

*Local Government Act 1993*  
**CODE OF CONDUCT PANEL DETERMINATION REPORT**  
**GEORGETOWN COUNCIL CODE OF CONDUCT**

Complaint brought by Councillor Greg Kieser against Councillor Heather Barwick

**Code of Conduct Panel**

- Ms Sue Smith (Chairperson),
- Ms Sally Darke (Local Government Member)
- Mr Graeme Jones (Legal Member)

**Date of Determination:** 15 October 2020

**Content Manager Reference:** C20798

**Summary of the complaint**

A Code of Conduct Complaint was lodged by Mayor Gregory Kieser through the General Manager of the George Town Council on 12 June 2020.

The Complaint alleged that Councillor Heather Barwick breached the following parts of the Georgetown Council Code of Conduct, approved on 22 January 2019:

*Part 3 (3) Use of Office;*

*In his or her personal dealings with the Council (for example as a ratepayer, recipient of a Council service or planning applicant), a Councillor must not expect nor request, expressly or implicitly, preferential treatment for himself or herself or any other person or body.*

The Complaint alleged that Councillor Heather Barwick breached the following parts of the Georgetown Council Code of Conduct, approved on 22 January 2019:

*Part 7 (3) Relationships with Community, Councillors and Council Employees*

*A Councillor must not contact or issue instructions to any of the Council's contractors or tenderers, without appropriate authorisation.*

**Initial assessment**

On initial assessment under Section 28ZC of the Local Government Act 1993 (the Act), the Chair of the Panel referred the Complaint to the Director of Local Government as a potential breach of the Act. After assessment by the Local Government Division the matter was returned to the Code of Conduct Panel for the Panel to deal with.

The Chairperson conducted a further 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 complaint be investigated.

The complainant, respondent councillor and the General Manager were notified of the outcome of the initial assessment by letter dated 7 August 2020.

## Investigation

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

The Panel forwarded the Complaint and evidentiary documents, including copies of emails sent by the General Manager to Councillor Barwick for her consideration and response. Councillor Barwick responded by providing her evidence which included a Statutory Declaration from Mr Simon French of DIRT ART.

Mr French stated that, having been notified of his unsuccessful tender, he contacted the Mayor and Councillors via email on 1 May 2020. He stated he had not been contacted by any Councillor during the Tender Process, and specifically that he had not been contacted by Councillor Barwick.

As part of his response to the exchange of evidentiary material Mayor Kieser submitted a letter dated 29 April 2020 from DIRT ART to the General Manager in which Mr French raised a number of issues as he was deeply aggrieved by the Tender Process. Mr French did not request a review of the Tender Process, nor did Mayor Kieser tender any evidence that the Council had accepted the correspondence as actionable in triggering a review or any further actions taken with DIRT ART.

Councillor Barwick admitted to the Panel that she had spoken by phone to Mr Leon Lange of Lange Design. She maintained however that Mr Lange had previously invited both members of the public and councillors to contact him with any feedback or questions concerning a certain development. Councillor Barwick submits she was merely seeking "clarification of some aspects of the most recent plan of Regent Square and in no way did I issue instructions or direct Mr Lange on how to do his job". Councillor Barwick contends she "willingly discussed the issue of my communication with Mr Lange, with the General Manager, who I genuinely believe was satisfied with my explanation and my commitment to abide by the rules in the future". This amounted to an admission of breaching Part 7 (3) of the Code.

The following documents were considered as evidence by the Panel:

- Mayor Kieser's Complaint Form and Statutory Declaration dated 12 June 2020 and attachments thereto:
  - email dated Monday June 1 2020 at 8.30am from Leon Lange to Heather Barwick cc David Richardson re Lange Design – Regent Square
  - email dated Monday 1 June 2020 at 11.23am from Shane Power to Cr Heather Barwick re Lange Design – Regent Square
  - email dated Monday 1 June 2020 at 11.32am from Shane Power to Councillors re Councillors' engagement with consultants
- Councillor Barwick's Statutory Declaration dated 20 August 2020 and attachments thereto:
  - Statutory Declaration dated 18 August 2020 from Simon David French
  - a typewritten copy of Cr Barwick's Statutory Declaration.
- Councillor Barwick's Statutory Declaration dated 16 September 2020
- Mayor Kieser's Statutory Declaration dated 21 September 2020 and attachment thereto:
  - Letter from Mr Simon French, Dirt Art dated 29 April 2020

As per Section 28ZG (2)(b) the Code of Conduct Panel determined that a hearing was unnecessary in the circumstances because the investigation could be adequately conducted by the means of written submissions and the examination of documentary evidence.

By letters dated 30 September 2020 the complainant and respondent councillor were notified of the Panel's intention to proceed to determine the complaint without a hearing. Both parties were invited to provide any objection in writing within 7 days. No objections were received.

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.

## Determination

As per section 28ZI of the Act the Code of Conduct Panel determines that Councillor Barwick has not breached Part 3 (3) Use of Office of the Code of Conduct, and therefore the Code of Conduct Panel dismisses this part of the complaint.

As per section 28ZI of the Act the Code of Conduct Panel determines that Councillor Barwick has breached Part 7 (3) Relationships with Community, Councillors and Council Employees of the Code of Conduct and therefore the Code of Conduct Panel upholds this part of the complaint.

## Reasons for determination

The Code of Conduct Panel considered the written submissions and documentary evidence provided by Mayor Kieser and Councillor Barwick.

The Code of Conduct Panel determined that in relation to *Part 3 (3) Use of Office of the George Town Council Code of Conduct*, there was no evidence that Councillor Barwick expected or requested, either expressly or implicitly, preferred treatment for herself or any other person or body.

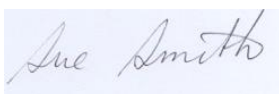
The Code of Conduct Panel determined that in relation to *Part 7 (3) Relationships with Community, Councillors & Council Employees of the George Town Council Code of Conduct*, Councillor Barwick did, on her own admission, contact a Council contractor - namely Mr Lange of Lange Design, without appropriate authorization. The Panel therefore upholds this part of the complaint. The Panel notes Councillor Barwick has subsequently had discussions with the General Manager of the Council in relation to this matter and committed to abiding by the Code in the future.

## Sanction

As per Section 28ZI (2) of the Act the Code of Conduct Panel imposes a caution on Cr Barwick, noting her commitment to abide by the Code in future.

## Right to review

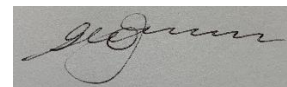
A person aggrieved by the determination of the Code of Conduct Panel is entitled under section 28ZP of the Act to apply to the Magistrates Court (Administrative Appeals Division) for a review of that determination on the ground that the Code of Conduct Panel has failed to comply with the rules of natural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



Sue Smith  
Chairperson



Sally Darke  
Member



Graeme Jones  
Member