



Local Government Standards Panel

Complaint Number	SP2018-122
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Arthur Kyron Chief Executive Officer
Respondent	Councillor Jesse Jacobs
Local Government	City of Canning
Regulation	Regulations 7 and 8 of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Ms Sarah Rizk (Presiding Member) Ms Elanor Rowe (Deputy Member) Ms Rebecca Aubrey (Deputy Member)
Heard	26 April 2019 Determined on the documents
Outcome	Two breaches of regulation 7(1) Two breaches of regulation 8

FINDING AND REASONS FOR FINDING

Published 27 May 2019

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Summary of the Panel's decision

1. The Local Government Standards Panel ("the Panel") found that Councillor Jesse Jacobs ("Cr Jacobs"), a councillor for the City of Canning ("the City"), committed four breaches under the *Local Government Act 1995* (WA) ("the Act") and regulations 7 and 8 of the *Local Government (Rules of Conduct) Regulations 2007* ("the Regulations") when he published and distributed flyers with the City's logo to residents on 7 and 13 August 2018.

Jurisdiction and procedural fairness

2. The Act makes provision for the circumstances in which a council member commits a minor breach.¹
3. On 7 December 2018 the Department of Local Government, Sport and Cultural Industries ("the Department") received a Complaint of Minor Breach Form dated 19 November 2018 ("Complaint"). The Complaint was signed by the Chief Executive Officer of the City, Mr Arthur Kyron ("Complainant") and contained the following allegations:
 - a. one allegation of a breach of regulation 7 and one allegation of a breach of regulation 8 in relation to a flyer with the City's logo regarding a proposed new runway at Perth Airport distributed to residents in or around 7 August 2018; and
 - b. one allegation of a breach of regulation 7 and one allegation of a breach of regulation 8 in relation to a flyer with the City's logo regarding saving Australia Post mailboxes distributed to residents in or around 13 August 2018.
4. On 13 December 2018, the Department advised Cr Jacobs of the Complaint and invited him to respond. The Department sent Cr Jacobs a copy of the original Complaint and all the supporting documents provided by the Complainant.
5. Under the Act, the Panel is required to consider a complaint of a minor breach and make a finding as to whether the alleged breach occurred.² On 26 April 2019 the Panel convened to consider the Complaint.
6. The Panel:
 - (a) accepted the Department's advice, based on information from the Western Australian Electoral Commission, that Cr Jacobs was a councillor at the time of the alleged breaches, having been elected on 17 October 2015, and was still a Councillor when the Panel met on 26 April 2019;
 - (b) was satisfied the Complaint had been made within two years after the alleged breaches are said to have occurred³;

¹ Section 5.105 of the Act.

² Section 5.110(2)(a) of the Act.

³ Section 5.107(4) of the Act



- (c) was satisfied the Complaint had been dealt with in accordance with the administrative requirements in the Act for dealing with complaints of minor breaches⁴; and
- (d) was satisfied that the Department had provided procedural fairness to Cr Jacobs.
7. If a councillor has previously committed two or more minor breaches, the Panel may send the complaint to the Chief Executive Officer of the department assisting the relevant Minister at the time instead of considering the Complaint itself.⁵ Cr Jacobs had previously been found to have committed one minor breach therefore the Panel did not consider sending the Complaint to the Chief Executive Officer of the Department.
8. Based on the information referred to in paragraphs 2 to 7 above the Panel found it had jurisdiction to determine whether Cr Jacobs had breached regulations 7 and 8 in connection with the Complaint.

Panel's role

9. The Panel is not an investigative body. It determines complaints of minor breaches solely upon the evidence presented to it.
10. Any finding, that a councillor has committed a minor breach, must be based on evidence from which it may be concluded that it is more likely than not that the breach occurred than that it did not occur (the required standard of proof).⁶
11. Where direct proof of an alleged fact, proposition or conduct is not available, in order to find the allegation, proposition or conduct has been established, the Panel must be satisfied from the evidence that it is more probable than not that it has occurred. The Panel cannot make a finding that the alleged fact, proposition or conduct occurred if the evidence merely supports two or more conflicting but equally possible inferences.⁷
12. For a finding that a councillor has breached a particular regulation the Panel must be satisfied that every element of the particular regulation has been established to the required standard of proof.

Regulation 7

13. Regulation 7 provides:

"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 –*

⁴ Sections 5.107, 5.108, 5.109 of the Act.

⁵ Sections 5.110(2)(b), 5.111(1) of the Act.

⁶ Section 5.106 of the Act.

⁷ *Bradshaw v McEwens Pty Ltd* (1951) 217 ALR 1, paragraph 5.



(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.”*

14. The Panel decided that the alleged conduct is not conduct that contravenes section 5.93 of the Act or section 83 of *The Criminal Code*.

Elements of regulation 7

15. In order to find a breach of regulation 7, the Panel must be satisfied to the required standard of proof that:

(a) the person, the subject of the Complaint, engaged in the alleged conduct (first element);

(b) the person, the subject of the Complaint, was a council member both at the time of the conduct and the time when the Panel makes its determination (second element);

(c) by engaging in the conduct, the person, the subject of the complaint, made use of his or her office as a council member (in the sense that he or she acted in their capacity as a councillor, rather than in some other capacity (third element);

(d) that when viewed objectively, such use was an improper use of the person's office as a council member in that it:

(i) involved a breach of the standards of conduct that would be expected of a person in the position of a councillor by reasonable persons with knowledge of the duties, power and authority of the councillor and the circumstances of the case; and

(ii) was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty;

(fourth element)

(e) the person engaged in the conduct in the belief that:

(i) [in the case of regulation 7(1)(a)] an advantage would be gained either directly or indirectly for the person or any other person; or

(ii) [in the case of regulation 7(1)(b)] detriment would be suffered by the local government or any other person.

(fifth element).

Fourth element - meaning of “to make improper use of....office”

16. The Macquarie dictionary definition of “*improper*” is “*not in accordance with propriety of behaviour, manners, etc; unsuitable or inappropriate for the purpose or occasion; abnormal or irregular.*”⁸ The Shorter Oxford dictionary definition is “*irregular, wrong; unsuitable, inappropriate; unbecoming, unseemly.*”⁹
17. Whether there is impropriety is to be assessed objectively: would a reasonable person with knowledge of the duties, powers and authority of a councillor, and all the circumstances of the particular case, form the view that the councillor had breached the standards of conduct expected of a councillor?¹⁰ “*For behaviour to be improper it must be such that a right-thinking person would regard the conduct as so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty.*”¹¹
18. Under the Act, Panel members must have regard for the general interests of local government in Western Australia.¹² It is in the interests of local government that councillors are, and are seen to be, professional and respectful in their dealings with fellow councillors, local government employees and members of the public.
19. Regulation 3 of the Regulations sets out general principles to guide councillors’ behaviour, although contravention of any of any of these does not amount to a minor breach.¹³ Regulation 3 provides, among other things, that councillors should act with reasonable care, diligence and integrity and treat others with respect and fairness.
20. The meaning of “improper” must be considered in the context of relevant legislation, such as the Act and the Regulations, and other rules and standards that apply to a councillor’s role and conduct, such as the local government’s Code of Conduct, and the circumstances and context of the case.¹⁴ All these provisions form part of the backdrop to the Regulations and give context to a complaint but the alleged conduct must also be judged in the particular circumstances.
21. Conduct can be improper even though the councillor’s judgment is that it isn’t improper. A councillor’s use of his or her office can be improper even though the councillor is intending to benefit the local government, the council or the ratepayers and residents.¹⁵

Fifth element - meaning of “to gain directly or indirectly an advantage for the person or any other person” and “to cause detriment to the local government or any other person”

Advantage

⁸ Macquarie Dictionary, Revised Third Edition.

⁹ Shorter Oxford English Dictionary, Sixth Edition.

¹⁰ *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraph 27, referring to *R v Byrnes* (1995) 183 CLR 501.

¹¹ *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 9, referring to *Robbins v Harness Racing Board* [1984] VR 641.

¹² Section 5.122(3) of the Act, Schedule 5.1 of the Act, clause 8(6).

¹³ Regulation 3.

¹⁴ *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 10.

¹⁵ *Yates and Local Government Standards Panel* [2012] WASAT 59, paragraph 64, referring to *Treby* 2010.



22. “*Advantage*” is defined as “*favouring a circumstance; something which gives one a better position ... benefit; increased well-being or convenience ... pecuniary profit ...*”¹⁶
23. “*To*” in “*to gain directly or indirectly an advantage*” indicates that for this element to be established, a councillor must have intended to gain an advantage for themselves or another person.
24. For this element to be established, it is not necessary to find that the councillor’s actions did, or reasonably could have, delivered the result sought.¹⁷

Detriment

25. “*Detriment*” means loss, damage or injury.¹⁸ It includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage. A person can suffer detriment through others thinking less favourably of them.¹⁹
26. For regulation 7(1)(b) to be satisfied it is not necessary to show that the local government or the person concerned actually suffered detriment.²⁰ However it is not enough to show that the local government or the person concerned suffered detriment or could have suffered detriment. The Panel must find that it is more likely than not that the councillor believed that his or her actions would cause detriment and intended to cause detriment.²¹
27. “*To cause detriment*” has been interpreted as meaning “*in order to*” or “*for the purpose of*” causing detriment, or “*with the will to*” cause detriment.²² There can be a finding of intent if, after considering all the evidence, the only reasonable inference is that the councillor intended to cause detriment.²³

Regulation 8

28. Regulation 8 provides:

“8. Misuse of local government resources

A person who is a council member must not either directly or indirectly use the resources of a local government –

- (a) for the purpose or persuading electors to vote in a particular way at an election, referendum or other poll held under the Act, the Electoral Act 1907 or the Commonwealth Electoral Act 1918; or*

¹⁶ Shorter Oxford English Dictionary, Sixth Edition

¹⁷ Yates and Local Government Standards Panel [2012] WASAT 59, paragraphs 71,72

¹⁸ Macquarie Dictionary Revised Third Edition, 2001.

¹⁹ Ryan and Local Government Standards Panel [2009] WASAT 154, paragraphs 31, 32.

²⁰ Treby 2010, paragraph 96, referring to Chew v The Queen 1992 CLR 626 (Chew 2010).

²¹ Re and Local Government Standards Panel [2014] WASAT 111, paragraph 51, referring to Australian Securities and Investments Commission v Australian Property Custodian Holdings Ltd [2013] FCA 1342.

²² Chew 2010.

²³ Treby 2010.

(b) for any other purpose,

unless authorised under the Act, or authorised by the council or the CEO, to use the resources for that purpose."

Elements of regulation 8

29. The essential issues or elements which need to be satisfied in order for a contravention of regulation 8 to have occurred are that it is more likely than it is not that:

- a. a Councillor directly or indirectly used;
- b. his or her local government's resources;
- c. for the identified purpose or any other purpose;
- d. without such purpose being authorised under the Act or by the council or the local government's CEO.

Substance of the Complaint

Airport Flyer

30. On 7 August 2018, a City staff member and resident of the City gave the City's Executive Manager Governance a flyer ("Airport Flyer") which had been dropped into their City residential mailbox on that or the previous day, which was then brought to the Complainant's attention. A copy of the Airport Flyer is below:



Councillor Jesse Jacobs

M: 0408 882 886
E: cr.jacobs@canning.wa.gov.au



canning.wa.gov.au @cityofcanning cityofcanning

THE SOUND IS COMING





31. The Airport Flyer contains information in relation to Perth Airport's proposed new runway, including the City's name and logo. The publication and distribution of the Airport Flyer has not in any way been authorised by Council or the Complainant himself, as CEO.
32. On 8 August 2018 the Complainant spoke with Cr Jacobs in relation to the Airport Flyer and he admitted that he had arranged for it to be published. The Complainant informed Cr Jacobs of the following:
- The distribution of information "masquerading" as a City publication was inappropriate and possibly illegal. Furthermore, the information contained in the flyer was misleading and self-promotional;
 - Cr Jacobs was not authorised to utilise Council's name or logo or both simultaneously on any publication unless authorised;
 - Council would have to publish a disclaimer, which would be both embarrassing and a waste of staff time and resources.

Background

33. The matter regarding the proposed new runway was on the agenda for the City's Council Agenda Briefing on 14 August 2018; it was not a matter that Council had voted on when the flyers were distributed and Cr Jacob's actions created the potential situation whereby the City's elected Members' debate and voting at the following Council Meeting on 21 August 2018, could be influenced by the inaccurate information in the Airport Flyer.
34. The Airport Flyer contained an image of Cr Jacobs' City business card ("City Business Card") containing the City's name and official logo and it was also published in the City's branded corporate colours. As the Flyer contained the City's name and official logo, it was likely to be assumed by members of the public that the Flyer and its contents were authorised by the City.

35. In the footer of the Airport Flyer, there is a statement that it was authorised by an individual ("Mr K") along with a residential address. A Google search of the address shows a property with three parked vehicles, two of which displayed large advertising boards printed with "*Jesse Jacobs for Mayor City of Canning*".
36. A director from the printing company ("Printers") advised the City that the only contact details they had in relation to who ordered the printing of the Airport Flyer was the same individual mentioned in the footer (Mr K). However, emails between Cr Jacobs and the Printers reveal that Cr Jacobs used his Councillor email address when corresponding with them.
37. The Airport Flyer also suggests residents can sign Cr Jacobs' petition titled "*Stop Perth Airport Moving Direction of Second Runway*" and provides a website address linking to the petition.
38. Perth Airport advised the City that the Airport Flyer was factually incorrect. It is of concern to the City that Cr Jacobs' Airport Flyer contained inaccurate information in relation to Perth Airport's proposed new runway project. This placed the City in a position whereby it was potentially exposed to adverse action from Perth Airport who might attempt to take legal action against the City in relation to the inaccurate information contained in the flyer and the confusion it caused residents.
39. Future City negotiations with Perth Airport regarding sponsorship of City events may also have been jeopardised. The City may also have suffered reputational damage and the Complainant notes that the City received complaints from residents regarding the Airport Flyer and enquiries as to whether it was a City document.
40. The "*Review of Perth Airport New Runway Project – Preliminary Draft Major Development Plan*" report indicates which City suburbs are expected to be impacted by increased or new aircraft noise exposure due to aircraft taking off and landing on the new runway, including suburbs in the City's Mason Ward which Cr Jacobs represents. However, other City suburbs are expected to receive some relief from noise exposure. In this context, Cr Jacobs was predominantly acting in the best interest of City residents in the Mason Ward which he represents, and not in the best interests of all City residents.

Mailboxes Flyer

41. On 13 August 2018, the Complainant received a copy of a flyer that related to Australia Post mailboxes being saved in the Mason Ward ("Mailboxes Flyer") from one of the City's elected members, which had been dropped into their residential mailbox on that or the previous day. A copy of the Mailboxes Flyer is below:

Mission Accomplished!

All Australia Post Mail Boxes in Mason Ward have been saved by Cr Jesse Jacobs

In June this year Australia Post notified residents that three mail boxes were to be permanently taken away for the Bentley, Queens Park and East Cannington Areas.


Your local City of Canning Councillor Jesse Jacobs with support of local residents and media fought to keep these mail boxes open.

On July 11 this year Australia Post reversed this decision.

Keeping locals posted

Australia Post to retain boxes

Canning times 17 July




Turn overleaf to read more!


Without the support of local residents we could not have kept these post boxes!

I have enclosed my Contact Card which you can cut out should you wish to contact me about issues in our local community. – Councillor Jesse Jacobs


As your locally elected Councillor I will continue to make sure basic services are maintained!



Councillor Jesse Jacobs
Mason Ward
M: 0408 882 886
E: jacobs@canning.wa.gov.au



canning.wa.gov.au [cityofcanning](#) [cityofcanning](#)



Cr Jesse Jacobs at Campbell Street Post box

Support our local post boxes by posting locally

42. The Mailboxes Flyer again included the City's name and logo however the publishing and distribution of the Mailboxes Flyer was not in any way authorised by Council or the Complainant as CEO.
43. On the same day the Complainant advised Cr Jacobs via email that his second flyer had come to the Complainant's attention and reminded him of the conversation they had on 8 August 2018 stating "you have distributed to residents utilising the City logo and name. You have done this despite my conversation with you last week."

Background

44. As is the case with the Airport Flyer, the Mailboxes Flyer also contains an image of Cr Jacobs' City Business Card along with the City's name and official logo and is also published in the City's branded corporate colours and it could therefore be assumed that the flyer and its content were authorised by the City.
45. Close examination of the footer of the Mailboxes Flyer reveals the statement that the flyer has been authorised by the same individual, Mr K, as the Airport Flyer.

Allegations

46. The City alleges that Cr Jacobs, in developing, publishing and mass mail distributing the Airport Flyer and the Mailboxes Flyer, containing the City's name and official logo and without authorisation from the City's Council, has breached regulation 7 and regulation 8:

Airport Flyer

a. First Allegation – breach of regulation 7

Cr Jacobs used the Airport Flyer to seek political advantage for himself in the way of votes from City residents in future elections and potentially disadvantaged the City both reputationally and financially and Perth Airport (again, reputationally and financially), including the cost of correcting the inaccurate information.

b. Second Allegation - breach of regulation 8

Cr Jacobs misused the City's name and official logo by incorporating them into the Airport Flyer.

Mailboxes Flyer

c. Third Allegation – breach of regulation 7

Cr Jacobs used the Mailboxes Flyer to seek political advantage for himself in the way of votes from City residents in future elections.

d. Fourth Allegation – breach of regulation 8

Cr Jacobs misused the City's name and official logo by incorporating them into the Mailboxes Flyer.

47. In addition, the City alleges that Cr Jacobs has breached the following City's policies, the relevant excerpts of which are attached at "**Annexure A**":

- a. Policy CM184 – Use of Council Logo, Armorial Crest and Name;
- b. Policy CM178 – Media Strategy;
- c. Policy EM.03 – Elected Members – Use of City Logo and Stationery;
- d. City of Canning Code of Conduct – Part 3.

Cr Jacobs' Response

48. Cr Jacobs denies the allegations as outlined in the Complaint. Cr Jacobs believes that sending flyers to residents with his details included is well within his charter as a Councillor. From time to time he writes to residents typically by mail out and usually attaches the following contact details: a photo; his title; the Council he represents; his Council email address and his Council telephone number.

49. All these details are on his council contact card, so it is not uncommon to attach it:



The reason for this is clear and it is so residents know who is writing to them and so they can get in contact with him if they have any issues.

50. The Airport Flyer and the Mailboxes Flyer related to issues that directly concerned residents and which Cr Jacobs believed he was obliged to inform them about. Both flyers were printed and distributed at the same time in different areas of the City.

51. With regard to the Airport Flyer, this informed residents that they were able to put in a submission to council on this matter should they wish to. With regard to the Mailboxes Flyer, Cr Jacobs states he had lobbied to keep three mailboxes in the Mason area open and functional, which was ultimately successful.

Regulation 7

52. Cr Jacobs has communicated with residents in a way that is not uncommon and his own mailbox is regularly filled with Federal Member and State member flyers.

53. Cr Jacobs questions what advantage he gained when he used his own personal funds in an effort to write to residents and keep them informed of recent issues.

54. Rather, Cr Jacobs submits he has enhanced the reputation of the City's local government system, enhanced free expression and enhanced a democratic system by communicating with residents. Residents want to know that their councillors (who they vote and pay for) are active and trying to robustly protect their interests.

55. Furthermore:

- a. he used his councillor card in the Flyers to identify himself as a legitimate councillor;
- b. the material he sent out was not unauthorised, slanderous, false or of an immoral nature; and
- c. there may be a political aspect to the Complaint.

56. Cr Jacobs plans to continue to actively and robustly represent ratepayers and residents long into the future.

Regulation 8

57. Cr Jacobs describes the two flyers as “*information flyers*” and states that he paid for them in full personally. This includes the design, printing and distribution. If it was the case that he had billed the City for sending the flyers perhaps there would be some grounds for an argument, but even then, it would be a stretch.

Panel’s consideration

First Allegation: Airport Flyer – breach of regulation 7

Regulation 7(1)(a) and (b)

First, second and third elements satisfied

58. The Panel finds that Cr Jacobs engaged in the conduct which is the subject of the First Allegation and that he was a councillor and was acting as a councillor at all relevant times.

59. The first, second and third elements of regulation 7(1)(a) and (b) are established.

Whether Cr Jacobs acted improperly (fourth element)

60. Upon consideration of all the evidence, the Panel is satisfied that the fourth element has been established in relation to the First Allegation and finds that Cr Jacobs did act improperly. The Panel makes this finding because it is satisfied to the required standard of proof that a reasonable person would consider that Cr Jacobs did not meet the standards of conduct expected of a councillor when he distributed the Airport Flyer:

- a. The proposed new runway was a very serious and complicated matter, with a number of complex reports involved, and several issues that required full consideration through proper discussion and debate. The matter had not yet been voted on and was included in the upcoming Agenda to the August Council meeting. While councillors are under a duty to bring to light facts about each proposal to enable council to get to the heart of the matter and understand exactly what issues need to be considered, the Airport Flyer did not invite discussion amongst the community and was clearly being used as propaganda with statements such as “*THE SOUND IS COMING*” and “*SECOND AIRPORT RUNWAY REPOSITIONING WILL DIRECTLY FACE YOU*”.
- b. The City operates under a ward system and as such, councillors have both a duty to present the views of electors in his or her ward and also to consider the good of the district as a whole when decision making. The Airport Flyer is wholly negative towards the proposed new runway and presents only one point of view, however it fails to acknowledge that some residents in other areas of the City might benefit from the changes. Cr Jacobs himself acknowledges that the Airport Flyers were only distributed to certain areas within the City which indicates he targeted only some members of the community to relay the information to.

- c. While Cr Jacobs states in his Response that he wished to encourage local residents to contact him in his position as a councillor with any issues, and that was the reason for including his City Business Card, he also used the opportunity to communicate with the community in a confronting and damning manner about the new proposed runway issue. People look to their elected representatives to provide leadership and guidance. However, the Airport Flyer did not offer any alternative solutions for residents, it simply stated that the proposal should be stopped, and encouraged them to sign a petition - "*STOP PERTH AIRPORT MOVING DIRECTION OF SECOND RUNWAY*" and vote for members who would try to achieve this result.
- d. The City did not authorise the contents of the Airport Flyer before it was distributed, including the use of the City's official logo as required, and the Panel finds that to the ordinary resident it could easily appear to be an authorised City flyer as it also contained the City's website and social media details. It was improper for Cr Jacobs to represent the Airport Flyer as official council communication and his conduct was also in contravention of certain City policies:
 - i. Cr Jacobs incorporated his City Business Card in the Airport Flyer and conveyed that the City was against the proposed new runway by doing so (Policy Number EM.03 "*Use of City Logo and Stationery*");
 - ii. Cr Jacobs failed to exercise "scrupulous care" in the use of the City's official logo by failing to seek guidance as to whether he was permitted to use it and thereby misused a City resource (Part 3 of the City's *Code of Conduct*).
- e. The Airport Flyer contained a number of blanket statements that were misleading, and this led to agitation and confusion amongst the community. This is evident from several of the emails from residents that the Complainant attaches and the following observations / comments contained therein:
 - Residents planned to recruit neighbours and friends to oppose any plan "*that adversely affects their quality of life*".
 - Claims were made in the Airport Flyer that residents attempted to substantiate / confirm for themselves but were unable to;
 - Residents were unable to contact Cr Jacobs using his contact details included in the flyer in order to discuss the issues raised.
 - One resident stated that they would vote for Cr Jacobs based on his "*championing*" of this particular issue.
 - While criticising the expansion, Cr Jacobs did not provide an alternative solution.

- Cr Jacobs appeared to be “*bending the truth*” in the Airport Flyer about which way the runway would point and how close it would be to residents’ homes and was asked to “*get his facts right*”.
- Cr Jacobs was clearly indicating that Council supported his position in the Airport Flyer.

- f. As a result of the Airport Flyer and the confusion amongst the community that it caused, it was necessary for the City and Perth Airport to take action to inform the public that the Airport Flyer was not issued by the City.

61. The Panel finds that Cr Jacobs’ use of his City Business Card and the City’s official logo in the Airport Flyer constituted an improper use of his office.

Whether Cr Jacobs intended to gain an advantage for himself or any other party and / or intended to cause detriment to the local government or any other person (fifth element)

62. It is alleged that Cr Jacobs both intended to gain an advantage for himself by way of political advantage and to cause detriment to the City and Perth Airport reputationally and financially and the Panel is satisfied to the required standard of proof that Cr Jacobs did intend both results.

Advantage

63. After considering all the evidence, the Panel finds it more likely than not that Cr Jacobs intended to promote himself as the champion of the proposed new runway issue. Cr Jacobs made it clear to certain sections of the community that the proposed new runway was a bad idea and encouraged them to act before it was too late and called for them to “*Vote for candidates and members that will stand up for you on this issue*”.

64. The advantage for Cr Jacobs is also referred to by Cr Jacobs himself in an email dated 14 August 2018 that he sent to the Complainant and his fellow elected members in response to criticism about the Airport Flyer and Mailboxes Flyer. Cr Jacobs stated:

“On both issues I am thus most proud to “self-promote” as you so eloquently put it by sticking up for many residents.”

Detriment

65. The Panel finds it more likely than not that Cr Jacobs would have been aware of the complexity of the issues involved in the proposal for the new runway and the sensitivity within the community about the issue, and that by distributing the Airport Flyers he would inflame the issue and potentially prejudice the upcoming debate at Council.

66. Furthermore in relation to Cr Jacobs intention, the Panel makes the following observations:

- a. During the process of having the flyers printed, Cr Jacobs requested the Printers stop using his councillor email address and instead use his

personal email address stating “*that would be better for this*”. This indicates he was aware that distributing the flyers was not a proper function of his role as a councillor; however, despite this he proceeded to print and distribute the Airport Flyers and included his Councillor City Business Card and the City’s logo on them.

- b. Cr Jacobs hand delivered the Airport Flyers to residents before the matter had been discussed formally at Council;
- c. Cr Jacobs ignored or neglected to check the City’s policies regarding use of the City’s logos before doing so; and
- d. Cr Jacobs was in a position whereby he would have had access to advanced and specialist knowledge on the issue of the proposed new runway. However, in the Airport Flyer he presented only limited and inflammatory information on the issue, and to only some sections of the community.

67. On the information available, the only reasonable inference as to Cr Jacobs’ intent from his conduct in distributing the Airport Flyers is that he intended to gain an advantage for himself and cause detriment to the City and Perth Airport.

Findings

68. Accordingly, for the above reasons, the Panel finds that Cr Jacobs did breach regulation 7(1) in relation to the First Allegation.

Second Allegation: Airport Flyer – breach of regulation 8

69. The Panel is satisfied to the required standard of proof that Cr Jacobs directly or indirectly misused the City’s logo in the Airport Flyer.

70. The term “*resources*” in regulation 8 is a wide concept that includes ‘*local government property*’ (that term is defined in section 1.4 of the Act as anything, whether land or not, that belongs to, or is vested in, or under the care, control or management of, the local government). “*Resources of local government*” includes any resources or material provided by the local government to a council member for the performance of the functions of a council member.

71. Based on the evidence before it, the Panel finds it is more likely than not that:

- a. Cr Jacobs, clearly as a councillor at the time of the alleged breach, used and incorporated his City Business Card containing the City’s official logo in the Airport Flyer;
- b. In light of paragraph 69 above, Cr Jacobs’ City Business Card and the City’s official logo were local government resources. Furthermore, Item 2 of the City’s Policy Number CM184 confirms that the City of Canning’s logos are owned by the City and subject to copyright;
- c. The Panel found that by distributing the Airport Flyer, Cr Jacobs sought political advantage for himself. The statement in the Airport Flyer that it had been “*authorised*” by a particular individual also indicates the flyer was used

as electoral material for the purpose of persuading electors to vote for the individual himself. The Panel also found that Cr Jacobs used the Airport Flyer for the purpose of causing detriment to both the City and Perth Airport.

- d. None of the purposes as described in subparagraph (c) above were authorised under the Act or by the council or the City's CEO. The Panel found that Cr Jacobs' conduct in relation to the Airport Flyer was improper under both the Act and the Regulations. Furthermore, the Panel accepts the Complainant's evidence that neither Council nor himself (in his position as CEO) authorised any such use of the City's resources, and Cr Jacobs does not provide any substantive evidence on the issue.

Findings

72. Accordingly, for the above reasons, the Panel finds that Cr Jacobs did breach regulation 8 in relation to the Second Allegation.

Third Allegation: Mailboxes Flyer - breach of regulation 7(1)(a)

First, second and third elements satisfied

73. The Panel finds that Cr Jacobs engaged in the conduct which is the subject of the Third Allegation and that he was a councillor and was acting as a councillor at all relevant times.

74. The first, second and third elements of regulation 7(1)(a) are established.

Whether Cr Jacobs acted improperly (fourth element)

75. Upon consideration of all the evidence the Panel is satisfied that the fourth element has been established in relation to the Third Allegation and finds that Cr Jacobs did act improperly. The Panel makes this finding because it is satisfied to the required standard of proof that a reasonable person would consider that Cr Jacobs did not meet the standards of conduct expected of a councillor when distributing the Mailboxes Flyer:

- a. It is an important aspect of a councillor's duties to facilitate communication between the community and the council and keep residents informed of relevant issues. However, the Panel finds there is a clear element of self-promotion in the Mailboxes Flyer:

"Your local City Canning Councillor Jesse Jacobs with support of local residents and media fought to keep these mail boxes open."

- b. The statement on the Mailboxes Flyer that it was "*authorised*" by a particular individual indicates that the flyer was being used as election material. However, by incorporating his City Business Card, Cr Jacobs blurred the line between his functions as a Councillor and electioneering.
- c. The Mailboxes Flyer incorporates the City's official logo and includes the City's website address and social media details and to the ordinary resident, it could easily appear that the Mailboxes Flyer was an authorised City flyer. However, the City did not authorise the contents or use of the logo, as was

required, before the flyer was distributed and the Panel finds that it was improper for Cr Jacobs to represent the Mailboxes Flyer as official council communication without authority.

d. Cr Jacobs' conduct was also in contravention of certain City policies:

- i. Cr Jacobs incorporated his City Business Card in the Mailboxes Flyer and by doing so conveyed to the community that the City's official position was that it supported the mailboxes being saved (Policy Number EM.03 "*Use of City Logo and Stationery*");
- ii. Cr Jacobs failed to exercise "*scrupulous care*" in the use of the City's official logo by failing to seek guidance as to whether he was permitted to use it (Part 3 of the *City's Code of Conduct*).

If Cr Jacobs was unaware or unsure of the City's policies, it would have been prudent of him to check under what circumstances he was authorised to use his City Business Card and the City's logo.

76. The Panel finds that Cr Jacobs did act improperly by distributing the Mailboxes Flyer.

Whether Cr Jacobs intended to gain an advantage for himself or any other party (fifth element)

77. The Panel is satisfied to the required standard of proof that Cr Jacobs intended to gain advantage for himself by distributing the Mailboxes Flyer:

- a. Despite the City's policies regarding the use of the City's logos and stationery, Cr Jacobs proceeded to print the Mailboxes Flyer and distribute them;
- b. In an email dated 14 August 2018 to the Complainant and his fellow elected members in response to criticism about the Airport Flyer and Mailboxes Flyer, Cr Jacobs alludes to the fact that he was publicising himself:

"On both issues I am thus most proud to "self-promote" as you so eloquently put it by sticking up for many residents."

- c. Cr Jacobs met with the Complainant on 8 August 2018 in relation to the Airport Flyer and was made aware of the serious issues regarding the unauthorised use of the City's official logo and was advised about the City's policies on such matters. However, Cr Jacobs did not inform the Complainant about the Mailboxes Flyer that he had already distributed (or was going to distribute) which would potentially cause further issues for the City and was also likely a misuse of City resources.

Findings

78. Accordingly, for the above reasons, the Panel finds that Cr Jacobs did breach regulation 7(1)(a) in relation to the Third Allegation.



Fourth Allegation - breach of regulation 8

79. The Panel is satisfied to the required standard that Cr Jacobs directly or indirectly misused the City's logo in the Mailboxes Flyer. The Panel repeats its Finding at paragraph 69 above and based on the evidence before it, the Panel finds it is more likely than not that:

- a. Cr Jacobs was clearly as a councillor at the time of the alleged breach and used and incorporated his City Business Card and the City's official logo in the Mailboxes Flyer;
- b. Cr Jacobs' City Business Card and the City's official logo were local government resources owned by the City and subject to copyright;
- c. The Panel found that by distributing the Flyer, Cr Jacobs sought political advantage for himself. The statement in the Mailboxes Flyer that it had been "*authorised*" by a particular individual also indicates the flyer was used as electoral material for the purpose of persuading electors to vote for Cr Jacobs himself.
- d. The purpose as described in subparagraph (c) above was not authorised under the Act or by the council or the City's CEO. The Panel found that Cr Jacobs' conduct in relation to the Mailboxes Flyer was improper under both the Act and the Regulations. Furthermore, the Panel accepts the Complainant's evidence that neither Council nor himself (in his position as CEO) authorised any such use of the City's resources, and Cr Jacobs does not provide any solid evidence on the issue.

Findings

80. Accordingly, for the above reasons, the Panel finds that Cr Jacobs did breach regulation 8 in relation to the Fourth Allegation.

Sarah Rizk (Presiding Deputy Member)

Elanor Rowe (Deputy Member)

Rebecca Aubrey (Deputy Member)



ANNEXURE A

Policy CM184 – Use of Council Logo, Armorial Crest and Name

2.0 Approval for use of Corporate Logos, Armorial Crest and Name

No person, without the authority of the Council, shall assume or use the City of Canning's Logos, armorial crest or design so nearly resembling the City of Canning's Logos or armorial crest as to be likely to be confused therewith on any letter, pamphlet, notice or handbill.

The Chief Executive Officer is authorised to permit the use of the Corporate Logos, Armorial Crest and other branding elements for Council business. Those persons authorised by the Chief Executive Officer to use the corporate logo must recognise that the corporate logos are subject to copyright and shall strictly ensure that the corporate logos are used in accordance with the City's approved corporate style guide.

Policy CM178 – Media Strategy

- 1.0 All public statements, written or verbal, on behalf of the Council shall be issued by the Mayor. Where the Mayor agrees, the Chief Executive Officer, pursuant to Section 5.41(f) of the Local Government Act 1995, may speak on behalf of the City. The Chief Executive Officer may refer any issue to any of the following officers for comment:-

- (a) Divisional Executives
- (b) Departmental Managers
- (c) Public Affairs Officer

Policy EM.03 – Elected Members – Use of City Logo and Stationery

2. Use of Stationery

- (1) Elected members are entitled to individualised City of Canning branded stationery and an individualised electronic email signature that the City will provide on request from the elected member.
- (2) City branded stationery must only be used for official purposes and the individualised stationery and email signature used only by that member.
- (3) Correspondence using individualised stationery can only represent the views of the individual elected member. Such stationery is not to be used to represent or purport to represent the views of the Council or the City of Canning. Councillors must exercise care to ensure that correspondence does not commit Council funds or convey a position which is contrary to that adopted by Council.
- (4) Postage expenses are payable by the elected member from the ICT allowance.

City of Canning Code of Conduct – Part 3.

- 6. We will make no allegations or derogatory statements, whether in media or in private, unless in the interests of the community and in one of the ways specifically provided for by legislation, such as the *Local Government Act 1995* or the *Public Interest Disclosure Act 2003*.
- 7. We will comply, to the best of our abilities, with legislation and the City's own Policies and Practices.
- 10. We will exercise scrupulous care in the use of the City's resources, human and material, and not misuse or by our inaction, permit the misuse of those resources.



Local Government Standards Panel

Complaint Number	SP 2018-122
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Mr Arthur Kyron
Respondent	Councillor Jesse Jacobs
Local Government	City of Canning
Regulation	Regulations 7 and 8 of the <i>Local Government (Rules of Conduct)</i> <i>Regulations 2007 (WA)</i>
Panel Members	Ms S Rizk (Presiding Member) Ms E Rowe (Deputy Member) Ms R Aubrey (Deputy Member)
Heard	26 July 2019 Determined on the documents
Outcome	Public apology

DECISION AND REASONS FOR DECISION

Published: 26 August 2019

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005 (WA)*, 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



Introduction

1. At its meeting on 26 April 2019, the Panel found that Councillor Jesse Jacobs (“Cr Jacobs”), a council member of the City of Canning (“the City”) committed two breaches of regulation 7 and two breaches of regulation 8 of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (“the Regulations”) when he published and distributed flyers with the City’s logo to residents on 7 and 13 August 2018.
2. On 27 May 2019 the Panel published its Finding and Reasons for Finding (“Findings”) that Cr Jacobs had breached Regulations 7 and 8. The Panel reviewed all the evidence presented to it and said:

“First Allegation: Airport Flyer – breach of regulation 7

60

- a. While councillors are under a duty to bring to light facts about each proposal to enable council to get to the heart of the matter and understand exactly what issues need to be considered, the Airport Flyer did not invite discussion amongst the community and was clearly being used as propaganda

- b. Cr Jacobs himself acknowledges that the Airport Flyers were only distributed to certain areas within the City which indicates he targeted only some members of the community to relay the information to.
- c. While Cr Jacobs states in his Response that he wished to encourage local residents to contact him in his position as a councillor with any issues, and that was the reason for including his City Business Card, he also used the opportunity to communicate with the community in a confronting and damning manner about the new proposed runway issue. People look to their elected representatives to provide leadership and guidance.....
- d. The City did not authorise the contents of the Airport Flyer before it was distributed, including the use of the City’s official logo, as required, and the Panel finds that to the ordinary resident it could easily appear to be an authorised City flyer as it also contained the City’s website and social media details. It was improper for Cr Jacobs to represent the Airport Flyer as official council communication and his conduct was also in contravention of certain City policies.....
- e. The Airport Flyer contained a number of blanket statements that were misleading, and this led to agitation and confusion amongst the community....
- f. As a result of the Airport Flyer and the confusion amongst the community that it caused, it was necessary for the City and Perth Airport to take action to inform the public that the Airport Flyer was not issued by the City.

63.

After considering all the evidence, the Panel finds it more likely than not that Cr Jacobs intended to promote himself as the champion of the proposed new runway issue.....

.....



65. The Panel finds it more likely than not that Cr Jacobs would have been aware of the complexity of the issues involved in the proposal for the new runway and the sensitivity within the community about the issue, and that by distributing the Airport Flyers he would inflame the issue and potentially prejudice the upcoming debate at Council.

Second Allegation: Airport Flyer – breach of regulation 8

71.

- a.the Panel accepts the Complainant's evidence that neither Council nor him (in his position as CEO) authorised any such use of the City's resources....

Third Allegation: Mailboxes Flyer – breach of regulation 7(1)(a)

75

- a. It is an important aspect of a councillor's duties to facilitate communication between the community and the council and keep residents informed of relevant issues. However, the Panel finds there is a clear element of self-promotion in the Mailboxes Flyer....
- b. The statement on the Mailboxes Flyer that it was "*authorised*" by a particular individual indicates that the flyer was being used as election material. However, by incorporating his City Business Card, Cr Jacobs blurred the line between his functions as a Councillor and electioneering.
- c. The Mailboxes Flyer incorporates the City's official logo and includes the City's website address and social media details and to the ordinary resident, it could easily appear that the Mailboxes Flyer was an authorised City flyer. However, the City did not authorise the contents or use of the logo, as was required, before the flyer was distributed and the Panel finds that it was improper for Cr Jacobs to represent the Mailboxes Flyer as official council communication without authority.
- d. Cr Jacobs' conduct was also in contravention of certain City policies....

.....

If Cr Jacobs was unaware or unsure of the City's policies, it would have been prudent of him to check under what circumstances he was authorised to use his City Business Card and the City's logo.

77.

- a. Despite the City's policies regarding the use of the City's logos and stationery, Cr Jacobs proceeded to print the Mailboxes Flyer and distribute them;

.....

- c. Cr Jacobs met with the Complainant on 8 August 2018 in relation to the Airport Flyer and was made aware of the serious issues regarding the unauthorised use of the City's official logo and was advised about the City's policies on such matters. However, Cr Jacobs did not inform the Complainant about the Mailboxes Flyer that he had already distributed (or was going to distribute) which would potentially cause further issues for the City and was also likely a misuse of City resources.



Fourth Allegation – breach of regulation 8

79.

- b. Cr Jacobs' City Business Card and the City's official logo were local government resources owned by the City and subject to copyright;

.....

- d. The purpose as described in subparagraph (c) above was not authorised under the Act or by the council or the City's CEO. The Panel found that Cr Jacob's conduct in relation to the Mailboxes Flyer was improper under both the Act and the Regulations. Furthermore, the Panel accepts the Complainant's evidence that neither Council nor him (in his position as CEO) authorised any such use of the City's resources, and Cr Jacobs does not provide any solid evidence on the issue."

Jurisdiction

- 3. The Panel convened on 26 July 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 that on this date there was no available information to indicate that Cr Jacobs 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 Jacobs' 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).¹
7. In a letter dated 27 May 2019, the Department notified Cr Jacobs of the Panel's findings, providing him with a copy of its Findings published on 27 May 2019 and inviting him to make submissions on how the Panel should deal with the breaches under section 5.110(6). The Department did not receive a submission from Cr Jacobs within the timeframe provided to him.

Panel's consideration

8. The Panel found that Cr Jacobs committed two breaches of Regulation 7 and two breaches of Regulation 8 that related to his conduct when he published and distributed flyers with the City's logo to residents on 7 and 13 August 2018. Cr Jacobs has previously been found to have committed one minor breach.
9. The Panel found that Cr Jacobs undermined the decision-making process of Council in order to promote himself on particular topics of local interest and misused the City's resources in producing and distributing the Flyers. In doing so, he misled the public by representing the Flyers as official council communication. This led to agitation and confusion amongst the community.
10. 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. The Panel also does not consider that ordering Cr Jacobs to undergo further training is appropriate. Cr Jacobs does not show any remorse for his actions or willingness to reflect further on the Panel's Findings and he did not reply when given the opportunity to respond to how the Panel should deal with the matter.
12. The options left for the Panel to consider are to order the publication of a Notice of Public Censure or to order Cr Jacobs to make a Public Apology (or both).
13. When the Panel makes an order that a Notice of Public Censure be published, that Notice is published by the local government's CEO, at the expense of the local government, and such expense is significant where the Notice is to be published in a newspaper or newspapers.
14. In the present case, on the evidence available to the Panel, the Panel does not consider that it should order a public censure.
15. The Flyers were distributed amongst the local community leading to confusion and unrest, and some backlash against Perth Airport in particular. In the circumstances, a public apology is appropriate as it reflects the impact of the Flyers on the Council, the City, and Perth Airport, and may go some way to repair the damage caused by Cr Jacobs' conduct. An apology in public is also appropriate when a councillor's conduct does not meet the standards other councillors seek to uphold.

¹ *Local Government Act 1995* (WA), s 5.110(5).



16. The Panel considers a public apology to those who suffered the damage, the Council, the City, and Perth Airport, is the appropriate penalty.

Panel's decision

17. 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 Jacobs is ordered to publicly apologise to the Council, the City, and Perth Airport.

A handwritten signature in black ink, appearing to be 'SRizk'.

Sarah Rizk (Presiding Deputy Member)

A handwritten signature in black ink, appearing to be 'ERowe'.

Elanor Rowe (Deputy Member)

A handwritten signature in black ink, appearing to be 'RAubrey'.

Rebecca Aubrey (Deputy Member)



ATTACHMENT

Complaint Number	SP2018-122
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Arthur Kyron
Respondent	Councillor Jesse Jacobs
Local Government	City of Canning
Regulation	Regulations 7 and 8 of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Ms S Rizk (Presiding Member) Ms E Rowe (Deputy Member) Ms R Aubrey (Deputy Member)
Heard	26 July 2019 Determined on the documents
Outcome	Public apology

ORDER FOR PUBLIC APOLOGY

Published 26 August 2019

DEFAMATION CAUTION

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Jesse Jacobs ("Cr Jacobs"), a Councillor for the City of Canning ("the City"), publicly apologise to the Council, the City, and Perth Airport as specified in paragraph 2 below.
2. At the City's first ordinary council meeting Cr Jacobs attends after the expiration of 28 days from the date of service of this Order on him, Cr Jacobs shall:
 - (a) ask the presiding person for his or her permission to address the meeting to make a public apology to the Council, the City, and Perth Airport;
 - (b) 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;
 - (c) address the Council 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 two provisions of the *Local Government (Rules of Conduct) Regulations 2007* when I published and distributed flyers with the City' logo to residents on 7 and 13 August 2018.
- (ii) The Panel found that by behaving in this manner I made improper use of my office as Councillor with the intention of damaging the Council, the City, and Perth Airport, and misused the City's resources, thereby committing two breaches of Regulation 7 and two breaches of Regulation 8 of the *Local Government (Rules of Conduct) Regulations 2007*.
- (iii) I accept that I should not have acted in such a manner towards the Council, the City, and Perth Airport, and I apologise to the parties concerned for having done so."

2. If Cr Jacobs 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 above, he 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 Canning Times newspaper.



PUBLIC APOLOGY BY CR JESSE JACOBS

A formal complaint was made to the Local Government Standards Panel alleging that I contravened two provisions of the *Local Government (Rules of Conduct) Regulations 2007* when I published and distributed flyers with the City's logo to residents on 7 and 13 August 2018.

The Panel found:

(1) I committed two breaches of Regulation 7 and two breaches of Regulation 8 of the Rules of Conduct Regulations when I published and distributed flyers with the City's logo to residents on 7 and 13 August 2018.

(2) By behaving in this way to the Council, the City, and Perth Airport, I failed to meet the standards of conduct expected of a councillor.

I apologise to the Council, the City, and Perth Airport for acting in such a manner.

Date of Order – 26 August 2019



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."