingborough Council Agenda for the meeting on 26 November 2018
- Kinborough Council Minutes of the meeting held on 26 November 2018.

Mr Mars contended that Cr Westwood had breached Part 2 Conflict of Interest, Sections 1 – 6, which state:

***PART 2 - Conflict of interests that are not pecuniary***

- 1. When carrying out his or her public duty, a councillor must not be unduly influenced, nor be seen to be unduly influenced, by personal or private interests that he or she may have.*
- 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.*
- 5. A councillor must avoid, and remove himself or herself from, positions of conflict of interest as far as reasonably possible.*
- 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 of the matter begins; and*
  - (b) act in good faith and exercise reasonable judgement to determine whether a reasonable person would consider that the conflict of interest requires the councillor to remove himself or herself physically from any Council discussion and remain out of the room until the matter is decided by the Council.*

The basis of the Complaint was that Cr Westwood failed to declare a conflict of interest in relation to a matter on the Council Agenda of 26 November 2018 relating to Declared Areas under the *Dog Control Act*. Neither Mr Mars nor Cr Westwood provided the Panel with a copy of the relevant Agenda or the Minutes of the Council meeting of 26 November 2018. The Panel obtained a copy of both documents from Council's website.

An Officer's report, prepared by the Executive Manager, Governance and Community Services, and attached to the Agenda noted that:

*At its meeting on 10 September 2018 Council resolved to endorse a Dog Management Policy following an extensive public consultation process.*

The Officer's report continued that it was necessary to formally advertise declared areas identified in the policy and allow 15 days for public submissions. The Officer's report noted that the (proposed) declared areas were advertised and in excess of 78 submissions were received. Full copies of each submission were provided to the councillors for review and consideration.

One of the proposed areas was *Taroona Beach (East of the Boat Ramp)*.

The Officer's report noted that the vast majority of the submissions (77) related to the proposal to declare Taroona Beach (East of the Boat Ramp) as an off-lead area. Forty-one (41) submissions were in support of the proposal and thirty six (36) were opposed.

The Officer’s report summarised the submissions made in support and in opposition and specifically noted that:

*the opposing viewpoints are well presented in the attached submissions from the Kingborough Dog Walking Association and Safe Beaches Tarooma.*

The Officer recommended that Council endorse Tarooma Beach (East of the Boat Ramp) as an off-lead exercise area pursuant to section 20 of the *Dog Control Act 2000*.

The Council Minutes of the meeting held on 26 November 2018 record that the following motion was moved by Cr Westwood and seconded by Cr Street:

*That having considered the submissions received during the statutory public advertising period, Council endorse the declaration of the following areas within the Dog Management Policy endorsed at Council’s 10 September 2018 meeting and advertised on 10 October 2018 in accordance with the provisions of the Dog Control Act 2000, to come into effect via public notice on Friday 30 November 2018, for a period of five years:*

a) *Off-lead dog exercise areas pursuant to Section 20 of the Act:*

- *Tarooma Apex Park*
- *Tarooma Beach (East of the Boat Ramp)*

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FOR

<i>Cr Grace</i>	<i>Cr Street</i>	<i>Cr Wass</i>	<i>Cr Westwood</i>	<i>Cr Winter</i>
<i>Cr Wriedt</i>				

AGAINST

<i>Cr Atkinson</i>	<i>Cr Bastone</i>	<i>Cr Fox</i>	<i>Cr Midgley</i>	
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*Carried*

In the Complaint, Mr Mars states that it was on the “public record” that Cr Westwood has a close relationship with the Kingborough Dog Walking Association (KDWA). In support of this contention he submitted a photograph from Cr Westwood’s Facebook page showing Cr Westwood and the Mayor with a Georgia Clark, of the Kingston Dog Walkers Association (the Association). He believed the photograph supported his assertion of Cr Westwood’s conflict of Interest.

Mr Mars further claimed that Cr Westwood admitted being a former paid up member of the Association.

In her response to the Complaint, Cr Westwood noted that whilst she was a former member of the Association, her membership was in 2007/2008 and 2008/2009 financial years. Cr Westwood was not a councillor at that time and was first elected to Council in 2018.

In response to the Complaint, Cr Westwood stated that she did not have a close relationship with the Association. She added that during her election campaign she educated herself in relation to the *Dog Control Act 2000*, which was “arguably the most topical issue for residents” at the time. During this process she met once with a representative of the Association. Following her election and prior to the 26 November 2018 meeting she also met with a representative of the Safe Beaches Tarooma group, who were opposing the views of the Association.

Attached to the Complaint was a copy of Cr Westwood’s Facebook page dated 16 November (presumably 2018) indicating that she had received a large number of submissions in relation to the Council’s declared areas for dogs. The Facebook page invited others to contribute their views.

### 3. Determination

The Panel dismisses the Complaint.

There was no material put to the Panel to evidence that Cr Westwood had any real, perceived or potential conflict of interest in the *Dog Control Act* matter before Council on 26 November 2018. Nor was there evidence of Cr Westwood bringing a closed, prejudiced or biased mind to the matter.

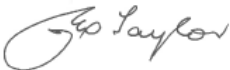
In fact, the material before the Panel indicated that Cr Westwood had undertaken wide consultation to inform herself prior to considering and voting on the matter at the Council meeting held on 26 November 2019. As noted above, comprehensive materials relating to the issue were provided to all elected members prior to the meeting on 26 November 2018 – with some of those materials being in support of the Officer’s recommendation and some being against it.

The Panel is satisfied that Cr Westwood did not have a personal or private interest in the matter and did not need to declare a conflict of interest in it.

The finalisation of this code of conduct complaint has exceeded the statutory 90-day period from the date of the initial assessment. This occurred because of other professional commitments and the absence of some relevant people during the summer holiday period.

### 4. Right to Review

A person aggrieved by the determination of the Code of Conduct Panel is entitled under section 28ZP of the Act to apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination on the grounds that the Code of Conduct Panel has failed to comply with the rules of natural justice.



**Jill Taylor**  
Chairperson



**Gretel Chen**  
Legal Member



**Penny Cocker**  
Member