



Local Government Standards Panel

Complaint Number	SP 2020-013
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Peter McLean
Respondent	Councillor Tanya Richardson
Local Government	City of Swan
Regulation	Regulation 7 of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr Michael Connolly (Presiding Member) Cr Peter Rogers (Member) Mrs Emma Power (Member)
Heard	10 June 2020 Determined on the documents
Finding	1 x Breach Regulation 7(1)(b)

FINDING AND REASONS FOR FINDING

Delivered 13 August 2020

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 10 June 2020, the Panel found that Councillor Tanya Richardson, a councillor of the City of Swan (**"the City"**) did commit a minor breach pursuant to the *Local Government Act 1995 (WA)* (**"the Act"**) and regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (**"the Regulations"**) when she allegedly abused her authority as a councillor to gain unauthorised access to an Annual General Meeting of the Ellenbrook Community 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.¹
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.²
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 accurate³; and
 - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding⁴.
7. The Panel does not possess investigative or supervisory powers.⁵ 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 Australia⁶.
10. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

¹ Section 5.105 of the Act

² Section 5.106 of the Act

³ *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1

⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336

⁵ *Re and Local Government Standards Panel* [2015] WASC 51 (at paragraph 24)

⁶ Section 8(6) of Schedule 5.1 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 6 March 2020 the Panel received a complaint from Mr Michael Foley acting as complaints officer of the City (**“the Complaints Officer”**). The same enclosed a Complaint of Minor Breach Form dated 4 March 2020.
13. In the complaint form, the Complainant alleges that Cr Richardson has breached regulation 7 of the Regulations and allegedly acted improperly when she abused her authority as a councillor by influencing and inciting a mob to gain unauthorised access to an Annual General Meeting of the Ellenbrook Community Collective (**“ECC”**) bringing her position as councillor and the City of Swan into disrepute as set out in paragraph 16 below (**“the Complaint”**).
14. The Panel convened on 10 June 2020 to consider the Complaint.
15. The Panel:
- a. accepted the advice of the Department that, based on information published on the Western Australian Electoral Commission’s website, Cr Richardson was:
 - i. at the time the Panel met, the elected to the Council of the City in October 2019 for a term expiring in October 2023;
 - ii. a Councillor at the time of the alleged breach; and
 - iii. a Councillor when the Panel met on 10 June 2020;
 - b. was satisfied the Complaint was made within six months after the alleged breach occurred⁷;
 - 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 breach⁸;

⁷ Section 5.107(4) and 5.109(2) of the Act

⁸ Section 5.107 and 5.109 of the Act



- d. was satisfied the Department had provided procedural fairness to Cr Richardson; and
- e. found it had jurisdiction to consider the Complaint.

The Specifics of the Complaint

16. The Complainant provided substantial arguments and comments in respect to the Complaint which are summarised as follows:
- a. Cr Tanya Richardson abused her authority, influencing and inciting a mob to gain unauthorised personal access to the ECC's Annual General Meeting ("**AGM**") and attacking persons at such meeting.
 - b. This constitutes a breach of conduct as city councillor, bringing her role and the City into disrepute, as well as providing personal advantage with the local area and other specified personal goals.
 - c. The Complainant was invited by local resident Cr Cate McCullough to guest Chair the AGM for the ECC on 4 February 2020 at the Ellenbrook Art Gallery Boardroom.
 - d. Mayor Kevin Bailey, who is a member of the ECC, earlier in the day of the meeting contacted the Complainant to note a number of people had indicated they wished to disrupt the meeting.
 - e. The Complainant offered to arrive early to welcome attendees and assist with any concerns regarding uninvited people attempting to attend the meeting. According to the ECC constitution, the AGM is only required to be open to members only and is not required to be a public event.
 - f. At approximately 5:30, the main doors to the Art Gallery were locked and a number of ECC members were already inside. They stated that they had locked the doors because people had been gathering outside.
 - g. The Complainant was informed by some concerned members when entering the building that there was a group gathering at the Dome across the road.
 - h. Close to 6 pm a group of men and women approached the rear Art Gallery door together and proceeded to knock on the windows and demand entrance.
 - i. A couple of other members were admitted via the front door.
 - j. Mayor Bailey called the police in the meantime, so that they could attend to reduce the likelihood of any negative incidents.
 - k. Then the group came around to the front door, demanding entrance, knocking at the windows, and shouting at those inside. The Complainant was in the boardroom at that time.
 - l. The ECC members in attendance were very concerned, with some fear regarding how out of control the group outside might get.
 - m. The Complainant heard some loud voices from the front area and was concerned about aggression, so went to the front door to assist.



- n. As the Complainant approached, an ECC member was holding onto the door and there was yelling back and forth between him and various members of the group, who were demanding to be admitted.
- o. The group were all getting aggressive, pulling and pushing on the door. The ECC member punched the window of the door to emphasise that they should leave. There was some swearing by both sides.
- p. The Complainant then stepped into the doorway and quietly spoke to the group who continued to shout and record him on video.
- q. The Complainant explained that he was an invited guest.
- r. There were various insults hurled at the Complainant, including many assertions that he was ignorant of the issues with the ECC and how the association should be run.
- s. The group claimed the event to be an open AGM of a "community group" and they had a right to enter. The Complainant asserted this was not the case gently and quietly.
- t. There was a gentleman there who said he was a City councillor, which the Complainant has since identified as Ian Johnson. Ian Johnson was participating fully in the attempted intimidation and demands to enter.
- u. One female member of ECC approached to be admitted, had to push her way through the group and was jostled aggressively.
- v. The Complainant asked the group if they could let him come out and talk with them reasonably, hear whatever grievances they had and then take that to the committee of the ECC, but that he didn't want them or others to be hurt or get into a fight. They insisted that the Complainant move out of the way, pulling the door as they did so. He maintained a firm, but not aggressive grip, not pulling or pushing the door, but merely standing with his hand on the handle.
- w. There was shouting, and the group jostled, shouted and were verbally and physically aggressive towards the Complainant.
- x. Into this fray of shoving, shouting and aggressive people then entered another woman, carrying a girl on her arm only a little older than a baby, with 3 other children.
- y. The Complainant did not know whether she was a member of the ECC or not. She pushed through the crowd, thrust out her hand, asked his name, and introduced herself as Cr Tanya Richardson. She then proceeded to demand entrance. The Complainant explained that it was a private meeting.
- z. Cr Richardson loudly stated that this was a community group meeting and she had a right to enter. The Complainant explained that simply wasn't the case, but he was happy to speak with her outside, if they would let him exit and close the door. With her baby on her arm, she and others demanded that the Complainant open up the door.
- aa. At this point, Cr Richardson became a de facto leader of the group, unanimously supported and encouraged in her actions.



- bb. She and another lady, backed up by the chorus of the entire group, started to tell the Complainant that they *“could push past you. You can't stop us. Try! We can push through you.”*.
- cc. The Complainant stated, *“Sure, you could. You're a big group. But why would you want to assault me?”* They said *“We're not assaulting you.”*
- dd. The Complainant said *“Yes you would be, because you would be physically pushing me. Why would you want to assault me?”*.
- ee. Cr Richardson and others kept shouting in the Complainant's face. Cr Richardson thrust her pointing finger at him several times. The Complainant asked Cr Richardson to remove her children as he felt she was putting them at risk. Cr Richardson claimed she wasn't putting them at risk.
- ff. Cr Richardson continued to shout at, goad, threaten, complain and argue with the Complainant, along with others.
- gg. The Complainant maintained a reasonable tone and quiet in order to not stir further anger and to defuse the situation.
- hh. The Complainant admits that at one point when Cr Richardson was in his face, yelling *“Peter, Peter, Peter ...”* that he did reply, still quietly, but a little mockingly, *“Tanya, Tanya, Tanya... Please let's talk about this rationally.”* and smiled. The Complainant couldn't help it, in the face of the ridiculous actions and accusations.
- ii. Cr Richardson gave the Complainant the impression that he should bow to her wishes, as she was *“a City councillor”*.
- jj. After further disturbance, one of the ECC members from inside the Gallery clearly and loudly announced that the AGM had been cancelled.
- kk. The group verbally attacked the Complainant, demanding what he knew about the cancellation. The Complainant informed them that clearly he had been standing out with them for some time, so only knew as much as they had just heard.
- ll. The group continued to attempt to barge their way in and to attempt to intimidate the Complainant physically, verbally and by way of making threats against his personal reputation into giving way.
- mm. The Complainant was not physically harmed. They hurled abuse at the people inside, some of whom responded once or twice.
- nn. The group was informed the police has been called.
- oo. Cr Richardson and others then objected to The Complainant's “smirk” because he was smiling calmly. The Complainant continued to ignore these kinds of attacks and comments, frequently just not answering and engaging with their comments when foolish, and continued to talk calmly and reasonably.
- pp. The group left after a few more minutes in the direction of the Dome.
- qq. The Complainant returned to the boardroom. The ECC members then redeclared the AGM as open, minuting that they had cancelled the event temporarily, in order to distract the angry mob outside.



- rr. The video that the group took of the incident would confirm the manner in which the Complainant conducted himself and the threats and shouts that they vigorously called throughout.
- ss. Police came well after the group had left. They noted that several of the group were in the Dome and that one of them (which we could see was Cr Johnson) was sitting across inside the Brook bar, watching us through the window as the police spoke with us. One member noted that she had been jostled around, possibly harming her ear, but she could not identify any particular individual in the group as responsible.
- tt. The Complainant witnessed no further incidents.
- uu. The Complainant is appalled that any City Councillor would use his or her position, name and community standing to attempt to influence and rouse a mob of people like this.
- vv. The group should immediately offer sincerest apologies and remonstrations to the affected parties. They frightened a number of people inside the building, which included minors (teenage), women and elderly persons.
- ww. It was only the protective behaviour that the members of the ECC Committee undertook by locking themselves in the building that prevented someone being seriously physically hurt through the disruptive group's actions, but there certainly was emotional trauma for the members present.

Respondent's Response

- 17. By an email dated 31 March 2020, Cr Richardson provided a response to the Complaint.
- 18. Cr Richardson denies that she has committed any minor breach.
- 19. Cr Richardson makes the following comments:
 - a. Cr Richardson was only trying to attend the Ellenbrook Community meeting to seek clarification about the organisation and the work that it performs.
 - b. Cr Richardson didn't behave in an aggressive way but asked questions why the public meeting was no longer open to the public.
 - c. Cr Richardson was there with other former members of the ECC who asked for her attendance to seek clarity around accusations being made around the group.
 - d. As a local councillor for the area Cr Richardson bases her facts around evidence and not being able to attend the meeting has placed a lot of unrest in the community. The group at the door became very frustrated with the response from the ECC members.
 - e. The community of Ellenbrook have a lot of unanswered questions and accusations around this group so the ECC are on the defence.
 - f. Cr Richardson disagrees with the comments and bully tactics that are being used by ECC to stop her from attending community groups.



- g. Cr Richardson chose to attend on the day at the last minute to support community members in Ellenbrook and understand the working of the ECC.
- h. It had been explained to Cr Richardson that this is usually an open meeting to the public. The fact it was closed was not disclosed to the community members.
- i. Cr Richardson was not the only one trying to attend the meeting and she has witness accounts that she did not barge the door with a pram as she didn't have it with her.
- j. Cr Richardson would like them to produce the evidence, she has video footage of the event and can uncover some incorrect information that was explained at the door by senior members of the council.
- k. The video evidence also shows Cr Richardson not barging the door but other community members doing this in frustration.
- l. Cr Richardson does not accept she has committed any code of conduct offense but was trying to understand why the Ellenbrook community are complaining about the ECC.

Panel's Consideration

- 20. To make a finding of a minor breach of regulation 7(1)(b) of the Regulations the Panel must be satisfied to the required standard that:
 - a. Cr Richardson was an elected member at the time of the alleged breach and the time of the determination;
 - b. Cr Richardson made use of her office as Council member of the City;
 - c. when viewed objectively, such use was an improper use of Cr Richardson'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. for Regulation 7(1)(a) - Cr Richardson engaged in the conduct with the intention to gain directly or indirectly an advantage for any person; OR
 - ii. for Regulation 7(1)(b) - Cr Richardson engaged in the conduct in the belief that detriment would be suffered by another person.

Cr Richardson was an Elected Member at the relevant times

- 21. Cr Richardson 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.

Cr Richardson made use of her office as Council Member of the City

23. In this instance Cr Richardson:
 - a. attended the relevant meeting in her capacity as an elected member to seek information in respect to complaints received from community members; and
 - b. identified herself as a councillor of the City.
24. As such, the Panel finds to the required standard that Cr Richardson was acting in her capacity as an elected member when she attended the ECC meeting.
25. This element is met.

Cr Richardson's use was improper

26. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or a lack of wisdom⁹. 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.
27. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent¹⁰.
28. 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.
29. The Complainant asserts that Cr Richardson's actions were improper as she used her position, name and community standing to attempt to influence and rouse a mob of people.
30. Both parties refer to video footage, however, did not provide the same to the panel for review.
31. The Panel has considered the evidence supplied and is satisfied, to the required standard, that Cr Richardson engaged in the following behaviour:
 - a. attempting to gain entrance to the ECC meeting along with a group of people;
 - b. raising her voice and engaging in a public and heated exchange with the Complainant; and
 - c. pointing her finger at the Complainant.
32. The Panel is not satisfied that Cr Richardson or the group was actually violent, however, it was clear that they were loud and unruly, and possibly jostled some people.
33. The City has a "*Code of Conduct for Councillors and Committee Members*" published September 2015 ("**the Code**") which sets out certain expectations in respect to the conduct of Councillors to be read in conjunction with the Regulations. The relevant sections of the Code are as follows:

⁹ Complaint of Minor Breach No. SP 3 of 2013

¹⁰ *Chew v R* [1992] HCA 18



a. Values – Leadership:

*We will provide clear direction and inspire people to reach their full potential.
This can be achieved through:*

- *Leading by example, with a professional pride in our City”*

b. High Ethical Standard

“ Councillors and Committee Members of the City of Swan should aspire to high ethical standards including those in Regulation 3(1) of the Local Government (Rules of Conduct) Regulations 2007. The standards in Regulation 3(1) prescribe the following conduct:-

....

4. Avoid damage to the reputation of the local government; and

....

7. Treat others with respect and fairness; and

.....”

c. Personal Behaviour

“(a) Councillors and Committee Members will:

(i) act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code;.....”

34. In the relevant circumstances, the Panel finds it more likely than not that Cr Richardson breached the above sections of the Code in that she acted in a manner that did not treat others with respect and fairness and in a manner that was likely to damage the reputation of the local government.
35. The standards of behaviour expected of councillors are of a generally higher standard than a member of the public due to their public position. Generally speaking it is not considered acceptable behaviour for any person, let alone a councillor, to aggressively raise their voice and point their finger at another person while doing so.
36. Further the severity of this behaviour was aggravated by the fact it took place in public and as part of a group of local community members.
37. As such, the Panel finds that it was more likely than not that the conduct by Cr Richardson was improper as it was not considered generally acceptable and was not justified in the circumstances, irrespective of her frustration.
38. The Panel acknowledges that Cr Richardson genuinely thought that the ECC meeting was public in nature that that she would be permitted to attend. Despite this, once she had been denied access, and the Complainant had asserted that the meeting was private, it would have been more appropriate to leave the meeting peacefully.
39. Further, even if the conduct did not cause any physical harm or unduly frightened any person, a group acting in that manner would have the potential to, and Cr Richardson should have been aware of this fact.
40. Despite this, the Panel does not find that Cr Richardson used her influence to “rouse a mob” as alleged by the Complainant. This assertion is an exaggeration.
41. Given the above, the Panel finds that it is more likely than not the conduct by Cr Richardson was improper as:
- a. the conduct in question was in breach of the City’s Code of Conduct;



- b. the conduct 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. the conduct is deserving of a penalty.
42. This element is met.

Cr Richardson intended to cause a disadvantage OR intended to gain directly or indirectly an advantage

43. “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.
44. The definitions of the noun ‘advantage’ in the Shorter Oxford English Dictionary (6th ed) include: a favouring circumstance; something which gives one a better position, benefit; increased well-being or convenience or pecuniary profit.
45. 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.¹¹
46. It is not necessary to find whether any detriment was actually suffered, or advantage actually gained¹², but an intent to cause such detriment or gain such advantage must be established.
47. The Complainant asserts that:
- a. in respect to Regulation 7(1)(a) - the conduct was undertaken for the purpose of “*providing personal advantage with the local area*”; and
 - b. in respect to Regulation 7(1)(b) - emotional trauma was caused for the members present and that that Cr Richardson’s role and City into disrepute, however, does not assert any motivation of Cr Richardson other than “rousing a mob”.
48. Cr Richardson asserts that she attended the meeting with the intention to seek clarification about the ECC and the work that it performs.
49. Although this may have been Cr Richardson’s initial intention, once it was made apparent that the meeting was closed in nature, and Cr Richardson continued to seek entrance, the Panel finds, to the required standard, that the intention to merely seek information was overridden by an intention to intimidate and harass the persons attending and operating the ECC meeting, by creating a loud and public display, until she was admitted to the meeting or received the information she sought.
50. This intimidation and harassment can be deemed to be a detriment for the purposes of the Regulations.
51. However, the Panel finds that it is more likely than not that Cr Richardson did not intend to cause any detriment to the City, but considered that she was undertaking her role as a councillor in investigating concerns voiced by her constituents.

¹¹ Complaint SP 12 and 13 of 2011

¹² *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



52. In respect as to whether any advantage was sought, the Panel is unsure of what the Complainant means by “providing personal advantage with the local area”. In the event that it is intended to assert that that Cr Richardson sought to advantage the local community by obtaining information regarding the ECC, then this is not the type of “advantage” that the Regulations are intended to regulate. It is generally considered proper and usual for a local councillor to seek relevant information to assist them to undertake their duties and thereby benefit their constituents.
53. As such, the Panel finds that it is more likely than not that Cr Richardson:
- in respect to Regulation 7(1)(a) - had no intent to gain an advantage for herself, the local community or any other person; and
 - in respect to Regulation 7(1)(b) - did have an intent to cause a detriment to the persons preventing access to the ECC meeting (including the Complainant) and, generally, the ECC members present at the meeting.
54. This element is met only in respect to Regulation 7(1)(b).

Conclusion

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

Panel’s Findings

56. Cr Richardson did not commit a breach of Regulation 7(1)(a) of the Regulations and therefore did not commit a minor breach.
57. Cr Richardson did commit one (1) breach of Regulation 7(1)(b) of the Regulations and therefore did commit a minor breach.

Mick Connolly (Presiding Member)

Emma Power (Member)

Peter Rogers (Member)



Local Government Standards Panel

Complaint Number	SP 2020-013
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Mr Peter McLean
Respondent	Councillor Tanya Richardson
Local Government	City of Swan
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mr Gordon MacMile (Presiding Member) Ms Elanor Rowe (Deputy Member) Ms Deborah Hopper (Deputy Member)
Heard	10 June 2020 Determined on the documents
Penalty Considered	17 September 2020
Outcome	Public Apology

PENALTY DECISION AND REASONS FOR DECISION

Delivered 8 October 2020

DEFAMATION CAUTION

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Introduction

1. At its meeting on 10 June 2020, the Panel found that Councillor Tanya Richardson (“Cr Richardson”), a council member of the City of Swan (“the City”) committed one breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (“the Regulations”) when she abused her authority as a councillor to gain unauthorised access to an Annual General Meeting of the Ellenbrook Community Collective.
2. On 13 August 2020, the Panel published its Finding and Reasons for Finding (“Findings”) and found that Cr Richardson had breached Regulation 7(1)(b). The Panel reviewed all the evidence presented to it and said:

“34. *In the relevant circumstances, the Panel finds it more likely than not that Cr Richardson.....acted in a manner that did not treat others with respect and fairness and in a manner that was likely to damage the reputation of the local government.*

35. *The standards of behaviour expected of councillors are of a generally higher standard than a member of the public due to their public position. Generally speaking, it is not considered acceptable behaviour for any person, let alone a councillor, to aggressively raise their voice and point their finger at another person while doing so.*

36. *Further the severity of this behaviour was aggravated by the fact it took place in public and as part of a group of local community members.*

.....

49. *Although this may have been Cr Richardson’s initial intention, once it was made apparent that the meeting was closed in nature, and Cr Richardson continued to seek entrance, the Panel finds, to the required standard, that the intention to merely seek information was overridden by an intention to intimidate and harass the persons attending and operating the ECC meeting, by creating a loud and public display, until she was admitted to the meeting or received the information she sought.*

50. *This intimidation and harassment can be deemed to be a detriment for the purposes of the Regulations.*

.....

53. *As such, the Panel finds that it is more likely than not that Cr Richardson:*

- b. *in respect to Regulation 7(1)(b) – did have an intent to cause a detriment to the persons preventing access to the ECC meeting (including the Complainant) and, generally, the ECC members present at the meeting.”*

Jurisdiction

3. The Panel convened on 17 September 2020 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 Richardson 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) *ordering that no sanction be imposed; or*
 - (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*
 - (iv) *the person against whom the complaint was made pay to the local government specified in the order an amount equal to the amount of remuneration and allowances payable by the local government in relation to the complaint under Schedule 5.1 clause 9;*

or

- (c) *ordering 2 or more of the sanctions described in paragraph (b).*

Councillor Richardson’s Submissions

5. 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
6. By a letter dated 13 August 2020, Cr Richardson was:
 - i. notified of the Panel’s finding of the minor breach;
 - ii. provided with a copy of the Panel’s Findings; and
 - iii. offered an opportunity to make submissions as to how the minor breaches should be dealt with under section 5.110(6) of the *Act*.
7. The Department did not receive a submission from Cr Richardson within the fourteen-day timeframe provided to her. In addition, a further request was sent to Cr Richardson on 21 August 2020, and a follow up phone call was made, to which there was no further response.

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



Panel's consideration

8. The Panel found that Cr Richardson breached Regulation 7(1)(b) when she abused her authority as a councillor to gain unauthorised access to an Annual General Meeting of the Ellenbrook Community Collective. A breach of regulation 7(1)(b) is a serious matter. Therefore, the Panel does not consider that ordering no sanction be imposed is appropriate because this would indicate that the breach is so minor that no penalty is warranted.
9. However, the Panel also does not consider it is appropriate to make an order for censure for Cr Richardson's actions, as they were 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. Likewise, the Panel also does not find that an order that Cr Richardson pay to the City a sum of money is warranted.
10. The options left for the Panel to consider are to order Cr Richardson to undertake training or make a Public Apology.
11. The circumstances in which it may be appropriate for the Panel to order that the council member concerned undertake training include where the member communicates to the Panel:
 - a. their acknowledgement that they have committed the minor breach, and their willingness to undertake training; or
 - b. their acknowledgement that they have committed the minor breach, but that such breach occurred through their lack of knowledge or education on the issue or issues concerned; or
 - c. their remorse or contrition for their offending conduct in committing the minor breach.
12. Cr Richardson did not take the opportunity to respond to how the Panel should deal with the breach. Therefore, in the circumstances, it is not the Panel's view that training (so to not repeat her offending conduct) will be of use to Cr Richardson.
13. As stated above, a breach of regulation 7(1)(b) involving improper conduct to cause detriment to another person is a serious matter. An apology in public to the other parties concerned is appropriate when a councillor's conduct does not meet the standards other councillors seek to uphold.
14. Therefore, the Panel considers a public apology to Mr Peter McLean and the other persons preventing access to the Ellenbrook Community Collective Annual General Meeting held on 4 February 2020, and generally to the members of the Ellenbrook Community Collective who were present at the meeting, 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 Richardson is ordered to publicly apologise for her conduct.

A handwritten signature in blue ink, appearing to read 'G MacMile'.

Gordon MacMile (Deputy Presiding Member)

A handwritten signature in black ink, appearing to read 'Elanor Rowe'.

Elanor Rowe (Deputy Member)

A handwritten signature in blue ink, appearing to read 'Deborah Hopper'.

Deborah Hopper (Deputy Member)



ORDER

Delivered 8 October 2020

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

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Tanya Richardson, a Councillor for the City of Swan, publicly apologise to Mr Peter McLean and the other persons preventing access to the Ellenbrook Community Collective Annual General Meeting held on 4 February 2020, and the members of the Ellenbrook Community Collective who were present at the meeting, 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 Richardson 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 Regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 (WA) when I abused my authority as a councillor to gain unauthorised access to an Annual General Meeting of the Ellenbrook Community Collective held on 4 February 2020.
- ii. The Panel found that by behaving in this manner I committed one breach of Regulation 7(1)(b) 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 Mr Peter McLean and the other persons preventing access to the Meeting, and to the members of the Ellenbrook Community Collective who were present at the meeting, for having done so."

3. If Cr Richardson 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 "*Echo*" newspaper:

PUBLIC APOLOGY BY COUNCILLOR TANYA RICHARDSON

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 (WA) when I abused my authority as a councillor to gain unauthorised access to an Annual General Meeting of the Ellenbrook Community Collective held on 4 February 2020.

The Panel found that by behaving in this manner I committed one breach of Regulation 7(1)(b) 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 Mr Peter McLean and the other persons preventing access to the Meeting, and to the members of the Ellenbrook Community Collective who were present at the meeting, for having done so.



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."