

LOCAL GOVERNMENT STANDARDS PANEL

Established under section 5.122 of the *Local Government Act 1995* (WA)

Complaint Number	SP 53 of 2016 [DLGC 20160181]
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Gary Crawford
Subject of complaint	Mayor Russell Aubrey
Local Government	City of Melville
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Ms M Strauss (Member)
Heard	3 May 2017 Determined on the documents
Outcome	One breach of regulation 7(1)(b)

FINDING AND REASONS FOR FINDING

Published 07 June 2017

DEFAMATION CAUTION

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Summary of the Panel's decision

1. The Panel found that Councillor Russell Aubrey, the Mayor of the City of Melville (the Mayor) committed a minor breach under the *Local Government Act 1995 (WA)* (the Act) and regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations) when sending an email dated 23 October 2016 to a member of the public, Mr Gary Crawford, and several others concerning building works at 37 Harris Street, Bicton. The Panel found that the Mayor did not breach regulation 7(1)(b) when sending emails dated 21 October 2016 and 22 October 2016 to Mr Crawford and others.

Jurisdiction

2. The Act provides for the circumstances in which a council member commits a minor breach.¹

3. On 9 November 2016 the Panel received a complaint from the Complaints Officer of the City of Melville (the City) alleging the Mayor had breached regulation 7(1)(b) when sending three emails dated 21, 22 and 23 October 2016 to City Councillors and others concerning building works at 37 Harris Street, Bicton (the Complaint).

4. On 9 March 2017 the Department of Local Government and Communities (the Department) received the Mayor's written response to the Complaint (the Response).

5. Under the Act the Panel is required to consider a complaint of a minor breach and make a finding as to whether the alleged breach occurred.²

6. On 3 May 2017 the Panel met to consider the Complaint.

7. The Panel considered the documents listed in Attachment A to these Reasons and the information in the Statement of Particulars, which is Attachment B to these Reasons.

8. The Panel accepted the advice from the Department that:

- according to Western Australian Electoral Commission records the Mayor was elected as a City Councillor on 3 May 2003 ; and
- the Mayor was a councillor at the time of the alleged breach and on 3 May 2017 when the Panel considered the Complaint.

9. The Panel was satisfied the Complaint was made within two years after the alleged breach occurred³, that the Complaint had been dealt with in accordance with the administrative requirements in the Act for dealing with complaints of minor breaches⁴ and that the Department had provided procedural fairness to the Mayor.

10. If a councillor has previously committed two or more minor breaches, the Panel may send the Complaint to the Chief Executive Officer of the Department instead of considering the Complaint itself.⁵ As the Mayor had not previously committed a minor breach the Panel did not consider sending the Complaint to that Chief Executive Officer.

¹ Section 5.105 of the Act.

² Section 5.110(2)(a) of the Act.

³ Section 5.107(4) of the Act

⁴ Sections 5.107, 5.108, 5.109 of the Act.

⁵ Sections 5.110(2)(b), 5.111(1) of the Act.

11. Based on the information referred to in paragraphs 2 to 10 above the Panel found it had jurisdiction to determine whether the Mayor had breached regulation 7(1)(b).

Panel's role

12. The Panel is not an investigative body. It determines complaints of minor breaches solely upon the evidence presented to it.

13. Any finding that a councillor has committed a minor breach must be based on evidence from which it may be concluded that it is more likely than not that the breach occurred than that it did not occur (the required standard of proof).⁶

14. Where direct proof of an alleged fact, proposition or conduct is not available, in order to find the allegation, proposition or conduct has been established, the Panel must be satisfied on the evidence that it is more probable than not that the alleged fact, proposition or conduct occurred. The Panel cannot make a finding that the alleged fact, proposition or conduct occurred if the evidence merely supports two or more conflicting but equally possible inferences.⁷

15. For a finding that a councillor has breached a particular regulation the Panel must be satisfied that every element of the particular regulation has been established to the required standard of proof.

Regulation 7(1)(b)

16. Regulation 7(1)(b) provides:

"7. Securing personal advantage or disadvantaging others

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

...

(b) to cause detriment to the local government or any other person."

(2) Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83."

17. The Panel decided that the alleged conduct is not conduct that could contravene section 5.93 of the Act or section 83 of *The Criminal Code*.

The Complaint Form and background

18. In his Complaint Form dated 2 November 2016 Mr Crawford, a member of the public and the President of the City of Melville Residents and Ratepayers Association (Inc) (the Association), alleges the Mayor breached regulation 7(1)(b) when sending emails on 21 October 2016 at 2.02pm (Email 1), 22 October 2016 at 11.07pm (Email 2) and

⁶ Section 5.106 of the Act.

⁷ *Bradshaw v McEwens Pty Ltd* (1951) 217 ALR 1, paragraph 5.

23 October 2016 at 10.49am (Email 3) to him and others. The Panel considered whether the Mayor breached regulation 7(1)(b) when sending each Email.

19. Mr Crawford provided copies of nine emails with his Complaint Form, including the Emails and other emails passing between Mr Crawford and the Mayor between 15 October 2016 and 23 October 2016. He also provided a copy of his letter to the then Minister for Local Government and Communities (the Minister) dated 27 October 2016 for background information. Some information provided with the Complaint Form was irrelevant.

20. The background to the three Emails is that Mr Crawford had for some time been writing to the City with concerns about the quality of building works at a strata housing complex at 37 Harris Street, Bicton (the Works). Mr Crawford owned one of the units and claimed the building works were sub-standard, did not comply with approved plans and posed a risk to public safety. The other six emails must be considered as they give context and are relevant to the Panel's assessment of the Emails.

21. The copies of some of the nine emails Mr Crawford sent to the Mayor do not include the addressees (the names in the "To: ..." and "Cc: ..." fields), the "Subject" title or the content of the email. The fact that this information is missing is relevant, for example to the issue of whether the Mayor created his own list of recipients or used Mr Crawford's list.

22. The email chain is as follows:

- First email. The copy of Mr Crawford's email to the Mayor dated 15 October 2016 at 6.12pm does not include the address list, the subject title or content of the email. In his letter to the Minister Mr Crawford said he wrote to the City about problems with a retaining wall and informed the Mayor and other Councillors but the fact that the address list, subject title and content of the email are missing affects the Panel's assessment of the second email.
- Second email. The Mayor's email dated 17 October at 9.50.53am was to Mr Crawford and all other Councillors and says only "This is an operational matter that will be responded to by the City's officers." The subject is "*Re: 37 Harris St. – all inspected piers condemnable; let's try to avoid a fatality?*" The only reasonable inference is that this was Mr Crawford's subject title.
- Third email. Mr Crawford sent an email on 21 October at 6.27am but the copy he provided does not include the addressees, subject title or content. This lack of information affects the Panel's assessment of the next email, Email 1.
- Fourth email. This is Email 1, dated 21 October at 2.02pm. The Mayor wrote to Mr Crawford, copied to all Councillors, a named person at "@commerce.wa.gov.au" and a named person "@communitynews.com.au". The subject title is "*Re: 37 Harris St – quite right your Worship potentially fatal bldg non-compliances*". The only reasonable inference is that this was Mr Crawford's subject title. There is nothing to indicate the Mayor sent Email 1 to the Fremantle Herald, to which Mr Crawford sent the fifth email.
- It is possible that Mr Crawford created the address list in Email 1 because Mr Crawford had created a new subject tile in Email 1. It is not possible for the Panel to be satisfied to the required standard of proof either that the Mayor created his own address list in Email 1 or that he used the one in the third email because Mr Crawford has not provided the address list for the third email.

- Fifth email. On 22 October 2016 at 1.05pm Mr Crawford sent an email to the Mayor with a new title, "*City of Melville: 37 Harris St Bicton – quite right your Worship potentially fatal bldg non-compliances*". He sent it to all other Councillors, blind copied to a named person at "@fremantleherald.com" and a named person at "@communitynews.com.au", attaching "37 Harris St drawings". The content is provided. This is the only email that, according to the copies provided, includes the Fremantle Herald address.
- The Panel notes that in his letter to the Minister on 27 October 2016 Mr Crawford said he sent the fifth email to all other Councillors, without mentioning that he had also sent it to the Fremantle Herald and Community News.
- Sixth email. On 22 October 2016 at 4.55pm the Mayor sent an email to Mr Crawford. The copy provided does not show the address list or the subject title. However, the content indicates that the Mayor was replying to the fifth email, as the Mayor commented on Mr Crawford's "couple of individuals" statement in the fifth email and requested an apology.
- Seventh email. This is Email 2, sent 22 October 2016 at 11.07pm. The Mayor addressed this to all other Councillors, the Association and the previously named person at "@community news.com". The subject title is "*City of Melville: 37 Harris St Bicton – quite right your Worship potentially fatal bldg non-compliances*", which is the same as the title Mr Crawford created (the only reasonable inference) in the fifth email. The content is provided. The Mayor referred to the "couple of individuals" again and again requested an apology. It does not appear there was any email from Mr Crawford after the sixth email because the Mayor said Mr Crawford had not apologised "by return of email" since the Mayor sent the sixth email.
- Eighth email. On 23 October 2016 at 9.52am Mr Crawford sent an email to the Mayor attaching a letter from Mr Crawford to the Mayor of the same date. There is no subject title in the email itself but the letter's title is "*37 Harris St Bicton – potentially fatal non-compliance. Your email of 22 October 2016.*" There is no address list in the copy of the email to which the letter is attached but Mr Crawford has written "Cc: various" at the foot of the letter.
- Ninth email. This is Email 3, which the Mayor sent to Mr Crawford on 23 October 2016 at 10.49am. There is a new address list: the other Councillors, the Association, the named person "@community news.com", two named people "@commerce.wa.gov.au", two named Members of the Western Australian Parliament "@mp.wa.gov.au", "minister.miles@dpc.wa.gov.au", a named Department employee "@dlgc.wa.gov.au" and a named person "@aph.gov.au". No subject title appears but the content is provided.
- The address "@dpc.wa.gov.au" is the address for the Department of the Premier and Cabinet and "@aph.gov.au" is the address for Federal Parliament. This is the first time the "@mp.wa.gov.au", "minister.miles@dpc.wa.gov.au" and "@aph.gov.au" email addresses have appeared.
- There is a new subject title in Email 3, "*Re: City of Melville – potentially fatal building non-compliances at 37 Harris St Bicton – City brushing aside public safety concerns*". It is possible that the Mayor replicated the address list in Mr Crawford's eighth email. It is also possible that he created this address list. The Panel cannot be satisfied to the required standard of proof that the Mayor created the address list in Email 3.

Elements of 7(1)(b)

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

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

First and second elements satisfied

24. Clearly the Mayor was acting as a councillor, thus using his office as a councillor, when he sent all nine emails. The first and second elements of regulation 7(1)(b) are satisfied.

Meaning of “to make improper use of ... office”

25. The dictionary definition of “improper” is “not in accordance with propriety of behaviour, manners, etc.; unsuitable or inappropriate for the purpose or occasion; abnormal or irregular.”⁸

26. Whether there is impropriety is to be assessed objectively: would a reasonable person with knowledge of the duties, powers and authority of a councillor, and all the circumstances of the particular case, form the view that the councillor had breached the standards of conduct expected of a councillor?⁹ “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.”¹⁰

27. Under the Act Panel members must have regard to the general interests of local government in Western Australia.¹¹ It is in the interests of local government that councillors are, and are seen to be, professional and respectful in their dealings with fellow councillors, local government employees and members of the public.

28. Regulation 3 of the Regulations sets out general principles to guide councillors’ behaviour, although contravention of any of any of these does not amount to a minor breach.¹² Regulation 3 provides, among other things, that councillors should act with reasonable care, diligence and integrity and treat others with respect and fairness.

⁸ Macquarie Dictionary, Revised Third Edition.

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

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

¹¹ Section 5.122(3) of the Act, Schedule 5.1 of the Act, clause 8(6).

¹² Regulation 13.

29. The meaning of “improper” must be considered in the context of relevant legislation, such as the Act and the Regulations, and other rules and standards that apply to a councillor’s role and conduct, such as the local government’s Code of Conduct, and the circumstances and context of the case.¹³

30. Conduct can be improper even though the councillor’s judgment is that it isn’t improper. A councillor’s use of his or her office can be improper even though the councillor is intending to benefit the local government, the council or the ratepayers and residents.¹⁴

31. Judge Sharp in *Yates and Local Government Standards Panel* [2012] WASAT 59 recognised a fiduciary relationship in saying that the standards of conduct that would be expected of a councillor can also be discerned from the fiduciary obligations (the duty to act in good faith) which councillors owe to their councils.

Meaning of “improper use of the person’s office to cause detriment to the local government or any other person”

32. “Detriment” means loss, damage or injury.¹⁵ It includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage. A person can suffer detriment through others thinking less favourably of them.¹⁶

33. For regulation 7(1)(b) to be satisfied it is not necessary to show that the local government or the person concerned actually suffered detriment.¹⁷ And it is not enough to show that the local government or the person concerned suffered detriment, or could have suffered detriment. The Panel must find that it is more likely than not that the councillor believed that his or her actions would cause detriment and intended to cause detriment.¹⁸ “To cause detriment” has been interpreted as meaning “in order to” or “for the purpose of” causing detriment, or “with the will to” cause detriment.¹⁹ There can be a finding of intent if, after considering all the evidence, the only reasonable inference is that the councillor intended to cause detriment.²⁰

General allegations and responses

34. Mr Crawford’s allegations about the Emails generally are that:

- The Mayor circulated the Emails to a wide public audience including State Government Ministers, Members of Parliament, other Councillors and the press.
- The Emails were dismissive of his concerns and intended to discredit him and harm his reputation to “potentially eliminate an adversary that may cause him harm or the Council’s embarrassment.”
- The Mayor made “derogatory, false and/or misleading statements with the intention of causing (him) embarrassment and harm to (his) reputation for his advantage”.

¹³ *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 10, referring to *Treby and Local Government Standards Panel* [2010] WASAT 81 (*Treby* 2010).

¹⁴ *Yates and Local Government Standards Panel* [2012] WASAT 59, paragraph 64, referring to *Treby* 2010.

¹⁵ Macquarie Dictionary Revised Third Edition, 2001.

¹⁶ *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraphs 31, 32.

¹⁷ *Treby* 2010, paragraph 96, referring to *Chew v The Queen* 1992 CLR 626 (*Chew* 2010).

¹⁸ *Re and Local Government Standards Panel* [2014] WASAT 111, paragraph 51, referring to *Australian Securities and Investments Commission v Australian Property Custodian Holdings Ltd* [2013] FCA 1342.

¹⁹ *Chew* 2010.

²⁰ *Treby* 2010.

- The Mayor did not fulfil his responsibilities under sections 2.7, 2.8 and 2.10 of the Act. He was in dereliction of his duties by not wanting to get involved in operational matters; by not taking electors' feedback into account and by not asking the City administration questions relevant to the performance of the City's functions.
- The Mayor did not act impartially or in the best interests of the City.
- The Mayor did not comply with clauses 2.1 and 8.1 of the City's Code of Conduct.

35. In his response to the Emails generally the Mayor said:

- He denies he breached regulation 7(1)(b) and says that at all times he acted to protect the reputation of the Office of Mayor and the City and did not intend to cause detriment to Mr Crawford.
- At all times he was conscious of regulation 9 of the Regulations, which provides that a Councillor must not undertake a task that contributes to the administration of the local government. When Mr Crawford outlined his concerns about the Works he immediately brought the matter to the CEO's attention. He was informed that staff had been dealing with the matter since 7 September 2016 and that they had been in constant contact with Mr Crawford to resolve the issues with the Works.
- He "recognised the need to be firm and forthright in dealing with (Mr Crawford's) persistent attack".
- In relation to Mr Crawford's statement that the three Emails were circulated to a wide public audience including Members of Parliament, other Councillors and the press, he used Mr Crawford's address lists to ensure Mr Crawford's addressees were not misguided by receiving only Mr Crawford's emails.
- If Mr Crawford considered the email correspondence was causing him detriment he could have ceased the email conversation. The fact that he did not demonstrated that he was comfortable with continuing the conversation and involving other parties. Mr Crawford was stating his version and he (the Mayor) gave his own version to protect the Council's reputation.

The Act and Code of Conduct

36. The Panel considered sections 2.7, 2.8 and 2.10 of the Act, which outline the roles of the council, the mayor and councillors, and the City's Code of Conduct, which provides, among other things, that councillors must act honestly and in good faith and treat others equitably and with respect. All these provisions form part of the backdrop to the Regulations and give context to a complaint but the alleged conduct must also be judged in the particular circumstances.

Email 1 (fourth email)

37. This was copied to all Councillors, the named person “@commerce.wa.gov.au” and the named person “@communitynews.com.au” and reads:

Sent: Friday, 21 Oct, 2016 At 2:02 PM
Subject: Re: 37 Harris St - quite right your Worship potentially fatal bldg non-compliances

Mr Crawford,
In regard to your statement
'quite right your Worship potentially fatal bldg non-compliances'
I refute any involvement or knowledge of the issues you have with the building compliances at 37 Harris St. In particular, I deny supporting you in this battle with the neighbours of what I assume to be your rental property.

Best wishes,
Russell

38. The first and third emails were from Mr Crawford. The copies he provided did not include the address lists or the content. Mr Crawford told the Minister he had told all Councillors about the problems with the Works so it is more likely than not that Mr Crawford sent the first email to all other Councillors, who were then included in the subsequent address lists. In the second email the Mayor replied to Mr Crawford, copying his email only to all other Councillors.

39. It is plausible that the Mayor repeated Mr Crawford’s third email address list. The Panel is not satisfied to the required standard of proof that the Mayor initiated the inclusion of Community News and the Department of Commerce in the address list.

40. In Email 1 the Mayor was simply refuting an assertion Mr Crawford apparently made in the third email. It was acceptable for him to do this. It does not on its face have the quality of “an erratic and vitriolic retort” as alleged by Mr Crawford. The Panel is unable to judge what a reasonable person might think of the Mayor’s actions in sending Email 1 because Mr Crawford has not provided the earlier content. It is possible that the missing content could lead a reasonable person to infer that Mr Crawford was in a “battle” with a neighbour and that Mr Crawford was asking or implying that the Mayor should intervene or assist Mr Crawford in a personal dispute.

Finding in relation to Email 1

41. The material provided, including the words in the Email itself, do not satisfy the Panel that the Mayor acted improperly when sending the Email and accordingly the Mayor did not breach regulation 7(1)(b).

Email 2 (seventh email)

42. This Email is:

----- Original Message -----
 From: "Mayor Russell Aubrey"
 <MayorRussell.Aubrey@melville.wa.gov.au<mailto:MayorRussell.Aubrey@melville.wa.gov.au>>
 To: "Gary Crawford" <gary.crawford2@bigpond.com<mailto:gary.crawford2@bigpond.com>>
 Cc: "Cr Cameron Schuster" <Cameron.Schuster@melville.wa.gov.au<mailto:Cameron.Schuster@melville.wa.gov.au>>;
 "Cr Clive Robartson" <Clive.Robartson@melville.wa.gov.au<mailto:Clive.Robartson@melville.wa.gov.au>>; "Cr Duncan
 Macphail" <Duncan.Macphail@melville.wa.gov.au<mailto:Duncan.Macphail@melville.wa.gov.au>>; "Cr Guy Wieland"
 <Guy.Wieland@melville.wa.gov.au<mailto:Guy.Wieland@melville.wa.gov.au>>; "Cr June Barton"
 <June.Barton@melville.wa.gov.au<mailto:June.Barton@melville.wa.gov.au>>; "Cr Lisa O'Malley"
 <Lisa.O'Malley@melville.wa.gov.au<mailto:Lisa.O'Malley@melville.wa.gov.au>>; "Cr Matthew Woodall"
 <Matthew.Woodall@melville.wa.gov.au<mailto:Matthew.Woodall@melville.wa.gov.au>>; "Cr Nicholas Pazolli"
 <Nicholas.Pazolli@melville.wa.gov.au<mailto:Nicholas.Pazolli@melville.wa.gov.au>>; "Cr Nicole Foxton"
 <Nicole.Foxton@melville.wa.gov.au<mailto:Nicole.Foxton@melville.wa.gov.au>>; "Cr Patricia Phelan"
 <Patricia.Phelan@melville.wa.gov.au<mailto:Patricia.Phelan@melville.wa.gov.au>>; "Cr Tim Barling"
 <Tim.Barling@melville.wa.gov.au<mailto:Tim.Barling@melville.wa.gov.au>>;
 "deputymayor@melville.wa.gov.au<mailto:deputymayor@melville.wa.gov.au>"
 <deputymayor@melville.wa.gov.au<mailto:deputymayor@melville.wa.gov.au>>; "Melville Residents & Ratepayers
 Assoc." <melville.residents@outlook.com<mailto:melville.residents@outlook.com>>; "Josh Zimmerman"
 <Josh.Zimmerman@communitynews.com.au<mailto:Josh.Zimmerman@communitynews.com.au>>
 Sent: Saturday, 22 Oct, 2016 At 11:07 PM
 Subject: Re: City of Melville : 37 Harris St Bicton - quite right your Worship potentially fatal bldg non-compliances

Mr Crawford,
 Your assertion that you have evidence via comment from 'a couple of individuals' that I, as Mayor of the City Of
 Melville, acted in an operational capacity in providing opinion regarding the structural standard of buildings at 37 Harris
 St, I believe is both false and malicious.
 As you know, I always strive to be meticulous in exercising my duties as Mayor and I draw great exception to your
 fictitious accusation.
 You have compounded your insulting behaviour by failing to immediately apologise by return of email.
 If I do not receive a complete apology and withdrawal of your fictitious statement by the open of business on Monday
 24th October 2016 I will pursue remedial actions to restore my good name and impeccable record as Mayor and bring
 you to task.
 Your behaviour reflects very poorly on you as President of the MRRRA and other body/bodies you claim to lead.

Yours in anticipation,

Russell Aubrey
 Mayor
 City of Melville

Sent from my iPhone

43. The only new recipient is the Association. The subject title is the same as in the fifth email and Mr Crawford has not provided the address list in the sixth email. This leads to the possibility that the title and address list were replicated in a series of "reply all" choices. The Panel is not satisfied to the required standard of proof that the Mayor chose to include the members of the Association in the email chain for the first time.

44. Mr Crawford's objections to the contents of Email 2 are the general ones. He also says that he had not made any false statements and that by demanding an apology the Mayor had wrongly implied that Cr Crawford had done something for which he should apologise.

45. In his Response the Mayor emphatically refuted the proposition that he had detailed knowledge about any non-compliance issues, and that he wanted to defend any potential claims that he had breached the Regulations by getting involved in an operational matter or by obtaining detailed information about the Works to support Mr Crawford's claims. The Mayor said he wanted an apology to clear his good name after Mr Crawford's "pursuit of this line of attack" on his credibility and performance of his functions because there is no mechanism for councillors to formally complain about a member of the public.

46. The Panel considered Email 2 in its context. The Mayor had sent a concise email (the first email) saying Mr Crawford's concerns were an operational matter. The Panel has no reason to doubt that he had already raised the matter with the officers who told him they had been working on it since 7 September and were continuing to do so. Despite receiving the Mayor's first email Mr Crawford continued to pursue his grievances and concerns with the Mayor and copied his emails to others.

47. The Mayor had already denied he had spoken to “a couple of individuals” about the Works (in the sixth email) and clearly became frustrated when Mr Crawford did not respond to that denial. In Email 1 the Mayor had already refuted an assertion apparently made in the previous email (the third email). The Panel accepts that by the time the Mayor sent Email 2 he had become frustrated and perceived that Mr Crawford was challenging his integrity and credibility.

48. The Panel finds that Mr Crawford has been insincere in alleging that the Mayor acted improperly by widely distributing his emails when Mr Crawford has not fully disclosed his own distribution lists.

49. The Mayor only sent Email 2 to the other Councillors, the previously named person at Community News (to whom Mr Crawford had sent the fifth email) and the Association. Although the Mayor could have moderated his language and chosen to limit his address list the Panel finds that in all the circumstances a reasonable person reading the series of emails (noting both parties’ content and the distribution information) would not consider the Mayor acted improperly. The Panel is not satisfied that in all the circumstances a right-thinking person would regard sending this Email as so wrongful and inappropriate in all the circumstances that it calls for the imposition of a penalty

Finding in relation to Email 2

50. The Mayor did not breach regulation 7(1)(b) when sending Email 2.

Email 3 (ninth email):

51. This reads:

From:	Mayor Russell Aubrey <MayorRussell.Aubrey@melville.wa.gov.au>
Sent:	Sunday, 23 October 2016 10:49 AM
To:	Gary Crawford
Cc:	Cr Cameron Schuster; Cr Clive Robartson; Cr Duncan Macphail; Cr Guy Wieland; Cr June Barton; Cr Lisa O'Malley; Cr Matthew Woodall; Cr Nicholas Pazolli; Cr Nicole Foxtou; Cr Patricia Phelan; Cr Tim Barling; Cr Rebecca Aubrey; melville.residents@outlook.com; josh.zimmerman@communitynews.com.au; Peter.Verrall@commerce.wa.gov.au; Chris.Maseyk@commerce.wa.gov.au; matt.taylor@mp.wa.gov.au; dean.nalder@mp.wa.gov.au; Miles, Minister; jennifer.mathews@dlgc.wa.gov.au; richard.newton@aph.gov.au
Subject:	Re: City of Melville - potentially fatal building non-compliances at 37 Harris St Bictou - City brushing aside public safety concerns

Mr Crawford,

If you think that you can make false statements and implicate the Mayor of the City in your personal battle with your neighbours you are totally deluded.
I am not a vulnerable person that you can frighten with your aggressive outbursts or threats.

I am the Mayor of the City with a responsibility to defend the good name of the Office which I hold with pride.

The statements you have made in regard to conversations I have had regarding your property in Harris St were manufactured by you for reasons that are not clear to me. The issues surrounding the building compliance at this address are operational matters which I refuse to be involved with as my role as Mayor dictates. They are of no more interest to me than anyone else you have chosen to include in your email communications.

The next four paragraphs in this Email are summarised by the Panel as follows: the Mayor says it had been brought to his attention that Mr Crawford is involved in court proceedings, that he wanted to “investigate” some aspects of the proceedings to see whether Mr Crawford was “attempting to advantage (his) prospects by creating an illusion”, and that he would “happily offer (himself) as a witness.”

I give notice that I do not intend corresponding with you any further on this matter.

I hope all recipients of this email enjoy the rest of the weekend.

Best wishes,

Russell

52. It is unlikely that the Mayor created a title which included “City brushing aside public safety concerns”. The Panel has no way of knowing whether the Mayor created his own address list in Email 3 or used the one in the eighth email because Mr Crawford has not provided the address list for the eighth email. Neither has Mr Crawford provided the list of people comprising “various” in his “Cc” category at the foot of his letter to the Mayor dated 23 October 2016, which he attached to the eighth email. Mr Crawford has been disingenuous in not providing this information.

53. The Panel is not satisfied to the required standard of proof that the Mayor initiated the inclusion of the new addressees in Email 3 (the Members of Parliament, named officers in State Government Departments and a named person at Federal Parliament). However, the Panel recognises that the Mayor could have omitted these addressees even if Mr Crawford had included them, and takes this into account when considering Email 3.

54. In relation to Email 3 specifically Mr Crawford alleges:

- There is no basis for saying he was trying to drag the Mayor and the City into a private matter which the Mayor called “a personal battle with (his) neighbours”.
- The Mayor defamed him by saying he was deluded. The Mayor wrongly accused him of manufacturing conversations and attempted to create a false belief by accusing Mr Crawford of criticising the Office of Mayor.
- The Mayor accused him of being aggressive and threatening, which he had not been, to influence the recipients’ opinions of him.
- The Mayor intended to cause detriment to Mr Crawford by improperly referring to a legal proceedings in Email 3.
- The Mayor’s request for an apology was “intended to create a false belief amongst other recipients” that he needed to apologise, when he did not; and “the suggestion he needs to bring me to task for something I have not done is an attempt to impinge my good character.”

55. In addition to his general responses referred to earlier in these Reasons for Finding the Mayor said:

- In relation to his mentioning the legal action in Email 3, he did this to make it “absolutely clear” to Mr Crawford that he “would oppose in the extreme” any suggestions by Mr Crawford in the proceedings that he agreed there were potentially fatal problems with the Works. He said he wanted to prevent Mr Crawford using his alleged views about the Works to give himself credibility in the proceedings.
- He had attended the proceedings to “witness any wrongful statements that Mr Crawford might make in reference (to) my support of his building non-compliance claims” against the neighbour.

- The recipients “on Mr Crawford’s email list” were aware of Mr Crawford’s “behaviours and opinions” so he didn’t, and didn’t need to, say anything to influence their views.

56. The Panel recognises the Mayor’s wish to correct what he saw as untruths and defend his reputation. The Panel acknowledges that the Mayor did not have the opportunity to complain about Mr Crawford’s conduct to anyone in authority to and that in his mind he needed to put his side of the story to people who had received Mr Crawford’s emails. However, it is untenable that he needed to refer to the legal proceedings to defend his name. This was personal information which the Mayor should have kept confidential. It was irrelevant to the issues of whether the Works were substandard and what the City and Council were doing about Mr Crawford’s complaints about the Works.

57. Any reasonable person would consider that the Mayor breached the standards of conduct expected of a councillor by sending this information to the recipients of the Email. Even if the Mayor had sent this information to only one of the several people in the “Cc” list he would have acted improperly.

58. The Panel finds that the Mayor made improper use of his office when sending Email 3.

In sending Email 3, did the Mayor make improper use of his office to cause detriment to the local government or any other person?

59. The Panel accepts that Mr Crawford felt embarrassed, insulted and denigrated by the Mayor’s publication of this information and that any reasonable person’s judgment would be that such information would damage Mr Crawford if it were published in these circumstances.

60. Further, any reasonable person would form the view that the Mayor’s statement that he would be prepared to give evidence against Mr Crawford in court amounted to a threat.

61. The only reasonable inference in all the circumstances is that the Mayor intended to attack Mr Crawford personally and to damage his reputation by sending Email 3. The Panel is satisfied to the required standard of proof that the Mayor intended to cause detriment to Mr Crawford by including the information about the court proceedings in Email 3 and sending it to Mr Crawford and others.

Finding in relation to Email 3

62. The Panel finds that the Mayor breached regulation 7(1)(b) when sending Email 3.

Panel's finding

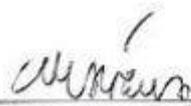
63. The Panel finds that the Mayor did not breach regulation 7(1)(b) when sending Emails 1 and 2 but committed a minor breach under regulation 7(1)(b) when sending Email 3 to Mr Crawford, Councillors and others.



Brad Jolly (Presiding Member)



Paul Kelly (Member)



Merranie Strauss (Member)

Date of Reasons – **07 June 2017**

Attachment A

The Available Information

Copy of Complaint of Minor Breach No. SP 53 of 2016 and supporting information dated 2 November 2016 made by Mr Gary Crawford.
Copy of Request for Comments letter including attachments (Complaint Summary, relevant legislation, Form A) to Mayor Aubrey dated 16 February 2017.
Copy of Mayor Aubrey's response to the allegations.
Copy of email trail provided by Mr Gary Crawford.
Copy of additional information provided by Mr Gary Crawford

Attachment B

Statement of Particulars

- The complaint was received by the Presiding Member of the Standards Panel on 9 November 2016
- The Complaints Officer complied with his obligations under section 5.107(3) and the complaint was made in writing in the form approved by the Minister pursuant to section 5.107(2).
- The complaint was sent to the Complaints Officer within two years after the breaches alleged in it occurred, as required by section 5.107(4).
- Regulation 7(1)(b) is a rule of conduct for the purposes of section 5.104(1). Accordingly, a contravention of Regulation 7(1)(b) is a minor breach under section 5.105(1)(a).
- Mayor Aubrey was elected to Council on 1 May 1999.
- At the time of the alleged contravention of the Regulations, Mayor Aubrey was an elected member of the City of Melville and continues to be so.
- On 16 February 2017 the Department advised Mayor Aubrey of the complaint and provided him with an opportunity to provide his comments and any information he desires in relation to the allegation contained within.
- On 9 March 2017 the Department received Mayor Aubrey's response to the allegation.