DEVELOPMENT & RESOURCES

DECISIONS BULLETIN

for the period 1 January 2012 - 31 January 2012

This Bulletin contains summaries of all written reasons for decisions published by the Tribunal in the Development & Resources stream for the period 1 January 2012 - 31 January 2012. The full text of decisions and reasons can be found on the Tribunal's website at www.sat.justice.wa.gov.au. If you would like the monthly bulletin emailed to you directly, please enter your email address and details at our subscription page.

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LOCAL GOVERNMENT ACT 1995 (WA)

YATES AND LOCAL GOVERNMENT STANDARDS PANEL [2012] WASAT 23
16 JANUARY 2012
JUDGE D R PARRY (DEPUTY PRESIDENT)

Local government - Regulation of councillors - Minor breach - Banners authorised by councillor placed on boundary fence of reserve under the care, control and management of local government - Whether boundary fence is a 'resource' of local government - Words & phrases: 'resource'

The Local Government Standards Panel found that Mr Donald Yates, when a council member of the Town of Bassendean, committed a breach of reg 8 of the Local Government (Rules of Conduct) Regulations 2007 (WA) by using a local government resource, namely, the boundary fence of Bassendean Oval, without authorisation, for the purpose of the interests of a community group known as 'Fresh Faces, New Directions', by placing or causing to be placed four banners on the boundary fence. Mr Yates sought review by the Tribunal.

At the final hearing on 25 October 2011, Mr Yates raised a question about whether the fence to which the banners were attached was owned by a football club and was, therefore, not a local government resource. The hearing was adjourned to 16 January 2012 to allow Mr Yates to clarify his contention and to allow the Local Government Standards Panel, and the Attorney-General for Western Australia, who intervened, to respond. At the reconvened hearing, Mr Yates gave evidence that he had placed two banners on fences at Bassendean Oval owned by the football club and had given two banners to members of a local netball team sponsored by Fresh Faces, without any express instruction as to what to do with them, together with pamphlets to distribute at a football match at Bassendean Oval that day. Mr Yates claimed that the members of the netball team exercised ‘initiative’ by moving the two banners he had placed on the club fence to a fence on land under the care, control and management of
the Town of Bassendean and by also placing the two banners he gave to them on another part of the same fence under the care, control and management of the Town.

Following the hearing, the Tribunal gave an oral decision in which it found that Mr Yates had placed or caused to be placed all four banners on the boundary fence of Bassendean Oval which was under the care, control and management of the Town of Bassendean, in contravention of reg 8. The Tribunal did not accept the veracity of Mr Yates’ evidence about having placed two of the banners on a fence owned by the football club and about not having given any express instructions to the members of the netball team to place the banners on the fence under the care, control and management of the Town of Bassendean. However, even if his evidence had been accepted, giving the banners to the members of the netball team, and their placement on the fence, would have involved indirect use of a local government resource in contravention of the regulation. The Tribunal also determined that the boundary fence on land under the care, control and management of the Town of Bassendean is a ‘resource’ of the Town. The Tribunal therefore affirmed the decision of the Local Government Standards Panel.

Finally, the Tribunal noted that the circumstances of this case highlighted the question of whether consideration should be given to amending the Local Government Act 1995 (WA) to enable an order to be made that, although a complaint has been established, none of the specified sanctions should be imposed, rather than dismissing the complaint.

CORR AND LOCAL GOVERNMENT STANDARDS PANEL [2012] WASAT 14
31 JANUARY 2012
JUDGE T SHARP (DEPUTY PRESIDENT)

Local government - Rules of Conduct - Information acquired from confidential documents of Council - Whether disclosure of information was a breach of Rules of Conduct - Whether information disclosed was in the public domain - Minor breach

The Local Government Standards Panel made a finding that a Councillor of the City of Joondalup, Mr Corr, had breached the Local Government (Rules of Conduct) Regulations 2007 (WA) by disclosing information from confidential documents tabled at a meeting of Council which was closed to members of the public. The Standards Panel ordered that Mr Corr be publicly censured. Mr Corr sought a review by the Tribunal of the Standards Panel’s decision.

The Tribunal considered whether the information which Mr Corr disclosed was ‘information’ within the meaning of the Regulations, whether he had in fact derived that information from the documents in question and whether the documents were confidential, again within the meaning of the Regulations.

The Tribunal upheld the decision the Standards Panel, both in respect of its finding that there had been a breach of the Regulations and in respect of the sanction for that breach.
This is a review of the respondent's decision to refuse development approval for a change of use of premises to accommodate a karaoke lounge in a highway frontage commercial zone in Bentley.

The respondent refused the proposal on grounds that it would impact detrimentally on the amenity of the locality because of nuisance generated by noise and traffic.

The applicant demonstrated in evidence that the karaoke lounge was limited in scale, able to comply with the Environmental Protection (Noise) Regulations 1997 (WA) in respect of noise sensitive premises in the locality and conformed with relevant town planning scheme requirements.

The Tribunal was satisfied that issues raised in respect of traffic nuisance and possible antisocial behaviour were of limited significance and capable of being practically managed.

The application for review was upheld and the proposed change of use was conditionally approved.