



Local Government Standards Panel

Complaint Number	SP 2019-125
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Mr Michael Foley
Respondent	Cr Rashelle Predovnik
Local Government	City of Swan
Regulation	Regulation 9(1) of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mr Michael Connolly (Presiding Member) Cr Peter Rogers (Member) Mrs Emma Power (Member)
Heard	12 March 2020 Determined on the documents
Penalty Considered	10 June 2020
Outcome	Training

DECISION AND REASONS FOR DECISION

Delivered 13 July 2020

DEFAMATION CAUTION

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Introduction

At its meeting on 12 March 2020, the Panel found that Councillor Rashelle Predovnik, councillor for the City of Swan (“**the City**”), committed 1 minor breach under the Local Government Act 1995 (WA) (“**the Act**”) and regulation 9(1) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (“**the Regulations**”) when she involved herself in the administration of the City by approaching owners of certain properties within the City with rates arrears and discussing the arrears and payment of the same with those owners (“**the Minor Breach**”).

Jurisdiction and Law

The Panel convened on 10 June 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 Predovnik had ceased to be, or was disqualified from being, a councillor.

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

By a letter dated 24 April 2020, Cr Predovnik was:

- notified of the Panel’s finding of the Minor Breaches;
- provided with a copy of the Panel’s Finding and Reasons for Finding; and
- offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the Act.

Possible Sanctions

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;*
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
 - (iv) *the person against whom the complaint was made pay to the local government specified in the order an amount equal to the amount*

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



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 Predovnik's Submissions

By an email dated 15 March 2020, the Department received a response from Cr Predovnik. In her response Cr Predovnik states that:

the Panel consider that no sanction be imposed due to the following:

- i. the Panel must have regard to the general interests of local government in Western Australia – and the City has downplayed its assessment of the severity of this rates arrears issue in Swan;
- ii. the Complainant made certain statements that were incorrect in respect to the rates situation in the City;
- iii. much needed reform in this area is not going to come from those committed to the current process. The 'truth' of this picture will only emerge through speaking to those directly impacted and the Act does not prohibit me from speaking to ratepayers in my role as a councillor;
- iv. other Councillors have undertaken similar actions and have not been the subject of a complaint;
- v. Cr Predovnik is surprised little weight has been given to the fact she was a new councillor and not experienced enough to be aware of the extent that such activity may have been an administrative matter; and
- vi. Cr Predovnik gave the CEO full disclosure as to her intentions to contact relevant parties and he could have used this issue to mentor her.

Cr Predovnik would request no public censure as she was newly elected and yet to undertake training;

Cr Predovnik would request no public apology as she has continued to door knock and discuss this issue with those affected via social media and messenger apps in her role as a councillor. Cr Predovnik is lobbying for the creation of a hardship policy and for better outcomes for those in debt and is concerned a public apology for actions she is committed to continuing will make a mockery of this sanction.

Cr Predovnik would request not enacting payment to the local government specified in the order as this is her first breach.

Cr Predovnik also poses a series of questions relating to the confidentiality and appeals process which should more properly be referred to the Department rather than the Panel itself.



Panel's Consideration

Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach.

Further it is not the purpose of the Panel to make a determination as to whether the current policies of a local government are appropriate and effective. This has no bearing on whether a minor breach has occurred or not.

The Panel may order under section 5.110(6)(a), that no sanction be imposed complaint not to reverse the Panel's finding of a breach, but to indicate that in all the circumstances the relevant councillor should not be penalised further.

Guidance as to the factors which the Panel may consider in determining the appropriate penalty to impose include, but are not limited to, the following:

- the nature and seriousness of the breaches;
- the councillor's motivation for the contravention;
- whether or not the councillor has shown any insight and remorse into his/her conduct;
- whether the councillor has breached the Act knowingly or carelessly;
- the councillor's disciplinary history;
- likelihood or not of the councillor committing further breaches of the Act;
- personal circumstances at the time of conduct, and of imposing the sanction;
- need to protect the public through general deterrence and maintain public confidence in local government; and
- any other matters which may be regarded as aggravating conduct or mitigating its seriousness².

The Panel does not consider it appropriate to impose no sanction in relation to the Minor Breach as this would condone Cr Predovnik's conduct.

The Panel would like to clarify to Cr Predovnik that the Minor Breach does not arise from the fact she spoke with, or received information from, her constituents nor from lobbying on their behalf. This is clearly within the scope of a councillor's responsibilities.

However, the Minor Breach arose as she took her role one step further in circumventing the standard rates recovery process of the City in relation to particular residences, which was an administrative procedure of the City.

The finding of Minor Breach was based upon the facts of the conduct involved. Being an inexperienced councillor does not affect the outcome of that finding. However, the fact that Cr Predovnik is a new councillor has been taken into account in the consideration of penalty.

The Panel also recognises that Cr Predovnik's actions arose from trying to do the right thing by her constituents that were in need and that it is unlikely she will breach the Act in the same manner again.

² *Chief Executive Officer, Department of Local Government and Communities and Scaffidi [2017] WASAT 67 (S)*



In these circumstances, the appropriate penalty is that Cr Predovnik undertake training so that she may properly identify the relevant administrative procedures for dealing with similar matters in the future.

The sanction of an order to undertake training would align with the intent of the Act and the purpose of the civil penalties under the Act to ensure future compliance with the statutory obligations imposed on councillors for the better protection of the public.

Panel's decision

The Panel orders pursuant to section 5.110(6)(b)(iii) of the Act that, in relation to the Minor Breach of regulation 7(1)(b) of the Regulations, Cr Predovnik undertake training as set out in the attached Order.

A handwritten signature in blue ink, appearing to read 'Mick Connolly'.

Mick Connolly (Presiding Member)

A handwritten signature in black ink, appearing to read 'Emma Power'.

Emma Power (Member)

A handwritten signature in black ink, appearing to read 'Peter Rogers'.

Peter Rogers (Member)



ORDER

Delivered 13 July 2020

DEFAMATION CAUTION

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

Within 4 months of the date of this Order, Councillor Rashelle Predovnik, a Councillor for the City of Swan, shall undertake:

1. the training course for Elected Members “*Understanding Local Government*” provided by WA Local Government Association (WALGA) for a period of no less than 4 hours; or
2. a training course with substantially similar learning outcomes provided by an alternative registered training organisation for a period of not less than 4 hours.



Local Government Standards Panel

Complaint Number	SP 2019-125
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Michael Foley
Respondent	Councillor Rashelle Predovnik
Local Government	City of Swan
Regulation	Regulation 9 <i>of the Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr Michael Connolly (Presiding Member) Ms Rebecca Aubrey (Member) Mrs Emma Power (Member)
Heard	12 March 2020 Determined on the documents
Finding	One (1) Breach of Regulation 9

FINDING AND REASONS FOR FINDING

Delivered 15 April 2020

DEFAMATION CAUTION

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Summary of the Panel's decision

1. On 12 March 2020, the Panel found that Councillor Rashelle Predovnik 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 9 of the Local Government (Rules of Conduct) Regulations 2007 (**"the Regulations"**) when she approached owners of certain properties within the City with rates arrears and discussed the arrears and payment of the same with those owners as set out in paragraph 15 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



Jurisdiction and Procedural Fairness

11. On 20 December 2019 the Panel received an email on behalf of Mr Michael Foley acting as complaints officer of the City ("**the Complaints Officer**"). The same enclosed a Complaint of Minor Breach Form dated 20 December 2019.
12. In the complaint Mr Michael Foley (in his capacity as Chief Executive Officer ("**CEO**") of the City) alleges that Cr Predovnik has allegedly breached regulation 9(1) of the Regulations when she approached owners of properties within the City with rates arrears and discussed the arrears and payment of arrears with them as set out in paragraph 15 below ("**the Complaint**").
13. The Panel convened 12 March 2020 to consider the Complaint.
14. The Panel:
 - a. accepted the advice of the Department of Local Government, Sport and Cultural Industries ("**the Department**") that, based on information published on the Western Australian Electoral Commission's website, Cr Predovnik was:
 - i. 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 12 March 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;
 - d. was satisfied the Department had provided procedural fairness to Cr Predovnik; and
 - e. found it had jurisdiction to consider the Complaint.

The Specifics of the Complaint

15. The Complainant makes the following particular arguments and allegations:
 - a. The City has approximately 62,000 rateable properties and approximately \$8 million in rates arrears outstanding (including approximately \$2 million deferred rates).
 - b. The City offers various payment alternatives to help ratepayers pay their rates.
 - c. Council has delegated to the CEO authority to write off interest on outstanding rates and service charges incurred in line with the City's Guideline - Extreme Financial Hardship Rates Relief.
 - d. The City has a comprehensive rate debt recovery and communication and resolution process where formal debt recovery by an agency is a last resort.
 - e. If any rates or service charges have been unpaid for at least three years, the City may sell the property to recover any outstanding moneys under section 6.64 of the Act.

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

⁸ Section 5.107 and 5.109 of the Act



- f. From time to time, a confidential report is prepared for Council to determine whether or not to authorise the CEO to instruct the Bailiff to proceed to sell the identified properties in the report.
 - g. On the 11 December 2019 ordinary Council meeting ("**OCM**") agenda, there was such a confidential report listed for Council's consideration. There were six properties identified to proceed to sell.
 - h. Both the public and confidential agenda for the OCM was made available to Councillors on Friday 29 November 2019.
 - i. Cr Predovnik e-mailed the Executive Manager Stakeholder Relations on Sunday 1 December 2019 requesting additional information ("**Email 1**"). Due to the amount of information required to be collated, an interim response was provided on Monday 2 December 2019 ("**Email 2**") with further detailed information provided on Friday 6 December 2019 ("**Email 3**" and "**the City Document**").
 - j. No questions regarding the confidential information were asked by any Councillors at the agenda forum held on Wednesday 4 December 2019 prior to the OCM.
 - k. On Thursday 5 December 2019, the Complainant received a phone call from Cr Predovnik regarding the sale of properties report on the agenda. She indicated that she wanted to do some further investigation to find out what their personal circumstances were.
 - l. The Complainant advised Cr Predovnik that there was a legal process to follow with regards to the collection of rates debts and that she needed to be very careful not to get involved in what was an operational and administrative matter.
 - m. The Complainant advised her not to approach people directly.
 - n. On Monday 9 December 2019 Cr Predovnik e-mailed the Executive Manager Stakeholder Relations advising that she had done her own research (presumably over the weekend of Saturday 7 and Sunday 8 December 2019) in relation to the sale of properties for rate and charges arrears ("**Email 4**").
 - o. In Email 4, Cr Predovnik advised that she attended the properties listed for sale in the report to Council. In some cases, she has spoken to and sought to negotiate payment plans with the owners of the properties.
 - p. Neither the CEO nor the Council authorised Cr Predovnik to attend these properties on behalf of the City nor to negotiate with the owners payment plans. In doing so Cr Predovnik has become involved in an operational matter.
 - q. Cr Predovnik requested staff assist with the preparation of an alternate motion for her to move at the OCM.
 - r. The OCM meeting was adjourned to 16 December 2019 when this item was considered by Council. Cr Predovnik declared an impartiality interest in the item, put forward her alternate motion, debated and voted on the matter.
 - s. Cr Predovnik has only completed a portion of the comprehensive induction programme for new Councillors provided by the City.
16. The following was also provided with the Complaint:
- a. **Email 1** dated 1 December 2019 from Cr Predovnik to Executive Manager Stakeholder Relations as follows:



From: Rashelle Predovnik
Sent: Sunday, 1 December 2019 11:41 PM
To: Kym Leahy
Cc: Mike Foley
Subject: Confidential Item C3.1

Hello Kym

Can you please provide more information on the Confidential Item C3.1 – on the face of it, it seems astonishing some people may lose the roof over their heads for paltry sums of debt ranging from \$8,000 to \$14,000.

I am also surprised at the lack of detail that has been included in this report to council. Can you please provide more information by Wednesday next week? My questions are as follows:

What is the story/personal circumstances of each of the six listed in item C3.1? And are there whole families living in these homes?

Are any of these properties deceased estates?

Are any of these properties vacant blocks?

Can you please list which of these properties (if any) are owner/occupier?

How much of these totals are actually rates outstanding – and how much is interest? Can you please provide a break down in each case.

Has anyone actually spoken to these people within the past three years? Or have they merely been contacted via writing?

Why is there no other recommendation in this report besides selling these properties/homes?

Can you please advise: Is it possible to hold the debt? To put a caveat on the title so the rates can be recouped following the sale of the property – whenever the owners themselves chose to sell it? (Obviously, this caveat would have to be at the discretion of council – based on their personal circumstances and true financial hardship).

If it's the the City of Swan seeking to sell these homes (and not the bank) this suggests they are not defaulting on mortgage repayments: Can you please confirm the properties listed above are not defaulting on their mortgages/being chased by the bank?

If a property was to get sold - in the case of the Kiara property, to recoup \$8,934.60 – what would happen to the rest of the funds from the sale: where would they go?

Thanks for your help with this Kym - any extra information you have about these properties would also be appreciated!

Kind regards
Rashelle



- b. a copy of **Email 2** dated 2 December 2019 from Executive Manager Stakeholder Relations to Cr Predovnik as follows:

From: Kym Leahy
Sent: Monday, 2 December 2019 12:22 PM
To: Rashelle Predovnik <Rashelle.Predovnik@swan.wa.gov.au>
Cc: Mike Foley <Mike.Foley@swan.wa.gov.au>; Jessica Beaman <Jessica.Beaman@swan.wa.gov.au>
Subject: FW: Confidential Item C3.1

Dear Cr Predovnik,

Thank you for your email. There are a lot of questions there but we will do our best to have a response to you prior to the OCM. I provide the following information as background in the interim.

The City has approximately \$8m in rates arrears outstanding (including approximately \$2m deferred rates). We progressively manage our debt through various stages of recovery that can ultimately lead to reports such as this being tabled for Council. Although you may feel that \$75k for the six properties is a paltry debt when you view them individually, we need to manage the City's overall debt exposure to ensure we can deliver services to all our community and that responsible financial management is being provided for the good governance of our community.

The City will always in the first instance attempt to resolve outstanding balances through various payment arrangements that are available to City ratepayers. The City acknowledges that our ratepayers face a number of increasing costs and these costs are not limited to rates. The City offers various payment alternatives to help ratepayers pay their rates; these include weekly, fortnightly, monthly payment plans and a four instalment option. If no contact or arrangement has been made by a ratepayer, and once all attempts to collect the debt have been exhausted, the City will refer debt to the debt collection agency.

Regards,

Kym Leahy

Executive Manager

Stakeholder Relations



c. **Email 3** dated 6 December from the assistant to Executive Manager Stakeholder Relations to Cr Predovnik as follows:

From: Jessica Beaman
Sent: Friday, 6 December 2019 4:00 PM
To: Rashelle Predovnik
Cc: Kym Leahy; Mike Foley; Jessica Beaman
Subject: RE: Confidential Item C3.1

Good afternoon Cr Predovnik,

Please see the attached document in response to your questions below.

Please note that this level of information is not readily available from our system and required additional resources over this week to manually extract this level of administrative information for you.

As you will see from the attached information, staff go to extensive effort to recover debt before it is handed to the debt recovery agency, which is a last resort. This process ensures responsible financial management for the good governance of our community.

Kind Regards,

Jessica Beaman  Executive Assistant to Executive Manager Stakeholder Relations
Council Support

d. The **City Document** referred to in Email 3 which includes the following extracts (note: The Panel has not preproduced the substantial personal financial material and provided. Relevant Information for each property was also supplied in a similar format as shown in paragraph 0):

i.

Action taken by the City of Swan FOLLOWS the *Local Government Act 1995* (the Act) requirements:

- Annual Rate Notice is issued in July, with 35 days available to pay before the due date. All payment options are listed on the notice;
- If a payment in full or first instalment is not received by the due date, a final notice is issued;
- If ratepayer made no contact or payment arrangement upon receipt of a final notice the City will refer the file to a debt collection agency to issue a letter of demand. Please note the City has approximately 62,000 rateable properties and approximately \$12.4m debt as at 30 June 2019;
- If there was no contact or payment upon a demand letter issue, the City's officers will again investigate each assessment to if there is any other reason not to proceed to a General Procedure Claim (GPC);
- GPC is hand delivered to each owner registered on the Certificate of Title by a field agent contracted by the debt collection agency;
- The City communicates with ratepayers by mail, phone calls, SMS, email or face to face ensuring they are fully aware of the outstanding debt and options available to negotiate a payment plan before any legal action is taken.

The Act allows Local Government to recover rates unpaid for more than three (3) years. The City's debt as at 30 June 2019 was \$12.4m (excl. ESL).

1. What is the story/personal circumstances of each of the six listed in Item C3.1? And are there whole families living in these homes?

Ratepayers do not have to disclose their personal circumstances.

2. Are any of these properties deceased estates?

No deceased estates in this Council report.

3. Are any of these properties vacant blocks?

No vacant blocks included in this Council report.



4. Can you please list which of these properties (if any) are owner/occupier?

The City does not maintain a resident register.

5. How much of these totals are actually rates outstanding – and how much is interest? Can you please provide a break down in each case?

The breakdown of debt components is included below.

6. Has anyone actually spoken to these people within the past three years? Or have they merely been contacted via writing?

As advised above, the City continuously communicates with ratepayers by mail, phone calls, SMS, email or face to face ensuring they are fully aware of the outstanding debt and options available to negotiate a payment plan before any legal process commences.

7. Why is there no other recommendation in this report besides selling these properties/homes?

The sale of the properties is the last option that the City would recommend after exhausting all other possible options.

8. Can you please advise: Is it possible to hold the debt? To put a caveat on the title so the rates can be recouped following the sale of the property – whenever the owners themselves chose to sell it? (Obviously, this caveat would have to be at the discretion of council – based on their personal circumstances and true financial hardship).

The City will always work with a ratepayer by negotiating a suitable payment plan. Caveats are part of the recovery process. It is to be noted that a house may not be sold for 15-20 years or ever.

9. If it's the City of Swan seeking to sell these homes (and not the bank) this suggests they are not defaulting on mortgage repayments: Can you please confirm the properties listed above are not defaulting on their mortgages/being chased by the bank?

This information is protected by the Privacy Act and the City does not get advised unless the property becomes a mortgagee in possession. Also, properties do not necessarily have a mortgage.

10. If a property was to get sold - in the case of the Kiara property, to recoup \$8,934.60 – what would happen to the rest of the funds from the sale: where would they go?

Surplus funds will be handed back to the registered property owner/s.

ii. Sample Relevant Property Information:

C/T Title: [REDACTED]
 Plaintiff number: To Be Confirmed
 Period Outstanding: 2016/17 – 2019/20
 Current Debt: \$10,093.74
 Last Payment: \$50.00 paid May 1, 2019
 Recovery level: Demand Letter issued

Debt itemized	2013	2014	2015	2016	2017	2018	2019
Rates	\$ 1,630.90	\$ 1,621.28	\$ 1,688.81	\$ 1,743.15	\$ 1,892.37	\$ 1,961.59	\$ 1,988.53
Interest	\$ 120.15	\$ 259.43	\$ 397.98	\$ 489.75	\$ 351.71	\$ 345.06	\$ 158.96
Legal Fees			\$ 471.20			\$ 704.20	



Recovery Action:

- February 2017 Final Notice issued;
- September 2017 Final Notice issued;
- January 2018 Demand Letter sent by Collection Agency;
- September 2018 Final Notice issued;
- October 2018 Demand Letter sent by Collection Agency;
- January 2019 General Procedure Claim (GPC) issued;
- May 2019 Owner made \$50.00 payment at the City of Swan offices, and he was advised of the situation, he stated that he is unemployed and will attend a Financial Counsellor – to date no response in relation to an appointment with a Financial Counsellor or any further payments;
- Contacted Water Corporation for any assistance in contact details or postal address, Water Corporation advised they hold the same information as the City;
- Searches by Collection Agency via Social Media (Facebook) and other sources revealed no matches;
- June 2019 Skip Trace (extensive external search of owner) requested to try and locate the owner, Skip Trace results reveal owner still resides at the property address 4 O'Connor Road, SWAN VIEW WA 6056;
- September 2019 Final Notice issued,
- November 2019 Demand Letter issued by Collection Agency;
- November 2019 email to Mortgagee, Bankwest, mortgagee has advised there is no debt associated with the property held by Bankwest, no further action from mortgagee;
- December 2019 no contact or payment received from owner.

Summary

- Debt has been accumulating since 2013, no payment received, balance at the end of financial year was \$1,751.05;
- In 2014 no payment received towards the debt of \$3,631.76 and balance at the end of financial year was \$3,631.76;
- In 2015 paid \$1,000 towards the debt of \$6,189.75, balance at the end of financial year was \$5,189.75;
- In 2016 paid \$400 towards the debt of \$7,422.65, balance at the end of financial year was \$7,022.65;
- In 2017 paid \$900 towards the debt of \$9,266.73, balance at the end of financial year was \$8,366.73;
- In 2018 paid \$3,400 towards the debt of \$8,366.73, balance at the end of financial year was \$7,977.58;
- In 2019 paid \$0 towards the debt of \$10,125.07, balance at the time of producing this report is \$10,125.07;
- Since 2013 two (2) times negotiated payment plan, defaulted on each occasion;
- Rating Officers advised the ratepayers in person of a possibility to see a financial counsellor and provide an income and expenditure statement to the City;
- August 2019 Field agent advised unable to serve GPC as the owner cannot be found at home.



e. **Email 4** dated 9 December 2019 from Cr Predovnik to Executive Manager Stakeholder Relations as follows:

Hello Kym,

Thank you for answering my questions and for taking the time to clearly outline the process. I did my own research this week and arrived at the conclusion there is only so much a local government can do if a person is not responding... So, after taking a much closer look: I have no criticism of the process the city follows in general to recoup outstanding rates.

What this confidential item has alerted me to however is the possibility of people in real financial hardship being pushing into homelessness over very small debts. I accept and understand the city simply cannot know every debtor's personal circumstances. So I went to these addresses to further investigate and I can provide the following information:

[REDACTED] of Bellevue: bunkered down behind padlocked gates in a derelict looking boarded up house in Bellevue. Their pet cat looks well fed. I suspect they may be hoarders and their response to the City of Swan in the information provided also suggests mental health issues.

[REDACTED] of Donington
There is no need for council to vote on this one – this family has already put their home on the market to pay off the bank and they know the caveat that's on their title will ensure outstanding rates are repaid to the City. I didn't record the details of the real estate agent, but the sign is clearly visible on their verge.

[REDACTED] of Bull
He was good enough to talk to me but unfortunately he is not a reasonable man. He won't be cooperative and I accept council will proceed with the officer's recommendation in his case.

[REDACTED] is a single dad who lives in this house with his 16-year-old son. He was on the dole when he made his last repayment and from that point on he couldn't meet his repayments. He said when he tried to reinstate the payments he was told the matter had progressed beyond repayments and moved to legal action, so he wasn't sure what to do. He recently got a job and is now working as a mechanic at [REDACTED] in Bellevue. He's on a payment plan for his water and he's willing to pay \$150 a week to repay his rates bill. He showed me a letter from Landgate dated November 15 advising him the City of Swan has lodged a Caveat on his Certificate of Title. A letter dated November 13 from debt collection agency CS Legal makes a demand of \$10,099.33 to be paid within 10 days. The interest rate being calculated daily is 11% per annum.

[REDACTED]
Three children aged 16, 14 and 11 live with their parents at this address. [REDACTED] said she unsuccessfully tried to access her superannuation to pay off their rates debt. Periods of unemployment and work hours being cut back caused this family financial hardship but they are clawing their way back with a financial plan that includes consolidating their debts. [REDACTED] says the family can and is willing to pay back \$100 a week on their rates debt. [REDACTED] did attempt to make repayments but her offer of \$100 a week was not accepted and she was told it had to be 157 a week. She can afford to pay back \$100 a week and wants to.

[REDACTED]
It was a family tragedy six years ago that gave [REDACTED] a bad turn. It shattered his parents and a grief-stricken [REDACTED] struggled to function, which made his debt levels spiral out of control. He said it got to a point where he couldn't open his mail or answer the door because he was so overwhelmed but he's reached a turning point: he is working with a financial councillor and is offering to pay \$100 a week on his rates bill. He has also made moves to get \$5000 out of his superannuation to put towards his rates bill, and he's optimistic he will get this. He's starting a new job as an electrician tomorrow and he has negotiated a payment plan on all of his debts through a financial councillor. He has a young child who needs a stable home environment, a difficult family court case to navigate and other debts to pay so he can't stretch his repayments to \$159 a week. Unfortunately, the 11% interest rate on his rates debt is pushing him into hardship. But he is willing and able to pay \$100 a week.

In light of my investigations I want to raise an alternative motion for council on Wednesday: can I please discuss the following with you on Tuesday:



[REDACTED] have all expressed a willingness to start a new payment plan and are clear about the amount they can afford. Can we please put a stay of execution for these three homes as they have expressed a desire to repay – is there a way we can go down this road? I am not asking to waive the rates owed – simply the interest charges – so that these ratepayers can repay their debt and get back on their feet – and continue to contribute to our economy. If people are genuinely facing financial hardship – to the degree they have not paid their rates in three years and have defaulted on repayment plans – putting a different process in place may help them more easily get back on their feet (should they be genuine about paying off their debt and honouring a new payment plan).

Can we put a process in place that we can easily monitor? If this proves to be a genuine attempt to reengage with the city and repay the debt – can the process include freezing the 11% interest rate charge on the debt until the amount is paid? Again, to help these people get back on their feet and back to being ratepayers in the City of Swan.

Mental Health issues:

Are we able to defer action on [REDACTED] to allow the City of Swan to investigate a separate method of dealing with outstanding rates from people with mental health issues – in light of the city’s growing homelessness problem.

Simply because, those with mental health issues have too lose a grip on reality to deal with the standard process the city follows to recoup rates. They are also our most vulnerable ratepayers and most prone to becoming homeless and the many social problems this causes our community is becoming problematic in Midland.

I appreciate there is a lot of material here and it would probably be easier if I come in to discuss this with you on Tuesday? (I am hoping you are free before 10am...). Are you available on Tuesday?

Kind Regards
Rashelle

- f. Extract from the confidential agenda item for the OCM setting out:
 - i. the details of each property and the relevant rates debt and actions undertaken to that date; and
 - ii. the motion (“**the Motion**”) made by Cr Predovnik at the OCM as follows:

MOTION that the Council resolve to:

- 1) In accordance with the *Local Government Act 1995* and pursuant to section 6.64, instruct the Bailiff to proceed to sell the properties listed hereunder which have rates and charges in arrears for three (3) or more years, and recover from the proceeds of sale the outstanding balances which total approximately \$41,817.51.

Assessment Number	Certificate of Title	Property Address
419554	[REDACTED]	[REDACTED]
237610	[REDACTED]	[REDACTED]
199563	[REDACTED]	[REDACTED]

- 2) Not instruct the Bailiff to proceed to sell the properties listed hereunder with outstanding balances which total approximately \$33,540.01, and notify the property owners that payment in full or a satisfactory payment plan is required to settle the debt.

Assessment Number	Certificate of Title	Property Address
195580	[REDACTED]	[REDACTED]
198296	[REDACTED]	[REDACTED]
184019	[REDACTED]	[REDACTED]

- 3) Note that any further default on the agreed payment plan or failure to negotiate an agreed payment plan will result in a report to Council to sell the properties in accordance with section 6.64 of the *Local Government Act 1995*.

The reason for changing the staff recommendation is that discussions with the property owners indicates a change of personal circumstances and desire to re-engage with the City.

(Cr Predovnik – Cr Kiely)



Respondent's Response

17. By an email dated 28 January 2020 Cr Predovnik provided a response to the Complaint.
18. Cr Predovnik denies that she has committed a minor breach.
19. Cr Predovnik makes the following comments and arguments in respect to the allegations of Minor Breach:
 - a. Cr Predovnik was keen to understand what could be done to help ratepayers facing the prospect of losing their homes.
 - b. The current process does not include providing personal information to council which Cr Predovnik felt was critical in order for her to make an informed judgment.
 - c. Less than two months into her role Cr Predovnik was expected to make a decision that would directly impact families and she took that responsibility very seriously. Cr Predovnik believed it was important to engage with her electors but to also seek clear direction and guidance from the CEO – which is why she made the phone call to Mike Foley on Thursday, December 5.
 - d. Cr Predovnik advised the CEO of her intention to go door knocking. Names and addresses were provided in the report and being a newly-elected councillor she believed it was incumbent to do due diligence and seek additional information from those directly affected.
 - e. Cr Predovnik explained to Mr Foley that as far as she understood she was able to door knock and do this because:
 - i. although this matter was a confidential item, the relevant people were directly impacted and had already been notified by the City; and
 - ii. the current process did not include providing personal information she believed was necessary to have in order to make a fully informed judgment.
 - f. Cr Predovnik strongly rejects the claim by Mr Foley that he gave her clear instruction and that he raised the issue of legal, operational and administrative matters during their conversation on Thursday, December 5.
 - g. Instead, Mr Foley simply cautioned Cr Predovnik (which she interpreted as good advice since the people I would door knock were under severe financial stress and may not be receptive).
 - h. Had Mr Foley alerted Cr Predovnik to a legal process with regards to the collection of rates debts, and had he truly advised that I needed to be very careful not to get involved in what was an operational and administrative matter, I would have taken this advice.
 - i. Instead, Cr Predovnik was given no clear instruction from Mr Foley, who admitted during the discussion he did not have the authority to stop me (or any elected member) from door knocking.
 - j. It was Cr Predovnik's understanding at the conclusion of the phone call that she was not breaching any regulations (as he mentioned none) and that Cr Predovnik was able to door knock the six homes on the agenda item.
 - k. Cr Predovnik rejects the argument that she attended these properties on behalf of the City and negotiated payment plans.



- l. Cr Predovnik clearly identified herself to these ratepayers as a councillor, on their doorstep to hear 'their story'.
- m. At no time did Cr Predovnik indicate that she was representing the council or the City. She also made it very clear that she had no authority to help them in this matter and she was purely seeking to understand their personal circumstances.
- n. Cr Predovnik didn't promise them anything or commit to anything and they accepted, she was simply seeking to get a better understanding of their personal circumstances.
- o. Currently there is no Council endorsed policy to guide the collection of debt so Cr Predovnik needed to ask questions to better understand the current process as she wanted to raise a motion that would save three homes.
- p. Cr Predovnik organised to meet with an executive staff member to discuss the proposed Motion and the staff member voiced concern Cr Predovnik had overstepped the mark into operations – specifically, that she had attempted to negotiate a payment plan.
- q. This feedback surprised Cr Predovnik as her emails were simply seeking to better understand a process that was new to her and that she did not understand.
- r. Cr Predovnik assured this manager she did not negotiate a payment plan – because she did not have the authority to do so or access to the system.
- s. The manager appeared to accept Cr Predovnik's explanation and she agreed to help Cr Predovnik draft a motion to council.
- t. Cr Predovnik is disappointed, despite her assurances, this complaint has been made.
- u. Cr Predovnik:
 - i. sought help, guidance and direction throughout this process;
 - ii. contacted a multitude of people to seek advice, including the CEO, senior staff, and a representative from WALGA (a number of times) to get a better understanding of compliance issues; and
 - iii. took cautious steps along this journey to get a motion before council, and WALGA's compliance officer was outstanding in her ability to guide Cr Predovnik through legal, operational and administrative considerations.
- v. It was the WALGA compliance officer who discussed these issues with Cr Predovnik (after she went door knocking) not the CEO and helped her to understand how the city's current collection of debt could be addressed on a higher policy level, working with staff and council, to achieve a positive result across the whole of the City.
- w. Cr Predovnik has now completed more of the necessary foundation modules regarding being a local councillor.
- x. Cr Predovnik found this confidential item challenging and her motion to council was successfully passed by the vast majority on December 16.
- y. Cr Predovnik's actions showed room for improvement that can be addressed at a policy level through working together as a council.
- z. Working together is critical to ensure good governance so, Cr Predovnik is disappointed the CEO:



- i. didn't meet with Cr Predovnik to talk about his concerns before lodging this complaint.
- ii. did not take this opportunity to mentor a new councillor and work with Cr Predovnik to ensure, moving forward, we are all clear and walking in the same direction.

Regulation 9

20. Regulation 9 prohibits councillors engaging in conduct that is intended to be undertaken by the administration of a local government and specifically provides as follows:

“9. Prohibition against involvement in administration

- (1) A person who is a council member must not undertake a task that contributes to the administration of the local government unless authorised by the council or by the CEO to undertake that task.*
- (2) Subregulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.”*

Panel's Consideration

21. To make a finding of a minor breach of regulation 9 of the Regulations the Panel must be satisfied that:
- a. Cr Predovnik was a councillor at the time of the alleged breach and at the time the determination was made; and
 - b. it is more likely than not that:
 - i. Cr Predovnik took on, or was involved in, or participated in, the performance, attempted performance, or part performance of a function or responsibility under which the Act or by delegation it is for the local government's CEO to perform or direct;
 - ii. that such taking on, involvement or participation:
 - A. contributed something to the administration of the local government; and
 - B. was not done as part of the deliberations at a council meeting; and
 - iii. that the City or CEO did not authorise such taking on, involvement or participation⁹.

Was Cr Predovnik a Councillor at the relevant times

22. Cr Predovnik was a councillor at the time of the alleged breach and at the time the Panel considered the Complaint.
23. This element is met.

Did Cr Predovnik take on the performance of an administrative function of the City

⁹ Yates and Local Government Standards Panel [2012] WASAT



24. The Act distinguishes between the roles of council and the staff employed by the local government, or the “administration”. Local governments are bodies corporate¹⁰ of which the council is the governing body.¹¹
25. The role of council includes making local laws, overseeing the allocation of the local government’s finances and resources and determining its policies.¹² The role of councillors is to represent the interests of electors, ratepayers and residents of the district.¹³ The administration advises councillors to assist in their decision-making and implements policies determined by council and council’s other decisions.
26. The process of debt collection on behalf of the City is clearly an administrative one undertaken by staff in compliance with a particular procedure. The process that had been undertaken with respect to each property was clearly outlined in the agenda for the OCM and also the City Document.
27. Cr Predovnik, does not deny that she undertook the relevant door knocking and confirms that she spoke with relevant parties, however, argues that:
 - a. the CEO did not stipulate that the matter was administrative in nature; and
 - b. there is no published process for dealing with debt recovery; and
 - c. there is room for improvement in the current manner of dealing with recovery of debt.
28. The argument that Cr Predovnik was not aware of the process for dealing with debt, or that it was an administrative matter, is not compelling. The confidential agenda for the OCM set out all steps the City had undertaken to contact the relevant property owners, negotiate payment plans and attempt to recover payment over a period in excess of 3 years in each case. This process was also outlined in the City Document (example of provided information shown as part of the City Document in above in paragraph 16.d.ii above).
29. This clearly indicates to a reasonable person reviewing such material that there has been substantial involvement by the City in an administrative capacity over a prolonged period of time, in some cases involving formal legal proceedings and judgements. As part of the agenda, the City had also provided recommendations to the Council as to how to administratively proceed. It is further important to note that, at the time the recommendations were made, the City had received no payments from the relevant parties for 3 years or more.
30. In addition, the City Document, which was provided to Cr Predovnik on 6 December 2019, clearly states that the debt collection process was undertaken in accordance with the requirements of the Act and indicates that the administration had substantial contact with the relevant parties. This document was received by Cr Predovnik before she decided to go door knocking.
31. Given the above, the Panel finds that Cr Predovnik should have been able to ascertain that debt collection was an administrative matter without also being specifically told so by the CEO.
32. The Panel is sympathetic with the motivation of Cr Predovnik in meeting with vulnerable members of the City. It is the clear role of Elected Members to represent the interests of their electors.

¹⁰ Section 2.5(2) of the Act

¹¹ Section 2.6(1) of the Act

¹² Sections 3.51 and 2.7(2) of the Act

¹³ Section 2.10(a) of the Act



33. It is Cr Predovnik's role as a councillor to carefully consider the information provided by the City, ask questions of the City, if she thought prudent, and to vote on the matter at the OCM. Further, it is reasonable for a councillor to provide an alternative motion if they consider this will reflect the needs of their constituents.
34. However, it was a step too far for Cr Predovnik to go and undertake her own research and to make independent administrative decisions as how to proceed with, or vary, existing debt collection processes in respect to individual properties and parties, especially in a situation where it was clear this had been a solely administrative matter for quite some time.
35. The fact that Cr Predovnik is a new councillor and was not aware of the extent that such activity may have been an administrative matter is no justification.
36. Given the above, the Panel finds it is more likely than not that Cr Predovnik did take on, involve herself with and undertake an administrative function of the City.
37. This element is met.

Did any taking on, involvement or participation contribute to the administration of the City

38. In order to "contribute" the action must "play a part in the achievement of a result"¹⁴.
39. Cr Predovnik argues that she in no way negotiated any payment plans or any outcomes and that she was only seeking information to understand the parties' personal circumstances.
40. The Panel does not find this argument persuasive where the conclusions that Cr Predovnik reached with respect to which properties should be sold or have further payment plans discussed (as outlined in Email 4) were then directly reflected in the Motion made by her (and then duly passed).
41. This indicates that Cr Predovnik's independent actions had a direct and quantifiable impact on administrative matters and operated to vary existing debt collection processes.
42. The Panel finds to the required standard that Cr Predovnik's conduct contributed to the administration of the City.
43. This element is met.

Was the taking on, involvement or participation undertaken as part of the deliberations at a council meeting

44. Cr Predovnik asserts the majority of her actions were to clarify her understanding of the debt collection process and attempting to seek information to understand the parties' personal circumstances so she could make an appropriate decision.
45. Although Cr Predovnik's actions were undertaken with a view for consideration of the proposed motion at the OCM, the Panel does not consider that this falls under this exception in the Regulations.
46. The exception is not intended to be a "free pass" for councillors to do anything while considering a manner in which they may vote in the future, but to allow for practical and open discussions, which may in due course have an administrative impact, while actually at a council meeting.
47. The Panel finds to the required standard that Cr Predovnik's actions were not undertaken as part of deliberations at a council meeting.

¹⁴ Yates and Local Government Standards Panel [2012] WASAT at 56



48. This element is met.

Was the taking on, involvement or participation authorised by the City or the CEO

49. There is no evidence presented that Cr Predovnik's actions were authorised by Council.
50. Although Cr Predovnik argues that the CEO at no time told her that her actions were not permitted, this does not amount to authorisation.
51. Further, it is unclear to what extent Cr Predovnik informed the CEO as to her intentions in contacting the relevant parties. As an elected member Cr Predovnik would be permitted to meet with and talk to her constituents. However, from the evidence supplied, the Panel finds it is more likely than not that the CEO was not aware to what extent Cr Predovnik intended to involve herself in the matter and did not authorise any administrative action or decision to be undertaken by Cr Predovnik.
52. This element is met.

Conclusion

53. The elements required to find a breach of regulation 9 of the Regulations have been met.

Panel's Findings

54. Cr Predovnik did breach Regulation 9 of the Regulations and therefore did commit a minor breach.

Mick Connolly (Presiding Member)

Rebecca Aubrey (Deputy Member)

Emma Power (Member)