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## Local Government Standards Panel

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| Complaint Number   | SP 2019-077   |
| Legislation        | <i>Local Government Act 1995</i>  |
| <b>Complainant</b> | <b>Mr Stephen Cain</b>  |
| <b>Respondent</b>  | <b>Deputy Mayor Lee-Anne Smith</b>  |
| Local Government   | <b>City of Cockburn</b>   |
| Regulation         | Regulation 7<br>of the <i>Local Government (Rules of Conduct)</i><br><i>Regulations 2007</i>    |
| Panel Members      | Mr Michael Connolly (Presiding Member)<br>Ms Rebecca Aubrey (Member)<br>Mrs Emma Power (Member) |
| Heard              | 8 October 2019<br>Determined on the documents   |
| Finding            | One breach of Regulation 7(1)(a)<br>No breach of Regulation 7(1)(b)                             |

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### FINDING AND REASONS FOR FINDING

Delivered 20 November 2019

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#### DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005*, applies to the further release or publication of all or part of this document or its contents. Accordingly, appropriate caution should be exercised when considering the further dissemination and the method of retention of this document and its contents.



## Summary of the Panel's decision

1. On 8 October 2019, the Panel found that Deputy Mayor Lee-Anne Smith the Deputy Mayor of the City of Cockburn ("**the City**"):
  - a. did commit a minor breach pursuant to the Local Government Act 1995 (WA) ("**the Act**") and regulation 7(1)(a) of the Local Government (Rules of Conduct) Regulations 2007 ("**the Regulations**"); and
  - b. did not commit a minor breach pursuant to the Act and regulation 7(1)(b) of the Regulations,when on 9 August 2019 she made false comments in an interview on ABC Radio Perth in respect to a notice of motion raised by her in relation to off road motor vehicle use which was discussed (but not passed) at the Ordinary Council Meeting of 8 August 2019 as set out in paragraph 16 below.

## The Panel's Role

2. Under section 5.110(2) of the Act the Panel is required to consider a minor breach complaint and make a finding as to whether the alleged minor breach occurred.
3. The Act provides for the circumstances in which a council member commits a minor breach.<sup>1</sup>
4. The Panel may make a finding that a councillor has committed a minor breach of the Act and Regulations based on evidence from which it may be concluded that it is more likely that the alleged breach occurred than it did not occur.<sup>2</sup>
5. In order to find a breach, it must be established that each element of the relevant Regulation is more likely than not to have been breached or met.
6. In considering whether a minor breach is established the Panel must consider:
  - a. all evidence provided and, where there are conflicting circumstances, inferences or evidence, must come to a reasonable conclusion that any circumstance, inference or evidence relied upon is more likely than not to have occurred or be accurate<sup>3</sup>; and
  - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding<sup>4</sup>.
7. The Panel does not possess investigative or supervisory powers.<sup>5</sup> The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials published by the relevant local authority's website.
8. It is the responsibility of both complainants and respondents to provide the Panel with all information they wish the Panel to consider when making its determination.
9. The Panel also must have regard to the general interests of local government in Western Australia<sup>6</sup>.

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<sup>1</sup> Section 5.105 of the Act

<sup>2</sup> Section 5.106 of the Act

<sup>3</sup> Bradshaw v McEwans Pty Ltd (1951) 217 ALR 1

<sup>4</sup> Briginshaw v Briginshaw (1938) 60 CLR 336

<sup>5</sup> Re and Local Government Standards Panel [2015] WASC 51 (at paragraph 24)

<sup>6</sup> Section 8(6) of Schedule 5.1 of the Act



10. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

## Regulation 7

11. Regulation 7 prohibits councillors engaging in conduct to either gain an advantage for themselves (or another party) or cause detriment to another party and specifically provides as follows:

### ***“7. Securing personal advantage or disadvantaging others***

- (1) *A person who is a council member must not make improper use of the person’s office as a council member —*
  - (a) *to gain directly or indirectly an advantage for the person or any other person; or*
  - (b) *to cause detriment to the local government or any other person.*
- (2) *Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.*

## Jurisdiction and Procedural Fairness

12. On 23 August 2019 the Panel received an email enclosing a letter dated 23 August 2019 from Mr Stephen Cain, acting as complaints officer of the City (**“the Complaints Officer”**). The same enclosed a Complaint of Minor Breach Form (with attachments) dated 23 August 2019.
13. In his letter of complaint Mr Cain alleges that in making false statements to ABC Radio Perth on 9 August 2019 as specified in paragraph 16 below, Deputy Mayor Smith has breached:
  - a. regulation 7(1)(a) of the Regulations as her actions were intended as self-promotion and to advantage her relationship with the Treeby Community Association (**“Allegation 1”**); and
  - b. regulation 7(1)(b) of the Regulations as the actions of Deputy Mayor Smith caused detriment to the City, with considerable staff time and resources subsequently expended to correct the false statements (**“Allegation 2”**).
14. The Panel convened on 8 August 2019 to consider the Complaint.
15. The Panel:
  - a. accepted the advice of the Department of Local Government, Sport and Cultural Industries (**“the Department”**) that, based on information published on the Western Australian Electoral Commission’s website, Deputy Mayor Smith was:
    - i. last elected to the Council of the City in October 2017 for a term expiring in October 2021;
    - ii. a Councillor at the time of the alleged breach; and
    - iii. a Councillor when the Panel met on 8 August 2019;
  - b. was satisfied the Complaint was made within six months after the alleged breach occurred<sup>7</sup>;

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<sup>7</sup> Section 5.107(4) and 5.109(2) of the Act

- c. was satisfied that the City's Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach<sup>8</sup>;
- d. was satisfied the Department had provided procedural fairness to Deputy Mayor Smith; and
- e. found it had jurisdiction to consider the Complaint.

### The Specifics of the Complaint

16. The Complainant provided the following background and assertions:

- a. On 24 July 2019 Deputy Mayor Smith lodged (via email) the following Notice of Motion (NOM):  
*"That Council set up a reference group to investigate suitable land within the City for off road motor vehicle/ motor cycle use".*
- b. This NOM was listed for consideration at the August Ordinary Council meeting of 8 August 2019 (**"the OCM"**).
- c. On 1 August 2019 the Agenda for the OCM was briefed to the City's Elected Members by the City's Director of Governance and Community Services, Mr Don Green. The NOM was listed for consideration as item 19.1. The officer recommendation did not support Deputy Mayor Smith's proposal and put the following recommendation for Council to consider:  
*"That Council coordinate a meeting with the Treeby Community Association and WA Police to discuss the extent of off-road vehicle activity occurring in the Treeby locality and investigate solutions to these concerns".*
- d. Deputy Mayor Smith was in attendance at the Agenda Briefing and asked a number of questions on the City's proposal for item 19.1.
- e. During the questions Deputy Mayor Smith said *"I think that's why the idea of having the reference group to come together so they can understand that"*;
- f. Mr Green responded stating *"I'm not sure whether, as I say, we're not recommending a reference group at this point in time"*;
- g. The City believes that details of the officer's recommendation were quite clearly explained to those in attendance.
- h. For the purposes of the OCM, the Administration prepared the running sheet for the Council meeting. This listed any alternate recommendation that had been raised since the Agenda briefing for consideration at the OCM. No alternative had been raised for item 19.1 which comprised the officer's recommendation, not the NOM proposition raised by Deputy Mayor Smith.
- i. At the OCM item 19.1 on was passed unanimously as part of an "en bloc" motion. Each council member (including Deputy Mayor Smith) made a declaration that they had given due consideration to the items on the agenda and moving of the relevant items;
- j. 9 August 2019 (9:13am) ABC Radio Perth ran an item on illegal use of road vehicles in the bushland. Deputy Mayor Smith, of her own volition, rang into broadcast and made a series of comments that were patently false.

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<sup>8</sup> Section 5.107 and 5.109 of the Act

- k. During the interview Deputy Mayor Smith made the following comments:  
*"Well, I'm actually I'm delighted to be able to say that a motion I put to explore the potential of having an off-road track. It was voted unanimously no debate. So it's on the table."*
- l. Deputy Mayor Smith's NOM was not the one agreed to by Council.
- m. Deputy Mayor Smith also mentioned the formation of a reference group, however, the Council resolution did not include formation of a reference group.
- n. Deputy Mayor Smith further made mention of certain land within the City that may be suitable for the purpose of off road driving;
- o. Deputy Mayor Smith spoke on behalf of the City during the Radio broadcast. Deputy Mayor Smith did not have the authorisation from the City's Mayor, Logan Howlett, to make statements on behalf of the City.
- p. The information provided by Deputy Mayor Smith through the media to the public was false.
- q. On 9 August 2019 Deputy Mayor Smith had sent correspondence to the City's Director Governance and Community Services, Mr Don Green, seeking to go onto the reference group. Mr Green responded later that morning (after the Radio interview has occurred) noting that the Council decision did not include a decision to establish a reference group.
- r. A further email exchange with Deputy Mayor Smith occurred in which she stated that the passed motion wasn't the NOM "I put up".
- s. While Deputy Mayor Smith may have been confused, she had indicated at the OCM that she had "given due consideration" to the relevant motion. The questions asked by Deputy Mayor Smith at the Agenda briefing also indicated she knew that the officers were not recommending a reference group be established.
- t. Based on the comments by Deputy Mayor Smith, on 9 August 2019 the ABC's Facebook page issued a statement that included a statement that the City of Cockburn wanted to create another off-road vehicle area. This is not the position of the City and there is no Council resolution to this effect.
- u. Subsequently several of the City's Elected Members contacted Mayor Howlett to complain about the comments made by Deputy Mayor Smith.
- v. On the 3 August 2019 Mayor requested the matter be reviewed by the Administration of the City, and advice was sought by the City.
- w. On 14 August 2019 the City issued a statement to the ABC and put out a formal media statement to correct the misinformation conveyed by Deputy Mayor Smith. These actions were only necessary because of Deputy Mayor Smith's false media statements.
- x. It is the City's view that in going to the media to speak on this matter Deputy Mayor Smith's actions were intended as self-promotion and to advantage her relationship with the Treeby Community Association.
- y. The statements made by Deputy Mayor Smith were not authorised by the Mayor and contained a number of false elements.
- z. The actions of Deputy Mayor Smith caused detriment to the City, with considerable staff time and resources subsequently expended to correct this position.



- aa. The City has provided several training sessions for its Elected Members on their roles and responsibilities, as well as authority to engage with the media. Deputy Mayor Smith has been in attendance at several of these. It is the City's view that Deputy Mayor Smith was fully aware that she did not have authorisation to speak on the City's behalf.
- 17. In addition, the City provided several attachments supporting the allegations made above.

### **Respondent's Response**

- 18. On 3 September 2019 the Department requested comment from Deputy Mayor Smith in respect to the Complaint. A further email was sent on 24 September 2019.
- 19. Deputy Mayor Smith did not provide a response to the Complaint.

### **Regulation 7**

- 20. To make a finding of a minor breach of regulation 7 of the Regulations the Panel must be satisfied to the required standard that:
  - a. Deputy Mayor Smith was an elected member at the time of the alleged breach and the time of the determination;
  - b. Deputy Mayor Smith made use of her office as Council member of the City;
  - c. when viewed objectively, such use was an improper use of Deputy Mayor Smith's office in that it:
    - i. involved a breach of the standards of conduct that would be expected of a person in the position of councillor by reasonable persons; and
    - ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty; and
  - d. either:
    - i. in respect to Regulation 7(1)(a) – Deputy Mayor Smith engaged in the conduct in the belief that an advantage would be gained directly or indirectly for herself (or any other person); or
    - ii. in respect to Regulation 7(1)(b) – Deputy Mayor Smith engaged in the conduct in the belief that detriment would be suffered by another person.

### **Panel's Consideration**

#### **Allegation 1 – Regulation 7(1)(a)**

##### **Deputy Mayor Smith was an Elected Member at the relevant times**

- 21. Deputy Mayor Smith was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
- 22. This element is met.

##### **Deputy Mayor Smith made use of her office as Council Member of the City**

- 23. Due to the facts that:





- a. in the ABC Radio interview Deputy Mayor Smith was identified as an elected member; and
  - b. the matter being discussed was a matter before Council and the subject of a recent Council motion, which was expressly referenced by Deputy Mayor Smith, the Panel finds, to the required standard, that Deputy Mayor Smith made use of her office as a council member.
24. This element is met.
- Deputy Mayor Smith's use was improper
25. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or a lack of wisdom<sup>9</sup>. It requires an abuse of power or the use of the councillor's position in a manner that such councillor knew (or ought to have known) was not authorised.
  26. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent<sup>10</sup>.
  27. Any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context including the specifics of the relevant event as well as councillor's formal role and responsibilities.
  28. Councillors must balance their responsibilities to the community with their obligations under the Regulations. As specifically set out in *Bradley and Local Government Standards Panel* [2012] WASAT 44; (2012) 80 SR (WA) 69 at [45]:  
*"Local councillors do a critical, necessary and difficult job; they attempt to represent local opinion which is not always an easy task..... They do not always get things right..... But they are not to be criticised for attempting to represent their constituency and community interests to the best of their abilities. Their job should not be made even more difficult by the imposition of unworkable rules that, in effect, limit what they may say when they are undertaking these critical functions."*
  29. The Complainant alleges that Deputy Mayor Smith acted improperly as:
    - a. Deputy Mayor Smith was not authorised to speak on behalf of the Council; and
    - b. Deputy Mayor Smith's statements to the media were false and did not correctly represent the motion that had actually been passed by Council or the Council's position.
  30. The City has an Elected Member Code of Conduct dated May 2018 ("**the Code of Conduct**"). The relevant sections of the Code of Conduct are as follows:  
*" 3.1 Elected Members shall act and be seen to act;  
.....  
• to communicate and confirm Council decisions and policies in a positive and proactive manner in the community, regardless of the level of personal support for Council's collective decisions;"*  
  
*" 4.3 All aspects of communication by Elected Members (verbal or written) involving Council activities, should reflect the status and objectives of Council and should be accurate, polite and professional."*

<sup>9</sup> Complaint of Minor Breach No. SP 3 of 2013

<sup>10</sup> *Chew v R* [1992] HCA 18



**“ 5. MEDIA & EXTERNAL COMMUNICATION**

*5.1 Unless acting in an authorised capacity as a Council spokesperson pursuant to the local Government Act, 1995:*

- (a) Councillors shall not speak, attempt to speak or give the perception of speaking on behalf of the local government;*
- (b) Councillors should ensure that statements made to the media are identified as their opinions only and do not necessarily represent the position of Council; and*
- (c) Subject to Clauses (a) and (b) above, an Elected Member may choose to make a personal statement publicly on a matter related to Council business. Elected Members approached by the media for a personal statement may request the assistance of the Chief Executive Officer, or authorised delegate, in preparing a response.*

.....

*5.2 (a) Elected Members are responsible for the content they publish in a personal capacity on any form of social media platform and in this regard must understand their legal obligations.*

.....

- ensure that all content published is accurate and not misleading and complies with all relevant City policies and legislative requirements;”*

31. The Panel finds that it is more likely than not that Deputy Mayor Smith was not speaking with the authority of the City however, in breach of section 5.1 of Code of Conduct, gave the impression she was speaking on behalf of the City.
32. In addition, although the Panel does not consider that Deputy Mayor Smith purposefully misrepresented the resolution that was made by Council, it finds that it is more likely than not that she did not take adequate care to understand the motion that was passed and ensure that her comments were accurate in that respect.
33. Further, although the Panel does not find that the allegations by the Complainant are wholly accurate in respect to Deputy Mayor Smith’s comments on the evidence provided, the Panel does find to the required standard that Deputy Mayor Smith’s statements were, as a whole, misleading to the media and the community at large to the degree that the same required rectification by the City.
34. Given the above, the Panel finds that it is more likely than not that the conduct by Deputy Mayor Smith was improper as such conduct:
  - a. was in breach of the Code of Conduct;
  - b. was of such a nature that a reasonable individual would consider the same to be inappropriate or not in keeping with the conduct that would be expected of a councillor; and
  - c. is deserving of a penalty.
35. This element is met.

Deputy Mayor Smith intended an advantage to be gained directly or indirectly





36. The definitions of the noun 'advantage' in the Shorter Oxford English Dictionary (6<sup>th</sup> ed) include: a favouring circumstance; something which gives one a better position, benefit; increased well-being or convenience or pecuniary profit.
37. The Panel considers the term 'advantage' in regulation 7(1)(a) is to be construed widely, and includes a financial or a non-financial benefit, gain or profit, or any state, circumstance, opportunity or means specially favourable.<sup>11</sup>
38. It is alleged that Deputy Mayor Smith's engaged in the relevant conduct for the purpose of securing advantage to herself:
  - a. by way of public promotion; and
  - b. to advance her relationship with the Treeby Community Association
39. The Panel finds to the required standard that the main motivation for making the relevant statements to the media was for the purpose of positively promoting Deputy Mayor Smith's involvement with an initiative that was likely to be publicly popular and would enhance her standing in the community and with local associations (including the Treeby Community Association).
40. In particular, Deputy Mayor Smith refers to "*a motion I put*", which clearly imputes a desire to take a certain amount of credit for the Council's decision.
41. Although intending to gain such an advantage is not wrongful in itself, and councillors should be acknowledged for their support and advancement of community issues, the fact that the information that was provided was misleading indicates a primary intent of self-promotion rather than to simply provide information to the community.
42. As such, the Panel finds that it is more likely than not that Deputy Mayor Smith did intend to advantage herself and her position by making the relevant comments on ABC Radio.
43. This element is met.

#### Conclusion

44. Given the above, the elements required to find a breach of regulation 7(1)(a) of the Regulations have been met.

#### **Allegation 2 – Regulation 7(1)(b)**

##### Deputy Mayor Smith was an Elected Member at the relevant times

45. Deputy Mayor Smith was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
46. This element is met.

##### Deputy Mayor Smith made use of her office as Council Member of the City

47. Due to the facts that:
  - a. in the ABC Radio interview Deputy Mayor Smith was identified as an elected member;
  - b. the matter being discussed was a matter before Council and the subject of a recent Council motion,

<sup>11</sup> Complaint SP 12 and 13 of 2011



the Panel finds, to the required standard, that Deputy Mayor Smith made use of her office as a council member.

48. This element is met.

Cr Deputy Mayor Smith's use was improper

49. As set out above in paragraphs 25 to 34 inclusive above, the Panel has found that it is more likely than not that Deputy Mayor Smith's conduct was improper.

50. This element is met.

Deputy Mayor Smith intended detriment to be suffered

51. "Detriment" means loss, damage or injury. It is construed widely and includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage.

52. It is not necessary to find whether any detriment was actually suffered<sup>12</sup>, but an intent to cause such detriment must be established.

53. The Complainant states that the actions of Deputy Mayor Smith caused detriment to the City and expended considerable staff time and resources, however, there is no assertion as to the intent of Deputy Mayor Smith.

54. The Panel finds that it is more likely than not that Deputy Mayor Smith did not intend to disadvantage the City or any other party. To the contrary it would appear she intended to show the City in a positive light.

55. As such, the Panel finds that it is more likely than not that Deputy Mayor Smith did not intend to directly cause damage or detriment to the City or any other party.

56. This element is not met.

Conclusion

57. The elements required to find a breach of regulation 7(1)(b) of the Regulations have not been met.

**Panel's Findings**

58. In respect to Allegation 1 Deputy Mayor Smith did commit a breach of Regulation 7(1)(a) of the Regulations and therefore did commit a minor breach.

59. In respect to Allegation 2 Deputy Mayor Smith did not commit a breach of Regulation 7(1)(b) of the Regulations and therefore did not commit a minor breach.

  
Mick Connolly (Presiding Member)

  
Rebecca Aubrey (Deputy Member)

  
Emma Power (Member)

<sup>12</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



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## Local Government Standards Panel

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| Complaint Number                           | SP 2019-077   |
| Legislation                                | <i>Local Government Act 1995 (WA)</i>   |
| <b>Complainant</b>                         | <b>Mr Stephen Cain</b>  |
| <b>Respondent</b>                          | <b>Councillor Lee-Anne Smith</b>  |
| <b>Local Government</b>                    | <b>City of Cockburn</b>   |
| Regulation                                 | Regulation 7(1)(a)<br>of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>                 |
| Panel Members for<br>Penalty Consideration | Mr Michael Connolly (Presiding Member)<br>Ms Elanor Rowe (Deputy Member)<br>Ms Rebecca Aubrey (Deputy Member) |
| Heard                                      | 8 October 2019<br>Determined on the documents   |
| Penalty Considered                         | 16 December 2019  |
| Outcome                                    | Public Apology  |

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### PENALTY DECISION AND REASONS FOR DECISION

Delivered 29 January 2020

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## Introduction

1. At its meeting on 8 October 2019, the Panel found that Councillor Lee-Anne Smith ("Cr Smith"), a council member of the City of Cockburn ("the City") committed one breach of regulation 7(1)(a) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) ("the Regulations") when on 9 August 2019 she made false comments in an interview on ABC Radio Perth in respect to a notice of motion raised by her in relation to off road motor vehicle use which was discussed (but not passed) at the Ordinary Council Meeting of 8 August 2019.
2. On 20 November 2019 the Panel published its Finding and Reasons for Finding ("Findings") that Cr Smith had breached Regulation 7(1)(a). The Panel reviewed all the evidence presented to it and said:
  - "31. The Panel finds that it is more likely than not that Deputy Mayor Smith was not speaking with the authority of the City however, in breach of section 5.1 of Code of Conduct, gave the impression she was speaking on behalf of the City.
  32. In addition, although the Panel does not consider that Deputy Mayor Smith purposefully misrepresented the resolution that was made by Council, it finds that it is more likely than not that she did not take adequate care to understand the motion that was passed and ensure that her comments were accurate in that respect.
  33. Further, although the Panel does not find that the allegations by the Complainant are wholly accurate in respect to Deputy Mayor Smith's comments on the evidence provided, the Panel does find to the required standard that Deputy Mayor Smith's statements were, as a whole, misleading to the media and the community at large to the degree that the same required rectification by the City.

.....

  39. The Panel finds to the required standard that the motivation for making the relevant statements to the media was for the purpose of positively promoting Deputy Mayor Smith's involvement with an initiative that was likely to be publicly popular and would enhance her standing in the community and with local associations.....
  40. In particular, Deputy Mayor Smith refers to "*a motion I put*", which clearly imputes a desire to take a certain amount of credit for the Council's decision.
  41. Although intending to gain such an advantage is not wrongful in itself, and councillors should be acknowledged for their support and advancement of community issues, the fact that the information that was provided was misleading indicates a primary intent of self-promotion rather than to simply provide information to the community."

## Jurisdiction

3. The Panel convened on 16 December 2019 to consider how it should deal with the Minor Breach. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries ("the Department") that on this date there was no available information to indicate that Cr Smith had ceased to be or was disqualified from being a councillor.



## Possible Sanctions

4. Section 5.110(6) of the *Local Government Act 1995* (WA) ("the Act") provides that the Panel is to deal with a minor breach by:
  - (a) *dismissing the complaint;*
  - (b) *ordering that —*
    - (i) *the person against whom the complaint was made be publicly censured as specified in the order;*
    - (ii) *the person against whom the complaint was made apologise publicly as specified in the order; or*
    - (iii) *the person against whom the complaint was made undertake training as specified in the order;*
  - or*
  - (c) *ordering 2 or more of the sanctions described in paragraph (b).*
5. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach. The Panel may dismiss a complaint under section 5.110(6)(a), not to reverse the Panel's finding of a breach, but to indicate that in all the circumstances the councillor should not be penalised and the breach should not be recorded against the councillor's name.

## Councillor Smith's Submissions

6. If the Panel finds that a councillor has committed a minor breach, it must give the councillor an opportunity to make submissions to the Panel about how it should deal with the breach under section 5.110(6).<sup>1</sup>
7. By a letter dated 21 November 2019, Cr Smith was:
  - a. notified of the Panel's finding of the minor breach;
  - b. provided with a copy of the Panel's Findings; and
  - c. offered an opportunity to make submissions as to how the minor breach should be dealt with under section 5.110(6) of the *Act*.
8. In an email dated 9 December 2019, the Department received a response from Cr Smith in which she stated as follows:
  - a. she was confused by the motion put forward by the City's officers;
  - b. the ABC contacted her (she did not contact them);
  - c. the City often has Elected Members speaking on radio and television giving interviews and the City's policy allows for this so long as they are speaking on their own behalf; and
  - d. she was excited as she thought it was a positive opportunity for the City; she did not think she had done anything wrong.

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<sup>1</sup> *Local Government Act 1995* (WA), s 5.110(5).



### Panel's consideration

9. The Panel has considered Cr Smith's submissions as to how the Complaint should be dealt with. In her response, Cr Smith continues to defend and explain her conduct and does not appear to accept why she was found to have committed a breach of the Act; nor is she remorseful for her actions.
10. The Panel found that Cr Smith made misleading statements to the media and the community that ultimately required rectification by the City. The Panel does not consider that dismissal of the Complaint is appropriate because this would indicate that the breach is so minor that no penalty is warranted.
11. However, the Panel also does not consider it is appropriate to make an order for censure for Cr Smith's actions in this matter, as they are not so serious to justify such an order. When the Panel makes an order that a Notice of Public Censure be published, the Notice is published by the local government's CEO, at the expense of the local government; such expense is significant where the Notice is to be published in a newspaper or newspapers.
12. The options left for the Panel to consider are to order Cr Smith to undertake training or make a Public Apology (or both).
13. Cr Smith's comments were published publicly on radio. In the circumstances, a public apology is appropriate as it reflects the widespread impact of Cr Smith's misleading statements and may go some way to repairing the damage caused by her conduct. An apology in public is also appropriate when a councillor's conduct does not meet the standards other councillors seek to uphold.
14. The Panel considers a public apology to the Council and the City is the appropriate penalty.

### Panel's decision

15. Having regard to the Findings, the matters set out herein, and the general interests of local government in Western Australia, the Panel's decision on how the Minor Breach is to be dealt with under s5.110(6) of the Act, is that pursuant to subsection (b)(ii) of that section, Cr Smith is ordered to publicly apologise for her conduct.

Mick Connolly (Presiding Member)

Elanor Rowe (Deputy Member)

Rebecca Aubrey (Deputy Member)





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## ORDER

Delivered 29 January 2020

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### THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Lee-Anne Smith, a Councillor for the City of Cockburn publicly apologise to the Council and the City, as specified in paragraphs 2 and 3 below.
2. At the ordinary council meeting first occurring after the expiration of 28 days from the date of service of this Order on her, Councillor Smith shall:
  - a. attend the relevant ordinary council meeting;
  - b. ask the presiding person for his or her permission to address the meeting to make a public apology to the public;
  - c. make the apology immediately after Public Question Time or during the Announcements part of the meeting, or at any other time when the meeting is open to the public, as the presiding person thinks fit; and
  - d. address the Council and public as follows, without saying any introductory words before the address, and without making any comments or statement after the address:

"I advise this meeting that:

- i. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) when I made false comments in an interview on ABC Radio Perth in respect to a notice of motion raised by me in relation to off road motor vehicle use which was discussed (but not passed) at the Ordinary Council Meeting of 8 August 2019.
- ii. The Panel found that by behaving in this manner I made improper use of my office as Councillor with the intention of advantaging myself thereby committing one breach of Regulation 7(1)(a) of the Local Government (Rules of Conduct) Regulations 2007.
- iii. I accept that I should not have acted in such a manner and I apologise to the Council and the City for having done so."



3. If Cr Smith fails or is unable to comply with the requirements of paragraph 2 above then within the next 28 days following the ordinary council meeting referred to in paragraph 2, she shall cause the following notice of public apology to be published in no less than 10 point print, as a one-column or two-column display advertisement in the first 10 pages of the "Cockburn Gazette" newspaper:

**PUBLIC APOLOGY BY COUNCILLOR LEE-ANNE SMITH**

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) when I made false comments in an interview on ABC Radio Perth in respect to a notice of motion raised by me in relation to off road motor vehicle use which was discussed (but not passed) at the Ordinary Council Meeting of 8 August 2019.

The Panel found that by behaving in this manner I made improper use of my office as Councillor with the intention of advantaging myself thereby committing one breach of Regulation 7(1)(a) of the Local Government (Rules of Conduct) Regulations 2007.

I accept that I should not have acted in such a manner and I apologise to the Council and the City for having done so.

Mick Connolly (Presiding Member)

Elanor Rowe (Deputy Member)

Rebecca Aubrey (Deputy Member)



## NOTICE TO THE PARTIES TO THE COMPLAINT RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (the Panel) advises:

- (1) Under section 5.125 of the *Local Government Act 1995* the person making a complaint **and** the person complained about each have the right to apply to the State Administrative Tribunal (the SAT) for a review of the Panel's decision in this matter. In this context, the term "decision" means a decision to dismiss the complaint or to make an order.
- (2) By rule 9(a) of the *State Administrative Tribunal Rules 2004*, subject to those rules an application to the SAT under its review jurisdiction **must be made within 28 days of the day on which the Panel (as the decision-maker) gives a notice** [see the Note below] under the *State Administrative Tribunal Act 2004 (SAT Act)*, section 20(1).
- (3) The Panel's ***Breach Findings and these Findings and Reasons for Finding – Sanctions***, constitute the Panel's notice (i.e. the decision-maker's notice) given under the *SAT Act*, section 20(1).

### **Note:**

- (1) This document may be given to a person in any of the ways provided for by sections 75 and 76 of the *Interpretation Act 1984*. [see s. 9.50 of the *Local Government Act 1995*]
- (2) Subsections 75(1) and (2) of the *Interpretation Act 1984* read:
  - "(1) Where a written law authorises or requires a document to be served by post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, **service shall be deemed** to be effected by properly addressing and posting (by pre-paid post) the document as a letter to the last known address of the person to be served, and, **unless the contrary is proved, to have been effected at the time when the letter would have been delivered in the ordinary course of post.** [Bold emphases added]
  - (2) Where a written law authorises or requires a document to be served by registered post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, then, if the document is eligible and acceptable for transmission as certified mail, the service of the document may be effected either by registered post or by certified mail."
- (3) Section 76 of the *Interpretation Act 1984* reads:

"Where a written law authorises or requires a document to be served, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, without directing it to be served in a particular manner, service of that document may be effected on the person to be served —

  - (a) by delivering the document to him personally; or
  - (b) by post in accordance with section 75(1); or
  - (c) by leaving it for him at his usual or last known place of abode, or if he is a principal of a business, at his usual or last known place of business; or
  - (d) in the case of a corporation or of an association of persons (whether incorporated or not), by delivering or leaving the document or posting it as a letter, addressed in each case to the corporation or association, at its principal place of business or principal office in the State."