



Local Government Standards Panel

Complaint Number	SP 64 of 2018
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Robert Jeans
Respondent	Councillor Matthew Whitfield
Local Government	City of Rockingham
Regulation	Regulation 9 of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mrs Sheryl Siekierka (Presiding Member) Ms Elanor Rowe (Deputy Member) Ms Rebecca Aubrey (Deputy Member)
Heard	22 February 2019 Determined on the documents
Outcome	Training

SANCTION DECISION AND REASONS FOR DECISION

Delivered: 16 March 2019

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.



Introduction

1. On 21 November 2018 the Panel found that Councillor Matthew Whitfield (“Cr Whitfield”), a member of the City of Rockingham (“City”), committed one breach of regulation 9 of the *Local Government (Rules of Conduct) Regulations 2007* (“the Regulations”) with reference to dealings he had with parties including land developers in relation to a new property development project. The Panel found that Cr Whitfield did not breach regulation 9 for his conduct on a separate occasion as also alleged in the Complaint.
2. On 30 January 2019 the Panel published its Finding and Reasons for Finding (“Findings”) that Cr Whitfield had breached regulation 9. The Panel reviewed all the evidence presented to it and said:
 - “55. The Panel finds that it is more likely than it is not that by speaking to developers and the Team on this basis, Cr Whitfield did involve himself in the administration of the local government.
 56. Part of a councillor’s role is to consider the need for and desirability of projects and / or works and to highlight possible courses of action, however councillors generally do not have authority to act as individuals. While Cr Whitfield may have had the initial idea regarding a short-term dog park on the new estate, it would have been appropriate for him as a councillor to raise his suggestion through the formal meeting process before council where it could be properly considered, and not directly with developers.
 57. The process for giving effect and implementing council decisions once made is an administrative function that the CEO is responsible for, which would have included the task of dealing with developers on such a detail as a short-term dog park and amongst other things temporary fencing. Cr Whitfield potentially influenced the developers and the management of the project in this respect.
 58. Based on the evidence before it, the Panel is satisfied to the required standard that Cr Whitfield undertook a task that contributed to the administration of local government, that he did not have authority to do so and such action was not part of the deliberations at a council or committee meeting.”

Jurisdiction

3. The Panel convened on 22 February 2019 to consider how it should deal with the breach. The Panel accepted the Department’s advice that on this date there was no available information to indicate that Cr Whitfield had ceased to be or was disqualified from being a councillor.

Possible sanctions

4. Section 5.110(6) of the Act provides that the Panel is to deal with a minor breach by —
 - “(a) *dismissing the complaint; or*
 - (b) *ordering that —*
 - (i) *the person against whom the complaint was made be publicly censured as specified in the order; or*

(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.

Cr Whitfield'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).¹
7. In a letter dated 30 January 2019, the Department notified Cr Whitfield of the Panel's findings, providing him with a copy of its Findings and inviting him to make submissions on how the Panel should deal with the breach under section 5.110(6).
8. Cr Whitfield sent his submissions to the Department by email on 7 February 2019, in which he submitted:
- The Complaint should be dismissed.
 - With regard to his meeting with Creating Communities that he referred to in the Facebook Post, Cr Whitfield maintains that they "*have no role in land at all*" and are not developers. In any event, he denies he met with them in his role as a councillor but did so as a community leader. Cr Whitfield attaches a copy of a letter from the Managing Director of Creating Communities as further evidence.
 - He did not act operationally or contribute towards the administration of the City as the meeting was not related to the City.
 - If Councillors are not allowed to meet with key groups who could benefit the whole community then there is something wrong with the Act.
 - The allegation is one of many that were made against Cr Whitfield by a "*vindictive CEO who wasted time, resources and city finances on pursuing this petty vendetta*" and who refused to meet with Cr Whitfield on several occasions when everything could easily have been explained.
 - With regard to his reference in the Facebook Post to making suggestions to "*all new land developers*" for dog parks in the City, Cr Whitfield states that apart from the Facebook Post itself there is no further evidence to support this and his own words are being used as the sole evidence of this occurring.

¹ Section 5.110(5) of the Act.

- Cr Whitfield acknowledges he did “overreach” in the Facebook Post by saying “*all developers*” and wishes to add context to the statement.
- The Facebook Post does not outline how Cr Whitfield made the suggestion to developers, and the form of the alleged administrative tasks he undertook. As a councillor part of his role is to attend many openings of businesses and “cutting the ribbon” events for new land releases. There have been two occasions at such official launches when during general conversation, sales representatives have asked about the area generally and what people are looking for. Cr Whitfield’s answer to this is that a fenced off dog area would be welcomed as residents like them; Baldivis has more dogs than most other suburbs and this is a popular request from residents.
- Cr Whitfield states that in no way has he formally arranged a meeting or corresponded with developers to discuss dog parks, or any other land development aspects.
- Cr Whitfield states he has not involved himself in the administration of the City, and respectfully, if the Panel believes that a councillor is not able to pass on community requests when the moment presents itself that could benefit the community, then the Act is out of date.

Panel’s consideration

9. Cr Whitfield had not previously been found to have committed any minor breaches.
10. Cr Whitfield attaches new evidence for consideration by the Panel however the Panel is unable to revisit the Finding and Reasons for Findings and review the finding of a breach.
11. While Cr Whitfield states he did “*overreach*” with a statement he made in the Facebook Post, he also takes the opportunity when responding to further defend his position and criticise the decision of the Panel. Cr Whitfield continues to be heavily critical of the City’s former CEO (the Complainant).
12. The Panel does not consider that dismissal of the Complaint as requested by Cr Whitfield is appropriate because this would indicate that Cr Whitfield’s conduct was so minor that no penalty is warranted. The Panel found that Cr Whitfield had dealings with developers and met with Creating Communities who, while not developers themselves, were closely connected and involved with the property development (which they themselves do not deny).
13. When the Panel makes an order that a Notice of Public Censure be published, that Notice is to be published by the local government’s CEO; the expense is borne by the local government and such expense is significant where the Notice is to be published in a newspaper or newspapers. The Panel does not consider it is appropriate to make an order for censure for Cr Whitfield’s actions in this matter, as they are not so serious to justify such an order.
14. The Panel has therefore considered the options of ordering training or a public apology (or both). In the circumstances the Panel decides that training in the area of fulfilling elected members’ responsibilities to act within the processes and



procedures of Local Government whilst leading and supporting their community, is appropriate.

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)(iii) of that section, Cr Whitfield is ordered to undertake training.

Sheryl Siekierka (Presiding Member)

Elanor Rowe (Deputy Member)

Rebecca Aubrey (Deputy Member)



ATTACHMENT

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ORDER FOR TRAINING

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. By 30 April 2019, Councillor Matthew Whitfield, a member of the City of Rockingham, shall undertake:
 - (a) the training course for Elected Members "Serving on Council" provided by WA Local Government Association (WALGA) for a period of 7.5 hours; or
 - (b) a training course with substantially similar learning outcomes provided by an alternative registered training organisation for a similar duration, but at least 4 hours.

Sheryl Siekierka (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."