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## Local Government Standards Panel

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Complaint Number	SP 8 of 2017 [DLGSC 20170010]
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Mr Mark Goodlet</b>
<b>Respondent</b>	<b>Councillor Zenda Johnson</b>
Local Government	<b>Town of Mosman Park</b>
Regulation	Regulations 7(1)(b) and 9(1) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Ms M Strauss (Presiding Member) Mrs S Siekierka (Member) Councillor Paul Kelly (Member)
Heard	14 August 2017 Determined on the documents
Outcome	One breach of regulation 7(1)(b) One breach of regulation 9(1)

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### FINDING AND REASONS FOR FINDING

Published 09 October 2017

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## Summary of the Panel's decision

1. On 14 August 2017 the Panel found that Councillor Zenda Johnson, a Councillor for the Town of Mosman Park (the Town), committed a minor breach under the *Local Government Act 1995 (WA)* (the Act) and regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations) on 4 and 5 September 2016 when she interfered in the performance of tree removal works that had been approved by the Town Council.
2. On 14 August 2017 the Panel also found that Cr Johnson committed a minor breach under the Act and regulation 9(1) of the Regulations when contacting the tree removal contractor on or soon after 9 September 2016 to discuss his account.

## Jurisdiction

3. The Act provides for the circumstances in which a council member commits a minor breach.<sup>1</sup>
4. On 3 February 2017 the Panel received a Complaint of Minor Breach Form dated 2 February 2017 signed by Mr Mark Goodlet, the Town's Chief Executive Officer. The Complaint arises out of a series of events on 4 and 5 September 2016 relating to tree removal works (the Works). Mr Goodlet alleges Cr Johnson breached regulations 7 and 9.
5. Mr Goodlet provided copies of the following documents with the Complaint Form, which together with the Complaint Form comprise the Complaint:
  - a Memorandum from Ms Bronwyn Rose, the Town's Executive Manager Corporate Services to Mr Goodlet dated 30 January 2017 (the Memorandum); and
  - a report to the Town dated 26 January 2017 prepared by a private consultancy firm (the Report) with a number of attachments, which the author of the Report calls "exhibits".
6. On 14 August 2017 the Panel convened to consider the Complaint.
7. The Panel was satisfied that Mr Goodlet, in his capacity as Complaints Officer, received the Complaint within 2 years from the date of the alleged conduct<sup>2</sup> and had dealt with the Complaint in accordance with the administrative requirements in the Act.<sup>3</sup>
8. Prior to 1 July 2017 the Government department assisting the relevant Minister to administer the Act was the Department of Local Government and Communities (the former Department). On 1 July 2017 the Department of Local Government, Sport and Cultural Industries became the Department responsible for administering the Act (the Department).

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

<sup>2</sup> As required by section 5.109(2) of the Act.

<sup>3</sup> Section 5.109(1) of the Act requires the complaints officer to send a copy of the complaint to the councillor alleged to have committed the breach.



9. On 21 April 2017 the former Department sent Cr Johnson copies of the Complaint Form, the Memorandum and the Report (with its attachments), inviting her to respond. By email on 12 May 2017 Cr Johnson responded to the Complaint in a Submission to the Standards Panel, with attachments. The Panel was satisfied that the former Department had provided procedural fairness to Cr Johnson.
10. The Western Australian Electoral Commission's website indicates that Cr Johnson was re-elected as a Town Councillor on 17 October 2015. The Department advised the Panel that Cr Johnson was a Councillor at the time of the alleged breaches and on 14 August 2017 when the Panel considered the Complaint.
11. If a councillor has previously committed two or more minor breaches, the Panel may send the complaint to the Chief Executive Officer of the department assisting the relevant Minister instead of considering the complaint itself.<sup>4</sup> As Cr Johnson had not previously committed any minor breaches the Panel did not consider sending the Complaint to the Chief Executive Officer of the Department.
12. Based on the information referred to in paragraphs 3 to 11 above the Panel found it had jurisdiction to deal with the Complaint.

### **The Panel's role**

13. The Panel is not an investigative body. It determines complaints of minor breaches solely upon the evidence presented to it.
14. Any finding that a councillor has committed a minor breach must be based on evidence from which it may be concluded that it is more likely than not that the breach occurred than that it did not occur (the required standard of proof).<sup>5</sup>
15. For a finding that a councillor has breached a particular regulation the Panel must be satisfied that every element of the particular regulation has been established to the required standard of proof.
16. Where direct proof of an alleged fact, proposition or conduct is not available, in order to find the allegation, proposition or conduct has been established, the Panel must be satisfied on the evidence that it is more probable than not that the alleged fact, proposition or conduct occurred. The Panel cannot make a finding that the alleged fact, proposition or conduct occurred if the evidence merely supports two or more conflicting but equally possible inferences.<sup>6</sup>

### **The Complaint**

17. Mr Goodlet has not particularised his allegations in the Complaint Form. He relies totally on the Memorandum and Report.

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<sup>4</sup> Sections 5.110(2)(b), 5.111(1) of the Act.

<sup>5</sup> Section 5.106 of the Act.

<sup>6</sup> *Bradshaw v McEwens Pty Ltd* (1951) 217 ALR 1, paragraph 5.



18. Based on the Memorandum and the other documents referred to in paragraph 19, the Panel considered the complaint to be that Cr Johnson breached regulations 7 and 9 and clauses 1.1 and 1.4 of the Town's Code of Conduct between 4 September 2016 and 9 September 2016, or shortly after 9 September 2016, when she interfered in approved tree removal works and an administrative process concerning a contractor's account.

### **Information relied upon by the Panel**

19. The Panel has not considered the consultant's assessment of the evidence or her conclusions and recommendations presented in the Report. The Panel has considered the information in:
- the Complaint Form;
  - the Memorandum;
  - letters and emails between Ms R and the Town attached to the Report;
  - Mr Goodlet's undated but signed written statement attached to the Report (his Statement);
  - Cr Johnson's submission to the Panel dated 12 May 2017 in response to the Complaint (her Submission);
  - Cr Johnson's statutory declaration made 7 December 2016 attached to the Report and referred to in her Submission (her Statutory Declaration);
  - comments of interviewees quoted in the Report;
  - the unsigned and undated File Note, stated on the File Note to be written by the Town's Executive Manager Technical Services, Mr MacPherson, attached to the Report;
  - invoice numbered 00000402 addressed to the Town for \$1,200 from the person contracted to remove the trees, attached to the Report; and
  - published Council minutes.

### **Background to the Complaint**

20. There is no dispute that:
- On 27 June 2016 Ms R, the prospective owner of 36 Harvey Street, on the corner of Thomas Street (the Property), sought the Council's approval to remove two large ficus trees from the Thomas Street verge adjoining the Property (the site).
  - On 6 July 2016 the Town sent Ms R a pro-forma letter to neighbours and a neighbour comment form to facilitate her consultation about her tree removal proposal with specified nearby owners. The Town's procedures required recipients to return their completed consultation forms to the Town.



- Council considered the application at its ordinary council meeting on 23 August 2016 by which time Ms R and Mr J were living in the Property.
- Mr M provided a report to Council for its meeting on 23 August 2016 in which he advised that Ms R had complied with the Town's requirement that she consult the particular residents specified by the Town. Nine residents advised the Town that they agreed with the removal and one was opposed.
- At the ordinary council meeting on 23 August 2016 Council voted 4 votes to 3 to approve the removal of the trees, subject to Ms R paying the costs of removal. Cr Johnson voted against the motion to approve.
- By letter dated 26 August 2016 the Town advised Ms R of Council's decision to approve the removal of both trees and the Town's requirement that the Works be performed by one of three pre-approved contractors, or another contractor, provided they are first approved by the Town.
- Mr C lived around the corner from the site, at 38 Harvey Street, next door to Ms R and Mr J.
- On the evening of 4 September 2016 Mr C telephoned Cr Johnson, concerned about the Works due to start the next day, saying the required community consultation process had not occurred. As a result of that conversation Mr C telephoned the Town's Mayor. Mr C called Cr Johnson again after he called the Mayor. Cr Johnson told Mr C she would call to see him the next morning.
- On 4 September at 6.46pm Mr C sent an email to the Mayor with the subject title, created by Mr C, "stay of execution trees coming down at 36 Harvey st", copied to Cr Johnson. In the email Mr C told the Mayor he had not received a consultation letter and he and four other residents agreed to the removal of one tree but not two.
- The Mayor replied to Mr C by email at 9.06am on 5 September 2016, copied to Cr Johnson, with the same subject title, "stay of execution trees coming down at 36 Harvey st". The Mayor said in the email he had spoken to Mr Goodlet that morning, who was "exploring what should/could be done".
- Early in the morning on 5 September 2016 a contractor engaged by Ms R and Mr J attended the site to remove the trees (the Contractor). His workers commenced the Works.
- A number of people attended the site at various times between around 7.00am and 9.30am on 5 September, including the Contractor, Mr J, Mr C, Cr Johnson, Mr Goodlet and Mr Macpherson. A number of residents were also at the site on the morning of the 5th as events unfolded.
- On the morning of 5 September Cr Johnson spoke to Mr C at his house, having gone to see him on her way home during her normal morning walk. She then spoke to the Contractor, who was sitting in his truck. By this time the Works had already commenced. During the course of this conversation Cr Johnson telephoned Mr Goodlet and she and the Contractor spoke to Mr Goodlet on Cr Johnson's mobile phone.



- Later that morning Mr Goodlet attended the site and spoke with Cr Johnson, Mr J and the Contractor. Mr MacPherson arrived a little later after checking paperwork and together, at the site, Mr Goodlet and Mr MacPherson established that proper processes had been followed and Council had approved the Works.
- The Contractor was prevented from finishing the Works on 5 September 2016, left the site and later charged the Town \$1,600 for expenses associated with not being able to complete the Works. Mr Goodlet and/or Mr MacPherson reviewed the account and negotiated it down to \$1,200. Cr Johnson also contacted the Contractor about his costs. The Town paid the account.
- On 5 September 2016 at 5.21pm Mr J sent an email to Mr Goodlet expressing concern about the events on 5 September 2016.
- Mr C and Cr Johnson have since acknowledged that due process leading to Council's approval was followed.

21. Regulation 7 provides:

*"7. Securing personal advantage or disadvantaging others*

- (1) *A person who is a council member must not make improper use of the person's office as a council member —*
  - (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."*

22. Mr Goodlet does not specify in his Complaint Form whether he alleges Cr Johnson breached regulation 7(1)(a) or 7(1)(b).

23. In his Statement<sup>7</sup> Mr Goodlet referred to the Contractor's costs and his concerns that Cr Johnson's presence at the site may have influenced actions on the site and people's perception about Cr Johnson's authority; and that on 5 September 2016 he had no "other reasonable choice but to attend, delay the works and resolve the matter".

24. The Panel treated the alleged breach of regulation 7 as an alleged breach of regulation 7(1)(b).

25. Regulation 9 provides

*"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.*

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<sup>7</sup> Page 2 under "Concerns".



*(2) Subregulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.”*

26. Clauses 1.1 and 1.4 of the Town’s Code of Conduct provide:

*“1.1 General behaviour*

*... it is the responsibility of all elected members and employees to*

*...*

- refrain from any form of conduct, in the performance of your official duties, which may cause any reasonable person unwarranted offence or embarrassment; and always act in accordance with their obligation to the Town.”*

*1.4 Relationship between Elected Members and Employees*

*Elected members must:*

- accept their role is a leadership and policy making role, not a management, operational or administrative one;*
- advise citizens that if they have complaints it must initially be put in writing (or directly if the matter is urgent) to the CEO, for the matter to be dealt with appropriately.”*

**Allegation 1 – breach of regulation 7(1)(b)**

27. The Panel decided that regulation 7(2) does not apply because the alleged conduct is not conduct that could breach section 5.93 of the Act or section 83 of The Criminal Code.

Elements of regulation 7(1)(b)

28. In order to find that the Cr Johnson breached regulation 7(1)(b) the Panel must be satisfied to the required standard of proof that Cr Johnson:

- was a councillor at the time of the alleged conduct;
- used her office as a councillor at the time of the alleged conduct;
- used her office improperly; and
- used her office improperly to cause detriment to the local government or any other person.

First and second elements satisfied

29. Clearly Cr Johnson was acting as a councillor, thus using her office as a councillor at the time of the alleged breach. The first and second elements of regulation 7(1)(b) are satisfied.



### Did Cr Johnson make improper use of her office?

30. The dictionary definition of “improper” is “not in accordance with propriety of behaviour, manners, etc.; unsuitable or inappropriate for the purpose or occasion; abnormal or irregular.”<sup>8</sup>
31. Whether there is impropriety is to be assessed objectively: would a reasonable person with knowledge of the duties, powers and authority of a councillor, and all the circumstances of the particular case, form the view that the councillor had breached the standards of conduct expected of a councillor?<sup>9</sup> “For behaviour to be improper it must be such that a right-thinking person would regard the conduct as so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty.”<sup>10</sup> Councillors have a duty to be faithful to the proper workings of the local government and their council.<sup>11</sup>
32. Under the Act Panel members must have regard to the general interests of local government in Western Australia.<sup>12</sup> It is in the interests of local government that councillors are, and are seen to be, professional and to act consistently with authorised decisions of Council and the administration. Councillors must also respect, and be seen to respect, the local government’s processes and the roles of its officers and their lawful decisions.
33. Regulation 3 of the Regulations sets out general principles to guide councillors’ behaviour, although contravention of any of any of these does not amount to a minor breach.<sup>13</sup> Regulation 3 provides, among other things, that councillors should act with reasonable care and diligence, act lawfully, avoid damage to the local government’s reputation and base decisions on relevant and factually correct information.
34. The meaning of “improper” must be considered in the context of relevant legislation, such as the Act and the Regulations, other rules and standards that apply to a councillor’s role and conduct, such as the local government’s Code of Conduct, and the circumstances and context of the case.<sup>14</sup>
35. Conduct can be improper even though the councillor’s judgment is that it isn’t improper. A councillor’s use of his or her office can be improper even though the councillor is intending to benefit the local government, the council or the ratepayers and residents.<sup>15</sup>
36. In his Statement Mr Goodlet says:

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<sup>8</sup> Macquarie Dictionary, Revised Third Edition.

<sup>9</sup> *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraph 27, referring to *R v Byrnes* (1995) 183 CLR 501.

<sup>10</sup> *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 9, referring to *Robbins v Harness Racing Board* [1984] VR 641.

<sup>11</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59 paragraph 64(5), *Treby and Local Government Standards Panel* [2009] WASAT 224 paragraph 19.

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

<sup>13</sup> Regulation 13.

<sup>14</sup> *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 10, referring to *Treby and Local Government Standards Panel* [2010] WASAT 81 (*Treby* 2010).

<sup>15</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59, paragraph 64(4), referring to *Treby* 2010.



- At 8.09am on 5 September 2016 he received a call from Cr Johnson, who was at the site, and in the course of that telephone call spoke to Mr J and the Contractor. He told Mr J he was not issuing a “stop work order” but asked Mr J to “keep holding off” on the Works until he could get to the site to sort things out.
  - During this series of discussions on Cr Johnson’s phone he told the Contractor that the Town would honour any financial loss “while (Mr Goodlet) sorted this matter out”.
  - When he arrived at the site at about 8.20am the Contractor had ceased work and was tidying up. He spoke to Mr J, Ms R, the Contractor, Mr C and Cr Johnson. He also spoke to the Mayor and although he doesn’t specify where or how, it is likely that this was by telephone.
  - He telephoned Mr MacPherson, asking him to bring the information about the consultation process, which Mr MacPherson did. He (Mr Goodlet) ascertained that the right people had been properly consulted. He concluded Mr C’s complaint was not justified.
  - He spoke to another resident, who was “very angry” that Mr C had included his name on a list of people Mr C alleged were opposed to trees being removed.
  - After taking these steps he considered the matter to be resolved and left the site at 9.30 am. By this time the Contractor had left the site.
37. In the Report the consultant said she made “extensive and accurate notes” of her telephone interview with the Contractor. She reported that the Contractor told her: Cr Johnson said there was a “stay of execution”; Cr Johnson “demanded” he stop the Works but he did not because he had all the right paperwork; a short time later Mr Goodlet arrived and told him to stop work; Mr Goodlet said the Town would be responsible for his costs; he and his workers then stopped the Works, packed up and left the site.
38. In his email to Mr Goodlet on 5 September Mr J expressed concern about the events of the day. He asked Mr Goodlet to review what happened, including Cr Johnson’s actions, to prevent such things happening in future. He said he and Ms R had done everything right, at their own expense, and were faced with demands to stop work and misleading claims.
39. In her Statutory Declaration Cr Johnson says:
- On the morning of the 5th she went to Mr C’s house where she found him distraught and anxious. She asked if he had heard from the Mayor or Mr Goodlet. He advised that he had not. She left Mr C’s house and rang the Mayor from the site on his home and mobile numbers (at 8.07am and 8.08am) but couldn’t reach him.
  - When she approached the Contractor in his truck she said, quoting from her Statutory Declaration, “words to the effect, that there had been a complaint and ... ‘there was some talk of a stay of execution’”. She asked whether he had heard from Mr Goodlet or the Mayor about the trees. The Contractor said he had not and that he had the necessary paperwork. She offered to facilitate a phone conversation there and then between Mr Goodlet and the Contractor. She then



called Mr Goodlet and in her words, “recommended he attend the site as soon as possible to resolve the matter”. She then passed her phone to the Contractor.

- At the site Mr J told her Mr C was not telling the truth.
  - She telephoned the Mayor again after she got home, saying, in her words, he “should contact (Mr Goodlet) urgently”.
  - While still at home she telephoned the Contractor and after also speaking to Mr J, returned to the site, by which time the Contractor and worker/s had left. Mr Macpherson was there and told her Mr Goodlet had “stood them down”.
40. Cr Johnson said she apologised to Ms R, Mr J and the Contractor for any confusion or anxiety they had experienced that morning.<sup>16</sup>
41. In her Submission<sup>17</sup> Cr Johnson said she went to the site to meet with Mr C, as is her normal practice when a resident raises an issue, to learn more about the matter before raising it with the CEO or asking the resident to contact the CEO. She did not expect the Works to have started. She chose to get involved at the site because the Works had started, the matter was becoming urgent and she wanted Mr Goodlet to be involved. She denies issuing any order to stop work or giving any instructions to anyone.
42. In her Submission<sup>18</sup> Cr Johnson says she did not breach regulation 7 because it was Mr Goodlet who caused the Works to be stopped and “authorised the costs to be incurred by the Town”. She said she and her walking companion heard the chain saws as they walked home after Cr Johnson’s first visit to the site<sup>19</sup>, which Cr Johnson’s walking companion confirmed in her statutory declaration made on 30 November 2016.
43. The Panel is satisfied to the required standard of proof that the administration acted appropriately when dealing with Ms R’s application to remove the trees. It followed its usual procedures and acted in accordance with Council’s resolution on 23 August 2016.
44. Cr Johnson knew Council had resolved to approve the Works as she had attended the Council meeting on 23 August 2016, or should have remembered this. Her vote against the officer’s recommendation and the motion to allow the trees to be removed, indicates she had strong views about the matter. When Mr C phoned her on the evening of 4 September she had a duty to be loyal to the Council’s decision and the administration’s processes which, by granting the application, Council had endorsed.
45. Weighing up Mr Goodlet’s Statement and Cr Johnson’s Statutory Declaration and Submission, and taking into account the consultant’s report of what the Contractor said (which carries limited weight as it is hearsay), the Panel is not satisfied to the required standard of proof that Cr Johnson either told or asked the Contractor to cease the Works and/or leave the site.

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<sup>16</sup> Statutory Declaration, paragraph 37.

<sup>17</sup> Page 6.

<sup>18</sup> Page 8.

<sup>19</sup> Submission page 6.



46. The Panel finds however that Cr Johnson interfered with the Works in several ways: when Mr C telephoned her on the evening of the 4th she should have referred Mr C to Mr Goodlet or reported the issue herself to Mr Goodlet; she made a point of going to Mr C's house and the site on the morning of the 5th; she sought to involve the Mayor, not only by suggesting Mr C contact the Mayor but also by telephoning him twice from the site and again from her home on the 5th; she returned to the site after going home, showing she made a conscious decision to stay involved even after Mr J told her when she went to the site the first time that Mr C was not telling the truth; she raised with the Contractor the possibility that the Works would have to cease; and she persisted with her involvement even after the Contractor said he had the paperwork and after Mr J told her he and Ms R had followed due process.
47. The provisions of the Code of Conduct referred to above are consistent with and support the standards of conduct set by the Regulations, as interpreted and applied under the common law. Cr Johnson did not act in accordance with her duty to be faithful to Council's decision. It was the administration's responsibility to implement the decision and deal with any queries about the effect of the decision or its implementation. Members of the public were at the site and would have seen the comings and goings and the Works being interrupted. Mr J and the Contractor became upset and frustrated and they and Ms R suffered significant inconvenience. Cr Johnson's interference would have reflected badly on the professionalism of the Council and the working relationship between the Council and the Town's administration.
48. Applying the tests for impropriety outlined earlier in these Reasons for Finding, the Panel finds that by interfering in the Works on 4 and 5 September 2016 Cr Johnson failed to properly perform her role as a councillor and did not meet the standards of conduct expected of a Councillor. Cr Johnson acted outside the scope of her role, in breach of the Code of Conduct. She did not meet the required standards of conduct.
49. The Panel finds that Cr Johnson acted improperly. This element is established.

Did Cr Johnson use her office improperly to cause detriment to the local government or any other person?

50. "Detriment" means loss, damage or injury.<sup>20</sup> A person causes detriment if they cause a person to be disadvantaged or damaged personally or financially. A person can suffer detriment through others thinking less favourably of them.<sup>21</sup>
51. For regulation 7(1)(b) to be satisfied it is not necessary to show that the local government or the person concerned actually suffered detriment.<sup>22</sup> And it is not enough to show that the local government or the person concerned suffered detriment, or could have suffered detriment. The Panel must find that it is more likely than not that the councillor believed that his or her actions would cause detriment and intended to cause detriment.<sup>23</sup> There can be a finding of intent if, after considering all the

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<sup>20</sup> Macquarie Dictionary Revised Third Edition, 2001.

<sup>21</sup> *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraphs 31, 32.

<sup>22</sup> *Treby* 2010, paragraph 96, referring to *Chew v The Queen* 1992 CLR 626 (*Chew* 2010).

<sup>23</sup> *Re and Local Government Standards Panel* [2014] WASAT 111, paragraph 51, referring to *Australian Securities and Investments Commission v Australian Property Custodian Holdings Ltd* [2013] FCA 1342.



evidence, the only reasonable inference is that the councillor intended to cause detriment.<sup>24</sup>

52. The Panel is satisfied that Cr Johnson caused detriment to several people because:
- Ms R and Mr J did not have their approved Works completed as scheduled and would have had to make new arrangements to have the Works finished;
  - the Contractor was inconvenienced and suffered financial loss on the day, and although the Town paid his costs he had to take steps to claim for his loss and organise another visit to the site;
  - any reasonable person would conclude that the comings and goings of various people and the number of conversations in the street on 5 September would have made the local government look unprofessional and disorganised in the eyes of Mr J, the Contractor and his workers, and any member of the public looking on; and
  - it was likely that other residents and ratepayers would hear about these events and think less favourably of the local government.
53. In relation to intention, although Cr Johnson did not directly stop the Works, she took several steps to disrupt and delay them. She wanted the Contractor to talk to Mr Goodlet before the Works continued and passed her phone to him so they could have that discussion. She implied there was a problem that needed looking into before he could proceed. Although Cr Johnson said she was trying to help a resident, she must have known that to help him she needed to adversely affect other parties. She took several steps to at least delay the Works, if not prevent them. She had voted against the removal of the trees, which is consistent with her decision to respond to Mr C's complaint quickly and extensively.
54. The only reasonable inference is that Cr Johnson intended that Mr C's complaint take priority over the inconvenience that would undoubtedly be suffered by Ms R, Mr J and the Contractor. The Panel is satisfied to the required standard of proof that Cr Johnson intended to cause detriment to Ms R, Mr J and the Contractor.

55. This element is established.

#### Finding in relation to Allegation 1

56. Cr Johnson breached regulation 7(1)(b).

#### **Allegation 2 – breach of regulation 9(1)**

57. Clearly regulation 9(2) does not apply.

58. Mr Goodlet does not specify in his Complaint Form which administrative task or tasks Cr Johnson performed in breach of regulation 9(1). The Memorandum simply alleges Cr Johnson interfered in an administrative process when she attended the site.

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<sup>24</sup> Treby 2010.

59. It was the administration's responsibility to advise Ms R and Mr J that they could remove the trees and to ensure the removal was carried out in accordance with the Town's requirements. There are two aspects of Cr Johnson's conduct which could possibly amount to performing a "task" that contributed to the Town's administration: stopping the Works; and dealing with the Contractor's invoice.

#### Elements of regulation 9(1)

60. In order to find that Cr Johnson breached regulation 9(1) the Panel must be satisfied to the required standard of proof that:

- Cr Johnson was a councillor at the time of the alleged breach;
- she undertook a task that contributed to the administration of the Town ; and
- neither the Council nor Mr Goodlet authorised her to perform the task.

#### First element

61. Clearly Cr Johnson was a councillor at the time of the alleged breach so this element is established.

#### Did Cr Johnson undertake a task that contributed to the Town's administration?

62. The Shorter Oxford English dictionary<sup>25</sup> defines "task" as "a piece of work imposed on or undertaken by a person; a fixed quantity of labour to be performed by a person". The Macquarie Dictionary<sup>26</sup> defines "task" as "a definite piece of work assigned or falling to the person; duty; any piece of work".

63. Under the Act the functions of a chief executive officer include to ensure that advice and information is available to the council so that it can make informed decisions; manage the day to day operations of the local government; and speak on behalf of the local government if the mayor or president agrees.<sup>27</sup> The role of councillors includes representing the interests of electors, ratepayers and residents of the district; providing leadership and guidance to the community in the district; and facilitating communication between the community and the council.<sup>28</sup>

64. Cr Johnson denies breaching regulation 9(1) because she did not perform any administrative tasks.

65. The Panel finds that Cr Johnson did not directly stop the Works. She did not perform any administrative tasks leading to the cessation of the Works.

66. Mr MacPherson says that on 7 September 2016, in line with his discussion with Mr Goodlet about the Contractor's invoice for \$1,600, he asked the Contractor for a breakdown of his costs. He passed the Contractor's response to Mr Goodlet.<sup>29</sup>

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<sup>25</sup> Sixth Edition.

<sup>26</sup> Revised Third Edition.

<sup>27</sup> Section 5.41(b), (d) and (f).

<sup>28</sup> Section 2.10(a), (b) and (c) of the Act.

<sup>29</sup> Page 3 of Mr MacPherson's signed statement.



67. Mr Goodlet says he negotiated the Contractor's charges down to \$1,200 and that Cr Johnson "told (him) that she also contacted (the Contractor) for the same purpose, but again without directing the matter through (him)".
68. In her Submission<sup>30</sup> Cr Johnson says:
- On 8 September 2016, Mr Goodlet called her into his office and accused her of stopping the Works.
  - In this meeting "Mr Goodlet stated that the Town had no intention of paying the account, and that I was responsible for the penalty cost of \$1600 ..."
  - "I was shocked, because I knew I had not issued any order to stop work and the work continued after I left the site ... Due to Mr Goodlet's accusation that I was responsible for stopping the works and the subsequent account, I thought it appropriate for me to negotiate with the contractor. I note that the contractor had not been engaged by the Town, but by (Mr J)."
  - "As a courtesy to Mr Goodlet, I emailed him on Friday 9 September 2016 at 9.21am, saying 'Mark, surely some negotiation with the tree lopper can take place – I will contact him.' ... Mr Goodlet has never replied to this email."
  - She wanted to speak with the Contractor because Mr Goodlet had asserted that she was responsible for the account. She contacted him and asked if she could meet with him to discuss the account but he declined to discuss the matter with her.
69. Cr Johnson admits she contacted the Contractor to discuss his account. It was the administration's role to deal with the account. Contacting the Contractor to discuss his account is a task for which the administration is responsible.
70. In this case the administration finalised the account through its own actions, not through Cr Johnson's action in contacting the Contractor. The Panel's view is that this element can be satisfied even if the performance of the task does not in the end contribute to the administrative outcome. This is a practical interpretation of the element and recognises its purpose, which must be to reinforce the respective roles of councillors and officers to ensure smooth and consistent administration and implementation of council decisions.
71. This element is satisfied.

Did the Council or Mr Goodlet authorise her to perform the task?

72. There is no evidence to indicate the Council authorised Cr Johnson to contact the Contractor.
73. The Panel accepts that by the time Mr MacPherson sought further information from the Contractor on 7 September 2016 he had spoken to Mr Goodlet about the account, and that Mr MacPherson received a response from the Contractor on 8 September 2016. The Panel is satisfied to the required standard of proof that Mr MacPherson and Mr Goodlet promptly took steps to settle the account.

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<sup>30</sup> Pages 8 and 9.



74. The Panel accepts that Mr Goodlet did not respond to Cr Johnson's email on 9 September 2016 saying she would contact the Contractor, and finds that she contacted him anyway. Based on these two findings the Panel concludes that it is more likely than not that Mr Goodlet did not authorise Cr Johnson to contact the Contractor to discuss the account.

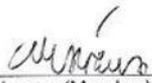
75. This element is established.

Finding in relation to Allegation 2

76. Cr Johnson breached regulation 9(1).

**Panel's finding**

77. The Panel finds that Cr Johnson committed two minor breaches, one breach of regulation 7(1)(b) and one breach of regulation 9(1).

  
\_\_\_\_\_  
Merranie Strauss (Member)

  
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Paul Kelly (Member)

  
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Sheryl Siekierka (Deputy Member)

Date of Reasons – 09 October 2017