



Register of Complaints

**Council Members, Committee Members
and Candidates**



Register of Complaints

Council Members, Committee Members and Candidates

1. Complaints of minor breach Register

This register is published in accordance with Section 5.121 of the *Local Government Act 1995* which provides:

5.121. Register of certain complaints of minor breaches

- (1) *The complaints officer for each local government is required to maintain a register of complaints which records all complaints that result in a finding under section 5.110(2)(a) that a minor breach has occurred.*
- (2) *The register of complaints is to include, for each recorded complaint —*
 - (a) *the name of the council member about whom the complaint is made; and*
 - (b) *the name of the person who makes the complaint; and*
 - (c) *a description of the minor breach that the standards panel finds has occurred; and*
 - (d) *details of the action taken under section 5.110(6).*
- (3) *The CEO must publish an up-to-date version of the register of complaints on the local government's official website.*

Where no item is included in the Register, a complaint as mentioned in this section has not been made or received.

2. Code of Conduct - Division 3 Complaints Register

This register is published in accordance with the *Local Government (Model Code of Conduct) Regulations 2021*.

The Code of Conduct is established to guide the behaviour of Council Members, Committee Members and Candidates.

This register includes details of complaints alleging a behaviour breach under division 3 of the Council Members, Committee Members and Candidates Code of Conduct.

3. Receiving complaints

The following officers are authorised to receive Division 3 complaints, relating to Council Members, Committee Members and Candidates and for the purposes of s5.120 of the *Local Government Act 1995*, and thus for Division 4 of the Code.

- Chief Executive Officer; and
- Manager Governance



Complaints of minor breach Register Made under Section 5.121 Local Government Act 1995			
Date of Hearing	Name of council member whom the complaint is about	Name of the person who made the complaint	Description of minor breach finding by Standards Panel
25 March 2021 (SP 2021-022)	Cr Marija Vujcic	Cr Rachel Pemberton	Councillor Marija Vujcic, Councillor for the City of Fremantle ("the City"), committed one minor breach under the Local Government Act 1995 (WA) ("the Act") and regulation 7 of the Local Government (Rules of Conduct) Regulations 2007 (WA) ("the Regulations") when she publicly named the Complainant as one of the parties who gave permission for an event for homeless persons that led to the formation of "Tent City" in Pioneer Park ("the Minor Breach").
Details of the actions taken under s5.110(6)			
<p>1. Councillor Marija Vujcic, a councillor for the City of Fremantle publicly apologise, as specified in paragraph 2 OR failing compliance with paragraph 2 within the specified timeframe, then paragraph 3 shall apply.</p> <p>Public Apology</p> <p>2. On the ordinary council meeting of the City of Fremantle first occurring after the expiration of 28 days from the date of service of this Order on her, Councillor Vujcic shall:</p> <ol style="list-style-type: none"> attend the relevant ordinary council meeting; ask the presiding person for his or her permission to address the meeting to make a public apology to the public; make the apology immediately after Public Question Time or during the Announcements part of the meeting, or at any other time when the meeting is open to the public, as the presiding person thinks fit; and address the Council and public as follows, without saying any introductory words before the address, and without making any comments or statement after the address: <p><i>"I advise this meeting that:</i></p>			



- i. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) when I publicly named then Mayor Pettit and Councillor Pemberton as the parties who gave permission for an event for homeless persons that led to the formation of "Tent City" in Pioneer Park.*
 - ii. The Panel found that I breached regulation 7(1)(b) of the said Regulations as I did not have a reasonable basis for such assertion and the comment was made to detriment Dr Pettit and Cr Pemberton.*
 - iii. I accept that I should not have made such accusation in public prior to an investigation being undertaken.*
 - iv. I now apologise to Dr Pettit, Councillor Pemberton, my fellow Councillors, the City and the public."*
3. If Councillor Vujcic fails to, or is unable to, comply with the requirements of paragraph 2 above in the required time frame THEN, within the next 28 days following the ordinary council meeting referred to in paragraph 2 above the Chief Executive Officer of the City of Fremantle shall arrange for the notice of public apology to be published:
- a. on the Facebook Page of the City of Fremantle in no less than 10 point font size; and
 - b. in an appropriate place on the website of the City of Fremantle in no less than 10 point font size; and
 - c. in the next occurring issue of any City of Fremantle public newsletter (if any) whether in electronic or print copy) in no less than 10 point font size.

PUBLIC APOLOGY BY COUNCILLOR MARIJA VUJCIC

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) when I publicly named the then Mayor, Dr Pettit, and Councillor Pemberton as the parties who gave permission for an event for homeless persons that led to the formation of "Tent City" in Pioneer Park.

The Panel found that I breached regulation 7(1)(b) of the said Regulations as I did not have a reasonable basis for such assertion and the comment was made to detriment Dr Pettit and Cr Pemberton.

I accept that I should not have made such accusation in public prior to an investigation being undertaken.

I apologise to Dr Pettit, Councillor Pemberton, my fellow Councillors, the City and the public.



Code of Conduct - Division 3 Complaints Register Made under Council Code of Conduct Division 3 Complaint Handling Policy			
Date of decision	Name of council member whom the complaint is about	Name of the person who made the complaint	Summary
23 February 2022	Cr Marija Vujcic	Margaret Kerr	<p>On 2 November 2021, the City of Fremantle engaged WISE Workplace (WISE) to investigate a formal complaint made by Ms Margaret Ker (Ms Ker), about the alleged conduct of Councillor Marija Vujcic (Cr Vujcic) relating to the use of social media.</p> <p>Copy of investigators report provided in Appendix 1.</p>
Findings and actions			
<p>Council:</p> <ol style="list-style-type: none"> 1. Support the findings of the independent investigator that Cr Marija Vujcic did not breach the City's Council Member, Committee Member and Candidate Code of Conduct. 2. Dismiss the complaint 3. Request a copy of the investigators report, minus attachments, be provided to the complainant and made publicly available on the City's Complaints Register. 4. Determine that no further action will be taken. 5. Review the steps taken in handling the complaint investigated and consider changes to encourage complainants to pursue mediation as the first step and give Council the opportunity to consider the outcome of such mediation. 			



Code of Conduct - Division 3 Complaints Register Made under Council Code of Conduct Division 3 Complaint Handling Policy			
Date of decision	Name of council member whom the complaint is about	Name of the person who made the complaint	Summary
23 February 2022	Cr Andrew Sullivan	Luca James Lee	<p>On 2 November 2021, the City of Fremantle engaged WISE Workplace (WISE) to investigate a formal complaint made by Mr Luca James Lee (Mr Lee), about the alleged conduct of Councillor Andrew Sullivan (Cr Sullivan).</p> <p>Copy of investigators report provided in Appendix 2.</p>
Findings and actions			
<p>Council:</p> <ol style="list-style-type: none"> 1. Accept the findings of the independent investigator, that Cr Andrew Sullivan breached section 9(c) of the Council Member, Committee Member and Candidate Code of Conduct, in relation to one allegation out of the 19 allegations made. 2. Acknowledge the public apology provided by Cr Sullivan, in relation to this matter. 3. Determine that no further action will be taken. 4. Review the steps taken in handling the complaint investigated and consider changes to encourage complainants to pursue mediation as the first step and give Council the opportunity to consider the outcome of such mediation. 5. Request a copy of the investigators report, minus attachments, be provided to the complainant and made publicly available on the City's Complaints Register. 			



Code of Conduct - Division 3 Complaints Register Made under Council Code of Conduct Division 3 Complaint Handling Policy			
Date of decision	Name of council member whom the complaint is about	Name of the person who made the complaint	Summary
22 June 2022	Cr Rachel Pemberton	Andrew Luobikis	<p>The City of Fremantle engaged Australia Wide Investigations to investigate a formal complaint made by Mr Andrew Luobikis, about the alleged conduct of Councillor Rachel Pemberton.</p> <p>Copy of investigators report provided in Appendix 3.</p>
Findings and actions			
<p>Council:</p> <ul style="list-style-type: none"> • Support the findings of the independent investigator, that Cr Rachel Pemberton did not breach section 9(c) of the Council Member, Committee Member and Candidate Code of Conduct. • Dismiss the complaint made against Cr Rachel Pemberton. • Request a copy of the investigators report, minus attachments, be provided to the complainant and made publicly available on the City's Complaints Register 			



Complaints of minor breach Register Made under Regulation 18(1)(b) of the <i>Local Government (Model Code of Conduct) Regulations 2021</i>			
Date of Hearing	Name of council member whom the complaint is about	Name of the person who made the complaint	Description of minor breach finding by Standards Panel
8 September 2022	Cr Marija Vujcic	Mayor Hannah Fitzhardinge	At its meeting on 8 September 2022, the Panel found that Councillor Marija Vujcic ("Cr Vujcic"), an elected member for the City of Fremantle ("the City"), committed one minor breach under the Local Government Act 1995 (WA) ("the Act") and Regulation 18(1)(b) of the <i>Local Government (Model Code of Conduct) Regulations 2021</i> ("the Regulations") when, on 7 July 2022, she published a Facebook post regarding a car parking issue in the City.
Details of the actions taken under s5.110(6)			
<ol style="list-style-type: none"> 1. Councillor Marija Vujcic ("Cr Vujcic"), an elected member for the City of Fremantle, publicly apologise, as specified in paragraph 3 below, or failing compliance with paragraph 3, then paragraph 4 below. 2. Cr Vujcic undertake training as specified in paragraph 5 below. <p><u>PUBLIC APOLOGY</u></p> <ol style="list-style-type: none"> 3. At the ordinary council meeting first occurring after the expiration of 28 days from the date of service of this Order on her, Cr Vujcic shall: <ol style="list-style-type: none"> a. attend the relevant ordinary council meeting; b. ask the presiding person for his or her permission to address the meeting to make a public apology to the public; c. make the apology immediately after Public Question Time or during the Announcements part of the meeting, or at any other time when the meeting is open to the public, as the presiding person thinks fit; and d. address the Council and public as follows, without saying any introductory words before the address, and without making any comments or statement after the address: 			

"I advise this meeting that:

- i. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the *Local Government (Model Code of Conduct) Regulations 2021* when, on 7 July 2022, I published a Facebook post regarding a car parking issue in the City.
- ii. The Panel found that by behaving in this manner I committed one breach of Regulation 18(1)(b).

I accept that I should not have acted in such a manner, and I now apologise to Mayor Fitzhardinge and the City's Chief Executive Officer, Mr Glen Dougall, for having done so."

4. If Cr Vujcic fails to, or is unable to, comply with the requirements of paragraph 3 above in the required timeframe then, within the next 28 days following the ordinary council meeting referred to in paragraph 3 above:
 - a. Cr Vujcic shall cause the following notice of public apology to be published in no less than 10-point print, as a one-column or two-column display advertisement in the first 10 pages of the "*Fremantle Herald*" newspaper; and
 - b. the Chief Executive Officer of the City of Fremantle shall arrange for the following notice of public apology to be published in no less than 10-point print or font:
 - i. on the Facebook page of the City of Fremantle; and
 - ii. in an appropriate place on the website of the City of Fremantle; and
 - iii. in the next occurring issues of all City of Fremantle community and public newsletters (if any) (whether in electronic or print copy):



PUBLIC APOLOGY BY COUNCILLOR MARIJA VUJCIC

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the *Local Government (Model Code of Conduct) Regulations 2021* when, on 7 July 2022, I made inappropriate comments in a Facebook post regarding a car parking issue in the City.

The Panel found that by behaving in this manner I committed one breach of Regulation 18(1)(b).

I accept that I should not have acted in such a manner, and I now apologise to Mayor Fitzhardinge and the City's Chief Executive Officer, Mr Glen Dougall, for having done so.

5. **TRAINING**

Within four (4) months of the Date of this Order, Cr Vujcic shall undertake:

- a. the training course for Elected Members "*Effective Community Leadership*" provided by the WA Local Government Association for a period of seven and a half (7.5) hours; or
- b. a training course with substantially similar learning outcomes provided by an alternative registered training organisation for a similar duration, but for a period of at least six (6) hours.

6 September 2023 - The City has been notified that an appeal has been submitted to the State Administrative Tribunal (SAT) for a review of the findings/decision of the Local Government Standards Panel (LGSP). No further action will be taken in relation to this matter until the appeal has been determined by the SAT.

Final action

Date of Decision: 31 January 2024

The Tribunal orders:

1. The directions hearing listed for 23 February 2024 is vacated.
2. Pursuant to s 46(1) of the *State Administrative Tribunal Act 2004* (WA) the applicant has leave to withdraw the proceeding and the proceeding is withdrawn.



Appendices

Documents made public through the determination process.



Appendix 1

Investigations full report, minus attachments

Council Member: Cr Marija Vujcic

Date of decision: 23 February 2022



Investigations | Training | Child Protection | Mediation | Governance

Private and Confidential Final Determination Report

Organisation	City of Fremantle		
Matter regarding	Complaint against Councillor Marija Vujcic		
Client Reference		WISE Case Number	03540lv-01
Date	16 December 2021		
Investigator	Matt Read		



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MELBOURNE
SYDNEY
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PERTH
HOBART

16 December 2021

Our Ref: 03540lv-01

PRIVATE & CONFIDENTIAL

Ms Charlie Clarke
Manager Governance
City of Fremantle
Walyalup Civic Centre
151 High Street
FREMANTLE WA 6160

Dear Ms Clarke,

Re: Complaint regarding the alleged behaviour of Councillor Marija Vujcic

Our instructions were to review and consider a complaint made by Ms Margaret Ker against Councillor Marija Vujcic and to report upon the outcome (findings).

We have dealt with the complaint under the Council Policy, Council Code of Conduct Division 3 Complaint Handling Policy adopted by Council on 23 June 2021 (FPOL2106-5) and provide you with a report and recommendations to Council.

Should you wish to further discuss the matter, please do not hesitate to contact our office.

Yours faithfully

Matt Read
Workplace Investigations Manager WA
Investigator on behalf of City of Fremantle
WISE Workplace

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1. INSTRUCTIONS

- 1.1 On 2 November 2021, the City of Fremantle engaged WISE Workplace (WISE) to investigate a formal complaint made by Ms Margaret Ker (Ms Ker), about the alleged conduct of Councillor Marija Vujcic (Cr Vujcic) relating to the use of social media.
- 1.2 The following written complaint received from Ms Ker was provided to WISE:
 - Complaint About Alleged Breach Form dated 13 October 2021 (Attachment 1).

2. METHODOLOGY

- 2.1 We conducted this review by examining relevant documentation provided by Ms Ker and the written response to the complaint provided by Cr Vujcic.
- 2.2 On 4 November 2021, the Complaint Administrator provided Ms Ker the offer of mediation (Attachment 2). Ms Ker declined mediation.
- 2.3 On 5 November 2021, the Complaint Administrator provided Cr Vujcic the offer of mediation (Attachment 3). Cr Vujcic agreed to mediation.
- 2.4 On 19 November 2021, Ms Ker was provided a letter informing her that Cr Vujcic was now being afforded an opportunity to respond to the complaint in writing and to provide her own comments and evidence for consideration (Attachment 4).
- 2.5 On 19 November 2021, Cr Vujcic was provided a letter affording her an opportunity to respond to the complaint in writing and to provide her own comments and evidence for consideration to be received within 14 days (Attachment 5).
- 2.6 On 2 December 2021, Cr Vujcic provided a written response to the allegations against her (Attachment 6).

STANDARD OF PROOF

- 2.7 Section 5.4 of the City of Fremantle *Council Policy, Council Code of Conduct Division 3 Complaint Handling Policy*, requires a determination by the Investigator that the alleged behaviour breach has occurred must be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur.
- 2.8 Section 5.106 of the *Local Government Act 1995* states, 'A finding that a breach has occurred is to be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur.'
- 2.9 The case of *Briginshaw v Briginshaw* (1938) 60 CLR 336 is generally regarded as authority for the proposition that if a finding, on the balance of probabilities, is likely to produce grave consequences the evidence should be of high probative value.

RELEVANT POLICIES AND PROCEDURES

- Council Members, Committee Members and Candidates Code of Conduct 2021 (Attachment 7);
- City of Fremantle Council Policy, Council Code of Conduct Division 3 Complaint Handling Policy (Attachment 8).

2.10 The allegation against Councillor Vujcic referred to a potential breach of the following:

Division 3 – Behaviour

8. *Personal Integrity*

(1) *A council member, committee member or candidate –*

(a) *must ensure that their use of social media and other forms of communication complies with this code; and*

(b) *must only publish material that is factually correct.*

(2) *A council member or committee member –*

(a) *n/a; and*

(b) *must comply with all policies, procedures and resolutions of the local government.*

9. *Relationship with others*

A council member, committee member or candidate —

(a) *must not bully or harass another person in any way; and*

(b) *must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and*

(c) *must not use offensive or derogatory language when referring to another person; and*

(d) *must not disparage the character of another council member, committee member or candidate or a local government employee in connection with the performance of their official duties; and*

(e) *must not impute dishonest or unethical motives to another council member, committee member or candidate or a local government employee in connection with the performance of their official duties.*

3. EXECUTIVE SUMMARY

3.1 We made the following finding:

Complaint 1

That Cr Marija Vujcic breached the City of Fremantle Code of Conduct relating to the use of social media.

We find that the Complaint is not substantiated.

4. EVIDENCE – MS MARGARET KER AND COUNCILLOR MARIJA VUJCIC

Margaret Ker

4.1 The evidence provided by Ms Ker is summarised as follows:

Complaint About Alleged Behaviour Breach Form

The content provided in a Complaint About Alleged Behaviour Breach Form submitted to the City by Ms Ker dated 13 October 2021, provides the following details of the alleged breach and behaviour of Cr Vujcic:

On 10 October the Fremantle Society published on their FB page a photo of the home of Cr Andrew Sullivan and a post in which this was used to make a highly derogatory attack on him. Cr Vujcic contributed to this attack as per attached screenshot. This appears to be a breach under clause 9 of the Code of Conduct.

Evidence provided by Margaret Ker

4.2 Ms Ker has provided the following screenshots from the Fremantle Society Facebook account:

4.3 Comment made by Cr Vujcic, which reads:

'The elected member sits on the Planning Committee. Really!'

4.4 Comment made by Mike Kenny, which reads:

'Marija Vujcic What a disgusting tactic by FS and as a sitting councillor you should be ashamed of yourself for joining in and endorsing it. So much for community-minded leadership being touted. Shame you aren't spending your valuable time endorsing you... See More'

4.5 Comment by Ms Ker, which reads:

'Mike Kenny Good if they stuck by their policies but essential that they abide by their code of conduct.'

4.6 Comment made by Sharon Morris, which reads:

'Marija Vujcic You willing to put your address up so we can all take a drive past and judge it? Bet not.'

4.7 Comment by Ms Ker, which reads:

'Your point being...? Your expectation is perhaps that a sitting Councillor would expedite his own Development Application??? I thought this''

Councillor Marija Vujcic

4.8 The evidence provided by Cr Vujcic in her written response to the complaint is summarised as follows:

Written response dated 2 December 2021

- 4.9 Cr Vujcic states that the alleged breach took place during the recent City of Fremantle local election, when Cr Sullivan was Acting Mayor and South Ward Councillor. Cr Vujcic was running for Mayor at the time and states the election period was between 10 September 2021 and 16 October 2021.
- 4.10 Cr Vujcic states that Cr Sullivan is not a member of the Fremantle Society and has no personal interest in the post of Mr John Dowson (Mr Dowson), President, The Fremantle Society, stating Mr Dowson did not represent Cr Vujcic during the election campaign.
- 4.11 Cr Vujcic states Mr Dowson published a post of Facebook on 10 October 2021 titled *"Elections – they are about People and not just issues. Sullivan photo above"*.
- 4.12 Cr Vujcic has provided a copy of a photograph depicting the front of Cr Sullivan's house (Attachment 6, Annexure 1) and copy of the Mr Dowson's post and comments placed on the post by supporters of Cr Sullivan (Attachment 6, Annexure 2).
- 4.13 Cr Vujcic submits that Ms Ker needs to be specific as to which clause of the Code was breached and therefore the allegation should be dismissed on this basis (Attachment 6, A1).
- 4.14 Cr Vujcic states that her posted comment of, *"The elected member sits on the Planning Committee. Really!"*, did not contribute to a highly derogatory attack on Cr Sullivan as stated by Ms Ker.
- 4.15 Cr Vujcic provides the following response to why her posted comment was not a derogatory attack on Cr Sullivan.
- Councillor Sullivan continues to sit on the Planning Committee and is a true statement.
 - The photograph upon the Facebook post is a true depiction of the house.
 - Cr Vujcic's comment *"Really"* was a surprised reaction to the photograph of the house, which resulted from the photograph and comments on the post that resulted in elements of contradiction.
 - Cr Vujcic did not continue to engage in the post or respond to comment.

- Cr Vujcic's posted comment was not intended to engage negatively and was a comment made without malice and throughout the election campaign did not engage in negative or hurtful posts towards anyone.
- Cr Sullivan continued to engage in the post to negate any credibility that Mr Dowson's post may have had with the public. Cr Vujcic stated an undercurrent of hastiness from commentators.
- The complainant Ms Ker continued to engage negatively on the post with intent to hurt and discredit Mr Dowson.
- Ms Ker's choice of words 'Highly derogatory attack' regarding Cr Vujcic's posted comment is disproportionate to the meaning of the comment.
- The comment was not derogatory, nor was there an attack on Cr Sullivan by Cr Vujcic.
- Ms Ker has not provided the level of evidence to support her claim that Cr Vujcic has breached Clause 9 of the Code of Conduct.
- The alleged breach should be dismissed.

Analysis and Finding

- 4.16 The comment alleged to have been placed by Cr Vujcic onto the Fremantle Society Facebook post, dated 10 October 2021, is not disputed by Cr Vujcic, but the allegation that her comment contributed to a highly derogatory attack upon Cr Sullivan is denied.
- 4.17 Cr Vujcic provides evidence that as Ms Ker has failed to be specific regarding the clause of the code that has been breached, the complaint should be dismissed. The City of Fremantle complaint form does not require a complainant to specify the exact section of the code alleged to have been breached, but asks for full details of the alleged breach to be provided. Ms Ker has provided a summary of the behaviour, supporting evidence and a comment that the behaviour appears to be a breach under Clause 9 of the Code.
- 4.18 Ms Ker has complied with the City of Fremantle complaint requirements, as supported by section 1.1 of the Policy, which states, 'The complainant must provide with the Complaint, details of the alleged behaviour breach together with any supporting evidence'.
- 4.19 In her complaint, Ms Ker has provided screen shots of five (5) comments from the Facebook post, however the post remains live on the Fremantle Society Facebook page and currently has sixty-seven (67) posted comments.
- 4.20 A review of the post and comments finds that the nature of the commentators are supportive of Cr Sullivan and question the validity of Mr Dowson on behalf of the Fremantle Society in posting a photograph of the front of Cr Sullivan's home, which indicates a state of disrepair and being kept untidy.
- 4.21 A comment made by Cr Sullivan regarding the photograph is present on the post and can be taken to be made in a jovial sense and includes uploading of a more recent photograph showing a more presentable frontage to the house in comparison with the photograph posted by Mr Dowson. Ms Ker is identified to have first posted any comments in reply to Mr Sullivan's comments and the photograph he uploaded.

- 4.22 This evidence confirms Mr Sullivan's knowledge of the post and the likelihood the he received ongoing notifications related to other comments being posted and would have therefore been aware of the comment posted by Cr Vujcic. This is further supported by Cr Sullivan responding to comments made by other commentators in relation to his comment and photograph.
- 4.23 There is no evidence available that Cr Sullivan responded to, or was offended by Cr Vujcic's posted comment.
- 4.24 The comment posted by Cr Vujcic follows a post made by another person regarding Cr Sullivan running for Mayor. It is noted that Cr Vujcic states she too was running for Mayor, however it cannot be determined whether the preceding post or both Councillor's running for Mayor influenced Cr Vujcic to post her comment in any way.
- 4.26 In response to Cr Vujcic's comment, "*The elected member sits on the Planning Committee. Really!*", Ms Ker uploading a post asking Cr Vujcic what her point was and respectfully asked her to withdraw her comment. Another comment is posted by Mr Mike Kenny who makes a comment that as a sitting councillor, Cr Vujcic should be ashamed of herself for joining in and endorsing it. This supports that the perception of other commentators to the post was that Cr Vujcic had failed to treat others, meaning Cr Sullivan, with respect and courtesy.
- 4.27 Cr Vujcic provides a response that her use of the word "Really", was more of a surprised reaction to the photograph of the house. However, when taken into account the full context of the sentence, "*The elected member sits on the Planning Committee. Really!*", a finding may be made that the word 'Really' was used in the context of questioning an elected members suitability of sitting on a Planning Committee and would support the responses received from other commentators of the post.
- 4.28 Cr Vujcic's use of an exclamation mark immediately after the word 'Really!', which is also located at the end of her comment, indicates emphasising her comment and may also be taken as expression of very strong feeling.
- 4.29 The Investigator has taken into account Ms Ker's perception of Cr Vujcic's behaviour regarding the use of social media. Whilst Cr Vujcic's comment may have not have been intended with any malice, her comment and use of the word 'Really' emphasised with an exclamation mark may have been ill-judged and has attracted interest from others.
- 4.30 However, when considering whether to afford Cr Vujcic the benefit of doubt and whether her behaviour amounts to a breach of the Code, taking into account that no other complaints have been received regarding this matter, including no complaints received by Cr Sullivan who is alleged by Ms Ker to have been the subject of the comment, the Investigator finds that Ms Ker's behaviour and intentions have not deviated sufficiently on which to make a finding.

5. RECOMMENDATIONS

- 5.1 We consider the evidence regarding Ms Ker's complaint against Cr Vujcic is insufficient to prove that Cr Vujcic has engaged in conduct that is capable of breaching the City of Fremantle Council Members, Committee Members and Candidates Code of Conduct.

6. ATTACHMENTS

The following documents are annexed to this report:

1. Complaint About Alleged Breach Form dated 13 October 2021
2. Offer of mediation – Ms Ker
3. Offer of mediation – Cr Vujcic
4. Letter to Ms Ker dated 19 November 2021
5. Letter to Cr Vujcic dated 19 November 2021
6. Written response
7. City of Fremantle Council Members Committee Members and Candidates Code of Conduct
8. Council Policy - Council Code of Conduct Division 3 Complaint Handling Policy



Appendix 2

Investigations full report, minus attachments

Council Member: Cr Andrew Sullivan

Date of decision: 23 February 2022

Private and Confidential FINAL Determination Report

Organisation	City of Fremantle		
Matter regarding	Complaint against Councillor Andrew Sullivan		
Client Reference		WISE Case Number	03541lv-01
Date	10 January 2022		
Investigator	Matt Read		



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HOBART

10 January 2022

Our ref: 03541lv-01

PRIVATE & CONFIDENTIAL

Ms Charlie Clarke
Manager Governance
City of Fremantle
Walyalup Civic Centre
151 High Street
FREMANTLE WA 6160

Dear Ms Clarke,

Re: Complaint regarding the alleged behaviour of Councillor Andrew Sullivan

Our instructions were to review and consider a complaint made by Mr Luca James Lee against Councillor Andrew Sullivan and to report upon the outcome (findings).

We have dealt with the complaint under the Council Policy, Council Code of Conduct Division 3 Complaint Handling Policy adopted by Council on 23 June 2021 (FPOL2106-5) and provide you with a report and recommendations to Council.

Should you wish to further discuss the matter, please do not hesitate to contact our office.

Yours faithfully

Matt Read
Workplace Investigations Manager WA
Investigator on behalf of City of Fremantle
WISE Workplace

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1. INSTRUCTIONS

- 1.1 On 2 November 2021, the City of Fremantle engaged WISE Workplace (WISE) to investigate a formal complaint made by Mr Luca James Lee (Mr Lee), about the alleged conduct of Councillor Andrew Sullivan (Cr Sullivan).
- 1.2 The following written complaint received from Mr Lee was provided to WISE:
 - Complaint About Alleged Breach Form dated 31 October 2021 (Attachment 1).

2. METHODOLOGY

- 2.1 We conducted this review by examining relevant documentation provided by Mr Lee and the written response to the complaint provided by Cr Sullivan.
- 2.2 On 4 November 2021, the Complaint Administrator provided Mr Lee the offer of mediation (Attachment 2). Mr Lee declined mediation.
- 2.3 On 5 November 2021, the Complaint Administrator provided Cr Sullivan the offer of mediation (Attachment 3). Cr Sullivan agreed to mediation.
- 2.4 On 19 November 2021, Mr Lee was provided a letter informing him that Cr Sullivan was now being afforded an opportunity to respond to the complaint in writing and to provide his own comments and evidence for consideration (Attachment 4).
- 2.5 On 19 November 2021, Cr Sullivan was provided a letter affording him an opportunity to respond to the complaint in writing and to provide his own comments and evidence for consideration to be received within 14 days (Attachment 5).
- 2.6 On 5 December 2021, Cr Sullivan provided a written response to the Complaint against him (Attachment 6).
- 2.7 On 6 December 2021, Mr Lee provided additional supporting evidence relating to his Complaint (Attachments 17 – 21).
- 2.8 On 8 December 2021, the additional supporting evidence provided by Mr Lee was provided to Cr Sullivan who was allowed five (5) further days in which to provide a response to the Complaint.
- 2.9 On 10 December 2021, Cr Sullivan provided an amended written response to the Complaint against him (Attachment 7).

STANDARD OF PROOF

- 2.10 Section 5.4 of the City of Fremantle *Council Policy, Council Code of Conduct Division 3 Complaint Handling Policy*, requires a determination by the Investigator that the alleged behaviour breach has occurred must be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur.
- 2.11 Section 5.106 of the *Local Government Act 1995* states, 'A finding that a breach has occurred is to be based on evidence from which it may be concluded that it is more likely that the breach occurred than that it did not occur.'

2.12 The case of *Briginshaw v Briginshaw* (1938) 60 CLR 336 is generally regarded as authority for the proposition that if a finding, on the balance of probabilities, is likely to produce grave consequences the evidence should be of high probative value.

RELEVANT POLICIES AND PROCEDURES

- Council Members, Committee Members and Candidates Code of Conduct 2021 (Attachment 8);
- City of Fremantle Council Policy, Council Code of Conduct Division 3 Complaint Handling Policy (Attachment 9).

2.13 The Complaint made by Mr Lee against Cr Sullivan referred to a potential breach of the following:

Division 2 – General Principles

4. Personal Integrity

(1) A council member, committee member or candidate should –

- (a) act with reasonable care and diligence; and*
- (b) act with honesty and integrity; and*
- (c) avoid damage to the reputation of the local government.*

(2) A council member or committee member should –

- (a) act in accordance with the trust placed in council members and committee members; and*
- (b) participate in decision-making in an honest, fair, impartial and timely manner.*

5. Relationship with others

A council member, committee member or candidate should –

- (a) Treat others with respect, courtesy and fairness.*

6. Accountability

(1) A council member or committee member should –

- (a) base decisions on relevant and factually correct information; and*
- (b) make decisions on merit, in the public interest and in accordance with statutory obligations and principles of good governance and procedural fairness; and*
- (c) n/a; and*
- (d) be open and accountable to, and represent, the community in the district.*

Division 3 – Behaviour

8. Personal Integrity

- (1) *A council member, committee member or candidate –*
- (a) *must ensure that their use of social media and other forms of communication complies with this code; and*
 - (b) *must only publish material that is factually correct.*
- (2) *A council member or committee member –*
- (a) *n/a; and*
 - (b) *must comply with all policies, procedures and resolutions of the local government.*

9. Relationship with others

A council member, committee member or candidate —

- (a) *must not bully or harass another person in any way; and*
- (b) *must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and*
- (c) *must not use offensive or derogatory language when referring to another person; and*
- (d) *must not disparage the character of another council member, committee member or candidate or a local government employee in connection with the performance of their official duties; and*
- (e) *must not impute dishonest or unethical motives to another council member, committee member or candidate or a local government employee in connection with the performance of their official duties.*

3. EXECUTIVE SUMMARY

3.1 We made the following finding:

Complaint

That Cr Sullivan breached the City of Fremantle Code of Conduct related to using derogatory language when referring to another person.

We find that the Complaint is substantiated.

4. EVIDENCE – MR LUCA JAMES LEE AND COUNCILLOR ANDREW SULLIVAN

Luca James Lee

4.1 The evidence provided by Mr Lee is summarised as follows:

Complaint About Alleged Behaviour Breach Form

The content provided in a Complaint About Alleged Behaviour Breach Form submitted to the City by Mr Lee dated 31 October 2021, provides the following details of the alleged breach and behaviour of Cr Sullivan:

- 4.2 Mr Lee states he corresponded with and met Cr Sullivan on 4 March 2021 to discuss a parking infringement issued to Mr Lee's businesses 'Bob's Shoe Retailing Pty Ltd' and 'Neo Shoe Corporation Pty Ltd'. Mr Lee stated the infringement was issued whilst undertaking the legitimate and necessary process of moving occupancy to new offices on Bannister Street, Fremantle.
- 4.3 Mr Lee states he met with Cr Sullivan to discuss the parking infringement, wider behaviour issues relating to City of Fremantle parking inspectors and how policy guidance provided to parking inspectors was not appropriate or beneficial towards local businesses.
- 4.4 Mr Lee stated that during the meeting Cr Sullivan made a number of commitments:
- During a meeting scheduled to be held on 5 March 2021 between Cr Sullivan and the CEO, Cr Sullivan would discuss the withdrawal of the parking infringement and initiate a discussion regarding updates in policy and guidance for the parking department and lack of sufficient and suitable commercial access to Manning Buildings.
 - Cr Sullivan committed to updating Mr Lee with the outcome of discussion points and the withdrawal of the parking infringement and immediately following his meeting with the CEO, Mr Paul Garbett (Mr Garbett).
 - Cr Sullivan stated both verbally and in writing that he had lodged an appeal/review of the parking infringement in-line with a "policy technicality" concerning first time offences for Fremantle residents.
 - Cr Sullivan undertook to request two leaders of the Economic Development Team to contact Mr Lee and his father to conduct discussions at a managerial level in the days following meeting with Cr Sullivan.
- 4.5 Mr Lee stated that on the date of meeting Cr Sullivan, he had sent him an email formally providing Mr Lee's contact details and to confirm that Mr Lee awaited an update from the CEO.
- 4.6 Mr Lee stated that from 5 March 2021 onwards, no contact had been received from Cr Sullivan and no member of the Economic Development Team have contacted Mr Lee.
- 4.7 Mr Lee stated that as no communication had been received from Cr Sullivan for a period of 5 months, Mr Lee assumed Cr Sullivan had arranged for the infringement to be withdrawn, but had failed in his courtesy to update them on this action.

- 4.8 Mr Lee stated that in mid-August 2021, a Final Demand Letter for the sum of \$104.80 was received from the City of Fremantle relating to the infringement. An Order to Pay an amount of \$205.40 was then received from the Fines Enforcement Register (FER), with a due date of 6 October 2021.
- 4.9 Mr Lee claims that not only did Cr Sullivan fail to act on the commitments he made to Mr Lee and his father, but he had also failed to alert Mr Lee that no action had been taken in relation to the original infringement, which caused escalation of unpaid infringements and resulted in the infringement being registered with FER.
- 4.10 Mr Lee states he sent an email dated 28 September 2021 to Cr Sullivan and other elected Council Members and Elected Staff at the City advising of the situation and how Cr Sullivan's lack of action had significantly affected his life and business. Mr Lee stated his email provided a timeline of events and attached evidence of communication he had with Cr Sullivan.
- 4.11 Mr Lee stated Cr Sullivan failed to respond to his email and instead left the matter to Mr Garbett, who provided a response, but failed to address any of the concerns raised by Mr Lee.
- 4.12 Mr Lee stated he sent an email to Mr Garbett on 6 October 2021 in follow up, but at the time of lodging the Complaint, no response had been received from Mr Garbett.
- 4.13 Mr Lee stated subsequent engagement with elected members of Council occurred resulting in advice from the current CEO, Mr Glen Dougall, who advised that the original infringement had been withdrawn and FER notified. Mr Lee states this was 8 months after his original meeting with Cr Sullivan.
- 4.14 Mr Lee stated the situation was strictly the cause of Cr Sullivan who was the former Acting Mayor, failing to act upon commitments he made to Mr Lee both verbally and in writing.
- 4.15 Within his complaint, Mr Lee highlighted areas of the Code that Cr Sullivan is alleged to have breached in relation to his behaviour as follows:
- Division 2. General Principles – 4. Personal Integrity, (1) A council member, committee member or candidate should – (a) act with reasonable care and diligence; and (b) act with honesty and integrity; and (e) avoid damage to the reputation of the local government.
 - Division 2. General Principles – 2. A council member or committee member should – (a) act in accordance with the trust placed in council members and committee members; and (b) participate in decision-making in an honest, fair, impartial and timely manner.
 - Division 2. General Principles – 5. Relationship with others, A council member or committee member or candidate should – (a) treat others with respect, courtesy and fairness.
 - Division 3. Behaviour – 8. Personal Integrity, (1) A council member, committee member or candidate – (a) must ensure that their use of social media and other forms of communication complies with this code; and (b) must only publish material that is factually correct.

- Division 3. Behaviour – 8. Personal Integrity, (2) A council member or committee member – (b) must comply with all policies, procedures and resolutions of the local government.

4.16 Attachments to Mr Lee's complaint form were the following items:

1. Email from Mr Lee to Cr Sullivan dated 28 September 2021 (Attachment 10);
2. Response from Mr Garbett, acting CEO dated 29 September 2021 (Attachment 11);
3. Email to Mr Garbett dated 6 October 2021 (Attachment 12);
4. Facebook screenshots (Attachment 13);
5. WhatsApp correspondence (Attachment 14);
6. News article (Attachment 15);
7. Highlighted copy of the Code of Conduct (Attachment 16).

Additional Evidence provided by Luca James Lee

4.17 Mr Lee provided the information/evidence relating to his complaint against Cr Sullivan:

1. Additional evidence letter dated 6 December 2021 (Attachment 17);
2. Email chain A (Attachment 18);
3. Email chain B (Attachment 19);
4. Email chain C (Attachment 20);
5. Email chain D (Attachment 21).

4.18 Mr Lee stated the additional information was not provided at the time of his original complaint due to a lack of time available to produce the information and information that he received on 26 November 2021, which he states was sourced from the City through a freedom of information request.

4.19 Mr Lee stated the additional information related to the larger issue outlined in his original complaint and the following breaches:

- Division 3. Behaviour – 8. Personal Integrity, (1) A council member, committee member or candidate – (a) must ensure that their use of social media and other forms of communication complies with this code; and (b) must only publish material that is factually correct.
- Division 3. Behaviour – 8. Personal Integrity, (1) A council member, committee member or candidate – (a) must ensure that their use of social media and other forms of communication complies with this code; and (b) must only publish material that is factually correct.

- 4.20 Within his additional evidence letter, Mr Lee provides Facebook screenshots of comments alleged to have been made by Cr Sullivan within a public forum.
- 4.21 Mr Lee states that in relation to a letter that he sent to Cr Sullivan and other elected members, within his Facebook comment dated 30 September 2021, Cr Sullivan has communicated to Ms Mia Kriznic (Ms Kriznic), Founder of the Fremantle Community Forum Facebook Group, referring to Mr Lee's letter as a private letter, therefore subtly attempting to shift blame to Ms Kriznic for publishing a private communication, which would attract unfair scrutiny or derision (Attachment 17, Item 2A).
- 4.22 Mr Lee states that as a result of Cr Sullivan's Facebook message, Ms Kriznic contacted Mr Lee requesting a statement that Mr Lee did not have an issue with her publishing the already disseminated letter.
- 4.23 Mr Lee states that within the same Facebook comment, Cr Sullivan refers to letting staff at the City continue to deal with Mr Lee's appeal as the only appropriate process and that Ms Kriznic's kangaroo court approach is inexcusable. Mr Lee states that when receiving information as to the result of his freedom of information request, it was apparent that there was never an appeal or review process regarding his infringement, which was resolved with the withdrawal of the infringement by the CEO on 12 October 2021.
- 4.24 Mr Lee states that Cr Sullivan was acutely aware that there was no appeal, as evidenced through his email communications with members of the City's executive leadership team.
- 4.25 Mr Lee states that in a further Facebook comment to Ms Kriznic dated 1 October 2021, Cr Sullivan falsely claims that Mr Lee had given Ms Kriznic his blessing to post his letter to an open Facebook Group, which Mr Lee states was in the middle of an election cycle.
- 4.26 Mr Lee states that Cr Sullivan again states that the matter is under review by the City when being aware at the time of his statement that this was not the case and the City had in fact asked Mr Lee to initiate a review process in a letter received from Mr Garbett on 29 September 2021. Mr Lee states that Cr Sullivan was acutely aware that no review process had been initiated and his false statement was in direct contravention of section 8.1 (b) of the Code of Conduct (Attachment 17, Item 2B).
- 4.27 Mr Lee states the general trend relating to Cr Sullivan's behaviour was a constant stream of false or misleading statements, designed to engender a more favourable opinion of himself and deliberately made to apply damage control to news of his behaviour and action being made public.
- 4.28 Mr Lee states that in continued Facebook comments to Ms Kriznic, Cr Sullivan again made false statements regarding the matter that led to the infringement (Attachment 17, Items C & D).
- 4.29 Mr Lee states that on two occasions, in his comments Cr Sullivan makes a false statement that the commercial van being used by Mr Lee to move office furniture and equipment was blocking a thoroughfare and parked unattended in the middle of a turnaround section of Paddy Troy Mall. Mr Lee states that taking into account the length of the vehicle, a decision was made to park the vehicle in the least obstructive position and provides an aerial view of the area showing the vehicle's parked location.
- 4.30 Mr Lee states Cr Sullivan's comments are not factually correct and geared towards swaying public opinion in his favour.

- 4.31 Mr Lee states Cr Sullivan comments state the parking officer involved as one of the City's most polite, empathetic and experienced officers and one that tried to locate the driver. Mr Lee states Cr Sullivan's Facebook comment then went on to say that after quite a few minutes of looking for the driver and going through the ticket issuing process did someone arrive to protest their innocence.
- 4.32 Mr Lee states the involved parking inspector had in fact been arrogant and not empathetic and refused to listen to any of the reasons provided for being parked in the location. Mr Lee states that information regarding these facts were provided to Cr Sullivan an hour after the infringement was issued.
- 4.33 Mr Lee states Cr Sullivan's comment that the parking inspector had spent quite a few minutes trying to locate the driver was clearly false when a group of 4 persons were relaying to and from the vehicle with cartons of office equipment and Mr Lee had noticed the parking inspector retrieving their ticket machine to issue an infringement.
- 4.34 Mr Lee states Cr Sullivan was not present at the time and would not have an understanding of what transpired or the sequence of events and Mr Lee had no knowledge on what he was basing his comments on. He stated that Cr Sullivan's version of events did not line up with Mr Lee's first-hand experience of the situation.
- 4.35 Mr Lee states there was evidence that Cr Sullivan's Facebook comments had swayed at least one member of public with someone by the name of Lloyd Hammond thanking Cr Sullivan for his comprehensive reply and that it sounded as though the parking inspector was doing his job (Attachment 17, Item 2D).
- 4.36 Mr Lee states that Cr Sullivan has continually refused to provide a response to Mr Lee directly, or indirectly via Facebook, but has communicated on Facebook to apply public damage control, described by Mr Lee as twisting the truth and making false and misleading statements engineered to deflect blame from himself.
- 4.37 Mr Lee states that as well as breaching section 8.1(b) of the code repeatedly, Cr Sullivan has also breached section 4.1(b), 4.2(a), 5.1(a), 6(a), 6(b) and 6(d) with his comments.
- 4.38 Mr Lee has provided evidence consisting of email chains.

Email chain A (Attachment 18)

- 4.39 Mr Lee states that in an email sent to Mr Garbett, CEO and Mr Matthew Hammond (Mr Hammond), Acting Director City Business, Cr Sullivan stated "*I did investigate Luca's claims at the time and endured a lot of unpleasant behaviour from him – he didn't win me over much*". Cr Sullivan's email goes on to state, "*We investigated whether Luca qualified for the first offence leniency but he didn't. I left the matter with staff*".
- 4.40 Mr Lee states that at no time has he ever abused, sworn or raised his voice at Cr Sullivan, but had clearly expressed issues whereby the City was failing ratepayers and business owners and had spoken to him in detail regarding the immediate issue of the parking infringement. Mr Lee stated he has a forthright manner and it appears that Cr Sullivan's description of unpleasant behaviour centred around the fact he expects a fawning, insipid audience rather than hard working business owners.

- 4.41 Mr Lee states that Cr Sullivan's comments that he investigated whether Mr Lee qualified for the first offence leniency is completely at odds with his public statements made through Facebook, whereby on a number of occasions, Cr Sullivan states he initiated an appeal process. Mr Lee states that behind the closed doors with City Executives, Cr Sullivan has stated he investigated Mr Lee's eligibility for leniency but he had not qualified.
- 4.42 Mr Lee states that Cr Sullivan has breached the following sections of the Code of Conduct:
- 4.1 (a) act with reasonable care and diligence; and
 - 4.1 (b) act with honest and integrity; and
 - 4.2 (a) act in accordance with the trust placed in council members and committee members;
 - 5.1 (a) treat others with respect, courtesy and fairness; and
 - 6. (d) be open and accountable to, and represent, the community in the district.

Email chain B (Attachment 19)

- 4.43 Mr Lee states that in an email sent by Cr Sullivan on 29 September 2021 to Mr Garbett and Mr Hammond, Cr Sullivan stated Mr Lee advised him that he owned a property in Fremantle but did not live there, however, was pretty sure Mr Lee's sister who also works for the business does live in Fremantle. Cr Sullivan's also wrote in his email, "*You may have to fill out the form for him as I get the impression he's not used to having to do such things*".
- 4.44 Mr Lee states that at no time has he advised Cr Sullivan that he did not live in his property in Fremantle and at no time has he mentioned his sister or her location. Mr Lee states his sister has no knowledge of Cr Sullivan and does not understand why he would have any knowledge regarding her place of residence. Mr Lee states his sister lives in Broome.
- 4.45 Mr Lee states that Cr Sullivan's comment to executives that the City may have to fill out a parking infringement appeal for Mr Lee is outrageous and an example of Cr Sullivan's inappropriate behaviour when conducting City business. Mr Lee states this comment was made 6-months after Mr Lee's original engagement with Cr Sullivan and described it as a cheap shot aimed at Mr Lee to portray Mr Lee as lazy, spoiled and overindulged. Mr Lee states the comment was offensive to him.
- 4.46 Mr Lee states that Cr Sullivan has breached the following sections of the Code of Conduct:
- 4.1 (b) act with honest and integrity; and
 - 4.1 (e) avoid damage to the reputation of the local government;
 - 4.2 (a) act in accordance with the trust placed in council members and committee members;
 - 4.2 (b) participate in decision-making in an honest, fair, impartial and timely manner;

- 5.1 (a) treat others with respect, courtesy and fairness;
- 6. (a) base decisions on relevant and factually correct information;
- 9. (c) must not use offensive or derogatory language when referring to another person.

Email chain C (Attachment 20)

- 4.47 Mr Lee states the email chain provided shows correspondence between Cr Sullivan, Mr Dougall and Mr John Flindell (Mr Flindell), Team Leader Parking, in which Cr Sullivan makes a number of derogatory remarks about Mr Lee.
- 4.48 Mr Lee states he perceived Cr Sullivan's comment "*Given his Californian/Australian accent and arrogance, I felt I was talking to [REDACTED]*" as likening him to Donald Trump.
- 4.49 Mr Lee states that when Mr Lee and his father had met with Cr Sullivan, Mr Lee explained the circumstances surrounding the infringement, which resulted in Cr Sullivan agreeing with them that the fine should not have been issued and was not warranted.
- 4.50 Mr Lee states he takes offence to Cr Sullivan making comments in his email about Mr Lee being self-entitled and self-important. Mr Lee states such comments are outrageous character judgements not becoming of Cr Sullivan's position, or the trust that unsuspecting community members place him in.
- 4.51 Mr Lee states that when Mr Flindell asked Cr Sullivan in an email whether Mr Lee was a resident of Fremantle, Cr Sullivan replied, "*He sure as hell didn't talk like one (or maybe that's just me showing how out of touch I am)*". Mr Lee states he perceived Cr Sullivan's comments as though Mr Lee did not qualify to be a resident of Fremantle as he did not sound like someone from Fremantle.
- 4.52 Mr Lee states he lived and worked in Fremantle through his teenage years and was now heading a number of executive functions of 2 of his Fremantle based businesses. He also states that his family is of First Nations descent and felt Cr Sullivan expresses an outwardly inflated sense of self, place and privilege and deems it his right to assign a level of belonging to another person, especially to a descendent of the original inhabitants of Australia.
- 4.53 Mr Lee states cultural sensitivity training is absolutely necessary for Cr Sullivan.
- 4.54 Mr Lee states that Cr Sullivan has breached the following sections of the Code of Conduct:
- 4.1 (b) act with honest and integrity; and
 - 4.1 (e) avoid damage to the reputation of the local government;
 - 4.2 (a) act in accordance with the trust placed in council members and committee members;
 - 4.2 (b) participate in decision-making in an honest, fair, impartial and timely manner;
 - 5.1 (a) treat others with respect, courtesy and fairness;

- 5.1 (b) respect and value diversity in the community;
- 6. (a) base decisions on relevant and factually correct information;
- 6. (b) make decisions on merit, in the public interest and in accordance with statutory obligations and principles of good governance and procedural fairness;
- 9. (c) must not use offensive or derogatory language when referring to another person.

Email chain D (Attachment 21)

- 4.55 Mr Lee states the evidence provided clearly shows that Cr Sullivan deliberately chose not to follow up with Mr Lee or his father following their meeting with him on 4 March 2021. Mr Lee states he was waiting for an update from Cr Sullivan as agreed during his face-to-face meeting with him and waiting to be put in contact with the Economic Development Team.
- 4.56 Mr Lee states that within his email to Mr Hammond dated 5 March 2021, Cr Sullivan states, *"I suspect young Luca is a recent returnee from California and that his dad, John, is trying to hand the business over to him and his sister. He reminds me of a younger version of [REDACTED] just a lot more arrogant, self-important and zero patient if he's not getting what he wants (the Trump school of business)."* Mr Lee states Cr Sullivan then goes on to state in his email, *"I might have to wear him out"*.
- 4.57 Mr Lee states that Mr Sullivan's tone is patronising with repeated references of him as 'young Luca' and includes a statement of wearing Mr Lee out, which he takes as a direct intent to cause harm or disadvantage to Mr Lee as he deemed Mr Lee's personality not to his liking. Mr Lee stated the comment applied to Cr Sullivan's commitment to provide Mr Lee with an update and then hearing nothing further until being ordered to pay the fine by FER.
- 4.58 Mr Lee states that in an email sent to Cr Sullivan dated 8 March 2021, Mr Hammond stated he was happy to meet with Mr Lee.
- 4.59 Mr Lee stated he sent Cr Sullivan an email containing his contact details, which was confirmed as being received by Cr Sullivan through the receipt of documents resulting from his freedom of information request.
- 4.60 Mr Lee also provides a Facebook post and comments made by Saz Cole (Attachment 17, Item 2E), which he states demonstrates that Cr Sullivan's behaviour towards others is not isolated to Mr Lee's experience with him.
- 4.61 Mr Lee states it is not becoming of, or acceptable in the least for an elected member, let alone the Acting Mayor at the time to behave in such a disreputable manner and from the evidence available to date, consciously choose to do nothing about an issue which would knowingly escalate and potentially cause a detriment to Mr Lee.

4.62 Mr Lee states that Cr Sullivan has breached the following sections of the Code of Conduct:

- 4.1 (b) act with honest and integrity; and
- 4.1 (e) avoid damage to the reputation of the local government;
- 4.2 (a) act in accordance with the trust placed in council members and committee members;
- 4.2 (b) participate in decision-making in an honest, fair, impartial and timely manner;
- 5.1 (a) treat others with respect, courtesy and fairness;
- 5.1 (b) respect and value diversity in the community;
- 6. (a) base decisions on relevant and factually correct information;
- 6. (b) make decisions on merit, in the public interest and in accordance with statutory obligations and principles of good governance and procedural fairness;
- 9. (c) must not use offensive or derogatory language when referring to another person.

Councillor Andrew Sullivan

4.63 The evidence provided by Cr Sullivan in his written response to the complaint is summarised as follows:

Written response dated 5 December and additional response dated 10 December 2021

4.64 Cr Sullivan states that he presents an arguable case that warrants the dismissal of all of Mr Lee's complaints against him (Attachment 7, Item 92).

4.65 Cr Sullivan provides information of his understanding related to the issue of the parking infringement and photographs that he received from Mr Flindell that are also contained within Mr Lee's evidence (Attachment 21, email chain D).

4.66 Cr Sullivan states that within one of the photographs, Mr Lee is seen to be approaching the parking inspector with what appears to be his mobile telephone in the air and immediately challenges the inspector and photographs him. Cr Sullivan states it troubled him that Mr Lee had used his mobile telephone camera in a manner that was inappropriate and confrontational.

4.67 Cr Sullivan states he has requested that the body-cam footage of the incident be available to this enquiry on the basis that Mr Lee persistently argues that the infringement should not have been issued and that the behaviour of the parking inspector towards him was inappropriate.

4.68 Cr Sullivan stated that on the date of the parking infringement being issued to Mr Lee, Cr Sullivan held the position of Deputy Mayor.

- 4.69 Cr Sullivan stated that on 26 February 2021, the date of the infringement, he had travelled to Nannup, having not requested Leave of Absence for his brief period away from Fremantle.
- 4.70 Cr Sullivan stated that immediately after the time of the infringement being issued, he saw an incoming call on his mobile telephone from a USA number and chose not to answer the call as he was on holiday and due to the call being received from a USA number.
- 4.71 Cr Sullivan stated he listened to a message left by the caller who introduced himself as 'Luca', the owner of Bob's Shoe Store in Fremantle. Cr Sullivan stated he had not met Mr Lee before, but knew of his shoe store business. Cr Sullivan stated his assessment of Mr Lee's call was that he was extremely upset, angry and demanding immediate assistance from Cr Sullivan as Acting Mayor. He states Mr Lee's message included a threat to close Bob's Shoe Store because of a parking infringement. Cr Sullivan states he no longer has the voicemail message left by Mr Lee.
- 4.72 Cr Sullivan states that within his message, Mr Lee requested that Cr Sullivan contact him immediately to ensure the infringement was withdrawn and if that was not the outcome, then he would close the store.
- 4.73 Cr Sullivan states that although Mr Lee's message was left after-hours and on a long-weekend, Cr Sullivan took the view as Acting Mayor, that he should respond immediately to Mr Lee as he was threatening to close his store, albeit over something trivial such as a parking infringement (Attachment 7, Item 12).
- 4.74 Cr Sullivan states he then contacted Mr Lee and a conversation took place for around twenty minutes or more. Cr Sullivan stated he providing Mr Lee the opportunity to vent his anger, which provided Mr Lee with the opportunity to express a range of other concerns, which included the unhelpful attitude of parking inspectors, the inspector's rudeness and indifference towards him, flawed parking policies and that the City had failed to assist retailers in Fremantle.
- 4.75 Cr Sullivan states that on a couple of occasions he tried to explain the City's economic development policies to Mr Lee and describe the considerable work the City was doing with retailers and to outline the City economic development strategies, but Mr Lee interjected and stated Cr Sullivan was not listening to his concerns, that Cr Sullivan should stop making excuses and should withdraw the infringement immediately. Cr Sullivan states Mr Lee demanded to know what Cr Sullivan was doing to fix the parking and retail situation in Fremantle and that if he could not fix things, then he would relocate his business immediately.
- 4.76 Cr Sullivan states that notably, Mr Lee said that the parking inspector had behaved unreasonably by issuing an infringement to someone running a business in Fremantle and that the officer had been rude towards him.
- 4.77 Cr Sullivan states he informed Mr Lee that the City's parking officers were well trained to engage politely and that no officer had the power to withdraw an infringement once it had been printed from the machine, which Cr Sullivan states was his understanding.
- 4.78 Cr Sullivan states he explained to Mr Lee that his perception of the parking inspector being rude may have been due to the officers' attempts to extricate himself from the situation as Mr Lee had photographed him and the officer may have perceived Mr Lee as being unreasonably threatening.

- 4.79 Cr Sullivan states he persuaded Mr Lee to accept that it was not possible for Cr Sullivan to deal with his concerns at the time and unreasonable to ask the CEO to do so, given it was the start of the long-weekend. Cr Sullivan states he proposed to Mr Lee that they meet to discuss the infringement and Mr Lee's broader concerns following the long-weekend and asked Mr Lee to send him an email briefly outlining his concerns regarding the parking infringement.
- 4.80 Cr Sullivan states that at the time he had not captured Mr Lee's name and therefore he did not have his full name or email address until much later in the process.
- 4.81 Cr Sullivan states that on 26 February 2021, he received a text message from Mr Lee from his Californian listed mobile telephone providing two photographs. Cr Sullivan stated Mr Lee did not send him any details of the event, his local contact details, his full name or any statement of concerns.
- 4.82 Cr Sullivan states he was surprised by the extent of Mr Lee's complaints and the fact that he was threatening to close his family business in Fremantle and was concerned that if he carried out his threat, then this may deliberately or inadvertently damage the City and Council reputation.
- 4.83 Cr Sullivan stated he wished to further canvass the broader issues directly with Mr Lee and sought to provide him time to recover from what he had described as a tiring and stressful relocation of his business and also wanted to enquire whether anything could be done in relation to the parking infringement to remove it from the table and allow a focus on the wider issues at hand (Attachment 7, Item 21).
- 4.84 Cr Sullivan states he sent an email to Mr Flindell and explained what he had been told by Mr Lee, including that Mr Lee was so angry that he was threatening to close his business. He states his email also informed Mr Flindell, "*I guess he was asking for a review, so I'll submit this for your processing*".
- 4.85 Cr Sullivan states Mr Flindell replied asking whether Cr Sullivan happened to know whether Mr Lee was a Fremantle resident. Cr Sullivan states it is standard policy for a parking infringement to be withdrawn if it is a resident's first parking offence and the parking infringement was insignificant. Cr Sullivan states he took Mr Flindell's email to mean that he was actively reviewing the infringement in direct response to his request and responded to him by saying he did not know whether Mr Lee was a Fremantle resident, but would find out.
- 4.86 Cr Sullivan states he then received a further email from Mr Flindell advising he had reviewed the parking inspector's body-cam who had dealt with the situation well and advised that the footage was damning. Cr Sullivan stated he took the information contained within Mr Flindell's email as Mr Flindell continuing to review the infringement and also investigating Mr Lee's concern's regarding the behaviour of the parking officer.
- 4.87 Cr Sullivan stated he hoped that by forwarding his request to staff to treat Mr Lee's complaint as a request to review the infringement, it may defuse any frustration or anger Mr Lee was experiencing and Cr Sullivan states he wanted the parking infringement out of the way so he could focus on having rational conversations regarding matters Mr Lee raised.

- 4.88 Cr Sullivan stated he knew that the infringement review process typically required a member of the public to complete and submit a form to the City and that elected members should remain at arms-length from the process, but did not feel it precluded him from acting as a conduit to having an appeal lodged and felt that asking Mr Lee to complete a form may inflame his agitated state of mind. Cr Sullivan states he was also confident that Mr Flindell was capable of dealing with the review sensitively and would let Cr Sullivan know if he required other information.
- 4.89 Cr Sullivan states he sent a Whatsapp message to Mr Lee on 3 March 2021 confirming he had lodged a review of the fine with staff who wanted to know whether he was a resident living within the City of Fremantle, to which Mr Lee replied providing an address that related to strata units and had not provided his full address. He states Mr Lee also made a comment that he was not sure as to the relevance of his address and seemed to be skirting around the issue.
- 4.90 Cr Sullivan states that on 4 March 2021, he met in person with Mr Lee and his father Mr John Perpignani, the purpose being to discuss the parking infringement and state of retailing in Fremantle, including what support the Council was affording the retail sector.
- 4.91 Cr Sullivan states that Mr Lee persistently stated an opinion that he should not have been fined for blocking the laneway and demanded assurances from Cr Sullivan that council policies be updated immediately so that businesses were supported and not infringed for going about their activities. Cr Sullivan states that Mr Lee said the parking inspector's failure to show any empathy for traders was symptomatic of Council's failure to support the retail sector.
- 4.92 Cr Sullivan stated that whenever he tried to highlight what the council had been doing, Mr Lee cut him off stating he had not finished speaking and Cr Sullivan needed to show him respect and listen to what he had to say and then demanded to be provided a list of directives that the CEO would issue to staff to fix all the problems that he had listed.
- 4.93 Cr Sullivan stated he became frustrated by Mr Lee's approach to the meeting and was particularly annoyed by his uncompromisingly negative perspective, but did not express this to him. Cr Sullivan stated Mr Lee's criticisms seemed to lack substance and the exercise seemed to be to demand more attention. Cr Sullivan stated he politely allowed Mr Lee to have his say.
- 4.94 Cr Sullivan stated the meeting lasted for around an hour during which he explained some of the work the economic development team had been doing and Mr Lee indicated he had not been aware of the team and so Cr Sullivan suggested it may be beneficial for Mr Lee, his father and Bob's Shore Store Team to meet with them.
- 4.95 Cr Sullivan states he requested Mr Lee's email and local telephone number so that he may pass it on to the economic development team and also informed him that he was meeting with Mr Dougall the following day at a function and would endeavour to speak to him.
- 4.96 Cr Sullivan states that during his meeting with Mr Lee and his father, he was unable to ascertain any information that clarified whether Mr Lee lived in Fremantle and as he had no further information to provide, it did not cross his mind to update Mr Flindell, or to make contact with him with regards to whether he had ascertained any residence details from rate payer rolls. Cr Sullivan stated he can only assume that Mr Flindell did not progress the infringement appeal from that point (Attachment 7, Item 33).

- 4.97 Cr Sullivan states that on 4 March 2021, he sent an email to Mr Dougall and provided a summary of his discussion with Mr Lee, including having sent Mr Findell information relating to the infringement for review.
- 4.98 Cr Sullivan states Mr Lee emailed him his contact details on 5 March 2021, which stated Mr Lee looked forward to an update once Cr Sullivan had spoken to the CEO.
- 4.99 Cr Sullivan stated that on 5 March 2021, he sent an email to Mr Hammond and identified that his frustration with Mr Lee's quarrelling and scolding was evident within the content of his email. He states that within his email, Cr Sullivan notified Mr Hammond that he would let Mr Lee know that his own store managers had been in contact with the economic development team, but failed to complete that action and also failed to provide him with Mr Lee's contact details. Cr Sullivan states these were oversights.
- 4.100 Cr Sullivan states that in relation to speaking to the CEO about the matter, at both meetings attended on 5 March 2021 and 8 March 2021, there was insufficient time to do so, however on 8 March 2021, Mr Hammond responded to Cr Sullivan's email stating he was happy to meet with Mr Lee and that Cr Sullivan should copy him into a subsequent email that Cr Sullivan was to send to Mr Lee. However, Cr Sullivan did not follow through with this, stating he was relatively new to the role of Acting Mayor and was attempting to deal with numerous matters at the time. He stated that whilst he had not forgotten about Mr Lee, he had become less focussed as it being his highest priority (Attachment 7, Item 39).
- 4.101 Cr Sullivan states he held a confidential conversation with a person who would have been disappointed if Mr Lee's business left Fremantle and asked for advice on how to build a respectful relationship with Mr Lee. Cr Sullivan states that the person expressed an opinion that there was little point in trying to meaningfully engage with Mr Lee who was almost impossible to deal with. Cr Sullivan states he conveyed this information to Mr Hammond in an email dated 29 September 2021.
- 4.102 Cr Sullivan states his conversation with the person caused him to greatly diminish the priority given to the matter.
- 4.103 Cr Sullivan states he was on Leave of Absence between the dates of 19 March 2021 and 28 March 2021. He states Mr Lee did not check in with Cr Sullivan why he had not contacted him.
- 4.104 Cr Sullivan states he received a scathing email from Mr Lee dated 28 September 2021, an email that Mr Lee had copied to a number of other persons including the CEO, Directors at the City, Candidates, Councillor's and his local MP. Cr Sullivan states Mr Lee's email included strong politically charged wording, which discredited Cr Sullivan.
- 4.105 Cr Sullivan states Mr Lee's email highlighted that the parking infringement had not been withdrawn resulting in a final demand being received from FER, which Cr Sullivan notes was received by Mr Lee 6-weeks prior to sending his email to Cr Sullivan and others.
- 4.106 Cr Sullivan states there was a lot of inaccuracy in Mr Lee's email regarding what Cr Sullivan was alleged to have committed to and noted the email stated the matter was being lodged as a formal complaint with the City.

- 4.107 Cr Sullivan states the details of Mr Lee's email quickly appeared on the Fremantle Community Facebook Page, administered by Ms Kriznic, which Cr Sullivan states is no longer available to him. Cr Sullivan states that within Mr Lee's complaint material, he has only provided screenshots of the Facebook page that he finds objectionable and Cr Sullivan invites an enquiry to review the post and associated comments. Cr Sullivan provides a copy of the link to the page in his written response (Attachment 7, Item 45).
- 4.108 Cr Sullivan states the timing of Mr Lee circulating his complaint appears to have been intentional and politicising the situation during the middle of an election, which has been used politically by others in social media forums (Attachment 7, Item 46).
- 4.109 Cr Sullivan stated the City was in caretaker mode at the time and Mr Dougall who was Acting CEO was on leave. Cr Sullivan states he advised Mr Garbett, Mr Dougall's Deputy, that he would not respond to Mr Lee's letter and notified all elected members that the CEO's office would need to handle the matter.
- 4.110 Cr Sullivan stated that on 29 September 2021, Mr Garbett sent an email to Mr Lee inviting him to lodge an appeal using the standard forms for parking appeals. Cr Sullivan states he then provided Mr Garbett with the chain of emails between Cr Sullivan and Mr Flindell that included the original parking infringement review process that commenced in March 2021.
- 4.111 Cr Sullivan states he understands Mr Lee went on to not submit a request for a parking infringement review, but demanded the infringement be withdrawn and that a review was completed on 12 October 2021 and Mr Lee was advised that the infringement had been withdrawn.
- 4.112 The evidence provided by Cr Sullivan in his written response relating to alleged breaches of the Code of Conduct 2021 is summarised as follows:

Alleged breach of Division 3, section 8.2(b)

- 4.113 Cr Sullivan states Mr Lee alleges Cr Sullivan has repeatedly breached section 8.2(b), but fails to provide specific detail other than it being an opening statement.

Alleged breach of Division 3, section 8.1(a) and (b)

- 4.114 Cr Sullivan states Mr Lee's argument relates to Cr Sullivan making factually incorrect statements.
- 4.115 Cr Sullivan states that in relation to Mr Lee's claim against Cr Sullivan posting a statement on Facebook that he had not followed up the matter as he had assumed staffers were either, or had dealt with the matter, it was clear through email content that both Mr Lee and Cr Sullivan had accepted that Cr Sullivan had lodged the appeal on his behalf and both believed staff were dealing with it.
- 4.116 Cr Sullivan states that given the above, his comments were correct and at very best, Mr Lee was splitting hairs and Cr Sullivan's intent was to state facts without entering political debate. Cr Sullivan states that his wording may have been a bit better, but whether to interpret his comments as not factual is quite minor and would not meet the threshold of a breach of the Code.

- 4.117 Cr Sullivan also states that Mr Lee's assumption is that no appeal process had ever taken place and Cr Sullivan had lied to him all along, which Cr Sullivan refutes as Mr Flindell had started to review the infringement, a fact supported by emails between Cr Sullivan and Mr Flindell.
- 4.118 Cr Sullivan states he was not trying to avoid accountability as alleged by Mr Lee, but was seeking to publicly acknowledge that Mr Lee was correct and the process had stalled, but staff were dealing with the matter so it could be resolved.
- 4.119 Cr Sullivan stated he did not assume Mr Lee's letter as an open letter and feels that there may have been some intent for the content of the letter to be leaked for political purposes. He states that in Mr Lee's evidence, Mr Lee confirm Ms Kriznic contacted him following Cr Sullivan's criticism of her and requested a statement from Mr Lee that he had no issue with her publishing it. Cr Sullivan states this indicates that at the time Ms Kriznic published the letter, she did not have permission to do so and therefore Cr Sullivan's comment regarding Ms Kriznic choosing to take a private letter that she was copied into and post it presumably without the author's permission is factually correct and not a breach of the Code.
- 4.120 Cr Sullivan states Mr Lee alleges an incorrect statement in relation to Cr Sullivan making a comment in public forum that Ms Kriznic had brought the matter into public forum in the middle of an election cycle, apparently with Mr Lee's blessing. Cr Sullivan states he may have been better served to have used the word presumably, or probably, rather than apparently, but his statement was factually correct and not to the level considered to be a breach of the Code.
- 4.121 Cr Sullivan states Mr Lee alleges that Cr Sullivan's comments regarding the original nature of the infringement are all factually incorrect. Cr Sullivan provides information relating to the circumstances of the incident resulting in the issue of the parking infringement and states Mr Lee is nit-picking in the extreme to suggests his statements in this regard are not factual (Attachment 7, Items 66 – 69).

Alleged breach of Division 3, section 8.1(a) and (b)

- 4.122 Cr Sullivan states Mr Lee alleges that Cr Sullivan failed to act with reasonable care and diligence.
- 4.123 Cr Sullivan stated he used his best endeavours to have the parking fine reviewed, which became drawn out over a long period of time. He states he tried to extract information from Mr Lee to provide Mr Flindell so he could complete his review, including asking Mr Lee whether he was a resident of Fremantle.
- 4.124 Cr Sullivan states he did not check back with Mr Flindell regarding whether he could proceed with a review based on the information Mr Lee had provided and it was unclear to him whether he had to pursue further information from Mr Lee, or whether Mr Flindell required further information to complete the review.
- 4.125 Cr Sullivan states the detail seemed trivial and not a priority. Cr Sullivan states his processes were not perfect and he did not deliver absolute diligence to ensure the process remained on track, but states he initially provided reasonable care and diligence that erred slightly when other matters distracted him in dealing with the matter.

Alleged breach of Division 2, section 4.1(b)

- 4.126 Cr Sullivan states Mr Lee alleges that Cr Sullivan failed to act with honesty and integrity by repeatedly making false statements and trying to shift blame to others.
- 4.127 Cr Sullivan states that his written response refutes such claims (Attachment 7, Items 367 to 47) and states he would not totally be to blame, as Mr Flindell could completed the review, or followed up with Cr Sullivan regarding any further information required. Cr Sullivan stated that likewise, Mr Lee could also have followed up the matter or engaged with Cr Sullivan regarding progress.
- 4.128 Cr Sullivan state he never informed Mr Lee that the infringement had been withdrawn, only that he had initiated a review and Mr Lee never followed up on whether it had been withdrawn. Cr Sullivan states there were assumptions made by all parties and had any party followed up the matter, then the review process would not have stalled for many months. Cr Sullivan states this is a fair assessment and not an attempt to shift blame.
- 4.129 Cr Sullivan refutes that he failed to act with honesty and integrity.

Alleged breach of Division 2, section 4.1(e)

- 4.130 Cr Sullivan states Mr Lee alleges that Cr Sullivan failed to avoid damage to the reputation of the local government and that Mr Lee refers to a significant amount of media and public attention paid to this issue.
- 4.131 Cr Sullivan states Mr Lee fails to demonstrate the above, but states it was true that detail relating to an email that Mr Lee sent to Cr Sullivan dated 28 September 2021 found its way onto Facebook, however states that it was initiated by Ms Kriznic and not Cr Sullivan.
- 4.132 Cr Sullivan states the information also got released in an online blog known as 'Streetwise Magazine' and states neither could be described as significant amount of media, as even collectively, they have limited readership.
- 4.133 Cr Sullivan states that a critical point is that he did not cause any of these matters to be aired publicly and feels they were likely to have been part of a political campaign to smear Cr Sullivan's reputation in the lead up to local government elections (Attachment 7, Item 74).
- 4.134 Cr Sullivan states he sought to assure those reading the Facebook posts that the City were addressing Mr Lee's concerns and states Mr Lee has failed to demonstrate how Cr Sullivan's actions in any way damaged the reputation of the local government.

Alleged breach of Division 2, section 4.2(a)

- 4.135 Cr Sullivan states Mr Lee alleges that Cr Sullivan failed to act in accordance with the trust placed in council members and committee members and that at no point has any trustworthiness been demonstrated by Cr Sullivan.
- 4.136 In response to Mr Lee's claim that Cr Sullivan failed to complete a course of action he had embarked upon, Cr Sullivan states he initiated the review process relating to the infringement on his behalf and believed the matter had been brought to the attention of the relevant person. He states there is clear evidence that Mr Flindell was actively carrying out a review and it was not in Cr Sullivan's power to conduct a review himself.
- 4.137 Cr Sullivan states he only ever acted as a conduit for an appeal to be lodged.

- 4.138 Cr Sullivan states he regrets not delivering diligence that the officer did not complete the process and at worst, there had been a lapse in his follow-up. Cr Sullivan stated making an inadvertent mistake through a moment of inattentiveness did not constitute a breach of trust.

Alleged breach of Division 2, section 4.2(b)

- 4.139 Cr Sullivan states Mr Lee alleges that Cr Sullivan failed to participate in decision-making in an honest, fair impartial and timely manner.
- 4.140 Cr Sullivan states none of Mr Lee's claims relate to decision-making in relation to the Code as it relates to formal decisions elected members are required to make in committee and council meetings.
- 4.141 Cr Sullivan states Mr Lee's claims that Cr Sullivan never demonstrated fairness or honesty are not supported by facts and are his personal opinion.
- 4.142 Cr Sullivan states he regrets Mr Lee's parking infringement had not been completed in a timely manner and regretted that the appeal process had stalled, but had not and could not be involved in the decision-making relating to the infringement and therefore has not breached the alleged section of the Code.

Alleged breach of Division 2, section 5.1(a)

- 4.143 Cr Sullivan states Mr Lee alleges that Cr Sullivan failed to treat others with respect, courtesy and fairness.
- 4.144 In relation to failing to engage with Mr Lee, Cr Sullivan states he made attempts to engage with Mr Lee and states from the outset, he could have simply stated to Mr Lee that he needed to complete and submit the relevant form relating to an appeal regarding the parking infringement. However, Cr Sullivan had spent time on the telephone with him whilst on holiday and ensured that he referred the matter to the relevant staff member on the first business day following the initial contact.
- 4.145 Cr Sullivan states he also met with Mr Lee at the earliest opportunity and listened empathetically to his concerns, which demonstrates that Cr Sullivan did treat Mr Lee with respect, courtesy and fairness, despite Mr Lee's perception.
- 4.146 Cr Sullivan states Mr Lee also alleges that by failing to follow through on commitments, Cr Sullivan has breached this section of the Code, however states that any failure to realise the review of the infringement had stalled was not a deliberate act and not a failure to treat others with respect, courtesy and fairness, rather an inadvertent lapse of concentration (attachment 7, Item 82).
- 4.147 Cr Sullivan states that Mr Lee asserts that his actions or inactions amount to incompetence and or wilful negligence, which Cr Sullivan refutes as the events do not demonstrate such on his part and he is not infallible or immune to lapses in attentiveness.
- 4.148 In relation to Mr Lee alleging that having his fine increased and his driver's license suspended was down to a failure on Cr Sullivan's part. Cr Sullivan states he did not deliberately or maliciously cause the appeal process to be stalled and was not responsible for, or involved in the fine enforcement process.

- 4.149 Cr Sullivan states that a threat of increasing the fine or suspending Mr Lee's driving license would have caused Mr Lee to write to or contact Cr Sullivan sooner, but Mr Lee had waited 6-weeks to do so. Cr Sullivan stated this part of the process was beyond his control and had not been aware of it until Mr Lee wrote to him on 28 September 2021, upon which Cr Sullivan acted immediately to ensure that the matter was properly dealt with.
- 4.150 Cr Sullivan states Mr Lee argues that his failure to realise the situation is evidence of a lack of respect, courtesy and fairness. Cr Sullivan states that any failure on his part to realise the process had stalled was inadvertent and not in any way deliberate and as such, it would be unreasonable to conclude that a simple mistake is a failure to show respect, courtesy or fairness.
- 4.151 In relation to Mr Lee claiming that Cr Sullivan failed to show him respect, courtesy or fairness through failing to respond to Mr Lee's email dated 28 September 2021, Cr Sullivan states Mr Lee was lodging a formal complaint against Cr Sullivan, a valid reason to recuse himself of further involvement with him and had immediately notified Mr Dougall and Mr Garbett of his removal. Cr Sullivan states that this demonstrates respect of the process when someone seeks to make a complaint against an elected member and an understanding of procedural fairness.
- 4.152 Cr Sullivan states that whilst he did not respond directly to Mr Lee, he took reasonable steps to ensure that Mr Garbett understood the importance of communicating with Mr Lee as soon as possible.

Alleged breaches relating to internal emails

- 4.153 Cr Sullivan states that internal emails were only intended as internal conversations between Cr Sullivan and staff members. Cr Sullivan states he made statements in his emails that were more about his venting of frustration regarding Mr Lee making such a huge issue over something as trivial as a parking infringement.
- 4.154 Cr Sullivan states that his statements show that he was frustrated with Mr Lee from the outset and was increasingly losing respect for him as time went on. However, he states he endeavoured to fully engage with Mr Lee professionally and in a timely manner and had set about dealing with his infringement, despite the personal perceptions of Mr Lee who had seriously rubbed Cr Sullivan up the wrong way.
- 4.155 Cr Sullivan stated this lapsed when he felt Mr Lee was being vexatious and making claims that were not based on a sound understanding or relevant matters.
- 4.156 Cr Sullivan states that the mistakes he made in not following up some communications were unintentional, however accepts that wording and sentiments in some of the internal emails was inappropriate and outside the spirit of the Code of Conduct and as such regrets making them.
- 4.157 Cr Sullivan states that in conclusion of his written response, he made considerable effort to empathise with Mr Lee following the issue of his infringement. Cr Sullivan states he also listened to Mr Lee's complaints that negatively referenced to City's parking policies and attitude towards retail business in Fremantle, noting that what Mr Lee presented was based on his perception and largely unsubstantiated or unfounded.
- 4.158 Cr Sullivan states Mr Lee had unreasonable expectations of what the City could be doing to support retail, nevertheless, Cr Sullivan listened to his concerns and attempted to explain what the City was doing.

- 4.159 Cr Sullivan states he also sought to be a conduit to ensure Mr Lee's parking infringement would be reviewed by the relevant officer.
- 4.160 Cr Sullivan states that whilst he inadvertently failed to follow up on some matters, there had been no malicious intent on his part. He stated this related to a couple of mistakes and whilst acknowledging a lapse in providing absolute diligence, others including Mr Lee could have identified that the process was not progressing as expected and could have brought this to the attention of the CEO.
- 4.161 Cr Sullivan states that in contrast to his behaviour towards him, Mr Lee's attitude towards the Council and Cr Sullivan has been unreasonable, critical and increasingly political and considers the alleged breaches as bordering on vexatious.

Analysis and Finding

- 4.162 It is noted by Cr Sullivan that 6-weeks elapsed between the time Mr Lee received a letter from FER and his email to Cr Sullivan and others dated 28 September 2021. Cr Sullivan states he would have thought Mr Lee would have contacted him closer to the receipt of the FER letter, but it is likely given Mr Lee has obtained further emails as provided in his additional evidence, that the delay was due to Mr Lee awaiting the outcome of his FOI application and being aggrieved with the content of some of those communications, again linked to the infringement matter.
- 4.163 Noting the additional information and evidence provided by Mr Lee is consistent with his original complaint information and relates to Cr Sullivan's handling of and behaviour regarding Mr Lee's parking infringement and given the number of individual matters raised by Mr Lee, it is felt appropriate to consider Cr Sullivan's behaviour based upon the information provided and responded to by both parties, rather than analysing each and every matter raised by Mr Lee when making an overall finding.
- 4.164 Mr Lee seeks to raise a number of matters in his complaint, which Cr Sullivan claims are bordering on vexatious, which is understood to mean, or similar to intended to harass or annoy without reasonable cause or conducted in such a manner. The complaint may also be made with the intent to be retaliatory in nature and/or intended to annoy or damage the reputation of the respondent. Cr Sullivan provides evidence regarding Mr Lee's demeanour from the outset of his complaint relating to using his mobile telephone to photograph the parking officer, contacting him shortly after the infringement was issued on the telephone and demanding an immediate withdrawal of the infringement, which Cr Sullivan was not delegate to carry out.

- 4.165 In support of Cr Sullivan's concern that Mr Lee's complaint may be vexatious, the Investigator notes that within his complaint, Mr Lee states that in response to Mr Flindell asking Cr Sullivan whether Mr Lee was a resident, Cr Sullivan replied in an email, "*He sure as hell didn't talk like one (or maybe that's just me showing how out of touch I am)*". Mr Lee perceives Cr Sullivan's comments to mean Mr Lee did not qualify to be a resident of Fremantle as he did not sound like someone from Fremantle. He then goes on to link Cr Sullivan's comments to expressing inflated sense of self, place and privilege and assigning a level of belonging to another person, especially to a descendent of the original inhabitants of Australia. Mr Lee then states cultural sensitivity training is a must for Cr Sullivan. There is no evidence in Cr Sullivan's email that raises concerns regarding cultural insensitivity or that Cr Sullivan had knowledge that Mr Lee is of First Nations descent. The comments made by Cr Sullivan may be perceived to be inappropriate, but notwithstanding his admission that he was frustrated with Mr Lee, his comments are not considered to be to the level on which to make a finding and may also be perceived as communicating that Mr Lee did not have a local accent, or that Cr Sullivan was not up-to-date with the demographics of Fremantle, despite his position of councillor. Overall, the approach of Mr Lee in this regard of linking the comments to cultural insensitively may support the vexatious nature of his complaints.
- 4.166 The Investigator notes that the Complaint About Alleged Breach Form submitted by Mr Lee refers to 'Please see attached documentation' in relation to the form requiring full details of the alleged breaches.
- 4.167 Analysis provided relates to breaches that Mr Lee claims have occurred as attached to his original complaint form dated 31 October 2021 and additional letter of complaint, information and evidence dated 6 December 2021.
- 4.168 The Investigator notes that Mr Lee's complaint against Cr Sullivan relates to matters regarding a parking infringement dated 26 February 2021, however, Mr Lee presents a number of allegations regarding the behaviour of Cr Sullivan linked to actions Cr Sullivan took or made during the chronology and dealings of the matter.
- 4.169 Within the additional information provided by Mr Lee dated 6 December, a letter of additional information and evidence and chains of emails was provided in which Mr Lee states specific sections of the Code of Conduct alleged to have been breached by Cr Sullivan.
- 4.170 The Council Code of Conduct Division 3 Complaint Handling Policy states, "*The objective of this Policy is to deal with matters relating to breaches of the behaviour requirements outlined in Division 3 of the Code of Conduct, and all Complaints under this Policy should be made with that objective in mind*".
- 4.171 We were instructed to deal with the complaint under the Council Policy, Council Code of Conduct Division 3 Complaint Handling Policy adopted by Council on 23 June 2021 (FPOL2106-5), which was communicated to Mr Lee and Cr Sullivan in the introductory and offer of mediation letter.
- 4.172 The complaint, analysis and finding may only relate to whether or not any of the alleged behaviour by Cr Sullivan failed to meet the expectations outlined in Division 3 of the Code of Conduct. The overview of Division 3 sets out the requirements relating to the behaviour of council members, committee members and candidates and is the mechanism for dealing with alleged breaches of those requirements.

- 4.173 Mr Lee provides details of other alleged sections relating to Division 2. General Principles of the Policy, however, these are principles set out to guide the behaviour of council members, committee members and candidates, whereas Division 3 sets out requirements relating to behaviour.
- 4.174 The relevant areas of Division 3, as alleged by Mr Lee and considered when making a finding are as follows:
- **Section 8(1)**
 - (a) must ensure that their use of social media and other forms of communication complies with this code; and
 - (b) must only publish material that is factually correct.
 - **Section 8(2)**
 - (b) must comply with all policies, procedures and resolutions of the local government.
 - **Section 9**
 - (c) must not use offensive or derogatory language when referring to another person.

Section 8(1) and (b) – use of social media and only publishing material that is correct

- 4.175 There is evidence available to show that Ms Kriznic published a letter created by Mr Lee that was addressed to Cr Sullivan and others, including Ms Kriznic. Cr Sullivan went on to make a comment on Facebook questioning whether permission by Mr Lee had been provided to Ms Kriznic to publish the letter. Whilst the Investigator does not make comment on whether or not Mr Lee or Cr Sullivan manipulated the issue to damage or smear the reputation of Ms Kriznic or Cr Sullivan, Cr Sullivan's Facebook comments are found not to be to the level of making a finding.
- 4.176 The evidence provided by Mr Lee consisting of screenshots of comments Cr Sullivan made to Ms Kriznic on Facebook are consistent with Cr Sullivan's written response and confirm that Cr Sullivan merely responded to comments placed onto Facebook by Ms Kriznic, which Cr Sullivan understood related to a private letter Ms Kriznic was copied into in an email. There no evidence to support that Cr Sullivan acted contrary to the requirements of the Code in this regard.
- 4.177 In relation to whether Cr Sullivan published factually incorrect information, his comments on Facebook sought to inform potential readers that he assumed staff members had or were dealing with the infringement matter and were made with the intention of publicly acknowledging that the process may have stalled, but was to be actioned to be resolved. The evidence does not support that Cr Sullivan published factually incorrect information to the level required on which to make a finding.

Section 8(2) – must comply with all policies, procedures and resolutions of the local government

- 4.178 Mr Lee provides evidence related to a number of alleged failures on behalf of Cr Sullivan, relating but not limited to failing to follow through on commitments, failing to alert Mr Lee that no action had been taken in relation to the original infringement and failing to respond to his email, but instead passing the matter to Mr Garbett.

- 4.179 In relation to a complaint that Cr Sullivan failed to deliver on the progress of withdrawing the infringement, Cr Sullivan is not delegated to manage the infringement appeal process and felt unreasonable to be held accountable for such having notified Mr Flindell of the matter and therefore a finding cannot be made.
- 4.180 In relation to a complaint that Cr Sullivan made factually incorrect statements regarding the evidence relating to the infringement incident, this is felt to be irrelevant as it had no bearing on the available evidence and potential outcome of the infringement appeal and the comments were based upon information known to him at the time and his own understanding of the incident.
- 4.181 The City of Fremantle website provides easy to navigate information regarding how to lodge an appeal relating to an infringement and a link titled 'Complete the online form', which is visible under the heading 'Lodge your appeal'. At the time of writing this report, the link was active.
- 4.182 Whilst Cr Sullivan may have been better served to have referred Mr Lee to the website to lodge an appeal, there is evidence available that he referred the matter to Mr Flindell, Team Leader Parking. The Investigator does not have information regarding which officer is delegated to consider appeals, but it is likely that Mr Flindell's position of employment would be delegated or involved in the process. There is evidence available that Mr Flindell was looking into the matter and no evidence that Cr Sullivan intended to cause detriment to Mr Lee in relation to the infringement or by stalling the process. The fact Cr Sullivan did not ensure that the process was completed is insufficient on which to make a finding.
- 4.183 It is appropriate to consider that parties in addition to Cr Sullivan, including Mr Flindell and Mr Lee, could have provided or requested updates regarding the review of the infringement, noting that a formal appeal lodgement did not occur and it may be argued that Mr Lee contributed to how the situation evolved through his timely telephone call to Cr Sullivan following the incident, where he spoke about the immediate withdrawal of the infringement, the removal of his business from Fremantle, which may be taking as an attempt to influence the withdrawal of the infringement and other retail issues. Whilst the information presented to Cr Sullivan at the time may have influenced his decision to attempt to assist Mr Lee with having the infringement reviewed, his actions and behaviour are found not to have deviated sufficiently to prove a breach of the Code.
- 4.184 In relation to Cr Sullivan passing the matter to Mr Garbett, it is reasonable to conclude that in doing so, Cr Sullivan's decision was appropriate. This is supported by his knowledge that Mr Lee was to make a formal complaint against him and the content of Mr Lee's email to Cr Sullivan dated 28 September 2021, in which he copied others into the email, was also construed by Cr Sullivan as Mr Lee seeking to publicise his complaint and or seek to tarnish the reputation of Cr Sullivan. The evidence available does not support making a finding.

Section 9 – must not use offensive or derogatory language when referring to another person

- 4.185 Cr Sullivan states that internal emails were only intended as internal conversations, however it is appropriate to consider his behaviour in relation to those emails and whether his behaviour may be a breach of the Code.
- 4.186 Notwithstanding that Cr Sullivan was frustrated with and increasingly losing respect for Mr Lee and felt that Mr Lee's complaints were bordering on being vexatious, there are a number of internal email communications sent by Cr Sullivan that by his own admissions were inappropriate and outside the spirit of the Code.

4.187 Email communications identified to have fallen short of the behaviour requirements of the Code relate to the following:

- Email sent to Mr Hammond on 5 March 2021, in which Cr Sullivan states, “*He reminds me of a younger [Redacted] just a lot more arrogant, self-important and zero patience if he’s not getting what he wants (the trump school of business). I might have to wear him out*”.
- Email sent to Mr Garbett on 29 September 2021, in which Cr Sullivan states, “*You may have to fill out the form for him as I get the impression he’s not used to having to do such things*”.

4.188 We find that Cr Sullivan’s behaviour relating to email communications to internal staff members was contrary to the requirements of the Code, as he has engaged in derogatory language when referring to another person.

5. RECOMMENDATIONS

5.1 A determination has been made that Cr Sullivan has breached section 9 (c) of the Division 3 – Behaviour of the Council Member, Committee Member and Candidate Code of Conduct.

5.2 We recommend that Part 6 Division 3 – Behaviour of the Council Member, Committee Member and Candidate Code of Conduct requires an action plan under the Policy. Such an action plan requires the Investigator to consult with Cr Sullivan to provide the opportunity to be involved in matters such as the timing of meetings or training.

5.3 We recommend that Cr Sullivan undertake counselling as outlined in section Part 6 – Action Plans, 6.2 of the Policy regarding his use of derogatory language when referring to Mr Lee in internal email communications.

5.4 We recommend that the counselling referred to as an action plan, may consist of discussions held between the CEO and Cr Sullivan to explore his behaviour regarding the use of derogatory language when referring to another person in email communications. This will serve as a strategy to improve Cr Sullivan’s behaviour in his email communications and minimise the risk of further complaints being received of a similar nature.

6. ATTACHMENTS

The following documents are attached to this report:

1. Complaint About Alleged Breach Form dated 31 October 2021
2. Offer of mediation – Mr Lee
3. Offer of mediation – Cr Sullivan
4. Letter to Mr Lee dated 19 November 2021
5. Letter to Cr Sullivan dated 19 November 2021
6. Written response dated 5 December 2021
7. Written response dated 10 December 2021
8. City of Fremantle Council Members Committee Members and Candidates Code of Conduct
9. Council Policy - Council Code of Conduct Division 3 Complaint Handling Policy
10. Email from Mr Lee to Cr Sullivan dated 28 September 2021
11. Response from Mr Garbett acting CEO dated 29 September 2021
12. Email to Mr Garbett dated 6 October 2021
13. Facebook screenshots
14. WhatsApp correspondence
15. News article
16. Highlighted copy of the Code of Conduct
17. Additional evidence letter dated 6 December 2021
18. Email chain A
19. Email chain B
20. Email chain C
21. Email chain D



Appendix 3

Investigations full report, minus attachments

Council Member: Cr Rachel Pemberton

Date of decision: 22 June 2022

Private and Confidential



Our Ref: 6683/22 F/JB

1 June 2022

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Dear Ms Clarke

Council Code of Conduct Division 3 Complaint relating to Cr Rachel Pemberton

The following report details the conduct and finding of an investigation into a complaint lodged against Cr Rachel Pemberton by Mr Andrew Luobikis, a ratepayer of the City of Fremantle.

The complaint related to comments attributed to Cr Pemberton during a Finance Policy, Operations and Legislation committee meeting held on 13 April 2022. Mr Luobikis stated he found that Cr Pemberton's comments relating to proposed naming conventions for street signs as '*Pale, Stale and Male*' was offensive to past and present male members of the community. Mr Luobikis submitted that Cr Pemberton's comment did not respect and did not value the diversity in the Fremantle community thereby failing to treat others with respect, courtesy, and fairness.

A copy of the Mr Luobikis' complaint contained in Complaint About Alleged Breach Form - Code of Conduct for council members, committee members and candidates dated 20 April 2022 has been reproduced as **Annexure 1** of this report.

In accordance with the City of Fremantle Council Code of Conduct Division 3 Complaint Handling Policy, the matter was referred to Joe Baskwell, a licensed Investigator employed by Australia Wide Investigations Pty Ltd to conduct an independent investigation.

The finding of the investigation is that the allegation as submitted in the complaint, namely that Cr Pemberton's comments contravened 9 (c) of the Code of Conduct wherein she used offensive or derogatory language when referring to another person cannot be substantiated.

Cr Pemberton did not use the comment in relation to another person as prescribed in the complaint.

The facts and evidence are such that while it is agreed that Mr Luobikis was genuinely aggrieved by the comment, it was accepted the context in which the comment was made was not to cause offence. Cr Pemberton's explanation that the comment was intended to be a descriptive commentary on structural and systemic approaches which do not promote diversity rather than a lack of respect, courtesy, and fairness to any individual is regarded as reasonable under the circumstances.

The Investigator has concluded that while Cr Pemberton did not intentionally cause distress, her comments could constitute an inadvertent failure on her part to meet her obligations under the Code of Conduct to treat others with respect, fairness, and equality. It is noted that Cr Pemberton has accepted full responsibility for her action and is willing to take reasonable action to address the situation.

While Cr Pemberton was willing to participate in mediation, Mr Luobikis did not wish to do so.

Based on the above it is recommended that the Complaints Officer consider Mr Luobikis' request for a retraction by Cr Pemberton and in consultation with her take such action as deemed appropriate under the circumstances.

Investigation

The Investigation was conducted in accordance with Council Code of Conduct Division 3, *Complaint Handling Policy*.

Accordingly, the Investigator confirmed that the Complaints Officer had:

- a) contacted the complainant (Mr Luobikis) to confirm receipt of the complaint.
- b) as part of the acknowledgement provided Mr Luobikis with a copy of the policy.
- c) provided Cr Pemberton with a copy of the complaint; and
- c) sent the Investigator the complaint together with the details of the alleged breach and any supporting evidence provided by the Complainant.

Methodology

Prior to meeting the parties, the Investigator viewed a video recording of the Finance Policy, Operations and Legislation (**FPOL**) committee meeting held on 13 April 2022 which confirms that Cr Pemberton makes the comments detailed in Mr Luobikis' complaint.

These comments were made in relation to item FPOL2204-3 PRIVATE ROAD NAME – 119 HOPE STREET, WHITE GUM VALLEY.

Meeting Recording:

<https://youtu.be/KWoSWRYfhE?t=823> (13:43 into recording).

The Investigator then contacted both the Complainant (Mr Luobikis) and the Respondent (Cr Pemberton) to confirm his appointment and arrange to meet each of them individually.

Given that Mr Luobikis was unavailable to be personally interviewed before the Investigator met with Cr Pemberton, the Investigator engaged in a preliminary telephone conversation in order to determine the outcomes Mr Luobikis was seeking through the process.

Mr Luobikis later specified what he wanted in documentation provided to the Investigator following their meeting in Fremantle on 26 May 2022.

Meeting Cr Pemberton

The Investigator met with Cr Pemberton at the Walyalup Civic Centre Fremantle on Tuesday 17 May 2022.

During their discussion Cr Pemberton:

- (i) Confirmed she had made the comment detailed in the complaint and took ownership of that comment. She did however qualify her comments in the context in which they were made.

- (ii) Stated categorically that she had not intended to cause offence to any individual or group of individuals by her comment. She unreservedly stated that any such offence was regretted on her part. She noted the term *pale, male, and stale* is commonly used when diversity issues are debated.
- (iii) Stated that as a City Councillor for 10 years, she has been frustrated by the lack of progress in certain aspects of the efforts to support and encourage diversity in the community. Cr Pemberton suggested this is reflected in the options that had been tabled for street names, which she believed did not reflect the diversity opportunities that are available.
- (iv) Submitted that her comments were intended to be a descriptive commentary on structural and systemic approaches which do not promote diversity rather than a lack of respect, courtesy, and fairness to anyone. In particular, the comments were not directed at Mr Luobikis or any individual or group. Cr Pemberton said she used the term as a reference to a wider cultural shift away from the traditional dominance and structural advantage for white males.
- (v) Cr Pemberton advised the Investigator that she is a trainer in diversity in the workplace. She therefore understands that such comments can cause offence and that when this occurs the situation needs to be addressed and dealt with.
- (vi) Cr Pemberton stated she was '*happy to eat her words*' and willing to apologise to Mr Luobikis in person. She was willing to participate in a mediation process.

Cr Pemberton noted that there was history between her and Mr Luobikis inferring that his complaint may be motivated by an element of personal animosity by him towards her.

A copy of an endorsed summary of the Investigator's meeting with Cr Pemberton is enclosed as **Annexure 2** of this report.

Meeting Mr Andrew Luobikis

The Investigator met with Mr Andrew Luobikis at the Esplanade Hotel Fremantle on Thursday 26 May 2022.

During their discussion the Investigator verbally provided Mr Luobikis with the points raised by Cr Pemberton in her response to the complaint.

In doing so the Investigator emphasised that:

- Cr Pemberton had not intended to cause any offence by her remarks; she pointed out this phrase is not hers but rather a colloquial term that is widely used in contemporary discussions relating to male dominated sectors.
- She had explained the context of the complaints was to be a descriptive commentary on structural and systemic approaches which do not promote diversity rather than a lack of respect, courtesy, and fairness to any individual.

- Cr Pemberton acknowledged she understood that her comments could have caused offence and had offered to consider any reasonable request from Mr Luobikis to address the situation.

While acknowledging Cr Pemberton's comment is a common phrase used by many, it is Mr Luobikis' contention that this does not justify its use when she is referring to residents/constituents in her position as a City Councillor. He argues there is no need to denigrate one group in society to promote another.

Mr Luobikis expressed the view that the term *Pale, Stale, Male* tells young white men that their contribution and hard work will never be valued as highly because of an accident of their birth. He further suggested that mature aged white men are being made to feel undervalued in the pursuit of equality.

A copy of an endorsed summary of the Investigator's meeting with Mr Luobikis is enclosed as **Annexure 3** of this report.

Mr Luobikis also expressed his disappointment that Cr Jenny Archibald, who was the Chair of the FPOL committee or the Mayor Hannah Fitzhardinge who was in attendance as an ex-officio member did not call Cr Pemberton to order over the comment.

In doing so Mr Luobikis referred to section 8.1 (1) of the City of Fremantle Meeting Procedures Policy 2018.

Proposed Resolution

Following his meeting with the Investigator, Mr Luobikis submitted a proposed statement to be read by Cr Pemberton at the next Ordinary Meeting of Council. He also sought a commitment from her to undergo training.

A copy of the statement proposed by Mr Luobikis for Cr Pemberton to issue is enclosed as **Annexure 4** of this report.

He requested that the Chief Executive Officer of the City of Fremantle should arrange for the notice of public apology to be published:

- a. on the Facebook Page of the City of Fremantle in no less than 10-point font size;
- b. and in an appropriate place on the website of the City of Fremantle in no less than 10-point font size; and
- c. in the next occurring issue of any City of Fremantle public newsletter (whether in electronic or print copy) in no less than 10-point font size or WA newspaper.

Mr Luobikis stated he believed the council needed to sanction Cr Pemberton on behalf of the community and make a statement that they do not support this behaviour. He further suggested the Mayor and chair of FPOL Cr Archibald need to take responsibility for not sanctioning Cr Pemberton at the time.

A copy of Mr Luobikis' email dated 26 May 2022 containing his suggestions has been reproduced as **Annexure 5** of this report.

Consideration

The following facts and evidence were considered by the Investigator in reaching a finding.

1. The fact that Cr Pemberton used the term *pale, male and stale* during the course of the Fremantle Council Finance Policy, Operations and Legislation committee meeting held on 13 April 2022 is not disputed.
2. The complaint lodged by Mr Andrew Luobikis is therefore considered to be valid and is not regarded as vexatious or mischievous.
3. Cr Pemberton's assertion that the term she used is commonly used in discussions regarding diversity has been confirmed by online research. The term is often attributed to Nasa administrator Daniel Goldin who, in 1992, criticised the lack of diversity in the space industry.
4. Video evidence supports the assertions made by Cr Pemberton that her comments were intended to be a descriptive commentary on structural and systemic approaches which do not promote diversity rather than a lack of respect, courtesy, and fairness to anyone. It is confirmed that the comments were not directed at any individual.
5. Given it has been accepted that the context of Cr Pemberton's comments was not to intentionally offend, suggestions that the Chair of the Finance Policy, Operations and Legislation committee or the Mayor failed to comply with section 8.1 (1) of the City of Fremantle Meeting Procedures Policy 2018 is not considered to be valid.
6. Cr Pemberton has acknowledged that she inadvertently made a comment that could cause offence and has offered to consider taking any reasonable action to address the concerns raised.
7. Mr Andrew Luobikis has specified the course of action he would like taken by Cr Pemberton and the Council by way of a widely distributed retraction.
8. Mr Luobikis further requested that Cr Pemberton undertake training.

Finding and Recommendation

Based on the facts and evidence considered in relation to this matter, the Investigator has concluded that Cr Pemberton inadvertently made a comment that caused offence for which she is willing to accept full responsibility.

The Investigator notes that as a trainer in workplace diversity, Cr Pemberton already has the skills and knowledge in regard to diversity and suggests that any further training would be unnecessary. It is the Investigator's view that the experience of her participation in this investigation would serve as a reminder to Cr Pemberton and other councillors for the need to exercise a degree of sensitivity when discussing potentially controversial topics.

The finding of the investigation is that the allegation as submitted in the complaint, namely that Cr Pemberton's comments contravened 9 (c) of the Code of Conduct wherein she used offensive or derogatory language when referring to another person cannot be substantiated.

Cr Pemberton did not use the comment in relation to another person as prescribed in the complaint.

The facts and evidence are such that while it is agreed that Mr Luobikis was genuinely aggrieved by the comment, it was accepted the context in which the comment was made was not to cause offence. Cr Pemberton's explanation that the comment was intended to be a descriptive commentary on structural and systemic approaches which do not promote diversity rather than a lack of respect, courtesy, and fairness to any individual is regarded as reasonable under the circumstances.

The Investigator has concluded that while Cr Pemberton did not intentionally cause distress, her comments could constitute an inadvertent failure on her part to meet her obligations under the Code of Conduct to treat others with respect, fairness, and equality.

It is noted that Cr Pemberton has accepted full responsibility for her action and is willing to take reasonable action to address the situation.

While Cr Pemberton was willing to participate in mediation, Mr Luobikis did not wish to do so.

Based on the above it is recommended that Cr Pemberton acknowledge her mistake and provide an apology that reflects this acknowledgement at the next available meeting of Finance Policy, Operations and Legislation committee meeting, the forum in which the comment initially was made.

Conclusion

This now concludes this investigation. The matter is now referred for your consideration and action.

Should you require any further information or clarification, please contact the writer at this office or on mobile service 0419 046 019.

Yours faithfully



Joe Baskwell
Australia Wide Investigations Pty Ltd