

THE PERTH INQUIRY: NOSE IN FINGERS OUT



ABOUT THE AUTHOR

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'Good Governance', 'transparent', 'accountable', 'equitable', 'efficient', 'participatory' are all buzzwords and catch phrases associated with good government. But what does it really mean? How is a local government, comprised of the council and the administration, supposed to work seamlessly together? It is clear that throughout history, local governments have been fraught with the difficulty of reconciling roles and responsibilities between the council and the administration. What has changed over the years and what can we learn?

Taking a walk back in time, in November 1938, the report of the Royal Commission appointed to inquire into the Perth City Council was released. It centered on that famous clock we all know, protruding from London Court. That clock protrudes 60cm into Hay Street on one side and St Georges Terrace on the other side of London Court, contrary to legislation.

At that time, Harold Boas, councilor at the City of Perth, also an architect, had offered to be a consultant on the project to assist to obtain approvals for plans submitted to the City, for a fee of £2,500. His proposal was rejected by the developer. Shortly thereafter the plans were submitted to the works committee at the City of Perth of which Cr Boas was a member together with Cr Raphael.

After the refusal of the application, Cr Raphael recommended to the developer to appoint Cr Boas as consulting architect to ensure that the plans included "local advice". Cr Boas again proposed to act in an advisory capacity, offering his knowledge of bylaws, and said that using his services would be "quite usual".

The Perth representative of the developer sent a telegram to the developer in Melbourne as follows:

"... preliminary plans London Arcade were submitted to Perth Council yesterday. Number of councilors headed by Boas objected to issue building permit. Have diplomatically interviewed Boas who is prepared to act for £750 as an advisory architect."

Cr Boas was then appointed, strangely the same plans were then again submitted, but this time in colour, and two weeks later those plans were approved by Council, with both those clocks still encroaching into Hay Street and St Georges Terrace contrary to the legislation.

A complaint was made by the then Town Planning Commissioner Davidson, and a Royal Commissioner of the Inquiry was set up to investigate. It found that:

- Cr Boas was not actuated by any improper motive; and
- Mr Davidson was motivated to complain by ill-will towards Cr Boas.

Cr Boas explained to the Inquiry that the main reason Mr Davidson exhibited intense personal abuse towards him was because he was the “only person associated with local government who had resisted his efforts as Town Planning Commissioner to build around himself an edifice which was contrary to every By-Law in existence”.

Cr Boas continued to say, “I have been consistently fighting to prevent him building up a super authority over the Local Governments of Western Australia. The time has arrived when the local authorities must consider their position.”

Fast forward, there has been significant change in governance, echoed by the legislation; the Municipal Corporations Act (MCA) was replaced by the Local Government Act 1960 and then later, the Local Government Act 1995 (LGA). Now again, the LGA is under review.

The most notable changes have been the changes in roles and responsibilities. Under the MCA, the Council held the majority of the power, in 1960 there was a movement to the delegation of powers, moving to a more corporate model focusing on efficiency, and in 1995 there became the identification of roles and responsibilities, resulting in a clear divide between the Council and the administration.

It is true that the Local Government Act was promulgated before the significant strides forward in Corporate Governance in the late 90's. We now see that all legislation that deals corporations sets out “principles” of good governance requiring the exercising powers and discharging duties with degree of care and diligence of a reasonable person in that position, making a business judgement in good faith for a proper purpose without a material personal interest in the subject matter of the judgment; and requiring directors or the management committee of an Association to inform themselves of the subject matter as is reasonably, rationally believing that the judgment is in the best interests of the corporation.

In an obtuse way this requirement is included in the Local Government (Rules of Conduct) Regulations 2007, regulation 3 sets out “General principles to guide the behaviour of council members” this includes the requirement to act lawfully, base decisions on relevant and factually correct information as well as, quite helpfully, “not be impaired by mind altering substances.”

There is a careful balance between the council and the administration, and both ought to be working to a common goal, in the interests of the district. Where the wheels fall off, commonly occurs when either:

1. Councilors are so divorced from operational matters, that their lack of knowledge can be an impediment to ensuring good government; or

2. Councilors become involved in operational matters that their policy setting strategic role is relegated as they intermeddle with operational matters.

Ultimately, the balance is crucial, this balance is best reflected in the term “nose in, fingers out” approach. This reflects the requirement for the councilors to be aware of the operational matters, but not to get involved beyond policy setting and strategic guidance.

Of course, the recent Perth Inquiry has found some councilors to have had their “fingers in” for personal benefit.

- Councilor Lily Chen, used her title of “City of Perth Councilor” on her advertising material for her legal and migration business and entertained persons in the Council dining room for personal benefit. The Inquiry found that Councilor Chen used her position to advance her own personal business interests contrary to regulation 7 of the Conduct Regulations.
- The Inquiry also found that the Lord Mayor, Ms Scaffidi, had “often interfered in matters which should have been left to administration”.

Equally the administration overstepped its role. The appointment of the CEO in any capacity, acting or otherwise, is by virtue of Section 5.36 of the Local Government Act the sole province of the Council, yet the Administration appointed acting CEO’s contrary to the requirements of the Local Government Act.

The Executive Leadership Group of the City of Perth enacted its Crisis Management Plan when it found that members of the Council had called a Special Council meeting for the purpose of appointing the CEO that those members wished to be appointed. Ultimately after examining the evidence the Inquiry found that this was done to possibly provoke or encourage the Minister to suspend Council.

History seems to repeat. Just as in 1938 there appeared to be personal benefit and intermeddling in administration giving rise to opportunity for improper conduct so too in 2018 there was intermeddling in administration; what is consistent is the age old problem of failing to appropriately recognise roles and responsibilities of each party.

As the 2020 Perth Inquiry stated, good governance requires “good leadership, clear and timely decision-making, a strong vision, a sound strategy and an appropriate system of checks and balances. It also requires that the structures, systems and policies underpinning each of these things is firmly in place, respected and followed, to make sure the organisation is run efficiently and effectively”.

The 2020 Perth Inquiry also noted that “strong governance models are of little value if organisations do not encourage their officers to take responsibility for issues within their control and to actively deal with matters as they arise”.

Put simply, a Councilor’s role is to strategically govern and set policies to guide the administration. Councilors are to have their nose in and fingers out. A councilor becoming involved in an operational matter, for example, intervening on an administrative process on the request of a single ratepayer, is not acting appropriately or in the best interests of the district as a whole.

There have been many other Inquiries throughout history, and the legislation will continue to evolve, but the single overarching lesson from the City of Perth Inquiry, which has also prominently featured in many others, is the principle of “Nose In, Fingers Out”.