



Local Government Standards Panel

Complaint Number	SP 2021-038
Legislation	<i>Local Government Act 1995</i>
Complainant	Mayor Patrick Hall
Respondent	Councillor Jesse Jacobs
Local Government	City of Canning
Regulation	Regulation 11 of the <i>Local Government (Rules of Conduct)</i> <i>Regulations 2007</i>
Panel Members	Mrs Emma Power (Presiding Member) Cr Peter Rogers (Member) Mr Gordon MacMile (Member)
Heard	14 May 2021 Determined on the documents
Finding	1 x Breach Regulation 11

FINDING AND REASONS FOR FINDING

Delivered 3 June 2021

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005*, applies to the further release or publication of all or part of this document or its contents. Accordingly, appropriate caution should be exercised when considering the further dissemination and the method of retention of this document and its contents.



Summary of the Panel's decision

1. On 14 May 2021, the Panel found that Councillor Jesse Jacobs a councillor of the City of Swan (“**the City**”):
 - a. did not commit a minor breach pursuant to the *Local Government Act 1995 (WA)* (“**the Act**”) and regulation 11 of the *Local Government (Rules of Conduct) Regulations 2007* (“**the Regulations**”) when he failed to declare an impartiality interest at the Ordinary Council Meeting of 21 July 2020 as the allegation of complaint was submitted out of time; and
 - b. did not commit a minor breach pursuant to the Act and Regulation 11 of the Regulations when he failed to declare an impartiality interest at the Strategic Issues Briefing provided to Council on 24 November 2020;
 - c. did not commit a minor breach pursuant to the Act and Regulation 11 of the Regulations when he failed to declare an impartiality interest at the Agenda Briefing of Council of 1 December 2020;
 - d. did commit a minor breach pursuant to the Act and Regulation 11 of the Regulations when he failed to declare an impartiality interest at the Ordinary Council Meeting of 8 December 2020;

in respect to City funds to be provided to upgrade a park located close to his home as specified in paragraph 15 below.

The Panel's Role

2. Under section 5.110(2) of the Act the Panel is required to consider a minor breach complaint and make a finding as to whether the alleged minor breach occurred.
3. The Act provides for the circumstances in which a council member commits a minor breach.¹
4. The Panel may make a finding that a councillor has committed a minor breach of the Act and Regulations based on evidence from which it may be concluded that it is more likely that the alleged breach occurred than it did not occur.²
5. In order to find a breach, it must be established that each element of the relevant Regulation is more likely than not to have been breached or met.
6. In considering whether a minor breach is established the Panel must consider:
 - a. all evidence provided and, where there are conflicting circumstances, inferences or evidence, must come to a reasonable conclusion that any circumstance, inference or evidence relied upon is more likely than not to have occurred or be accurate³; and
 - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding⁴.
7. The Panel does not possess investigative or supervisory powers.⁵ The Panel makes decisions about complaints regarding minor breaches solely upon the evidence

¹ Section 5.105 of the Act

² Section 5.106 of the Act

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

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

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



presented to it and, where appropriate, materials published by the relevant local authority's website.

8. It is the responsibility of both complainants and respondents to provide the Panel with all information they wish the Panel to consider when making its determination.
9. The Panel also must have regard to the general interests of local government in Western Australia⁶.
10. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

Jurisdiction and Procedural Fairness

11. On 26 March 2021 the Panel received an email from Mr Arthur Kyron acting as complaints officer of the City ("**the Complaints Officer**"). The same enclosed a Complaint of Minor Breach Form dated 23 March 2021.
12. In the complaint form, the Complainant alleges that Cr Jacobs has breached regulation 11 of the Regulations when he failed to declare an impartiality interest at:
 - a. the Ordinary Council Meeting of 21 July 2020 ("**Allegation 1**");
 - b. the Strategic Issues Briefing provided to Council on 24 November 2020 ("**Allegation 2**");
 - c. the Agenda Briefing of Council of 1 December 2020 ("**Allegation 3**"); and
 - d. the Ordinary Council Meeting of 8 December 2020 ("**Allegation 4**"),in respect to City funds to be provided to upgrade a park located close to his home as set out in paragraph 15 below ("**the Complaint**").
13. The Panel convened 14 May 2021 to consider the Complaint.
14. The Panel:
 - a. accepted the advice of the Department of Local Government, Sport and Cultural Industries ("**the Department**") that, based on information published on the Western Australian Electoral Commission's website, Cr Jacobs was:
 - i. was elected to the Council of the City in in October 2019 for a term expiring in October 2023;
 - ii. a Councillor at the time of the alleged breach; and
 - iii. a Councillor when the Panel met on 14 May 2021;
 - b. was satisfied the Complaint was made within six months after the alleged breach occurred⁷;
 - c. was satisfied that the City's Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach⁸;
 - d. was satisfied the Department had provided procedural fairness to Cr Jacobs; and
 - e. found it had jurisdiction to consider the Complaint.

⁶ Section 8(6) of Schedule 5.1 of the Act

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

⁸ Section 5.107 and 5.109 of the Act



The Specifics of the Complaint

15. The Complainant makes the following particular arguments and allegations in respect to the Complaint:
- a. Deputy Mayor Jacobs to declare a clear conflict of interest on multiple occasions which resulted in funding of \$150,000 being approved by Council to upgrade an area of 'public open space' known as the Gianatti Parklands, which is located on Gianatti Ramble in East Cannington.
 - b. Cr Jacobs resides on Gianatti Ramble.
 - c. Declaration of conflicts of interest by Elected Members are a cornerstone of transparency and accountability in the local government sector. Failure to declare a clear interest undermines the confidence of the community that their Elected Members are impartially and appropriately exercising their considerable powers. This is particularly relevant for matters involving planning and funding.
 - d. If the full City of Canning Council had been made aware that Cr Jacobs resided in the street in which he was advocating for \$150,000 of funding, then, due to the potential issues relating to 'public perception', it is highly likely that the Gianatti Park Upgrade may not have been supported.
 - e. Therefore this failure has affected the decision-making of Council and perverted the normal course of Council's deliberations.
 - f. In the circumstances, it could be reasonable to draw the conclusion that the failure by Councillor Jacobs to declare an interest on four (4) separate occasions, was calculated and intentional.
 - g. Those occasions were;
 - i. the City of Canning Ordinary Council Meeting ("**the July OCM**") held 21 July 2020 where the Gianatti Parkland Upgrade was the subject of both a Petition and a Deputation;
 - ii. a Strategic Issues Briefing of 24 November 2020 where the Gianatti Parkland Upgrade was discussed ("**the SIB**");
 - iii. the City of Canning's Agenda Briefing Meeting held on 1 December 2020 where the matter appeared on the Agenda and was open to discussion ("**the Agenda Briefing**"); and
 - iv. the City of Canning's Ordinary Council Meeting of 8 December 2020 where the Gianatti Parkland Upgrade was vigorously debated and where \$150,000 of funding was approved by Council [Matter EN-031-20 Local Roads and Community Infrastructure (LRCI) Program – Extension] ("**the December OCM**").
 - h. **July OCM – 21 July 2020**
 - i. At the July OCM:
 - A. a deputation was made by a party who is a close neighbour of Cr Jacobs; and
 - B. a petition was presented to Council by another resident of Gianatti Ramble ("**the Petition**").
 - ii. The wife of Cr Jacobs was a signatory to the Petition.



- iii. It would seem implausible that Cr Jacobs had no prior knowledge of the Petition before it was presented to Council. This is evidenced by his wife being a signatory to the Petition and the fact that practically every one of Cr Jacobs' neighbours had signed the Petition.
 - iv. The motion to accept the Petition was then 'Moved' by Cr Jacobs.
 - v. Irrespective of whether Cr Jacobs had prior knowledge of the Petition or not, once it was raised he had a duty to declare a conflict of interest.
 - vi. In moving the Motion to accept the Petition Cr Jacobs knowingly triggered a process which would ultimately result in a funding decision coming back to Council for its consideration.
 - vii. The Minutes record reflects Cr Jacobs did not declare any interest.
- i. **Strategic Issues Briefing (SIB) 24 November 2020**
- i. On Friday 6 November 2020 Director Warren Bow sent an email to Elected Members which:
 - A. advised that the City had been successful in obtaining a significant sum of unbudgeted grant funding; and
 - B. providing a list of proposed projects for consideration for funding through the Local Roads and Community Infrastructure (LRCI) Program.
 - ii. There was no mention of an upgrade to Gianatti Parklands as a suggested project at that time.
 - iii. On November 19 the Agenda Papers were published and distributed for the SIB with the above information.
 - iv. By the time the matter was brought before the SIB for discussion by Council the 'upgrade of Gianatti Ramble Parkland' was added as a new project with a provisional funding allocation of \$150,000.
 - v. At the SIB, another Councillor queried the sudden inclusion of the project.
 - vi. At the SIB it was also mentioned that Elected Members are encouraged to disclose a conflict of interest, where they are aware they have one, when attending a Forum, Briefing or Workshop and where applicable, remove themselves from the room while the matter is being discussed.
 - vii. Cr Jacobs did not disclose any conflict.
 - viii. The following is a transcript from the audio recording of the relevant part(s) of the SIB:
 - A. *Cr Barry*: "I'm glad to see that Gianatti Ramble got a Guernsey because I haven't seen it here"
Director Bow: "It made a late charge Councillor Barry".
Cr Barry: "Was that late charge from the Deputy Mayor?"
(Director Bow does not respond.)
 - B. *Cr Spencer-Teo*: "With the Gianatti Ramble Parklands, was that just to develop the parklands or was it also to put a playground on these parklands?"



Director Bow: “Both. There’ll be a parkland development and there may be some play elements there”.

Cr Spencer-Teo referred to the reports attached to the SIB Agenda where the City had stated that it did not currently have sufficient resources to deliver any more playgrounds.

Cr Spencer-Teo: “Here it says the following projects were considered but were incapable of being delivered, and it’s got down here additional playgrounds. Is that no longer the case?”

- C. *Cr Jacobs* “Councillor Barry and I have been out there. At the moment there is a fence in the middle of it. Would that include taking that fence and using the full block?”

Director Bow: “Yes, that’s what we’re planning to do Deputy Mayor.”

- ix. Cr Jacobs admits having visited the site which confirms that Cr Jacobs had actively involved himself in the Gianatti Parklands project prior to the 24 November SIB.
- x. Further, later on the evening of November 24, Cr Jacobs emailed Director Bow and stated”

“ Just a short email to you all to support the adding of Hillview Hub Streetscape and Gianatti Parkland to the LRCI grants for completion before 30 June 2021.

I am most pleased that both projects have been shortlisted to be considered at Dec 2020 OCM.

As you know the local community has been particularly active in lobbying Cr Barry and myself over the last few years regarding the corner of Gianatti and Terek Parkland. And we have also recently received a petition and presentation within the last year. So it does enjoy the strong support of both Cr Barry and myself. Given the low comparative cost of the parkland project it is hoped that it could make any final shortlisting for December.”

- xi. The email is evidence that Cr Jacobs continued to advocate strongly for the Gianatti Ramble Parklands Upgrade with the City’s executive officers – without advising them of his clear conflict of interest.

j. Agenda Briefing Meeting - 1 December 2020

- i. At the Agenda Briefing Meeting held on 1 December 2020 Report Number EN-031-20 was tabled as a ‘late item’ entitled ‘Local Roads and Community Infrastructure (LRCI) Program – Extension’ and ‘Gianatti Ramble Parkland, East Cannington - \$150,000’ which stated:

“ Scope for this project will include a complete engagement process that will deliver a basic masterplan. The will enable the City to plan and stage the development of the park as the land becomes available to the City through acquisition via the relevant Town Planning Scheme provisions. Likely elements for the park include nature based play, seating, plantings and fencing.”

- ii. Cr Jacobs did not make a declaration of interest regarding the Gianatti Ramble matter despite the item being listed for discussion by Council and having a provisional funding allocation of \$150,000, and despite he and his family residing on Gianatti Ramble, East Cannington.



k. December OCM - 8 December 2020

- i. At the December OCM Item Number EN-031-20 was tabled in the meeting's published agenda.
- ii. The title of the Report was '*Local Roads and Community Infrastructure (LRCI) Program – Extension*' and the Officers Recommendation contained in the report included requested that Council Endorse the nomination of the Gianatti Ramble Parkland Upgrade for funding under the Local Roads and Community Infrastructure Program.
- iii. Cr Jacobs was in attendance at the meeting and did not make a declaration of interest regarding Item Number EN-031-20.
- iv. Compounding Cr Jacobs' failure to declare a conflict of interest over Item EN-031-20, the Minutes of the OCM held 8 December 2020 show that Cr Jacobs:
 - A. moved that Council endorse the Officers Recommendation which included funding for the Gianatti Ramble Parkland Upgrade; and
 - B. spoke in favour of the Officers Recommendation.
- v. Cr Spencer-Teo then moved to amend the substantive motion to remove the Gianatti Ramble Parkland Upgrade.
- vi. Cr Jacobs then spoke against the amendment put by Cr Spencer-Teo; urged his fellow Councillors not to support the amendment and then voted against the amendment - which was lost.
- vii. Council made this decision without the Elected Members knowing that Cr Jacobs and his family reside on Gianatti Ramble.
- viii. Given the circumstances, if Councillors had been aware of the interest in the matter, the conflict that it presented, and the likely public perception if the matter were made public and was raised by the media, there is a likelihood that Council may not have endorsed funding for the project.

l. General - Disclosure of interest

- i. It is to be noted that declarations of interest – on the basis of impartiality, are a regular occurrence at City of Canning meetings.
- ii. Under Regulation 11, even if Cr Jacobs was to claim to be unaware that the Gianatti Ramble Parkland Upgrade matter was to be discussed at the SIB held 24 November 2020 then under regulation 11(4) he was compelled to disclose the interest when the discussion on the matter began.
- iii. Considering Cr Jacobs had numerous (four) separate opportunities to publicly disclose a conflict of interest in relation to this matter, it is open to the Panel to find that:
 - A. the Cr Jacobs' failure to declare a conflict of interest has not been an inadvertent oversight; and
 - B. Cr Jacobs failed to disclose the interest because the funding of the Gianatti Ramble Parklands Upgrade would deliver a benefit to both himself and his family.
- iv. It is not the case that Cr Jacobs is an inexperienced Councillor and unaware of his responsibilities and fiduciary duties (being Deputy Mayor). He is a highly experienced public officer with many relevant qualifications including



- from the Western Australian Local Government Association regarding meeting procedures and disclosures of interest.
- v. The disclosure of interests is a key tenet of local government and all levels of government.
 - vi. Elected Members have a sworn duty to act in good faith and to exercise their considerable decision making powers impartially. To not do so undermines public confidence in the honesty and integrity of all public officers.
 - vii. The position of Deputy Mayor carries considerable influence on Council. It is a leadership role that demands a standard of propriety which meets the expectations of our community and sets a benchmark for the conduct of other Councillors.
 - viii. With respect to ethics and integrity, a Deputy Mayor should strive to set an example for all others to follow, and in this instance Cr Jacobs has failed in that objective.
16. The Complainant also supplied the following supporting documentation to the Panel:
- a. Map of Gianatti Ramble;
 - b. Petition tabled at July OCM;
 - c. Extract of Minutes of July OCM (Petition and Deputation);
 - d. Email dated 6 November 2020 from Director Bow to Councillors;
 - e. Agenda Papers for SIB - 24 November 2020;
 - f. Email dated 24 November 2020 from Deputy Mayor Jacobs to Director Bow;
 - g. Confidential Strategic Issues Briefing – Agenda;
 - h. Draft Agenda – Agenda Briefing – 1 December 2020;
 - i. Agenda of December OCM; and
 - j. Minutes of December OCM.

Respondent's Response

17. Despite being given an opportunity to respond to the Complaint by the Department, Cr Jacobs did not provide a response within the required time frame.

Regulation 11

18. Regulation 11 requires a councillor to disclose what is commonly referred to as an "impartiality interest". The relevant parts of regulation 11 provide:

"11. Disclosure of interest

(1) *In this regulation —*

***interest** means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.*



- (2) *A person who is a council member and who has an interest in any matter to be discussed at a council or committee meeting attended by the member must disclose the nature of the interest —*
 - (a) *in a written notice given to the CEO before the meeting; or*
 - (b) *at the meeting immediately before the matter is discussed.*
 - (3) *Subregulation (2) does not apply to an interest referred to in section 5.60 of the Act.*
 - (4) *Subregulation (2) does not apply if —*
 - (a) *a person who is a council member fails to disclose an interest because the person did not know he or she had an interest in the matter; or*
 - (b) *a person who is a council member fails to disclose an interest because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person disclosed the interest as soon as possible after the discussion began.*
 - (5) *If, under subregulation (2)(a), a person who is a council member discloses an interest in a written notice given to the CEO before a meeting then —*
 - (a) *before the meeting the CEO is to cause the notice to be given to the person who is to preside at the meeting; and*
 - (b) *at the meeting the person presiding is to bring the notice and its contents to the attention of the persons present immediately before a matter to which the disclosure relates is discussed.*
 - (6) *If —*
 - (a) *under subregulation (2)(b) or (4)(b) a person's interest in a matter is disclosed at a meeting; or*
 - (b) *under subregulation (5)(b) notice of a person's interest in a matter is brought to the attention of the persons present at a meeting,*
the nature of the interest is to be recorded in the minutes of the meeting."
19. To make a finding of a minor breach of regulation 11 of the Regulations the Panel must be satisfied that it is more likely than not that:
- a. Cr Jacobs was an elected member at the time of the alleged breach and the time of the determination;
 - b. Cr Jacobs attended the council or committee meeting and was present when the relevant matter came before the meeting and was discussed;
 - c. subject to regulation 11(3), Cr Jacobs had a private or personal interest in a matter in which an apparent or real conflict of interest or a bias arises that does, or might, adversely affect the member's impartiality in considering such matter;
 - d. Cr Jacobs did not disclose the nature of the relevant interest in the matter in either of the ways required by regulation 11(2)(a) or regulation 11(2)(b); and
 - e. regulation 11(4) does not apply.



Allegation 1 – July OCM – 21 July 2020

20. As this alleged incident occurred more than 6 months prior to the date that the Complaint was made the Panel is unable to consider this allegation in accordance with sections 107(4) and 5.109(2) of the Act.

Allegation 2 - Strategic Issues Briefing (SIB) - 24 November 2020

Cr Jacobs was an elected member at the time of the alleged breach and the time of the determination

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

Cr Jacobs attended at the council or committee meeting and was present during discussion of the matter

23. The terms of Regulation 11 dictate that the same only applies where the relevant matter is discussed at a council meeting (ordinary or special) or a committee meeting (as those terms are contemplated in the Act).
24. Although a Strategic Issue Briefing is a gathering of Council (and best practice indicates that the same obligations on councillors should apply) it is not considered to be a council meeting or committee meeting as defined in the Act.
25. This element is not met.

Remaining Elements

26. As the above element cannot be met, the remaining elements have not been considered here.

Conclusion

27. The elements required to find a breach of regulation 11 of the Regulations have not been met.

Allegation 3 – Agenda Briefing – 1 December 2020

Cr Jacobs was an elected member at the time of the alleged breach and the time of the determination

28. Cr Jacobs was a councillor at the time of the alleged breach and at the time the Panel considered the Complaint.
29. This element is met.

Cr Jacobs attended at the council or committee meeting and was present during discussion of the matter

30. As noted above, the terms of Regulation 11 dictate that the same only applies where the relevant matter is discussed at a formal council meeting or committee meeting.
31. An Agenda Briefing is not a council meeting or committee meeting as defined in the Act, but rather is an administrative undertaking to assist councillors to read and prepare the substantial material required for an ordinary council meeting.



32. As such the obligations under Regulation 11 do not apply in this case.
33. This element is not met.

Remaining Elements

34. As the above element cannot be met, the remaining elements have not been considered here by the Panel.

Conclusion

35. The elements required to find a breach of regulation 11 of the Regulations have not been met.

Allegation 4 – December OCM – 8 December 2020

Cr Jacobs was an elected member at the time of the alleged breach and the time of the determination

36. Cr Jacobs was a councillor at the time of the alleged breach and at the time the Panel considered the Complaint.
37. This element is met.

Cr Jacobs attended at the council or committee meeting and was present during discussion of the matter

38. The relevant matter the subject of the Complaint was discussed at the Ordinary Council Meeting of 8 December 2020.
39. The Minutes indicate that Cr Jacobs was present at the OCM, moved the relevant Motion, was present during the discussion and then voted in respect to the relevant item.
40. This element is met.

Subject to Regulation 11(3), Cr Jacobs has an interest in the matter

41. In regulation 11(1) an “interest” is defined as:

*“**interest** means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.”*

42. This is commonly referred to as an “impartiality interest”.
43. In order for there to be a declarable impartiality interest either:
 - a. it must be more likely than not that, when viewed objectively, the relevant interest is one that a fair-minded informed observer might reasonably apprehend or perceive might be a conflict of interest or a bias; or
 - b. an existing association to, or with, a councillor exists which might adversely affect the councillor’s impartiality in considering the matter on the basis that:
 - i. the councillor’s mind might not be open to persuasion in regard to the matter; or
 - ii. the member might not be willing to give genuine and appropriate consideration to the matter, the matters required by law to be taken into account or any recommendation of council officers or a committee, as the case requires.
44. In this case the Panel finds that it is more likely than not that the first instance applies as it would be generally assumed, by a reasonable person, that where a substantial



upgrade of a public park is occurring close to a councillor's home, and the councillor's family would personally benefit from such upgrade, there may be a perception that such councillor's impartiality may be affected.

45. There need not be an *actual* conflict or bias held by the elected member, the *apprehension* of bias is enough to trigger the requirements of this Regulation to disclose.
46. The factors that:
 - a. Cr Jacobs is an experienced councillor in the position of Deputy Mayor who should have a comprehensive understanding of the issues of conflicts and declarations;
 - b. prior to the December OCM Cr Jacobs had a close association and involvement with this item;
 - c. Cr Jacobs' family had a close involvement with this item; and
 - d. at the Agenda Briefing Cr Jacobs' relationship to, and involvement in, the item had been expressly questioned by another councillor,should have suggested to Cr Jacobs that there was the significant possibility of a perceived bias in the matter.
47. In this case, the Panel finds that it is more likely than not that the facts that:
 - a. Cr Jacobs lived in close proximity to the relevant park;
 - b. Cr Jacobs' wife had signed the relevant Petition;
 - c. Cr Jacobs was aware of the contents of the Petition; and
 - d. Cr Jacobs had an active role in seeking to secure the funding for the park upgrades,is enough to give rise to a perceived interest arising from the perception of a fair-minded informed observer that Cr Jacobs may have a bias in the matter or might not be open to persuasion in regard to the matter.
48. It is clear that there was significant support for the Park upgrade in the community and Cr Jacobs was supporting his constituents by endorsing the same. However, this motive does not negate the requirement to disclose impartiality conflicts as required by the Regulations.
49. It is further important to note that, once an impartiality interest is declared, this does not mean that the councillor may not speak for (or against) or vote in respect to the relevant item/matter. Once an impartiality interest is declared, the member's involvement in the meeting continues in the usual manner.
50. However, making a disclosure of this type makes it clear to all other council members and the public that a perception of a bias could possibly arise and, further, promotes transparency and accountability in the local government system.
51. This element is met.

Cr Jacobs did not disclose the nature of the relevant interest in the matter

52. Regulation 11(2) requires disclosure of an impartiality interest by either:
 - a. a written notice given to the CEO before the meeting; or
 - b. verbally at the meeting immediately before the matter is discussed.



53. Sub regulation 11(5) further requires the public acknowledgement and recording of any disclosure provided.
54. The Minutes of the December OCM reflects that Cr Jacobs did not provide any declaration of impartiality at any time before or during the meeting.
55. The Panel finds to the required standard that Cr Jacobs did not declare his impartiality interest in respect to the item concerning the Gianatti Parkland Upgrade at the December OCM.
56. This element is met.

Regulation 11(4) did not apply

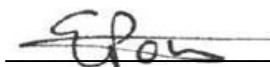
57. In this case there is no indication that Cr Jacobs was not aware he had an interest in the matter. As set out in paragraphs 46 and 47 there were several clear indicators that Cr Jacobs had a close association with the item.
58. The Minutes of the December OCM do not indicate that Cr Jacobs disclosed the interest as soon as possible after the discussion began, or at any time before or during the relevant meeting.
59. This element is met.

Conclusion


The elements required to find a breach of regulation 11 of the Regulations have been met.

Panel's Findings

60. In respect to Allegation 1 Cr Jacobs did not breach Regulation 11 of the Regulations and therefore did not commit a minor breach.
61. In respect to Allegation 2 Cr Jacobs did not breach Regulation 11 of the Regulations and therefore did not commit a minor breach.
62. In respect to Allegation 3 Cr Jacobs did not breach Regulation 11 of the Regulations and therefore did not commit a minor breach.
63. In respect to Allegation 4 Cr Jacobs did breach Regulation 11 of the Regulations and therefore did commit a minor breach.



Emma Power (Member)



Peter Rogers (Member)



Gordon MacMile (Deputy Member)



Local Government Standards Panel

Complaint Number	SP 2021-038
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Mayor Patrick Hall
Respondent	Councillor Jesse Jacobs
Local Government	City of Canning
Regulation	Regulation 11 of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mr Tim Fraser (Presiding Member) Mrs Emma Power (Member) Cr Deb Hopper (Member)
Heard	14 May 2021 Determined on the documents
Penalty Considered	19 August 2021
Outcome	Training

DECISION AND REASONS FOR DECISION

Delivered 17 September 2021

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005 (WA)*, applies to the further release or publication of all or part of this document or its contents. Accordingly, appropriate caution should be exercised when considering the further dissemination and the method of retention of this document and its contents



Introduction

1. At its meeting on 14 May 2021, the Panel found that Councillor Jesse Jacobs, a councillor for the City of Canning (**“the City”**), committed one minor breach under the *Local Government Act 1995 (WA)* (**“the Act”**) and regulation 11 of Division 4 of the *Local Government (Rules of Conduct) Regulations 2007* (**“the Regulations”**) when he failed to declare and impartiality interest at the Ordinary Council Meeting of 8 December 2020 in respect to City funds to be provided to upgrade a park located close to his home (**“the Minor Breach”**).

Jurisdiction and Law

2. The Panel convened on 19 August 2021 to consider how it should deal with the Minor Breach.
3. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries (**“the Department”**) that on this date there was no available information to indicate that Cr Jacobs had ceased to be, or was disqualified from being, a councillor.
4. If the Panel finds that a councillor has committed a minor breach, it must give the councillor an opportunity to make submissions to the Panel about how it should deal with the breach under section 5.110(6).¹
5. By a letter dated 14 July 2021, Cr Jacobs was:
 - a. notified of the Panel’s finding of the Minor Breach;
 - b. provided with a copy of the Panel’s Finding and Reasons for Finding; and
 - c. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the *Act*.

Possible Sanctions

6. Section 5.110(6) of the *Local Government Act 1995 (WA)* (**“the Act”**) provides that the Panel is to deal with a minor breach by:
 - (a) *ordering that no sanction be imposed; or*
 - (b) *ordering that —*
 - (i) *the person against whom the complaint was made be publicly censured as specified in the order;*
or
 - (ii) *the person against whom the complaint was made apologise publicly as specified in the order;*
or
 - (iii) *the person against whom the complaint was made undertake training as specified in the order;*
or
 - (iv) *the person against whom the complaint was made pay to the local government specified in the order an amount equal to the amount*

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



of remuneration and allowances payable by the local government in relation to the complaint under Schedule 5.1 clause 9;

or

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

Cr Jacobs' Submissions

7. By an email dated 10 August 2021, the Department received a response from Cr Jacobs.
8. Cr Jacobs provided the following comments and arguments as to penalty, as summarised by the Panel:
 - a. It is Cr Jacobs' preference that the Panel deal with this matter through no sanction. If this is not possible to undertake training would be deemed of value to himself and to Council.
 - b. This would provide greatly clarity to Cr Jacobs in future as in Dec 2020 Cr Jacobs had asked the relevant director if any impartiality interest was needed.
 - c. He asked Cr Jacobs if his house was directly opposite or adjacent to the parkland. Cr Jacobs' said no as the park was at the end of the street on an intersection about 20 houses away. He replied in the negative.
 - d. Furthermore Cr Jacobs had previously viewed "Local Government Operational Guidelines - Dec 2019" and read the scenarios particularly page 7 the footpath scenario and made the judgement call that a disclosure of impartiality interest was not required as per this document's guidance.

Panel's Consideration

9. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach.
10. The Panel may order under section 5.110(6)(a), that no sanction be imposed, not to reverse the Panel's finding of a breach, but to indicate that in all the circumstances the relevant councillor should not be penalised further.
11. Guidance as to the factors which the Panel may consider in determining the appropriate penalty to impose include, but are not limited to, the following:
 - 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 seriousness².
12. The Panel notes that Cr Jacobs' did not consider that he had an impartiality interest to declare in this instance. However, the Panel notes that based on Cr Jacobs' comments, he appears to be unclear as to the relevant types of interest that must be disclosed.
13. The fact that the relevant director noted that the house was not immediately adjacent to the park is an indication that such director considered that Cr Jacobs did not need to declare a *financial interest*. The manner in which this type of interest arises under the Act is substantially different to the application of an impartiality interest.
14. With respect to the particular footpath scenarios mentioned in the Local Government Operational Guidelines - Dec 2019, the facts and parties involved in that scenario is entirely different to the relevant facts in this case.
15. In this case:
 - a. Cr Jacobs lived in close proximity to the relevant park and himself and his family would personally largely benefit from the park being upgraded;
 - b. Cr Jacobs was aware of the contents of the Petition and Cr Jacobs' wife had signed the relevant Petition;
 - c. Cr Jacobs had an active role in seeking to secure the funding for the park upgrades; and
 - d. at prior meetings Cr Jacobs' relationship to, and interest in, the item had been expressly questioned by another councillor.
16. Each of these combine to make a situation where it should have been apparent that Cr Jacobs had such a close relationship with the matter that a fair-minded informed observer would consider that Cr Jacobs may have a bias or might not be open to persuasion in regard to the matter.
17. It is important that other elected members and the public are fully aware that matters before Council are introduced and voted on in a transparent and unbiased manner. As such, a very cautious and prudent approach should be undertaken where any possible apprehension of bias may exist.
18. Due to his experience and his capacity as Deputy Mayor, Cr Jacobs should have a very clear understanding of the circumstances under which the requirement to declare an impartiality interest is required.
19. In these circumstances, the Panel considers that the appropriate sanction is that Cr Jacobs undertake training to refresh himself as to the requirements and standards of conduct expected of local councillors as to conflicts of interest.

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



20. The sanction of an order to undertake training also aligns with the intent of the Act and the purpose of the civil penalties under the Act to ensure future compliance with the statutory obligations imposed on councillors for the better protection of the public.
21. In the relevant circumstances, the Panel considers that undertaking training is an adequate sanction and that it is not necessary to make an order in accordance with Schedule 5.1 clause 9 of the Act that Cr Jacobs recoup to the City the costs of the Department incurred with respect to the Complaint.

Panel's decision

22. The Panel orders pursuant to section 5.110(6)(b)(iii) and section 5.110(6)(c) of the Act that, in relation to the Minor Breach of regulation 11 of the Regulations Cr Jacobs undertake training as specified in the attached Order.

Signing

Tim Fraser (Presiding Member)

Emma Power (Member)

Deborah Hopper (Member)



ORDER

Delivered 17 September 2021

DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005 (WA)*, applies to the further release or publication of all or part of this document or its contents. Accordingly, appropriate caution should be exercised when considering the further dissemination and the method of retention of this document and its contents

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Within 4 months of the date of this Order Councillor Jesse Jacobs, a councillor for the City of Canning, shall undertake:
 - a. the training course for Elected Members “Conflicts of Interest” provided by WA Local Government Association (WALGA) attending either in person or via e-learning; or
 - b. a training course with substantially similar learning outcomes provided by an alternative registered training organisation.



NOTICE TO THE PARTIES TO THE COMPLAINT

RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (the Panel) advises:

- (1) Under section 5.125 of the *Local Government Act 1995* the person making a **complaint** and the person complained about each have the right to apply to the **State Administrative Tribunal (the SAT)** for a review of the Panel's decision in **this matter**. In this context, the term "decision" means a decision to dismiss the complaint or to make an order.
- (2) By rule 9(a) of the *State Administrative Tribunal Rules 2004*, subject to those rules **an application to the SAT under its review jurisdiction must be made within 28 days** of the day on which the Panel (as the decision-maker) gives a notice [see the Note below] under the *State Administrative Tribunal Act 2004 (SAT Act)*, section 20(1).
- (3) **The Panel's Breach Findings and these Findings and Reasons for Finding – Sanctions**, constitute the Panel's notice (i.e. the decision-maker's notice) given under the *SAT Act*, section 20(1).

Note:

- (1) This document may be given to a person in any of the ways provided for by sections 75 and 76 of the *Interpretation Act 1984*. [see s. 9.50 of the *Local Government Act 1995*]
- (2) Subsections 75(1) and (2) of the *Interpretation Act 1984* read:
 - (1) *Where a written law authorises or requires a document to be served by post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, **service shall be deemed** to be effected by properly addressing and posting (by pre-paid post) the document as a letter to the last known address of the person to be served, and, **unless the contrary is proved, to have been effected at the time when the letter would have been delivered in the ordinary course of post.*** [Bold emphases added]
 - (2) *Where a written law authorises or requires a document to be served by registered post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, then, if the document is eligible and acceptable for transmission as certified mail, the service of the document may be effected either by registered post or by certified mail."*
- (3) Section 76 of the *Interpretation Act 1984* reads:

"Where a written law authorises or requires a document to be served, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, without directing it to be served in a particular manner, service of that document may be effected on the person to be served —

 - (a) *by delivering the document to him personally; or*
 - (b) *by post in accordance with section 75(1); or*
 - (c) *by leaving it for him at his usual or last known place of abode, or if he is a principal of a business, at his usual or last known place of business; or*
 - (d) *in the case of a corporation or of an association of persons (whether incorporated or not), by delivering or leaving the document or posting it as a letter, addressed in each case to the corporation or association, at its principal place of business or principal office in the State."*