



Dear Inspector

**NOTICE OF DECISION**  
**COMPLAINT OF CONDUCT BREACH No. 2026-01048**

I refer to the Complaint of a Conduct Breach received by the Adjudicator's Office on 23 April 2026 alleging that Mayor Jerry Clune breached the *Local Government (Model Code of Conduct) Regulations 2021*.

The Adjudicator considered this matter and determined that **there was a breach of Regulation 17 and a breach of Regulation 18**. In accordance with section 8A.18(4)(a) of the *Local Government Act 1995*, the Adjudicator has ordered that no sanction be imposed.

The Adjudicator has now finalised it's dealing with the Complaint and the Adjudication Support and Research Officer has notified the Complainant and Respondent of the outcome.

Yours sincerely

Natasha Horner  
Senior Strategy and Research Officer

1 July 2026



# Conduct Breach Matter 2026-01048

## Adjudicator Findings and Sanction Decision Report

|                                    |                                                                                                          |
|------------------------------------|----------------------------------------------------------------------------------------------------------|
| <b>Legislation</b>                 | <i>Local Government Act 1995 (WA) and Local Government (Model Code of Conduct) Regulations 2021 (WA)</i> |
| <b>Complainant</b>                 | Mr Aaron Horsman                                                                                         |
| <b>Respondent</b>                  | Mayor Jerry Clune                                                                                        |
| <b>Local Government</b>            | City of Greater Geraldton                                                                                |
| <b>Responsible Adjudicator</b>     | Deputy Adjudicator Lee McIntosh                                                                          |
| <b>Finding</b>                     | Allegation 1: Breach of Regulation 17<br>Allegation 2: Breach of Regulation 18                           |
| <b>Date Finding Made</b>           | 15 June 2026                                                                                             |
| <b>Sanction Decision</b>           | Breach of Regulation 17: No Sanction<br>Breach of Regulation 18: No Sanction                             |
| <b>Date Sanction Decision Made</b> | 30 June 2026                                                                                             |
| <b>Date of Delivery</b>            | 1 July 2026                                                                                              |



## Executive summary of findings

### Model Code of Conduct Rule 18

The Respondent improperly used his office on 4 December 2025 to write a letter of support for the grant of a liquor license on a premises which the Council owned and commercially leased to a third party business. The letter did not disclose the Council's land, lease or financial interest.

The letter was inconsistent with the Council's determination on 25 June 2024 that the commercial lease was subject to the third party business receiving all regulatory approvals, which included a liquor license, and also inconsistent with the Council's clear expectation that the commercial lease decision would be referred back to the Council if there were any objections.

Consistent with principles of good governance, the Council's financial interest in the outcome of a liquor license for the premises should have been identified as a potential conflict of interest and conflict of interest management processes applied. No such processes were applied by the Respondent, and the Council was unable to apply them either as the intent to write the letter of support was not put before them.

The breach was not caused knowingly and only occurred after the Respondent sought advice from City staff.

The Respondent's action was an improper use of his office which constitutes a breach of Model Code of Conduct Rule 18.

### Model Code of Conduct Rule 17

The Respondent used City resources when improperly writing, consulting on and sending the letter of support, including using the City's email and letterhead and consulting with staff.

The Chief Executive Officer of the City was not able to authorise this use as the sending of the letter was an improper use of the Respondent's office in the first place and so not within the CEO's power to authorise.

This constitutes a breach of Model Code of Conduct Rule 17, albeit a secondary breach which would not have occurred but for the Rule 18 breach.

### Proposed sanction

I provided the Respondent with a reasonable opportunity to make submissions on sanction before making a final decision on sanction.



In respect of the breach of Model Code of Conduct Rule 18, the Respondent's submission on sanction has included:

- As a result of the complaint and adjudication process, the Respondent now knows the kind of conduct expected of him when dealing with the City's assets.
- The Respondent proposes to raise with the Council a policy to deal with requests for letters of support, and a policy to deal with Council decision making where the subject matter of the decision is a City-owned asset.
- The Respondent has obtained advice at his own expense on good practice for dealing with the City's assets.
- The Respondent regrets sending the letter of support.
- The Respondent did not act with any deception, did not have any personal interest or make any personal gain, and believed he was acting in the best interest of the City. The breach was not caused knowingly, occurred after he sought advice from Council staff, and only occurred because he was not aware of the potential for the circumstances to cause a breach.
- The publication of the adjudication findings alone will be sufficient sanction.

In view of the above, and my considerations on sanction (included in my reasons for decision), I do not consider a sanction is proportionate or warranted for the Rule 18 breach. I therefore do not order a sanction for the breach of Model Code of Conduct Rule 18.

In respect of the breach of Model Code of Conduct Rule 17, as the breach of Model Code of Conduct Rule 18 is the primary breach; Model Code of Conduct Rule 17 would not have been in issue if not for that primary breach. I therefore do not order a sanction for the breach of Model Code of Conduct Rule 17.

Although I do not have the power to make findings or other sanctions against them, I recommend the CEO and relevant directors of the Council undertake training in conflict of interest identification and management processes relevant to the interests of the City as a commercial entity.



# Reasons for decision

## Introduction

This is a matter concerning a complaint made by ex-councillor Aaron Horsman against Mayor Jerry Clune (the **Complaint**).

The Complaint was made to the Local Government Inspector (the **Inspector**) on 31 January 2026 (Complaint number 2026-1048).

The Inspector undertook a preliminary assessment of the Complaint, and determined that:

- (a) the allegations fell within the Inspector's jurisdiction<sup>1</sup>;
- (b) the Complaint met the statutory requirements for a breach Complaint under the *Local Government Act 1995* (WA) (**LGA**);<sup>2</sup> and
- (c) the matter related to conduct that could constitute a conduct breach.<sup>3</sup>

On about 26 April 2026, the Inspector referred the Complaint to the Principal Adjudicator pursuant to section 8A.13(1)(a) of the LGA, and the Complaint was then allocated to me for adjudication on 27 May 2026.

## The Complaint

The Complaint arises from the Respondent using the letterhead of the City of Greater Geraldton, Office of the Mayor, to write a letter dated 4 December 2025 in support of a third party business' liquor licensing application, in circumstances where the business was to be operated on a Council owned property under a commercial lease agreement with the Council.

The Complainant considers the Respondent's action constituted a contravention of the *Local Government (Model Code of Conduct) Regulations 2021* (WA) (**Model Code of Conduct**) by:

- (d) misusing local government resources (Model Code of Conduct Rule 17); and/or
- (e) using his office to cause a disadvantage to the community members who were opposing the license and to advantage to the business (Model Code of Conduct Rule 18).

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<sup>1</sup> Part 8A LGA

<sup>2</sup> 8A.1. LGA

<sup>3</sup> 8A.3 LGA



## Legislative background and jurisdiction of this adjudication

The Inspector may receive many different types of complaints under the LGA. However, only certain types of complaints may be referred to the Principal Adjudicator for determination.

Relevantly in this case, the Inspector may refer a complaint to the Principal Adjudicator if the Inspector decides that a breach complaint alleges a conduct breach.<sup>4</sup>

A conduct breach is defined in the Act as follows:

- (1) A council member commits a **conduct breach** if the member —
  - (a) contravenes a rule of conduct; or
  - (b) contravenes a local law made under this Act, contravention of which the regulations specify to be a conduct breach.<sup>5</sup>

## Model Code of Conduct

Section 5.102A of the LGA defines rule of conduct to mean ‘a provision of the model code that is specified in the model code to be a rule of conduct.’ The phrase model code is defined in the same section to mean ‘the model code of conduct prescribed for the purposes of section 5.103(1)’.

The model code prescribed for the purposes of section 5.103(1) of the LGA is in Schedule 1 of the *Local Government (Model Code of Conduct) Regulations 2021* (WA).

The rules that are specified to be “rules of conduct” which I am required to adjudicate on are set out in Division 4 of the Model Code of Conduct.

## Model Code of Conduct assumed to be Local Government Code of Conduct

A local government must adopt a code of conduct that incorporates the Model Code of Conduct.<sup>6</sup>

While some additions are permitted, a local government is not permitted to ‘include in the adopted code of conduct provisions in addition to the...rules of conduct.’<sup>7</sup> The Model Code of Conduct is taken to be the local government’s adopted code of conduct until the local government adopts a code of conduct.<sup>8</sup>

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<sup>4</sup> s 8A.13(1) LGA

<sup>5</sup> s 8A.3. LGA

<sup>6</sup> s 5.104(1). LGA

<sup>7</sup> s 5.104(4). LGA

<sup>8</sup> s 5.104(5). LGA



The City of Greater Geraldton has adopted a Code of Conduct, referred to as the *Code of Conduct for Council Members, Committee Members & Candidates*.<sup>9</sup> However, that code of conduct was adopted in March 2026, so it does not apply to conduct the subject of the Complaint which occurred in December 2025. I do not have access to a copy of the adopted Code of Conduct that was in force at the time of the Complaint.

However, as the Model Code of Conduct must be incorporated into a local government's adopted Code of Conduct and no amendments are permitted to the rules of conduct<sup>10</sup>, it is safe for me to proceed on the basis that the rules of conduct that were in force in the City of Greater Geraldton in December 2025 were in the same terms as those found in the Model Code of Conduct.

## No local law breach alleged

For the purpose of section 8A.3 of the LGA, regulation 4 of the *Local Government (Local Government Inspector) Regulations 2025* (WA) prescribes that the contravention of a local law as to conduct is also a conduct breach.

The term 'local law as to conduct' means a local law relating to the conduct of people at council or committee meetings.<sup>11</sup> It is not alleged that Respondent breached any local law as to conduct.

## Adjudication does not deal with behavioural breaches

My adjudication jurisdiction is limited to the Complaint referred to me by the Inspector under section 8A.13(1)(a) of the LGA. Accordingly, I cannot adjudicate on allegations of behavioural breaches or improper use of information, even if they arise in the course of my deliberations.

## The complaints process and procedural fairness to date

The Complaint was assessed by the Inspector, who determined that the allegations could constitute a conduct breach of Model Code of Conduct Rules 17 and 18.<sup>12</sup>

Before I make a finding, the Respondent must have had with a reasonable opportunity to make submissions on whether or not a conduct breach occurred.<sup>13</sup>

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<sup>9</sup> City of Greater Geraldton, *Code of Conduct for Council Members, Committee Members & Candidates* (Code of Conduct, 31 March 2026) [Council Policy - 4 2 Code of Conduct for Council Members Committee Members and Candidates - Version 3.pdf](#)

<sup>10</sup> LGA (n 4) s 5.104(4).

<sup>11</sup> *Inspector Regs* (n **Error! Bookmark not defined.**) r 4

<sup>12</sup> Local Government Inspector Pre-Assessment Report 24 February 2026

<sup>13</sup> 8A.18 (1) Local Government Act WA 1995



Shortly after his appointment as Principal Adjudicator in April 2026, the Principal Adjudicator caused the Respondent to be sent an invitation (30 April 2026) to respond to the Complaint.

On 13 May 2026 Civic Legal on behalf of the Respondent provided a response to the Complaint.

In dealing with the Complaint I am required act with as little formality as the requirements of this LGA and a proper consideration of the matters before me permit.<sup>14</sup>

I consider I now have adequate information to make findings (and to propose sanctions for the Respondent's further submissions) in respect of the Complaint.

## Overarching principles and standard of proof to determine a conduct breach

In making findings on a conduct breach and proposing sanctions, I must have regard to:<sup>15</sup>

- (f) the provision of good government by local governments; and
- (g) the public interest.

I must not make a finding of a conduct breach unless I am satisfied that all of the relevant elements are established on the balance of probabilities. I must be satisfied, based on the evidence available to me, that it is more likely than not that the alleged conduct occurred.<sup>16</sup>

I must find that every element of a relevant Model Code of Conduct rule of conduct is established before I find a breach.

I have determined the Complaint on the basis of the evidence before me provided by the Inspector, the Complainant, and the Respondent.

## The alleged conduct breaches

### Model Code of Conduct Rule 18

Rule 18 of the Model Code of Conduct provides:

- 18. Securing personal advantage or disadvantaging others**

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<sup>14</sup> s 8B.30 LGA

<sup>15</sup> s 8A.17 LGA

<sup>16</sup> s 8A.18 (10) LGA



- (1) A council member must not make improper use of their office —
  - (a) to gain, directly or indirectly, an advantage for the council member or any other person; or
  - (b) to cause detriment to the local government or any other person.
- (2) Subclause (1) does not apply to conduct that contravenes section 5.93 of the Act or *The Criminal Code* section 83.

### **No contravention of section 5.93 of the LGA or Criminal Code section 83**

There is no evidence before me to suggest that the subject matter of the complaints involved a contravention of either section 5.93 of the Act or section 83 of *The Criminal Code*.

Accordingly, I find that I have jurisdiction to determine the Complaint of breach of Rule 18 of the Model Code of Conduct.

### **Rule 18 – elements**

For a person to be found in breach of Rule 18 of the Model Code of Conduct, I must be satisfied of the following elements:<sup>17</sup>

- (h) the person was a council member at the time of the alleged conduct;
- (i) the person made use of their office;
- (j) such use of the person's office was improper; and
- (k) such use was to:
  - (i) gain an advantage for the person or any other person; or
  - (ii) cause a detriment to the local government or any other person.

### **The Respondent was a council member at the time of the Complaint**

The Inspector's preliminary assessment has informed me that the Respondent was last elected to Council in 2023 with a term expiring in October 2027 and was a Council member at the time the Complaint was made.<sup>18</sup> I am satisfied the Respondent was a council member at the time of the Complaint.

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<sup>17</sup> *Shannon and Local Government Standards Panel* [2025] WASAT 120 at [48]

<sup>18</sup> Inspector Preliminary Assessment Report, 20 February 2026, Section 3.1



## The Respondent made use of his office

The Respondent wrote the letter of support on the letterhead of the City of Greater Geraldton, Office of the Mayor, and signed it as Mayor. I am satisfied this was a use of the Respondent's office.

## The Respondent's use of his office was improper

The Complaint arises from the Respondent using the letterhead of the Council of Greater Geraldton, Office of the Mayor to write a letter dated 4 December 2025 in support of a local business' liquor licensing application, in circumstances where the business was to be operated on a Council owned property under a commercial lease agreement with the Council.

The letter did not disclose the Council's land or lease interest or its financial interest in the grant of a liquor license to the premises.

I must consider whether this was an improper use of the Respondent's office.

### Legal principles relevant to determination of whether a use is improper

In *Treby v Local Government Standards Panel (No 2)*<sup>19</sup>, Deputy President Pritchard considered the meaning of 'improper use of the person's office':<sup>20</sup>

- (l) *First, impropriety consists in a breach of the standards of conduct that would be expected of a person in the position of the [councillor] by reasonable persons with knowledge of the duties, powers and authority of his position as a councillor and the circumstances of the case.*
- (m) *Secondly, impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent.*
- (n) *Thirdly, impropriety may arise in a number of ways. It may consist of an abuse of power, that is, if a councillor uses his or her position in a way that is inconsistent with the discharge of the duties arising from that office or employment. Alternatively, impropriety will arise from the doing of an act which a councillor knows or ought to know that he has no authority to do.*
- (o) *Fourthly, in the case of impropriety arising from an abuse of power, a councillor's alleged knowledge or means of knowledge of the circumstances in which the power is exercised and his purpose or intention in exercising the power will be important factors in determining whether the power has been abused.*

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<sup>19</sup> *Treby v Local Government Standards Panel (No 2)* [2010] WASAT 81 [29]- [33]

<sup>20</sup> The decision was about reg 7 of the now repealed *Local Government (Rules of Conduct) Regulations 2007* (WA). The wording of former reg 7 is in almost identical terms to the Model Code of Conduct Rule 18.



(p) *Fifthly, a councillor's use of his or her office can be improper even though it is for the purpose or with the intention of benefiting the Council.*

In *Hipkins and Local Government Standards Panel*<sup>21</sup> Senior Member McNab set out the principles in *Treby v Local Government Standards Panel* and then also considered *Victoria in Robbins v Harness Racing Board*<sup>22</sup> which considered the term 'improper' at 646:

*The word 'improper' is more difficult to define and must depend upon the context in which the expression is used. 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.*

Senior Member McNab also observed the meaning of "improper" must be considered in the context of the LGA and any regulations, rules and standards that apply to a councillor's role and conduct, and the circumstances and context of the case.<sup>23</sup> I have considered the context of the LGA and Model Code of Conduct in particular, as well as the circumstances of the case.

The intent of the LGA is to result in —

- (q) better decision-making by local governments; and
- (r) greater community participation in the decisions and affairs of local governments; and
- (s) greater accountability of local governments to their communities; and
- (t) more efficient and effective local government.<sup>24</sup>

The general principles in the Model Code of Conduct to guide the behaviour of council members relevantly include Council members should:

- (u) identify and appropriately manage any conflict of interest;<sup>25</sup>
- (v) avoid damage to the reputation of the local government;<sup>26</sup>
- (w) make decisions in accordance with principles of good governance;<sup>27</sup>
- (x) act with reasonable care and diligence;<sup>28</sup> and

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<sup>21</sup> [2014] WASAT 48, paragraph 9

<sup>22</sup> [1984] VR 641

<sup>23</sup> *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 10.

<sup>24</sup> LGA s 1.3 (2)

<sup>25</sup> Model code of conduct clause 4 (1) (d)

<sup>26</sup> Model code of conduct clause 4 (1) (e)

<sup>27</sup> Model code of conduct clause 6 (b)

<sup>28</sup> Model code of conduct clause 4 (1) (a)



(y) act with honesty and integrity.<sup>29</sup>

These principles are also included in *City of Greater Geraldton Council Policy 4.2 Code of Conduct*.

**Council resolution in relation to lease - the basis of the Respondent's conduct**

The Council resolved to enter into a commercial lease (of premises on land which the Council owned) with a third party business at an Ordinary Council meeting on 25 June 2024. The Council's decision to enter the lease was subject to:<sup>30</sup>

- (z) an advertising notice period of fourteen (14) days, inviting public submissions;
- (aa) the business receiving all development and regulatory approvals, including liquor license approval;<sup>31</sup> and
- (bb) referral of the matter back to Council for final consideration should any objecting submissions be received.

Councillors were provided with detailed agenda papers for the meeting, and the resolutions of the Council included different decisions to those recommended in the agenda papers.

The final resolution of the Council was for a lease on commercial retail terms for an initial term of ten years, with further five-year renewals available. An initial lease fee of \$60,000 was payable to the Council, as well as ongoing rent subject to an initial six-month rent-free period.<sup>32</sup>

I find it more likely than not that the Council decision making and resolutions in relation to the lease were:

- (cc) the Council gave substantive consideration to matters associated with the commercial lease of a Council owned premises;
- (dd) the Council understood the third party business lessee intended to apply for a liquor license at a subsequent time;
- (ee) the Council made the commercial lease subject to the business obtaining that liquor license;
- (ff) the Council understood the commercial lease may not go ahead if the liquor license was not obtained;

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<sup>29</sup> Model code of conduct clause 4 (1) (b)

<sup>30</sup> Council Minutes 25 June 2024 Agenda Reference D-24-065945 page 113

<sup>31</sup> Council Minutes 25 June 2024 Agenda Reference D-24-065945 page 110 refers to the business need for a liquor license

<sup>32</sup> Ordinary Council Meeting on 25 June 2024 [DS041]



- (gg) the Council commercial lease decision would come back to the Council if objecting submissions were raised; and
- (hh) the Council commercial lease decision would come back to the Council if the “subject to” conditions were not satisfied.

### **Council consideration of the liquor license in particular**

From the time of the Council resolution about the commercial lease until the Respondent's decision to send the letter of support, the Council's involvement with the liquor license application appears to be what would be expected in the usual course of a Council planning, development and administration functions, by way of grant of an application approving a change of use to restaurant/cafe and tavern, and the issue of a certificate under section 40 of the *Liquor Control Act 1988* (WA).<sup>33</sup>

I have not been provided with any evidence the Council decided to take steps beyond these statutory and administrative functions and actively support the business in its liquor licensing application.

I have not been provided with any evidence that sending formal correspondence in support of the liquor licence application was something that was notified to, canvassed, deliberated or resolved at a Council meeting at any time, and the respondent has acknowledged there was no resolution about this.<sup>34</sup> I have not been provided with any evidence that supporting businesses to have liquor licenses is something that the Council has a standing policy on, or has issued a standing authorisation to the Mayor for.

### **Respondent's position on sending the letter of support, and my findings about consistency of sending the letter with the Council's June 2024 resolution**

*Respondent submits sending the letter was consistent with the council resolution*

The Respondent has submitted:

- (ii) that the letter was in furtherance of the City's lease resolution<sup>35</sup>;
- (jj) the letter was sent to state the City's position having regard to the lease resolution<sup>36</sup>;
- (kk) that in the Council's resolution it was implicit that the Council supported the lease, subject to the approval of the Director of Liquor Licensing;<sup>37</sup> and
- (ll) if the City holds a supportive view and has expressed it in a resolution made in public, it seems implicit that the Mayor is authorised to say so.<sup>38</sup>

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<sup>33</sup> submissions in support of liquor license 12 January 2026 paragraph 7.4 (c)

<sup>34</sup> Pg 2 Respondent submission

<sup>35</sup> Pg 5, 6 Respondent submission

<sup>36</sup> Pg 4 Respondent submission

<sup>37</sup> Pg 5 Respondent submission

<sup>38</sup> Pg 5 Respondent submission



I find this is inconsistent with explicit content of the Council resolution that the commercial lease was subject to a liquor license being granted, and that receipt of regulatory approvals was a matter that the Council resolved as a separate and subsequent matter for the third party business to satisfy. The Mayor knew of this specific resolution, which is a relevant matter for determining whether a use is improper or not.<sup>39</sup>

I also find it more likely than not the Council's determination that should any objection submissions be received, the matter be referred back to the Council for final resolution, formalised the Council's expectation that potentially contentious matters in relation to the commercial lease or liquor licence would return to the Council in some way before being actioned. In my view this encompassed the additional potentially contentious step of writing of a letter of support for a liquor license on a Council-owned property some 18 months after the Council's lease resolution, given public interest and political matters could have (and clearly did) arise during that time.

The Respondent has submitted that he did not know at the time that the letter of support was being prepared, that the Complainant would be an objector.<sup>40</sup> I do not doubt this, but do note that the objection period for the liquor licence application had closed on 3 November 2025<sup>41</sup> and so if the Respondent did not know there were objections, this because he did not enquire about the current state of objections before sending the letter. The effect of referring back to the Council would have being consistent with the Council's June 2024 resolution and would have identified the Complainant and perhaps others as objectors and allowed the Council to consider whether to send a letter, based on these and other up-to-date matters. In any event, the Respondent's personal knowledge, consciousness or intent is not relevant, following the principles in *Treby*.<sup>42</sup>

### **Respondent submits sending the letter was in furtherance of the Council's interests**

The Respondent submitted that:

- (mm) "The letter was issued in the Mayor's genuine belief that a letter issued in furtherance of the City's interests fell within the authority of the Mayor having regard to the role of the Mayor as set out in s 2.8 of the LGA,"<sup>43</sup> and
- (nn) "Absent a liquor licence being obtained, there would be no final resolution to enter into a lease and the City would not stand to benefit from the rental income that would flow from that as landlord."<sup>44</sup>

This submission reflects that the Respondent did not exercise independent judgment from the Council's interests when considering whether to write the letter of support. This is also relevant to whether the writing of the letter was an improper use of his

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<sup>39</sup> *Treby v Local Government Standards Panel (No 2)* [2010] WASAT 81 [32]

<sup>40</sup> Pg 4 Respondent submission

<sup>41</sup> Submissions in support of liquor license paragraph 7.8, provided with the Respondent submissions

<sup>42</sup> paragraph 36 (b) of this adjudication.

<sup>43</sup> Pg 2 Respondent submission

<sup>44</sup> Pg 1 Respondent submission



office, this is dealt with in paragraph 80 onwards below. In any event, a use of office can be improper even if it is with the intent of benefiting the Council, again, following the principles in *Treby*.<sup>45</sup>

The Respondent's submission<sup>46</sup> raises that beyond the involvement identified in paragraph 49 above, a local government may also decide to intervene in liquor licensing proceedings for the purpose of adducing evidence or making a representation.<sup>47</sup> Given the formal "intervenor" statutory role that a local government may have in relation to liquor licensing matters, and the potential implications for this for the local government of doing so (such as use of its resources and any political and public interest matters), it is reasonable to suppose a Council decision of this nature would have required a resolution from the Council.

There was no Council resolution on 25 June 2024 or at any time to support the business in its liquor licensing application, intervene in the liquor licensing proceedings, make representations in those proceedings, or Council consideration of whether it should provide support in those proceedings if asked.

#### **Council's financial interest in the land, the lease and in the outcome of the liquor license application**

The Respondent's submissions reflect that he considered it in the City's financial interests to support the liquor license, for example "the City would not stand to benefit from the rental income that would flow from that as landlord".<sup>48</sup>

The Respondents' submissions do not however address the subject of whether the Council's financial interest in the outcome of the liquor license was a) likely to raise a reasonable apprehension of bias in a fair-minded observer, or b) required any conflict identification or management. The absence of submissions on this point is despite these issues being the central subject of the Complaint.<sup>49</sup>

The success of the third party businesses' liquor licensing application, if granted and the other lease conditions were satisfied, would result in a financial gain to the Council in that it would be able to receive the initial lease fee of \$60,000 and after six months, commence receiving rent for at least ten years. The Council therefore had a financial interest in the outcome of the liquor licensing application.

A local government, like any other corporate entity, may seek to engage in development of land<sup>50</sup> and have financial interests. I find that in this case the Council had a financial interest in the land (as owner), in the lease (as lessor), and more likely than not in the outcome of the liquor license application (as lessee is entitled to payments under the lease).

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<sup>45</sup> paragraph 36 (e) of this adjudication.

<sup>46</sup> Pg 2 Respondent submission

<sup>47</sup> s69 (7) *Liquor Control Act 1988* (WA)

<sup>48</sup> Pg 1 Respondent submission and see paragraph 53 of these findings

<sup>49</sup> See the summary and details of the alleged breach in the Complaint dated 12 January 2026, which were provided to the Respondent.

<sup>50</sup> *Aloi v Bertoli* [no 2] [2013] WASC 214 at 87



The LGA does not define the types of financial interest which a local government may have, and while it probably codifies conflicts of interest for individual council members,<sup>51</sup> it does not deal with the financial interests of a local government as an entity itself. Given that the LGA is relevant context for my decision though, I note that my finding of the Council's financial interest in the outcome of the liquor license application is consistent with the financial interest matters identified in the LGA in respect of individuals:

- (oo) A financial interest is held by a person under the LGA if it is reasonable to expect that the matter will, if dealt with by the local government in a particular way, result in a financial gain, loss, benefit or detriment to that person.<sup>52</sup>
- (pp) An indirect financial interest is defined under the LGA as including a reference to a financial relationship between a person and another person who requires a local government decision in relation to the matter.<sup>53</sup>

A similar concept of “pecuniary interest” under the previous *Local Government Act 1960* (WA) was considered in *Raccuia v Allpike*.<sup>54</sup>

*(there is) a pecuniary interest in a contract or proposed contract or matter in which the municipality is concerned, if the contract or matter would, if dealt with in a particular way, result in the payment of money to him or by him or would give rise to an expectation (so long as it was not too remote) of the payment or receipt, or gain or saving or loss, of money by or to him.*

Although the LGA financial interest provisions which apply to individual Council members do not apply in respect of the Council as an entity itself, they are consistent with the reasonable apprehension of bias principles which do apply to the Council.<sup>55</sup>

There are usually considered to be four distinct, though overlapping, categories of reasons where the reasonable apprehension of bias applies. The first is an interest, whether direct or indirect and whether pecuniary or other. A financial interest falls within this category, including for town planning decision making.<sup>56</sup>

### **What is good governance for dealing with Council financial interests?**

If a particular member or employee has an individual direct or indirect financial interest they are required to disclose it at a Council meeting, and then the member is not be able to participate in the meeting.<sup>57</sup> Ideally the member would have disclosed the interest before the meeting. Some exceptions to the members' participation

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<sup>51</sup> *Sanders v City of South Perth* [2019] WASC 226 [217]

<sup>52</sup> 5.60A

<sup>53</sup> 5.6.1

<sup>54</sup> (1997) 76 LGRA 388

<sup>55</sup> *Wilderness Society of WA (Inc) v Minister for Environment* [2013] WASC 307 [206], *Sanders v City of South Perth* [2019] WASC 226 [216, 218]

<sup>56</sup> *Murlan Consulting Pty Ltd v Ku-ring-gai Council (No 4)* [2010] NSWLEC 95

<sup>57</sup> 5.65, 5.67 LGA



could be decided at the meeting or by the Minister, all these exceptions would rely on the interest having been disclosed in the first place.<sup>58</sup>

The requirements of particular members and employees with respect to financial interests under the LGA codify the good governance and conflict of interest identification and management practices which are of general application<sup>59</sup> and have been held to apply to entities such as a local governments<sup>60</sup> as well as individuals. I find these principles of general application apply to the Council, with the modifications explained below in paragraphs 73 to 74.

In the absence of explicit statutory language to the contrary, legislation will be construed on the basis that compliance with the principles of procedural fairness, such the common law principle of avoidance of apprehension of bias on the part of a fair-minded lay observer cognisant of all the facts<sup>61</sup>, is a condition of the valid exercise of power<sup>62</sup>. The result of departure from those principles is that the decisionmaker is taken outside jurisdiction, rendering his or her actions invalid.<sup>63</sup>

In considering non-disclosure of conflict of interest which affected a statutory authority, Martin CJ held that given the nature of the functions undertaken and the obvious public interest in the discharge of those functions with propriety and integrity, a breach of disclosure of conflict of interest will result in an invalid discharge of statutory duties.<sup>64</sup>

As to the standard required for the avoidance of apprehension of bias on the part of a fair-minded lay observer cognisant of all the facts, Senior Member McNabb noted in *Corr and Local Government Standards Panel*:<sup>65</sup>

*the standard required in conflict of interest matters is generally an objective standard - one that can be satisfied without the need for proof that Councillor (X) had any direct, conscious or actual knowledge of the relevant conflict. The conflict arises from objective or constructive circumstances, not from the subjective knowledge of the particular Councillor.*

### **How do these conflict of interests principles apply to local governments which have commercial dealings?**

The principles of good governance in respect of conflicts of interest have specifically been considered in respect of local governments<sup>66</sup> in WA in light of the fact that local governments may have commercial dealings as well as being responsible for

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<sup>58</sup> 5.68, 5.69 LGA

<sup>59</sup> *The Wilderness Society of WA Inc v The Minister for Environment* (2013) WASC 307

<sup>60</sup> *F and D Bonaccorso Pty Ltd v City of Canada Bay Council* (2007) 157 LGERA 250, *Aloi v Bertoli* [no 2] [2013] WASC 214

<sup>61</sup> *Ebner v Official Trustee in Bankruptcy* [2000] HCA 63 at [6]

<sup>62</sup> *Kioa v West* [1985] HCA 81

<sup>63</sup> *Saeed v Minister for Immigration and Citizenship* [2010] HCA 23

<sup>64</sup> *The Wilderness Society of WA Inc v The Minister for Environment* (2013) WASC 307 [205, 221]

<sup>65</sup> [2014] WASAT 86 at [24]

<sup>66</sup> *Aloi v Bertoli* [no 2] [2013] WASC 214 at 89



planning decisions, and so are often required to make more than one decision in respect of a development.

The principles which apply to local government include:

- A need to be alert to the risk of conflicts of interest;
- A need to act honestly;
- A need to comply with the requirements of the Code of Conduct;
- A need to consider all applications on their merits; and
- A duty to exercise independent judgement.<sup>67</sup>

In cases similar to the one which is the subject of the Complaint, where there is an initial decision which means a Council has a commercial interest in a matter (in this case, the lease), and the Council is then required to make a later decision (in this case, whether to support the liquor license application), the standard which the Council is required to apply to the second decision has been described as:

*the state of impartiality which is required is the capacity in a council to preserve a freedom, notwithstanding earlier investigations and decisions, to approach their duty of inquiring into and disposing of the objections without a closed mind, so that if considerations advanced by objectors bring them to a different frame of mind they can, and will go back on their proposals.*<sup>68</sup>

Arguments that a council is under an implied contractual duty to do what it can to obtain approvals for land it has transacted for commercial development on, have been raised in courts before and rejected.<sup>69</sup>

There is nothing in the local government and planning and development decision-making regime which contemplates that councils may contractually surrender their power of independent judgment to determine an application or refuse to make a later decision.<sup>70</sup>

These decisions are also consistent with legal principles of general application that later decisions and discretions need to be exercised in a free and unhindered way.<sup>71</sup>

Senior Member McNabb noted in *Bradley and Local Government Standards Panel*:<sup>72</sup>

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<sup>67</sup> *Aloi v Bertoli* [no 2] [2013] WASC 214 at 101, 105, 110

<sup>68</sup> *Lower Hutt City Council v Bank* [1974] 1 NZLR 545 (CA) 549 - 550

<sup>69</sup> *Aloi* [108]

<sup>70</sup> *F and D Bonaccorso Pty Ltd v City of Canada Bay Council* (2007) 157 LGERA 250 at [136]

<sup>71</sup> *Ansett Transport Industries (Operations) Pty Ltd v The Commonwealth of Australia* (1977) 139 CLR 54 at 74–76; *Attorney-General for the State of New South Wales v Quin* (1990) 170 CLR 1 at 17

<sup>72</sup> [2012] WASAT 44 at [42]



*“that in these types of matters we are: ... concerned with an allegation of undeclared conflict or bias (apparent or real) clouding the exercise of public duty, and the mechanism imposed by law for ameliorating that conflict.”*

### **Application of the conflict of interest principles to the Respondent's writing of the letter of support**

The issue then is whether the Respondent brought an impartial mind to the question of whether a letter of support should be issued?<sup>73</sup>

The Respondent's submitted that *“Absent a liquor licence being obtained, there would be no final resolution to enter into a lease, and the Council would not stand to benefit from the rental income that would flow from that as landlord”* and he also submitted that the letter of support was issued in furtherance of the City's interest.<sup>74</sup>

The Respondent's submission that he wrote the letter of support for the liquor licence application in the belief it would help secure financial benefit for the Council indicates no independence of mind was brought to the decision to issue the letter.

There was no (and remains no) recognition by the Respondent of the potential conflict of interest due to the Council's financial interest in a liquor license being granted to premises. The Respondent's submissions do not address how the Respondents' actions were consistent with the principles of good governance, or with a reasonable person would perceive the Council to have a conflict of interest due to its commercial relationship with the land the subject of the liquor licence application.

I find a fair-minded observer cognisant of the facts would hold a reasonable apprehension that the Council's financial interest in the premises could affect the Council's decision to write a letter of support. Applying the principles in *Aloi v Bertoli*, I find the Respondent was not alert to this reasonable apprehension, that the Respondent did not consider all the merits or otherwise of writing the letter, and that the Respondent did not bring an independent mind to the decision to write the letter.

The Respondent's letter does not identify or seek to manage the conflict of interest. It makes no mention of the Council's interest in the land or that it will receive financial benefit from the lease being finalised through the successful grant of a liquor license application. I find that these matters would have been easy to include any letter would have been consistent with good governance principles.

### **Was the breach inappropriate in the circumstances?**

I consider the Mayor of a Council and indeed all Council members and employees should have a good working knowledge of good governance principles, and conflict of interest identification and management practices which apply to both to Council members individually, and to the Council as an entity itself. I find this to be the standard of conduct expected of a person in the Respondent's position by

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<sup>73</sup> *F and D Bonaccorso Pty Ltd v City of Canada Bay Council* (2007) 157 LGERA 250 at 141

<sup>74</sup> Respondent submissions page 1 and 2.



reasonable persons with knowledge of the Respondent's duties and the circumstances of the case, as outlined in *Treby*.<sup>75</sup>

This is to be judged objectively and does not involve any element of intent by the Respondent.<sup>76</sup>

As Senior Member McNabb noted in Corr and Local Government Standards Panel:<sup>77</sup>

*a Councillor nevertheless has an overriding duty to .... look for and to avoid the type of conflicts of interest that we are presently concerned with.*

I consider the failure to apply good governance principles was inappropriate in the circumstances and calls for the imposition of a penalty. This is because the Respondent's failure to apply these principles was evident at each step of the process which led to the Respondent sending the letter, with no evident checks or balances in place in the Council's processes. The lack of relevant checks and balances resulted in failures at each of the following steps:

- a) The Respondent did not distinguish the Council's decision to lease the premises in June 2024 from his second later decision in December 2025 to support an application for a liquor licence at the premises;
- b) The Respondent did not refer the second decision back to the Council, and although the objection period for the liquor licence had recently ended, did not inquire whether there were any objections;
- c) The Respondent did not identify the potential conflict of interest or perception of bias in the second decision and so did not raise it at a Council meeting;
- d) The CEO did not identify the conflict of interest or perception of bias or advise the Respondent to raise it at a Council meeting;
- e) There is a comment from a Council Director in respect of the proposed letter stating "*They have all the required Council approvals so I see no issue with the LOS*". This indicates consideration was given to the issuing of the letter but the Council's financial interest in the outcome of the liquor license application was not identified;
- f) The matter was not sought to be brought before a Council meeting, which may then in the normal course have raised consideration of conflicts of interest in the agenda setting and agenda papers preparation;
- g) The matter was not brought before a Council meeting at which time the conflict of interest or perception of bias could have been identified;

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<sup>75</sup> [29]

<sup>76</sup> *Treby v Local Government Standards Panel (No 2)* [2010] WASAT 81 [30]

<sup>77</sup> [2014] WASAT 86 at [21]



- h) No steps were taken to reduce the impact of the conflict or the appearance of the conflict;
- i) No steps were taken to manage the conflict; and
- j) The potential conflict was not disclosed in the letter of support which was written, and the letter did not disclose the Council's interest in the premises or its financial interest in the liquor licence being granted.

The Council's officers and Council members appear to have appropriately considered the disclosure of interest in the 25 June 2024 meeting minutes in respect of the Councils' meeting resolution to lease the premises to the business.<sup>78</sup> They could not reasonably have identified the conflict of interest with the support of the liquor licensing application at that time as it was not on the agenda for that meeting or any later meeting.

My conclusion that the imposition of a penalty is appropriate is consistent with the matters which I must have regard to:<sup>79</sup>

- (qq) the provision of good government by local governments; and
- (rr) the public interest.

### Did the use of office cause an advantage or detriment?

Consistent with the previous Standards Panel's decisions, which I see no reason to depart from in this case, the term 'advantage' in rule 18(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.<sup>80</sup>

It is not necessary for there to be an actual gain but an intent to gain such advantage must be established.<sup>81</sup>

I find that the improper use of the office had the intention to cause gain to the third party business by resulting in the grant, or quicker or more favourably conditioned grant, of the liquor licensing application. The Respondents' submission has confirmed this was the intent of the letter, that is, to ensure a liquor license was obtained by the business<sup>82</sup>, and in any case it is clear from the letter of support itself.

I do not have any evidence before me that writing the letter could have caused detriment to any other person.

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<sup>78</sup> Council Minutes 25 June 2024 Agenda Reference D-24-065945 page 113 where the Complainant declared a conflict and left the meeting, and page 112 where officers considered declarable interests in the preparation of their report for the Council.

<sup>79</sup> s 8A.17 LGA

<sup>80</sup> Complaint SP 12 and 13 of 2011

<sup>81</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59 at [71] adopting *Treby* at [96]

<sup>82</sup> Respondent submissions page 1



The Respondent's Submissions explained that the Respondent had no personal or financial or proximity interest in the outcome of the liquor licence application or lease resolution.<sup>83</sup> I accept this but it is not determinative as the third-party business was "any other person" who the Respondent intended to gain from his use of office, within the terms of rule 18(1)(a).

## **Council's ability to support local businesses**

I should say something about the ability of the Council to support businesses which are consistent with the planning and development policies for an area.

The observation in the Respondent's letter about how the business would align with the Council's Strategic Community Plan are matters which in my view could properly and perhaps even usually be the subject of the proper use of the Respondent's office. My finding should not be seen as constraining the Council's ability to do this.

This finding is only relevant to the Council's ability to support a business when:

- (ss) the Council itself has a financial interest in the outcome of a regulatory process for the business (in which case conflict of interest identification and management processes should be applied); or
- (tt) when the Council determines a commercial arrangement be subject to a later regulatory process and referred back to Council if there are objecting submissions.

## **Council's ability to enter into commercial arrangements**

I should also say something about the Council's ability to enter into commercial leases and indeed determine development applications where it is itself the applicant. This finding should not be seen as constraining that ability, subject to application of principles of good governance.<sup>84</sup>

## **Conclusion**

The elements required to find a breach of rule 18 of the Model Code of Conduct have been met.

## **Model Code of Conduct Rule 17**

Rule 17 of the code of conduct provides:

- 17. Misuse of local government resources

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<sup>83</sup> Respondent submissions page 3, 4

<sup>84</sup> *Aloi v Bertoli* [no 2] [2013] WASC 214 at 89 (Pritchard J)



(1) In this clause —

**electoral purpose** means the purpose of persuading electors to vote in a particular way at an election...

resources of a local government includes —

- (a) local government property; and
- (b) services provided, or paid for, by a local government.

(2) A council member must not, directly or indirectly, use the resources of a local government for an electoral purpose or other purpose unless authorised under the Act, or by the local government or the CEO, to use the resources for that purpose

The relevant elements of rule 17, in this case, are:

- the resource used was a “local government resource”;
- The Respondent directly or indirectly used such local government’s resources for a purpose; and
- The purpose was not authorised under the LGA or by the Council or the Town’s CEO.

### **The resource was a local government resource**

The term ‘resource’ is not defined in the Model Code of Conduct or in the LGA. However, the term ‘local government property’ means “anything, whether land or not, that belongs to, or is vested in, or under the care, control or management of, the local government”.<sup>85</sup>

In this case the Respondent directly used the email and letterhead of the Council and consulted with Council staff to send the letter of support.

The email and letterhead are Council property and staff resources are provided by the Council. I find there has been use of local government resources.

I note the Respondent’s submissions agree with this.<sup>86</sup>

### **The Respondent used the resource**

I find the Respondent directly used the local government resources in writing, consulting on and sending the letter of support.

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<sup>85</sup> s 1.4 LGA

<sup>86</sup> Respondent submissions page 2.



## The purpose was not authorised under the LGA or by the Council or the CEO

There was no Council resolution supporting the Respondent's use of the resources to write the letter of support. See paragraphs 51 above.

In respect of an authorisation from the CEO, the Chief Executive Officer of the Council was provided with the letter before it was sent<sup>87</sup> and replied "*Thank you. Looks good to me.*"<sup>88</sup>. Although this could be seen as an authorisation, it is not necessary for me to decide this issue as authorisation cannot be granted for an act which is unlawful in the first place.<sup>89</sup>

Compliance with good governance and conflict of interest identification and management practices is usually a necessary precondition for the proper use of office, and non-compliance results in the office having been exercised improperly. This is consistent with the general principle of administrative law that direct financial interest in a decision is usually a necessary pre-condition for the decision to be within statutory power, unless there is clear statutory intention to the contrary.<sup>90</sup>

There is no contrary intention in the LGA or the Model Code of Conduct. Although one of the intentions of the LGA is that local government decision-making is more efficient,<sup>91</sup> I can see no reason why the Respondent's decision to send a letter would not have been efficient with the application of conflict identification and management principles.

I find it the CEO could not authorise the sending of the letter.

## Conclusion

The elements required to find a breach of rule 17 of the Model Code of Conduct have been met.

## The interests of the Complainant

The Respondent makes submissions about the genuineness of the Complainant's complaint and also the interests of the Complainant in making the Compliant.<sup>92</sup>

The Respondent submits that lodging a complaint against the Mayor is an abuse of the complaint process as it could cause the Council's letter of support to be re-evaluated negatively by the Director of Liquor Licensing.<sup>93</sup>

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<sup>87</sup> email 5 December 11:35 am

<sup>88</sup> email 5 December, 12:30 pm

<sup>89</sup> see paragraph 70 above, *Wilderness Society of WA (Inc) v Minister for Environment* [2013] WASC 307 [205, 221]

<sup>90</sup> see paragraph 70 above

<sup>91</sup> S 1.3 (2) (d) LGA

<sup>92</sup> respondent submissions page 5

<sup>93</sup> respondent submissions page 8



These are not relevant to central matters relevant to my decision and I make no comment about them.

I do note though that nothing in my findings should be considered by the Director of Liquor Licensing as negatively affecting the grant of the liquor license, my findings are neutral on this matter as they about the process and circumstances of the letter of support being written rather than the content of the letter.



# Sanction Decision

## Procedural Fairness

I must deal with the conduct breaches I have found by either ordering no sanction be imposed or ordering the Respondent have one of the sanctions set out in the Act.<sup>94</sup>

Before I order a sanction, I must provide the Respondent with a reasonable opportunity to make submissions on it<sup>95</sup>.

The Respondent has now provided with an opportunity to make submissions on sanctions and make submissions that there should be no sanction.

## Types of sanction

The types of sanction which I am I am required to consider to deal with conduct breaches are:<sup>96</sup>

- (a) ordering that no sanction be imposed; or
- (b) ordering that the Respondent —
  - (i) be publicly censured as specified in the order; or
  - (ii) apologise publicly as specified in the order; or
  - (iii) undertake counselling as specified in the order; or
  - (iv) undertake training as specified in the order; or
  - (v) is not entitled to be paid, in respect of a period of not more than 3 months specified in the order, the fees and allowances which the person would otherwise be entitled to be paid under Part 5 Division 8 in respect of the specified period; or
  - (vi) is not entitled to attend a meeting of a committee of a council for a period of not more than 3 months specified in the order; or
  - (vii) is suspended for a period of not more than 3 months specified in the order;
- (c) ordering 2 or more of the sanctions described in paragraph (b)(i) to (vii).

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<sup>94</sup> 8A.18 (4) LGA

<sup>95</sup> 8A.18 (2) LGA

<sup>96</sup> 8A. 18 (4) LGA



## Guidance on type of sanction

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

- (a) the nature and seriousness of the breaches;
- (b) the councillor's motivation for the contravention;
- (c) whether or not the councillor has shown any insight and remorse into his/her conduct;
- (d) whether the councillor has breached the Act knowingly or carelessly;
- (e) the councillor's disciplinary history;
- (f) likelihood or not of the councillor committing further breaches of the Act;
- (g) personal circumstances at the time of conduct, and of imposing the sanction;
- (h) need to protect the public through general deterrence and maintain public confidence in local government; and
- (i) any other matters which may be regarded as aggravating conduct or mitigating its seriousness.<sup>97</sup>

These were relevant to the Local Government Standards Panel decisions on sanctions and I find no reason to depart from them in this case.

## Considerations for sanctions for Rule 18 breach in this case

Due to the nature of and insight into the conduct I have made findings about in paragraphs 53-54 and 86 – 90 above, I considered whether a sanction should be issued in relation to the Rule 18 conduct breach.

I considered whether a sanction would be consistent with the general principles which I must apply concerning the provision of good government by local governments, and the public interest.

I also considered whether it would be appropriate to impose a sanction in the specific circumstances of this case.

To identify and manage conflicts of interest is important to the likely public perception of local government, their confidence in local government decision making, and their

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<sup>97</sup> *Chief Executive Officer, Department of Local Government and Communities and Scaffidi* [2017] WASAT 67 (S), summarized in the Local Government Standards Panel Decision on penalty for Complaint number 2024-0515



trust that local governments bring an independent mind to decision making, even in areas where they have a commercial interest.<sup>98</sup>

In *Chief Executive Officer, Department of Local Government and Communities and Scaffidi*, the Tribunal was dealing with an individual's conflicts of interest under Part 5 of the LGA, but also stated principles of general application, including:

*The disclosure regime provided by the LG Act in relation to relevant persons minimises the risk of corruption or improper influence by requiring disclosure and thus accountability by relevant persons. It also promotes public confidence in the regime by providing for transparency<sup>99</sup>; and*

*Accordingly, the provisions of Part 5 of the LG Act are to be construed so as to ensure that the relevant disclosures lead to accountability in substance. A construction which promotes accountability and transparency is to be preferred to one that does not promote those objects.<sup>100</sup>*

As to the appropriateness of a sanction for the Respondent in his capacity as Mayor, I am aware previous decisions have found a Mayor may be subject to additional expectations in terms of standards of behaviour, which is also reflected in s 2.8(1) of the LG Act.<sup>101</sup>

I consider improvement in conflict of interest identification and management for the City when it is operating as a commercial entity would be an appropriate and proportionate outcome from the complaint and adjudication process which is consistent with good government.

I consider improvement in identifying the separate decisions by the Council which need an independent mind which is unfettered by previous Council decisions, would also be an appropriate and proportionate outcome from the complaint and adjudication process, and consistent with the public interest in having trust in the decisions which the Council is empowered to make.

I note that the Model Code of Conduct Regulations provides that Council members should actively seek out and engage in training and development opportunities to improve the performance of their role.<sup>102</sup>

I have considered recent decisions of the Local Government Standards Panel concerning Rule 22: Disclosure of Interest, but note they are in relation to individual conflict of interests rather than the interests of a local government as a whole.<sup>103</sup>

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<sup>98</sup> A breach of conflict disclosure obligations are a serious matter: *Corr and Local Government Standards Panel* [2014] WASAT 86 at [35]

<sup>99</sup> [2017] WASAT 67 [76]

<sup>100</sup> [78]

<sup>101</sup> *Treby* at [89]

<sup>102</sup> Local Government (Model Code of Conduct) Regulations 2021 clause 4(2)

<sup>103</sup> For example, Local Government Standards Panel Decision on penalty for Complaint numbers 2024-0392, 2024-0390, 20230213



## Consideration of Respondent's submission on sanction

In respect of the breach of Model Code of Conduct Rule 18, the Respondent's submission on sanction has included:

- As a result of the complaint and adjudication process, the Respondent now knows the kind of conduct expected of him when dealing with the City's assets.
- The Respondent proposes to raise with the Council a policy to deal with requests for letters of support.
- The Respondent proposes to raise with Council a policy to deal with Council decision making matters where the underlying subject matter of the decision involves a City asset.
- The Respondent has obtained advice at his own expense on good practice for dealing with the City's assets.
- The Respondent regrets sending the letter of support.
- The Respondent does not consider a disciplinary sanction or training in conflict of interest identification and management processes relevant to the interests of the City as a commercial entity is an appropriate sanction for him as an individual in the circumstances of the breach, including that he sought advice from the Council staff before sending the letter of support.
- The Respondent did not act with any deception, did not have any personal interest or make any personal gain, and believed he was acting in the best interest of the City. The breach was not caused knowingly, it only occurred because he was not aware of the potential for the circumstances to cause a breach.
- The publication of the adjudication findings alone will be sufficient sanction.

## Conclusion on sanction for rule 18 breach

In view of the Respondent's submissions dealing directly with the subject matter and outcome which I would expect as the outcome of any sanction, I do not consider a sanction is proportionate or warranted for the Rule 18 breach in this case.

I therefore do not order a sanction for the breach of Model Code of Conduct Rule 18.

I do not have the power to order that City staff attend training relevant to their duties, but would recommend consideration to be given to:

- training in conflict of interest identification and management for the City when it is operating as a commercial entity; and
- training in to deal with Council decision making matters where the underlying subject matter of the decision involves a City asset; and



- implementing an efficient policy for considering and deciding whether letters of support should be issued, including if and when such letters need to be subject to a resolution of the Council.

## Sanction Decision for Rule 17 breach

I do not propose to order a sanction in respect of the Rule 17 breach.

I find that the Rule 18 breach was the primary breach and there would have been no breach of Rule 17 but for the Rule 18 breach in the first place.

I find imposing a penalty for a breach of Rule 17 would be disproportionate as the breach is so minor as to not warrant a sanction.

In my finding the rule 17 breach is not worthy of a sanction I have also considered Senior Member McNab's decision in *Bradley and Local Government Standards Panel*:<sup>104</sup>

*Local councillors do a critical, necessary and difficult job; they attempt to represent local opinion which is not always an easy task... They are political creatures in the best sense of that description who are primarily, in this capacity at least, accountable to their local electors and community. They do not always get things right... But they are not to be criticised for attempting to represent their constituency and community interests to the best of their abilities. Their job should not be made even more difficult by the imposition of unworkable rules that, in effect, limit what they may say when they are undertaking these critical functions.*

In deciding no sanction is appropriate for the Rule 17 breach, I also find that the Respondent was attempting to represent a Council objective and the community interest in having a new venue operating in the community. The Respondent should not be criticised for this.

## Order for costs of adjudication

Under 8A.19 (2) of the LGA, if I find a conduct breach has occurred, I may order the Respondent to pay the local government the amount which that local government is required to pay for costs of the adjudication process.

I do not find that the Respondent reimbursing the local government would be an appropriate and proportionate order in this case, particularly when the Respondent's breach was not identified or managed by the procedures of the City.

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<sup>104</sup> [2012] WASAT 44 at [45]



### **DEFAMATION CAUTION**

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