

Local Government Act 1993

CODE OF CONDUCT PANEL DETERMINATION REPORT SOUTHERN MIDLANDS COUNCIL CODE OF CONDUCT

Complaint brought by Mr Rick Wilton against Cr Fraser Miller

Code of Conduct Investigating Panel

- Lynn Mason AM (Chairperson),
- Phil Cocker (Local Government Member)
- Steve Bishop (Legal Member)

Date of Determination: 7 August 2025

Content Manager Reference: C36501

Summary of the complaint

A code of conduct complaint was submitted by Mr Rick Wilton to the Southern Midlands Council General Manager on 16 December 2024.

The complaint alleged that Cr Miller breached the following parts of the *Local Government (Code of Conduct) Order 2024* (the Order):

PART 2 - Conflicts of interests that are not pecuniary

1. *A councillor, in carrying out the councillor's public duty, must not be unduly influenced, nor be seen to be unduly influenced, by personal or private interests that the councillor may have.*
2. *A councillor must act openly and honestly in the public interest.*

PART 7 - Relationships with community, councillors and council employees

1. *An elected member must—*
 - (a) *treat all persons fairly; and*
 - (b) *not cause a reasonable person offence or embarrassment; and*
 - (c) *not bully or harass a person.*
2. *A councillor must –*
 - (a) *listen to, and respect, the views of other councillors in council and committee meetings and all other proceedings of the council; and*
 - (b) *endeavour to ensure that issues, not personalities, are the focus of debate.*

PART 8 - Representation

5. *A councillor's personal views must not be expressed publicly in such a way as to –*

(a)

(b) *bring the council into disrepute.*

6. *A councillor must show respect when expressing personal views publicly.*

7. *A councillor's personal conduct must not reflect, or have the potential to reflect, adversely on the reputation of the council.*

The complaint also indicated that Cr Miller may have breached sections 7.3, 7.4, and 7.5 of the Code of Conduct (the Code), as well as sections 8.1, 8.2, 8.3, 8.4, and 8.8. These alleged breaches were dismissed by the Initial Assessor (the Assessor).

Initial assessment

Following receipt of the complaint, the Assessor conducted an 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, the Assessor determined that:

- Although the complaint did not identify the *provisions* of the Code which were alleged to have been breached, there was an identification of a parts of the Code said to have been breached. Those parts identified were Part 7 and Part 8 of the Code. The Assessor noted that in the complaint form, under the section for identifying the provisions of the code that have been breached, Mr Wilton said 'Not acting in the interest of the community'. The relevant provision, or part of the Code, was not specifically identified but the Assessor noted that there are provisions in Part 2 of the Code that may be relevant. The Assessor determined to assess the complaint against provisions 2.1 and 2.2 of the Code as detailed below.
- The Assessor dismissed the complaint as it related to provisions 7.3, 7.4 and 7.5 as each of those provisions were entirely irrelevant and the complaint, and as far as it alleged a breach of those provisions, was therefore entirely without merit. For the benefit of any doubt, the Assessor specified that the complaint did not relate to the contacting of Council contractors for provision 7.3 to apply, or the contacting of Council employees for provision 7.4 to apply. Provision 7.5 requires that a Councillor must not engage in prohibited conduct. Prohibited conduct is as defined in section 17 of the *Anti-Discrimination Act 1998*. That is conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of a listed attribute. There was no suggestion that has occurred in this complaint and accordingly, provision 7.5 of the Code was entirely irrelevant to the complaint and the complaint was without merit in respect to that part. The complaint alleging breaches of provisions 7.3, 7.4 and 7.5 was accordingly dismissed under section 28ZB(1)(a) as it was frivolous or vexatious.
- The Assessor accepted that there were aspects of the complaint that, if proven, could result in a finding of breach of provisions 7.1 and 7.2 of the Code.
- The Assessor dismissed the complaint as it related to provisions 8.1, 8.2, 8.3, 8.4 and 8.8 as each of those provisions appeared to be entirely irrelevant and the complaint of a breach of those parts was therefore entirely without merit. For the benefit of any doubt, the Assessor specified that the complaint did not relate to inaccurate representation of the policies or decisions of Council when giving information to the community for provision 8.1 to apply, or knowingly

misrepresenting information during the councillor's duties for provision 8.2 to apply. Nor did it relate to a councillor speaking on behalf of Council without authorisation for provision 8.3 to apply, or failing to clearly indicate that a view put forward was a personal view. Finally, there was no suggestion in the complaint that provision 8.8 was relevant to the complaint as that provision applies when a councillor has been appointed to represent the Council on an external body. Accordingly, insofar as any part of the complaint alleged breaches of provisions 8.1, 8.2, 8.3, 8.4 and 8.8, it was dismissed under section 28ZB(1)(a) as frivolous or vexatious.

- The Assessor accepted that there were aspects of the complaint that, if proven, could result in a finding of breach of provisions 8.5, specifically 8.5(b), 8.6 and 8.7 of the Code.
- 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 Assessor determined that the complaint should be investigated.

The complainant and the respondent councillor were notified of the outcome of the initial assessment by letter dated 14 February 2025.

Summary of the complaint

The complaint alleged that Cr Miller had:

- Attempted to intimidate Mr Wilton by approaching him in the council chamber at the outset of the Southern Midlands Council meeting held on 26 June 2024, at Broadmarsh;
- Confronted Mr Wilton on 28 June 2024 at the Campania Tavern about 'helping him with his fencing', and failed to move away from Mr Wilton when asked;
- Made an inappropriate gesture to Mr Wilton when as he was leaving the tavern.

The Panel notes that Cr Miller alleged that the date of the relevant encounter at the Campania Tavern was 30 June 2024, not 28 June 2024. The Panel determines that this discrepancy is not material to the complaint.

Investigation

In accordance with section 28ZE of the Act, the Code of Conduct Investigating Panel (the Panel) investigated the complaint. Following the Initial Assessment, the Panel investigated whether Cr Miller breached the following sections of the Code:

PART 2 - Conflicts of interests that are not pecuniary

- 1. A councillor, in carrying out the councillor's public duty, must not be unduly influenced, nor be seen to be unduly influenced, by personal or private interests that the councillor may have.*
- 2. A councillor must act openly and honestly in the public interest.*

¹ 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.

PART 7 - Relationships with community, councillors and council employees

1. An elected member must–

- (a) treat all persons fairly; and*
- (b) not cause a reasonable person offence or embarrassment; and*
- (c) not bully or harass a person.*

2. A councillor must –

- (a) listen to, and respect, the views of other councillors in council and committee meetings and all other proceedings of the council; and*
- (b) endeavour to ensure that issues, not personalities, are the focus of debate.*

PART 8 - Representation

5. A councillor's personal views must not be expressed publicly in such a way as to –

- (a)*
- (b) bring the council into disrepute.*

6. A councillor must show respect when expressing personal views publicly.

7. A councillor's personal conduct must not reflect, or have the potential to reflect, adversely on the reputation of the council.

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

- The complaint submitted by Mr Wilton, attached to a Statutory Declaration dated 16 December 2024, 7 pp;
- Response submitted by Cr Miller, attached to a Statutory Declaration dated 28 February 2025, 4pp, including a Statutory Declaration from Ms Melina Nardi dated 25 September 2025, stamped 25 September 2024, 1 pp;
- Statutory Declaration from Ms Meriki Lee Wilton, 9 April 2025, 2 pp;
- Statutory Declaration from Mr Ricky Albert Wilton, 11 April 2025, 2 pp;
- Statutory Declaration from Cr Fraser Miller, 25 September 2024, 7 pp, including a Statutory Declaration from Dr Melina Nardi, 25 September 2024, 1 pp;
- Statutory Declaration from Mr Andrew Caddle, 21 May 2025, 1 pp;
- Statutory Declaration from Cr Donna Blackwell, 18 July 2025, 1p;
- The *Local Government (Code of Conduct) Order 2024*.

In accordance with section 28ZG of the Act, the Panel determined to conduct a hearing into the matter.

Hearing

As per section 28ZH of the Act, the Code of Conduct Panel held a hearing on 24 July 2025 in the Southern Midlands Council Chambers at Kempton. Cr Miller appeared by video link.

The Chairperson opened the hearing with a statement about the procedures to be followed, and a summary of those parts of the complaint being investigated.

Both Cr Miller and Mr Wilton took the oath or read the affirmation statement prior to giving their evidence or making statements to the Panel.

1. In the matter of the public road to Craighourne Dam which crosses Cr Miller's property, to which Mr Wilton alluded in his complaint, the Panel accepts the statement from Cr Miller that he had acted *openly and honestly when dealing with this matter* (in Council meetings and discussions) and .. (had taken) *no part in any debate or decisions where this issue is concerned*. The Panel determines that participation in council meetings is a key part of a councillor's public duty, and as no evidence was provided to show that Cr Miller had failed this duty in dealing with this matter, the Panel dismisses the complaint that Cr Miller breached Part 2.1 of the Code. The Panel also accepts the statement made by Cr Miller during the hearing, that as a private citizen he has a right to pursue what he considers to be his interests, in this case, closure of the public road which crosses his property.

Mr Wilton said in this complaint that Cr Miller had been *trying to close a public road since 2018 prior to becoming a councillor. Once he became a councillor he has continued to try and close public road (sic) by locking the gate, placing large boulders in the path of the public road from internally on his property...* Mr Wilton reasserted this allegation during the hearing.

2. Cr Miller attempted several times in his written and oral evidence at the hearing to allege that his own approaches to Mr Wilton before the council meeting on 26 June 2024, and again at the Campania Tavern in late June 2024, were in consequence of, and therefore justified by, a long standing dispute between himself and Mr Wilton over the closure of the public road to Craighourne Dam. Mr Wilton also said in the hearing that the dispute had been going on for 8 years, and Cr Miller did not dispute this statement.

However, the task of the Panel was to ascertain whether or not the actions of Cr Miller at the council meeting on 26 June 2024, and at the Campania Tavern on or about 28 June 2024, constituted a breach of the Code. Mr Wilton said that Cr Miller at the council meeting had approached him as he sat in the public gallery waiting for the meeting to start, and had asked him if Mr Wilton *was still up for fencing on the weekend*, the fencing of the Craighourne Dam road being one of the contentious issues between the two men. Cr Miller agreed in making his address to the Panel that this had happened although his recollection of the question he had asked Mr Wilton was *When are you going to fix my fences?*

Mr Wilton asked Cr Miller to move away, to move *'out of my free space'*. He said that he felt threatened by Cr Miller, in that he, Mr Wilton, was seated, and Cr Miller, a man Mr Wilton described as tall, and much younger than himself, stood very close to him and *'loomed'* over him. Mr Wilton noted that at this point a member of council's staff approached him and said words to the effect of *don't let him intimidate you*. The Statutory Declaration from Mr Andrew Caddle, who was sitting next to Mr Wilton at the time, confirms that the exchange with Cr Miller took place. Mr Wilton said that he *did not want to go into a public place and be intimidated by*

somebody. He alleged that Cr Miller had tried to upset him because he was attending the council meeting as a member of the public who wished to speak to the council about the Craighourne Dam access road during Public Question Time. Mr Wilton said that he felt that Cr Miller was trying to *agitate* him before the meeting started.

Mr Wilton told the Panel that Cr Miller had done a similar action at the Campania Tavern on or about 28 June 2024, and again, Mr Wilton considered that it was done by Cr Miller to provoke him.

Cr Miller told the Panel that he considered that his words to Mr Wilton were a 'joke', and that he did not believe that Mr Wilton had ever been intimidated by him. He agreed that he had repeated his 'joke' about fencing on the evening at the Campania Tavern. He told the Panel that Mr Wilton had not *liked the joke* when he made it at the council meeting on 26 June 2024, and that when he repeated it, or similar, at the Campania Tavern a few days later, he described it as *an offhand remark*. Cr Miller denied having made an inappropriate gesture towards Mr Wilton as he (Cr Miller) was leaving the Tavern.

Cr Miller read out an email from the General Manager of Southern Midlands Council, stating that as General Manager he had not been in attendance at the meeting of 24 June 2024 when the meeting started, but that he had been told later that there had been an incident before the meeting started, but that it did not appear to warrant any further action on his part.

In response to a question from the Panel, Cr Miller said that in light of what he called *abuse* from Mr Wilton about Cr Miller's attempts to have the relevant road closed, he thought it appropriate to *try to make light of the situation*.

In answer to further questions from the Panel, Cr Miller said that he had repeated his 'joke' to Mr Wilton at the council meeting, even though he agreed that it was probable from Mr Wilton's reaction the first time he said it that Mr Wilton had *not appreciated the joke*. Cr Miller agreed that Mr Wilton was not amused by Cr Miller's 'joke', and that Mr Wilton had not laughed about it. Cr Miller was then asked why he had repeated the 'joke' at the Tavern, when it was apparent to him at the council meeting a few days before that Mr Wilton was not taking his remarks as a joke. Cr Miller responded that he considered he was *perfectly justified* in *needling* Mr Wilton at the Campania Tavern, in light of the longstanding nature of their dispute.

3. In conclusion Mr Wilton told the Panel that he *just wanted to be able to go into his local tavern and have a beer and not be approached by Cr Miller in any way....I don't want to be asked about fences. It's intimidating to me when he comes up and has a go to try and provoke me. I just want it to stop.*

In his closing statement Cr Miller described Mr Wilton's attempts to prevent closure of the Craighourne Dam road as his *crusade to keep this road open*. He asserted that Mr Wilton was not intimidated by him and repeated his denial of the allegation that he had made an inappropriate gesture to Mr Wilton at the Campania Tavern on or about 28 June 2024.

When asked what he considered would be an appropriate sanction in the event that any part of the complaint were upheld, Cr Miller replied that the complaint should be dismissed. He reiterated his complaint that the Panel had not taken into account the fact that his witness (his wife) was unable to attend the hearing because she was at

work.² The Chairperson reminded Cr Miller that the Panel had offered appearance by video link, and had made several requests for a further statement from the witness, but none had been received.

Determination

As per section 28ZI(c) of the Act, the Code of Conduct Investigating Panel determines that Cr Miller has breached the Code of Conduct. The Panel upholds the complaint that Cr Miller breached Part 7.1 (a), (b), and (c), and Part 8.7 of the Code, and dismisses the complaint that Cr Miller breached Parts 2.1, 2.2, 7.2, 7.2, 8.5(b), and 8.6.

Reasons for determination

That Cr Miller breached Parts 2.1 and 2.2 of the Code, viz.,

PART 2 - Conflicts of interests that are not pecuniary

1. *A councillor, in carrying out the councillor's public duty, must not be unduly influenced, nor be seen to be unduly influenced, by personal or private interests that the councillor may have.*

2. *A councillor must act openly and honestly in the public interest.*

No direct evidence was provided by Mr Wilton to substantiate the allegation that Cr Miller had been unduly influenced in undertaking his duties as a councillor by his personal interest in having the road across his property closed to the public. Cr Miller described the allegation in his response to the complaint as *entirely baseless*, and the Panel determines that as a private citizen, Cr Miller has a right to pursue what he considers to be his interests, in this case, closure of the public road which crosses his property, providing that there is no conflict with his obligations to comply with the Code of Conduct. Given the lack of evidence directly linking Cr Miller to unauthorised closures of the road, or to failing to declare his interest in the matter of closing the road, the Panel dismisses this part of the complaint.³

² In its investigation of the complaint prior to the hearing, the Panel was informed that Mr Wilton's business relied on his being able to deliver his produce on Fridays, and it was not possible for him to change that. He was free on any other day. The Panel was also told that Cr Miller's witness was only available on a Friday, and could not appear in person or by video link as a witness at any other time. The Panel determined that in the circumstances the hearing could not be conducted on a Friday, but to make every effort to accommodate the witness. These efforts received no response.

³ The Panel notes that Item 13.1.2 of the Southern Midlands Council Agenda for the meeting of 26 June 2024 was entitled *Craigbourne Road, Colebrook – Request from F Miller & M Nardi Re: Proposal to close Craigbourne Road (north-eastern section accessed via Link Road, Colebrook)*.

The Panel notes that Item 13.1.2 of the Southern Midlands Council Minutes of the meeting of 26 June 2024 record that Cr Miller declared an interest in Item 13.1.2 and left the meeting room before debate started, and did not return until after the vote was taken. The Minutes also state that the following motion was passed by 5 votes to 1:
THAT:

a) Council re-affirm its previous position that the north-eastern section of Craigbourne Road (accessed via Link Road) remain open; and b) Depending on the above, and subject to the abutting landowners being willing to fence the Craigbourne Road frontage, Council initiate further discussions with Inland Fisheries and Tasmanian Irrigation with the aim of developing a formal area at the end of the road on Tasmanian Irrigation land for vehicle parking and access to Craigbourne Dam, including signs and physical barriers to prevent access to private land.

That Cr Miller breached Part 7.1(a), (b), and (c) of the Code, viz.,

PART 7 - Relationships with community, councillors and council employees

1. An elected member must–

- (a) treat all persons fairly; and*
- (b) not cause a reasonable person offence or embarrassment; and*
- (c) not bully or harass a person.*

The Panel determines that Cr Miller's approach to Mr Wilton at the council meeting in Broadmarsh on 26 June 2024 was unfair to Mr Wilton, in that it seems by its nature to have been a deliberate attempt to unsettle Mr Wilton before he asked his questions in Public Question Time. His approach as a councillor to a member of the public at a council meeting, and in the public gallery, also served to emphasise that in that environment, Cr Miller was a person with some authority as an elected member.

The dispute over the public road had been going on for 8 years. Cr Miller produced no evidence to support his allegation that Mr Wilton had caused damage to his property's fences, so the suggestion that Mr Wilton should assist in repairing those fences could not be seen by a reasonable person as either serious or amusing.

The Panel determines that Cr Miller's repeat of his 'joke' to Mr Wilton in the Campania Tavern on or about 28 June 2024 was essentially his way of mocking and taunting Mr Wilton, and calculated to annoy Mr Wilton. Cr Miller had seen at the council meeting in Broadmarsh that Mr Wilton had not thought his remarks amusing, and had asked Cr Miller twice to move away from him. The Panel determines that this second approach so soon after the first was unfair to Mr Wilton in a public place, where Mr Wilton again asked Cr Miller to move away from him.

Given Cr Miller's standing in the community as a councillor, the Panel determines that his approach and remarks to Mr Wilton in the bar of the Campania Tavern were offensive and embarrassing to Mr Wilton, given the public space in which the incident occurred.

The Panel also determines that Cr Miller's behaviour constituted harassment of Mr Wilton, given that the same unamusing approach was taken towards Mr Wilton in a public place within such a short time.

The only evidence given to support the allegation that Cr Miller had made an inappropriate gesture towards Mr Wilton as he left the Tavern came from Mr Wilton. It was denied by Cr Miller, and there is a possibility of a wave being misconstrued. Since Mr Wilton is the complainant he bears the onus of proof on the balance of probabilities, and the Panel is not affirmatively satisfied that this in fact happened.

In accordance with section 28ZI(1)(c) of the Act, the Panel upholds the complaint that Cr Miller breached Part 7.1(a), Part 7.1(b), and Part 7.1(c) of the Code of Conduct.

That Cr Miller breached Part 7.2 of the Code, viz.,

2. A councillor must –

- (a) listen to, and respect, the views of other councillors in council and committee meetings and all other proceedings of the council; and*

(b) endeavour to ensure that issues, not personalities, are the focus of debate.

No evidence was presented in submissions from Mr Wilton nor at the hearing to support this allegation. The complaint does not relate to exchanges between councillors in meetings or in undertaking their duties as councillors.

In accordance with section 28ZI(1)(c) of the Act, the Panel dismisses the complaint that Cr Miller breached Part 7.2 of the Code of Conduct.

That Cr Miller breached Part 8.5(b), 8.6, and 8.7 of the Code, viz.,

PART 8 - Representation

5. *A councillor's personal views must not be expressed publicly in such a way as to –*

(a)

(b) bring the council into disrepute.

6. *A councillor must show respect when expressing personal views publicly.*

7. *A councillor's personal conduct must not reflect, or have the potential to reflect, adversely on the reputation of the council.*

The Panel determines that the conduct of Cr Miller is not properly characterized as an expression of his personal views for the purpose of a complaint under Parts 8(5) (b) and 8 (6) of the Code. In the view of the Panel, those provisions are directed towards statements of opinion rather than harassing conduct.

The Panel determines that Cr Miller's approach to Mr Wilton at the Campania Tavern on or about 28 June 2024 had the potential to reflect adversely on the reputation of the council. Cr Miller is a public figure, an elected member of the local council. Other members of the public present in the tavern on that occasion were able to see a councillor approach a member of the public and be asked immediately to move away from that member of the public. The Panel determines that this exchange between Cr Miller and Mr Wilton in a public bar had the potential to reflect adversely on the reputation of the council. The Panel therefore upholds the complaint that Cr Miller breached Part 8.7 of the Code of Conduct.

In accordance with section 28ZI(1)(c) of the Act, the Panel upholds the complaint that Cr Miller breached Part 8.7 of the Code of Conduct, and dismisses the complaint that he breached Part 8.5(b) and Part 8.6.

Summary

In accordance with section 28ZI of the Act, the Panel determines that Cr Miller has breached Parts 7.1(a), 7.1(b) and 7.1 (c), and Part 8.7 of the Code of Conduct.

Sanctions

The Panel notes Mr Wilton's desired outcome of the complaint as detailed in his complaint. At the hearing, when asked if he wished to add anything to that outcome, Mr Wilton said that he expected the Panel to deal with sanction in accordance with its responsibilities under the Act.

Cr Miller was asked at the hearing if he wished to make submission on sanction in the event that any part of the complaint was upheld, and he was offered additional time in

which to consider this if he wanted it. Cr Miller said that extra time was unnecessary, and he considered that the complaint should be dismissed in its entirety.

The Panel notes that this is Cr Miller's first term as an elected member of Southern Midlands Council. The Panel also takes into account that Cr Miller has had no previous complaints of breaches of the Code of Conduct brought against him. Nevertheless, the Panel determines that his statement that he considered he was justified in 'needling' Mr Wilton indicates a lack of understanding of proper conduct towards members of his community and merits a warning that such behaviour may discredit the reputation of Southern Midlands Council. The Panel determines that his unfair and offensive and embarrassing treatment of a member of the public, and harassment of that person, merit a sanction greater than a caution.

The Panel reprimands Cr Miller for his breaches of the Code of Conduct.

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 Initial Assessor's determination that the complaint is to be investigated.

The Panel has been unable to determine the Complaint within 90 days, owing to granting extension for responses and appearances, intervening holiday periods, and 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 Tasmanian Civil and Administrative Tribunal for a review of the determination on that ground.



Lynn Mason
Chairperson



Steve Bishop
Member



Philip Cocker
Member

DATE : 7 August 2025