Court copy

| MAGISTRATES COURT of WESTERN AUSTRALIA<br>**PERTH REGISTRY** | **Court number/s** | PE3280/2023 |
|---|---|---|
| | **Jurisdiction** | ☒ **Criminal** ☐ **Civil** |
| | **Lodgment Date** | 13.10.2023 |

# WRITTEN SUBMISSIONS

| **Case Details** | **DEPARTMENT OF TRANSPORT** **vs** **DAWN MICHELLE KELLY** |
|---|---|
| | **Submissions Lodged for Magistrate** OLIVER |

| **Details of Lodging Party** | | | | |
|---|---|---|---|---|
| | **Name:** | Department of Transport | Date | 13.10.2023 |
| | **Address:** | 140 William Street | | |
| | **Email:** | Prosecutions@transport.wa.gov.au | | |
| | **Contact No:** | (08) 65517010 | | |

| **HEARING DETAILS**<br>**This case is listed in Court on:** | | | | |
|---|---|---|---|---|
| **Date and time** | Date | 15.12.2023 | Time | 9:30am |
| **Place** | **Central Law Courts, 501 Hay Street, Perth WA 6000** | | | |

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IN THE MAGISTRATES COURT OF WESTERN AUSTRALIA
AT PERTH

PE 3280/2023

BETWEEN

**DEPARTMENT OF TRANSPORT** PROSECUTION

- and -

**DAWN MICHELLE KELLY** ACCUSED

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**PROSECUTION'S SUBMISSIONS**

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Date of Document: 13 October 2023

Filed on behalf of: Prosecution

Date of Filing: 13 October 2023

Prepared by:
Bavani Veloo
Department of Transport
140 William Street
Perth WA 6000

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Ref: 3539489

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**Issues for consideration**

1. Whether the prosecution can rely on the certificate tendered as evidence at trial on 19 September 2023 (*Certificate*) issued under section 110(1) of the *Road Traffic (Administration) Act* 2008 (the *RTA Act*), without calling a witness to give evidence of the matters contained in the *Certificate*, to prove the elements of the simple offence under section 10(6) of the *Road Traffic (Vehicles) Act* 2012 (the *RTV Act*) being that:

   (a) A person was issued a notice under section 10(3)(b) of the *RTV Act* (Notice) requiring that an application for the transfer of the licence be made;

   (b) The person did not make the application for transfer (which is the payment of the amount in the Notice) within 28 days after the Notice was issued.

2. Whether, based on the *Certificate*, the accused has a case to answer.

**Background**

3. Dawn Michelle KELLY (the accused) is charged with an offence under section 10(6) of the *RTV Act*. The accused elected to deal with this matter in court on 15 December 2022. The matter was listed for a first appearance on 28 March 2023, and upon a plea of not guilty, the matter was adjourned for trial to 25 July 2023.

4. On 25 July 2023, the prosecution intended to rely solely on tendering a certificate issued under section 110 of the *RTA Act*, including the attachment referred to in that certificate, without calling a witness to give evidence of the matters contained in that certificate.

5. The Court indicated that section 110(3) of the *RTA Act* does not allow a certificate to go beyond proving whether a vehicle was registered or was not registered and who the registered holder of the vehicle was, and a witness needs to be present to produce the documents that give rise to the facts in a certificate.

6. In addition, the Court requested a copy of the delegation authority and any authority in support of the prosecution's position to rely on a certificate alone without calling a witness. The Court further criticised the prosecution for not providing disclosure to the accused prior to the hearing.

7. The prosecution informed the Court that it was not aware of any cases and made an application to adjourn the matter to provide full disclosure to the accused, to make further inquiries and seek instructions in relation to section 110 of *the RTA Act* and whether to call witnesses at the next hearing date. The adjournment was granted by the Court and the trial was re-listed for 19 September 2023.

8. On 19 September 2023, the prosecution informed the Court that disclosure was complied with on 29 August 2023 as ordered, and that the prosecution was ready to proceed by relying on a certificate issued under section 110 of the *RTA Act*, without calling a witness to tender that certificate or give evidence of the matters contained in that certificate.

9. The Prosecution also informed the Court that after disclosure was provided the certificate was amended to expressly state the subsection the certificate was issued under, and a sentence was added in paragraph [6] of the certificate for clarification purposes. The *Certificate* was provided to the accused on the morning of the hearing.

10. The prosecution provided opening submissions, after which the prosecution opened its case and tendered the *Certificate* without the attachments. The prosecution also provided the Court and the accused with a copy of the instrument of delegation authority. The *Certificate* was marked for identification only.

11. The Court expressed a view that the legislation is not designed to be used in the way the prosecution is using it and made orders for the prosecution to file written submissions by 13 October 2023, addressing why the prosecution can lawfully proceed in the manner it seeks to do so, and reserved a decision on this issue for 15 December 2023.

**The relevant statutory framework**

12. Section 110(1) of the *RTA Act* provides:

> *'for the purposes of a prosecution for an offence under a road law or verifying the accuracy of information provided to corresponding authority under section 13(1) or to another Australian driver licensing authority under section 14(2), the CEO or a person authorised by the CEO may issue a certificate stating that a fact specified in the certificate appears in or is derived from the driver's licence register or another record kept by the CEO or the Commissioner for Main Roads under a road law'.*

13. Subsection (2) provides that:

> *'a certificate purporting to be issued under subsection (1) or under a law in force in another jurisdiction that corresponds to that subsection is evidence of any fact stated in the certificate'.*

14. Section 4 of the *RTA Act* provides for the following definitions: -

    (a) *'road law'* includes the *RTV Act*; and

    (b) *'records'* means *any documents, documentation, or records, whether in paper, electronic or any other form.*

15. Section 14 of the *RTV Act* provides that, *'the CEO is to keep a register of vehicle licences and enter in it particulars of each vehicle licence that is granted'* (vehicle register).

16. A fact specified in a certificate under section 110(1) of the *RTA Act*, must 'appear in' or 'derive from' the driver's licence register, or another record kept by the CEO under a road law (which includes the vehicle register).

**The Court can rely on the *Certificate***

*The Certificate records information derived from the vehicle register*

17. In summary, the *Certificate* states that the following information is recorded on the vehicle register:-

    (a) The receipt of the 'Notification of Change of Ownership – Vehicle Licence Transfer form (MR9) transfer form' (MR9 form) on 5 August 2022 at Joondalup DVS office;
    (b) Certain relevant information relating to the Vehicle including the plate number, make, model, body type, VIN and engine number;
    (c) The date of the sale of the Vehicle as 30 July 2022 from KELLNDORFER to KELLY;
    (d) Transfer of the vehicle licence to KELLY on 5 August 2022;
    (e) That a notice under section 10(3)(b) of the RTV Act (Notice) was posted to KELLY Dawn Michelle on 11 August 2022;
    (f) An application for the transfer of vehicle licence will be taken to have been made on payment of the amount set out in the Notice;

(g) The due date for payment was 8 September 2022; and
(h) There was no record that payment of the amount set out in the Notice was made in full by the due date.

18. In accordance with s 110(1) of the *RTA Act*, the above information recorded in the *Certificate* is derived from or appears in the vehicle register. The information in paragraphs (a) to (c) is derived directly from the MR9 form, received from both the seller (KELLNDORFER) and the purchaser (KELLY) and recorded on the vehicle register. The update of the vehicle register at paragraph (d) is derived from the record of change of ownership (based on the receipt of the MR9 form). Similarly, paragraphs (e) to (h) are information derived from the vehicle register as a consequence of the Notice being issued.

19. In this respect, it should be noted that the *Certificate* is issued pursuant to s110(1) of the *RTA Act*, which is distinct from section 110(3) of the *RTA Act*. Generally, certificates issued under section 110(3) of the *RTA Act* are more restrictive as to what can be included and such certificates do not go beyond proving a vehicle was registered or was not registered and who the registered holder of the vehicle was. Such certificates issued under that subsection can be tendered in a prosecution under any written law.

20. In contrast, section 110(1) of the *RTA Act* only applies to prosecutions under a 'road law, such as the current prosecution. The only other limitation under this subsection is that any facts specified in such certificates, such as the *Certificate*, appears in or is derived from the register or another record kept by the CEO or the Commissioner of Main Roads under a road law.

*The Certificate can be tendered as evidence*

21. In *Barrett v City of Cockburn*[1] *(Barrett)*, the validity of a certificate tendered pursuant to section 9.41(3) of the *Local Government Act 1995* (WA) (the *LGA*) – whether certain items of evidence could be tendered without the need for a witness to be called, was considered on appeal.

22. The appellant submitted that the way in which the prosecution tendered some evidence in the course of counsel's opening address occasioned a miscarriage of justice. Specifically, it was suggested that it was because this deprived the appellant of the opportunity of being able to cross-examine a witness.[2]

23. During counsel for respondent's opening address a certificate prepared under section 9.41 of the *LGA*, evidencing the fact that The Grange was within the district of the City of Cockburn (*the City*), and a certificate issued under section 110 of the *RTA Act* certifying that the car found to have been parked on The Grange at the relevant time was licensed to the appellant, were tendered and accepted as exhibits.[3]

24. The Honourable Justice Vandongen stated:[4]

> *"it is difficult to see how it could be concluded that a miscarriage of justice was occasioned because these documents were tendered during the prosecution's*

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[1] [2023] WASC 384, delivered 4 October 2023.
[2] *Barrett*, at [153].
[3] *Barrett,* at [154].
[4] *Barrett,* at [155].

*opening address, or that the magistrate in some way fell into error in allowing that to happen, or by subsequently taking this evidence into account. The copies of the relevant laws, and the two certificates, were admissible without the need for a witness to be called.*"

25. In *Barrett*, the prosecution sought to prove that the appellant's acts occurred within the district of *the City* by tendering a certificate, purported to have been made under section 9.41(3) of the *LGA*. The certificate was signed by an employee of *the City* who had been authorised by the chief executive officer (CEO of *the City*) to sign the certificate, stating that on a certain date, The Grange, Beeliar, was within the district of the City. The certificate was signed and dated.[5]

26. His Honourable Justice Vandongen stated:[6]

> "*the appellant's contentions in relation to this certificate are unclear and difficult to understand. To the extent that there is any suggestion that the certificate was invalid, in the sense that it did not comply with section 9.41(3) of the LGA, that contention is without substance. Pursuant to section 9.41(3), evidence as to whether anything is within a local government's district may be given by tendering a certificate signed by the CEO, or by an employee of the local government who purports to be authorised by the CEO to so sign, which contains a statement to that effect. The certificate that was tendered by the respondent plainly complied with those requirements.*"

27. His Honourable Justice Vandongen further stated,[7]

> "*...the argument also completely ignores that fact that section 9.41(3) of the LGA expressly refers to evidence as to whether anything 'is within a local government's district'. It is beyond question that one of the functions of that provision is to facilitate proof of that specific fact.*"

**Based on the *Certificate* the accused has a case to answer**

*No Case to Answer – Test to be applied*

28. In determining whether an accused has a case to answer, the question for the trial judge is whether the evidence of the prosecution, taken at its highest, is capable of establishing beyond reasonable doubt the guilt of the accused.[8]

29. In reaching a conclusion that there is no case to answer, a trial judge does not undertake any weighing or evaluation of the evidence, rather the evidence is to be taken as being correct.[9]

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[5] *Barrett*, at [159].
[6] *Barrett*, at [160].
[7] *Barrett*, at [162].
[8] *Morrison v Kiwi Electrix Pty Ltd* (1998) 19 WAR 482, 489 (Malcolm CJ, with whom Kennedy and Ipp JJ agreed).
[9] *State of Western Australia v Montani* [2007] WASCA 259, [37]-[38] (Martin CJ, Pullin and Miller JJA).

30. Further, where the prosecution depends upon inferences, the question is as follows: (1) on the assumption that all of the evidence of primary fact, considered at its strongest from the point of view of the prosecution, is accurate; and (2) on the further assumption that all inferences most favourable to the prosecution which are reasonably open are drawn, is the evidence capable of producing in the mind of a reasonable person satisfaction, beyond reasonable doubt, of the guilt of the accused?[10]

31. In respect of the second limb, the judge's role is to draw all reasonable inferences from those facts adverse to the accused and in favour of the prosecution.[11]

*The relevant facts are established to the requisite standard*

32. The *Certificate* records various information as recorded in the vehicle register. From that information, the following relevant facts can be established.

    32.1. On 5 August 2022, the Department received the MR9 form from KELLNDORFER and the accused which gave notice of change of ownership of the Vehicle to the accused.

    32.2. The change of ownership occurred on 30 July 2022 by way of sale from KELLNDORFER to the accused.

    32.3. A Notice was posted to the accused on 11 August 2023 requiring an application for the transfer of the licence to be made.

    32.4. Payment in accordance with the Notice was due by 8 September 2022

    32.5. The accused made no payment by 8 September 2022.

33. Accordingly, the offence under s 10(6) of the *RTV Act* is established from those facts as:

    33.1. KELLNDORFER, as the licensed owner of the Vehicle, and the accused as the purchaser of the Vehicle gave notice to the CEO, in writing of the change of ownership of the Vehicle within the stipulated timeframe as required by the *RTV Act*.

    33.2. Having received the MR9 form, the CEO issued to the accused, as the new owner of the Vehicle, a Notice requiring that an application for the transfer of the licence be made under section 5 of the *RTV Act*.

    33.3. No application for the transfer of the Vehicle licence was made within 28 days after the Notice was issued (i.e., 8 September 2022).

34. The accused will have the opportunity to lead evidence on whether one of the relevant exceptions under s 10(6) of the *RTV Act* is made out.

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[10] *R v Bilick* (1984) 36 SASR 321, 337 (King CJ); followed in *Morrison v Kiwi Electrix Pty Ltd*, 491 (Malcolm CJ, with whom Kennedy and Ipp JJ agreed);

[11] *State of Western Australia v Montani*, [10]-[11] (Martin CJ, Pullin and Miller JA).

**Conclusion**

35. The *Certificate* tendered by the prosecution is a certificate purported to be issued under section 110(1) of the *RTA Act* by the Department's Coordinator of Release of Information Business Unit, who is delegated by the CEO for the purposes of a prosecution pursuant to section 10(6) of the *RTV Act* (a 'road law'), which is evidence of the facts stated in the *Certificate* that 'appear in' or is 'derived from' the vehicle register kept by the CEO under section 14 of the *RTV Act*.

36. In *Barrett v City of Cockburn* [2023] WASC 384, certificates were tendered and accepted as exhibits. It was held by His Honourable Justice Vandongen that "*...the two certificates, were admissible without the need for a witness to be called.*"

37. For the reasons explained above, the *Certificate* issued under section110(1) of the *RTA Act* can be tendered in Court as evidence of facts contained therein for a prosecution under section 10(6) of the *RTV Act*, without having to call a witness to give evidence of the matters contained therein and/or tender the *Certificate*.

38. On that basis, the accused has a case to answer in accordance with the requisite standard to be applied.

Bavani Veloo
Lawyer for the Department of Transport

**Legislation**

1. *Road Traffic (Administration) Act 2008.*
2. *Road Traffic (Vehicles) Act 2012.*

**Case law**

1. *Barrett v City of Cockburn* [2023] WASC 384.
2. *Morrison v Kiwi Electrix Pty Ltd* (1998) 19 WAR 482.
3. *State of Western Australia v Montani* [2007] WASCA 259.
4. *R v Bilick* (1984) 36 SASR 321.

| | | |
|---|---|---|
| **JURISDICTION** | **:** | SUPREME COURT OF WESTERN AUSTRALIA |
| **CITATION** | **:** | BARRETT -v- CITY OF COCKBURN [2023] WASC 384 |
| **CORAM** | **:** | VANDONGEN J |
| **HEARD** | **:** | 15 MAY 2023 |
| **DELIVERED** | **:** | 4 OCTOBER 2023 |
| **PUBLISHED** | **:** | 4 OCTOBER 2023 |
| **FILE NO/S** | **:** | SJA 1037 of 2022 |
| **BETWEEN** | **:** | DONALD GRAHAM BARRETT<br>Appellant<br><br>AND<br><br>CITY OF COCKBURN<br>Respondent |

*Catchwords:*

Criminal law - Single judge appeal - Application for extension of time within which to appeal

Local law - Validity - Whether local government has power to make law regulating parking and stopping of vehicles on roads - Inconsistency with state government laws

Criminal law - Criminal procedure - Validity of infringement notice - Validity of certificate of authority for an authorised person issued pursuant to s 9.10 of the *Local Government Act 1995* (WA) - Relevance to issues on appeal

Criminal law - Criminal procedure - Validity of prosecution notice - Whether notice signed by a person authorised to commence that prosecution - Whether prosecution validly commenced - Whether alleged offence adequately described

Criminal law - Appeal against conviction and sentence - Procedural fairness - Whether appellant not afforded the right to properly represent himself pursuant to s 144(1) of the *Criminal Procedure Act 2004* (WA) - Whether substantial miscarriage of justice occurred

Local law - Parking infringement - Validity of no parking signs - Whether local government had passed a resolution to erect signs - Whether evidence supported appellant's assertions - Whether substantial miscarriage of justice occurred

Criminal law - Evidence and proof - Validity of certificate tendered pursuant to s 9.41(3) of the *Local Government Act 1995* (WA) - Whether certain items of evidence could be tendered without the need for a witness to be called

Criminal law - Criminal procedure - Failure to produce documents in answer to summons or as directed - Whether substantial miscarriage of justice occurred

Criminal law - Appeal against conviction - Whether verdicts of guilty unreasonable or unable to be supported

Practice and procedure - Costs - Whether magistrate erred by exercising discretion in awarding costs - Proportionality

*Legislation:*

*City of Cockburn (Local Government Act) Local Laws 2000*
*City of Cockburn Parking & Parking Facilities Local Law 2007*
*Courts and Tribunals (Electronic Process Facilitation) Act 2013* (WA)
*Criminal Appeals Act 2004* (WA)
*Criminal Procedure Act 2004* (WA)
*Criminal Procedure Regulations 2005* (WA)
*Evidence Act 1906* (WA)
*Interpretation Act 1984* (WA)
*Land Administration Act 1997* (WA)
*Local Government (Miscellaneous Provisions) Act 1960* (WA)
*Local Government Act 1995* (WA)
*Main Roads Act 1930* (WA)
*Public Works Act 1902* (WA)
*Road Traffic (Administration) Act 2008* (WA)
*Road Traffic Act 1974* (WA)
*Road Traffic Code 2000* (WA)

*Result:*

Application for extension of time within which to appeal against conviction refused
Application for extension of time within which to appeal against sentence refused
Application for extension of time within which to appeal against costs order allowed
Leave to appeal against costs order allowed and appeal against costs order allowed
Costs order set aside and new costs order substituted

*Category:* B

**Representation:**

*Counsel:*

| | | |
|---|---|---|
| Appellant | : | In person |
| Respondent | : | T L Beckett & M Madvad |

*Solicitors:*

| | | |
|---|---|---|
| Appellant | : | In person |
| Respondent | : | McLeods |

**Case(s) referred to in decision(s):**

Bardsley v The Queen [2004] WASCA 251; (2004) 29 WAR 338
Basham v City of Joondalup [2015] WASC 345
Basham v City of Joondalup [No 2] [2016] WASC 120
Castle Constructions Pty Ltd v North Sydney Council [2007] NSWCA 164; (2007) 155 LGERA 52
Commonwealth v Grunseit [1943] HCA 47; (1943) 67 CLR 58
Eastough v The State of Western Australia [No 2] [2010] WASCA 88
Filippou v The Queen [2015] HCA 29; (2015) 89 ALJR 776
Fry v Keating [2013] WASCA 109
Gilbert v CEO Chief Executive Officer Cockburn Council [2022] WASC 419
House v The King [1936] HCA 40; (1936) 55 CLR 499
Kalbasi v State of Western Australia [2018] HCA 7; (2018) 264 CLR 62
Kelly v Fiander [2023] WASC 187

Lockett v Commissioner of Consumer Protection [2017] WASC 358
Montalbano v Morris [2019] WASC 309
OKS v State of Western Australia [2019] HCA 10; (2019) 265 CLR 268
PAH v The State of Western Australia [2015] WASCA 159
Parfenova v Diss [2021] WASCA 50
R v Soma [2003] HCA 13; (2003) 212 CLR 299
RG Capital Radio Ltd v Australian Broadcasting Authority [2001] FCA 855; (2001) 113 FCR 185
Rodi v City of Joondalup [2014] WASC 330
Samuels v The State of Western Australia [2005] WASCA 193; (2005) 30 WAR 473
Sea Shepherd Australia Ltd v The State of Western Australia [2014] WASC 66
Tallott v The City of Stirling [2017] WASCA 126
The State of Western Australia v Olive [2011] WASCA 25; (2011) 57 MVR 269
Tu v McLean [2022] WASC 176
Wells v The State of Western Australia [2017] WASCA 27
White v The Queen [2006] WASCA 62
Wimbridge v The State of Western Australia [2009] WASCA 196

**VANDONGEN J**:

## Introduction

1 The appellant seeks leave to appeal against judgments of conviction that were entered against him in the Magistrates Court in Fremantle on 24 November 2020 in relation to one charge of parking on a portion of a thoroughfare to which a no parking sign applied, contrary to cl 26(1)(e) of the *City of Cockburn Parking & Parking Facilities Law 2007* (**Parking Law**) (**Charge 1**), and one charge of driving across a footpath, contrary to s 9.4(b) and s 12.24 of the *City of Cockburn (Local Government Act) Local Laws 2000* (**Local Laws**) **(Charge 2**). The appellant also seeks leave to appeal against fines of $200 imposed in respect of each of those offences. Finally, the appellant applies for leave to appeal against an order made that he pay the respondent's costs fixed at $8,074.

2 An appeal notice was filed in this court on 20 April 2022, almost 16 months after the judgments of conviction were entered and sentence was imposed. Accordingly, the appellant requires an extension of time within which to appeal.

3 Although it is very clear that the appellant feels aggrieved, and not only because he was convicted of these offences, it is a great pity that so much time and effort has been expended on a matter that resulted in a total of $400 in fines, particularly when the appellant had the option of dealing with the matter by paying a modified penalty of $100.

4 The appeal notice that was filed in this matter, together with enclosures, extends to a total of 30 pages. The purported grounds of appeal are discursive and thus the precise nature of the alleged errors and circumstances that are said to give rise to a conclusion that a miscarriage of justice was occasioned are extremely difficult to identify. It is regrettable that the appellant was also permitted to file and serve a 694-page document, euphemistically referred to as an 'Outline Synopsis' as well as a 60-page 'List of Evidence' after the appeal notice was lodged. These documents have hindered, rather than assisted, the court in resolving this matter.

5 In an unsuccessful attempt to bring the appellant's complaints about the primary court's decision into focus, on 6 September 2022 a registrar of this court made orders requiring the appellant to file and serve a 10-page summary of the grounds of appeal, cross-referenced to

his submissions. In response the appellant filed a four-page document entitled 'Written Submissions Introduction' and a 10-page document entitled 'Written Submissions', both of which fell well short of achieving their desired purpose.

6 In addition to the above documents, and compounding the lack of focus, the appellant filed a 67-page, colour-coded document entitled 'Summary of All Evidence', together with an application in an appeal (and a supporting affidavit) in which the appellant sought an order that he be permitted to tender the material referred to in that document on the appeal. Further, in accordance with additional orders made by the registrar, the appellant filed a 19-page colour-coded document entitled 'Evidence to Written Submission', which appears to constitute an attempt to correlate the evidence referred to in the 'Summary' with the submissions made in the 'Written Submissions', as well as the 694-page synopsis.

7 The appeal was listed for directions on 20 February 2023. The purpose of the directions hearing was to see whether the appellant was able to clarify his grounds of appeal, and the contentions made in support of those grounds. It was pointed out to the appellant that because of the sheer volume of material that he sought to rely on there was a risk that the points that he wished to make on the appeal might not be properly identified.

8 Following the directions hearing, my associate provided the parties with a document setting out, in summary form, the grounds of appeal that the court understood the appellant wished to argue. The content of that document was based on what had been discussed with the appellant at the directions hearing. After considering the document the appellant then made some amendments, added some comments, returned it to the court and provided a copy to the respondent. The court has proceeded on the basis that this document, a copy of which appears as Annexure 1 to these reasons, sets out all the grounds of appeal that the appellant wishes to rely on (**Grounds of Appeal**).

9 Further orders were also made at the directions hearing on 20 February 2023. Those orders were made because the grounds of appeal complained, in effect, that a miscarriage of justice was occasioned because the appellant was prohibited from being able to use a computer during his trial and because certain documents that were the subject of a summons to produce were not produced at his trial. The orders required the appellant to provide lists of the documents the

appellant contended were on his computer to which he was denied access, and the documents he contended had not been provided under summons. The appellant complied with those orders and provided two lists of documents. In keeping with the history of this matter, the documents were provided three weeks after the ordered date, and one of those documents was 26 pages long.

10 I have not set out the unfortunate history of this matter simply to criticise an unrepresented appellant. However, and with the benefit of hindsight, the court should not have indulged the appellant. The appellant's approach to this matter has severely hampered my ability to confidently and efficiently identify the key points the appellant wishes to make.

## General legal framework of appeal

11 Pursuant to s 7(1) of the *Criminal Appeals Act 2004* (WA) (**CA Act**), a person who is aggrieved by a decision of a court of summary jurisdiction may appeal to the Supreme Court against that decision. Relevantly, a 'decision' of a court of summary jurisdiction includes a decision to convict an accused of a charge, as well as a sentence imposed or order made as a result of a conviction.[1]

12 An appeal brought pursuant to the right conferred by s 7(1) of the CA Act may be made, relevantly, on the ground that the court of summary jurisdiction made an error of law or fact, or of both law and fact, or that there has been a miscarriage of justice. An appellant may also rely on a ground that the court imposed a sentence that was excessive.

13 Leave is required for each ground of appeal,[2] and if leave to appeal is not granted on at least one ground, the appeal is taken to have been dismissed.[3] Leave to appeal must not be granted on a ground of appeal unless the court is satisfied that the ground has a reasonable prospect of succeeding.[4]

## Extension of time within which to appeal

14 The appellant requires an extension of time within which to appeal. As I have already observed, the appellant filed his notice of appeal almost 16 months out of time.

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[1] CA Act, s 6(c).
[2] CA Act, s 9(1).
[3] CA Act, s 9(3).
[4] ***Samuels v The State of Western Australia*** [2005] WASCA 193; (2005) 30 WAR 473 [56].

15 The principles to be applied in relation to a grant of an extension of time within which to appeal are well established. Generally, the following factors are to be considered in deciding whether to exercise the discretion to extend time, although they are not exhaustive: the nature and extent of the delay; the reasons for delay; the proposed grounds of appeal and their merit; the prejudice to the applicant if an extension of time is not granted, and the prejudice (if any) to the respondent if an extension of time is granted. Further, where there has been a lengthy delay, an appellant must show exceptional circumstances before an extension of time for leave to appeal against conviction will be granted, unless it can be shown that there will be a miscarriage of justice if an extension is not granted.[5]

16 It will come as no surprise to learn that the appellant filed a 220-page affidavit (including annexures) in support of an application for an extension of time within which to appeal. I do not intend to provide a detailed summary of that document. It is sufficient to set out two paragraphs of the appellant's affidavit, from which the essential flavour of the application can be perceived:

> The first foundation (1) centres on the Appellant's inability to lodge a coherent appeal application in time because of the debilitating psychological impact caused by the numerous acts by the prosecuting authority, the Magistrate's unlawful, discriminatory and unjudicial exercise of judicial authority (bullying and intimidation) through his decision and direction to the Appellant on 24 November 2020 - before and during the trial - the associated process and costs of obtaining the required documentation from the Magistrate Court in the required time period, along with a complete collapse of self-belief and a total loss of faith and trust in our States elected local government and State Ministers and what the Appellant then felt was having been betrayed by the judicial system and the fact that the Prosecutors and the Presiding Magistrate's betrayal of their oath of office as oath bound Officers of the Court and what that oath stands for.
>
> The second foundation (2) is temporal and the requirement for the Joint Standing Committee on Delegated Legislation of the Parliament of Western Australia to deal with an amending City of Cockburn Local Law that was first proposed to Council the week following the Appellant's trial which established that the City of Cockburn Executive knew that the charges the Appellant was convicted of were not offence under a written law as those offences required a Council resolution which had never been made. There are further reasons which are

[5] ***Wimbridge v The State of Western Australia*** [2009] WASCA 196 [19] - [25] (Wheeler JA), [45] - [49] (Buss JA).

> apparent on any readings of the grounds of appeal *[Attachment 8: Modified Form 20 -Appeal notice (r 65)]*.

17 There is no question that there has been a very lengthy delay in the commencement of this appeal. In my view, that delay is not adequately explained. I agree with the respondent's submission that while the appellant may have been struggling with several psychological and other medical conditions, he has nevertheless demonstrated that he was capable of preparing several weighty tomes in support of his appeal. Accordingly, the appellant must show that there are exceptional circumstances before an extension of time for leave to appeal will be granted, unless he can demonstrate that a miscarriage of justice will occur if an extension is not granted.

18 I note that in ***Bardsley v The Queen***[6] Wheeler JA made the following observations:

> [I]f all that were required to demonstrate a miscarriage of justice were that there should be a ground which would have succeeded in a regularly instituted appeal, one wonders what purpose the statutory limit and the existence of a discretion would serve. In practical terms, any person with a meritorious ground of appeal would succeed, whenever the appeal was instituted. A person without such a ground might formally be refused leave, rather than having their appeal dismissed, if attempting to appeal out of time, but there would be no practical consequence ever flowing from a failure to appeal within time.
>
> It is my view that both principle and authority in this State suggest that the Court may require more to be demonstrated than that an appeal ground will be successful, before time is extended. It is also my view that this is a case in which more should be demonstrated.

19 In my view there is much to be said for the proposition that in the circumstances of this case, where the delay in commencing the appeal is inordinate, the offences that the appellant was convicted of are at the lowest end of the spectrum of criminal offending, and the fines imposed were modest,[7] the appellant needs to show more than that an appeal ground will be successful before time will be extended. I will return to the appellant's application to extend time later in these reasons.

## The proceedings in the Magistrates Court

20 The appellant was charged by prosecution notice dated 22 January 2020, which contained both Charge 1 and Charge 2.

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[6] ***Bardsley v The Queen*** [2004] WASCA 251; (2004) 29 WAR 338 [113] - [114].
[7] Each fine was only 4% of the maximum penalty, being a fine of $5,000.

21 For the purposes of Charge 1, s 26.1(e) of the Parking Law provided as follows:

> **Stopping or Parking Contrary to Signs**
>
> 26. (1) A person shall not stop or park a vehicle on a thoroughfare, or portion of a thoroughfare, -
>
> …
>
> (e) to which a 'no parking' sign applies, unless the driver is -
>
> (i) dropping off, or picking up, passengers or goods;
>
> (ii) does not leave the vehicle unattended; and
>
> (iii) completes the dropping off, or picking up, of the passengers or goods within 2 minutes of stopping and drives on.

22 For the purposes of Charge 2, cl 9.4(b) of the Local Laws was in the following terms:

> **9.4 Activities Needing Permission**
>
> A person shall not, without the permission of the local government or an authorised person:
>
> …
>
> (b) drive any vehicle over or across a kerb or footpath except at a specially constructed crossing place[.]

23 The prosecution was commenced by a Mr Michael Emery who, according to the prosecution notice, was an 'Authorised Employee of the City of Cockburn'. The prosecutor was described in the notice as the 'City of Cockburn'.

24 From the electronic records made on the prosecution notice it appears as though the appellant entered endorsed pleas of not guilty to both charges, before he later appeared before Magistrate Lemmon in the Magistrates Court at Fremantle on 5 June 2020. As the court could not accommodate a trial on that date the charges were adjourned and listed for trial on 24 November 2020.

25 The trial took place on 24 November 2020 before Magistrate Malone. At the conclusion of the trial the magistrate found the appellant guilty of both charges. The appellant was fined $200 in relation to each of the charges and was ordered to pay the prosecution's costs in the sum of $8,074.

26 At the commencement of the trial, counsel representing the prosecutor outlined a relatively straightforward prosecution case in a brief opening. In relation to Charge 1, it was alleged that on 15 October 2019, at Beeliar, the appellant had parked his car on a part of a thoroughfare that was subject to a no-parking sign. In relation to Charge 2, it was alleged that, at the same time and at the same place, the appellant drove his car across a footpath. In essence, the prosecution case was that the appellant had driven his car over a footpath in order to position the car where it was later found parked contrary to a no-parking sign.

27 The prosecutor began by tendering several documents, which the magistrate accepted into evidence as exhibits.[8] Those documents were as follows:

(1) Western Australian Government Gazette, dated 9 October 2000, which contained the Local Laws (exhibit P1);

(2) a certificate made under s 9.41(3) of the LGA, in which it was certified that The Grange, Beeliar, was within the district of the City of Cockburn (exhibit P2);

(3) an evidentiary certificate signed by an officer authorised for the purposes of s 110 of the *Road Traffic (Administration) Act 2008* (WA), constituting evidence that a vehicle with the registration number matching the car that the appellant was alleged to have parked contrary to parking signs was licenced to the appellant (exhibit P3); and

(4) a witness statement signed by a Ms Tamara Bold, who was, at the relevant time, a Senior Customer Service Officer employed by the City of Cockburn (exhibit P4).[9]

[8] The prosecutor noted that the appellant may have some objections to the documents, but the magistrate decided to accept them into evidence on the basis that '[t]hey can always be withdrawn': ts 6.
[9] The statement was tendered by consent: ts 7.

28 After the prosecutor tendered these exhibits, the appellant made a brief opening address; however, the magistrate suggested that what he was saying may be more appropriate for a closing address.

29 The prosecution then called a parking officer employed by the City of Cockburn, James Williams, who gave evidence that he was an 'authorised person' for the purposes of the Local Laws and the Parking Law. He said that on 15 October 2019 he was conducting a school parking patrol on The Grange in Beeliar, keeping an eye on both the east and west sides of the road where there were parking restricted areas. He said that there were 'no parking' restriction areas in relation to the road and verge between 7.30 am and 9.00 am, and then from 2.30 pm until 4.00 pm. An aerial photograph of The Grange was tendered as exhibit P5.

30 Mr Williams said that while travelling on The Grange he noticed a white Ford station wagon and took a photograph of that car in order to demonstrate where it was parked. After initially stating that he had noticed the car during an afternoon patrol, when his attention was drawn to a time stamp on the photograph, which indicated that it had been taken at approximately 8.38 am, Mr Williams confirmed that it was during a morning patrol.

31 The photograph that was shown to Mr Williams depicted the back of a white Ford parked on a lightly grassed embankment, with a concrete footpath in the foreground. Mr Williams was able to use a further aerial photograph (exhibit P7)[10] to explain where he had seen the car relative to the parking signs which regulated parking on The Grange and its verges. In addition, three close-up photographs of the relevant parking signs, taken by Mr Williams a short while after the alleged offence, were tendered by the prosecution (exhibit P8).

32 Mr Williams gave evidence that after he had taken the photograph of the white Ford station wagon, he returned to his normal duties and issued an infringement notice, by post, the following day. The infringement notice was tendered at the trial as exhibit P9.

33 Finally, the prosecution tendered through Mr Williams a further aerial photograph depicting the area in which he had seen the white Ford station wagon adjacent to The Grange (exhibit P10). This photograph showed various property boundaries ascertained through

[10] There is no record of an exhibit P6 being tendered in the trial transcript, but from subsequent references it appears as though an exhibit was tendered.

the City of Cockburn mapping systems, demonstrating that the car was parked between a footpath and the property boundary of the Beeliar Primary School. More particularly, the aerial photograph constituted evidence that the car was parked on the thoroughfare constituted by The Grange and its verge.

34 Mr Williams was allowed to give evidence that the car most likely crossed the footpath adjacent to The Grange in order to position itself in the place where it was parked. He said that the appellant had never been given permission to drive over that footpath.

35 The appellant then cross-examined Mr Williams on a range of topics, including his appointment as an 'authorised officer' for the City of Cockburn, and tendered a certificate of authority dated 26 September 2019, signed by the chief executive officer (exhibit A1). Much of the appellant's cross-examination of Mr Williams appeared to be focused on the infringement notice that he issued to the appellant. Indeed, various copies of infringement notices, together with the envelope in which the infringement notice was sent to the appellant, were tendered as exhibits. The appellant also cross-examined Mr Williams with a view, it appears, to undermining the accuracy of the maps used to demonstrate where the parking signs were located.

36 The prosecution also adduced evidence from a Michael Emery, the Rangers and Community Safety Services Manager employed by the City of Cockburn. He said that his involvement in relation to this matter began when it was brought to his attention that the appellant was seeking to appeal the decision to issue him with an infringement notice. His role was to sign the prosecution notice after the appellant elected to have the matter dealt with by a court. He said that as part of his role he would sign a dozen or so prosecution notices each year.

37 In the course of Mr Emery's evidence, reference was made to a letter that had been sent by the appellant to the acting chief executive officer of the City of Cockburn, in which it was said the appellant had conceded that his car had been parked on the verge of The Grange (exhibit P11).

38 Mr Emery was also taken to some notes (tendered as exhibit P12) that were made in the electronic business system operated by the City of Cockburn relating to the infringement notice that had been issued to the appellant. The prosecution relied on those notes as containing admissions made by the appellant in a telephone call on

19 November 2019, that he was the driver of the white Ford on the day in question.

39 The appellant cross-examined Mr Emery about some matters relating to an investigation conducted into his objection to the infringement notice. However, the appellant focused his attention on whether Mr Emery was authorised to commence prosecutions. Mr Emery rejected the appellant's contentions that he was not authorised to commence prosecutions, asserting that under the *Local Government Act 1995* (WA) (**LGA**) it was in the course of his duties to regularly commence prosecutions.

40 After Mr Emery had completed his evidence, the prosecutor tendered a document entitled 'Admissions Under s 32 Evidence Act 1906' (exhibit P14). In that document the appellant made an admission that he was the person in charge of the white Ford that was found by Mr Williams parked on The Grange at the relevant time.

41 The appellant elected to give evidence. In his evidence the appellant accepted that his car was parked where it was photographed by Mr Williams, and conceded that either he or his wife had parked the car there. The appellant also said that he had always held the belief that a person was allowed to drive over a footpath, pointing to the fact that you have to drive over a footpath to get to a house.

42 He also said that he believed he could park in the area in which the car was found. He pointed to the fact that the two parking signs relied on by the City of Cockburn were a long way apart, and that he had seen hundreds of people parked there over the years and had not heard of anybody getting parking tickets. He said that he had not intended to break the law. He also said that while it was, in his opinion, easy to park where the car was found without crossing the footpath, it was fair to say that it would have been parked on that occasion having driven over the footpath. In that regard, the appellant said that 'to say anything else would be ridiculous … As far as I'm concerned'.[11]

43 The appellant complained about the treatment he said he had received from employees of the City of Cockburn when he went to speak with them about the infringement notice. It is apparent from comments made by the magistrate that the appellant became emotional when describing the way in which he said he had been treated.

[11] ts 43.

44 In cross-examination, the appellant admitted that it was more likely that he parked the car on the occasion it was photographed by Mr Williams. He said that he accepted that there were parking signs relating to the road and verge in the area in which, and at the time, the car had been parked. However, he maintained that he believed he was allowed to park there. He also reiterated his acceptance that the only realistic way of parking in the place his car was found was by driving over the footpath.

## Grounds of appeal and proceedings in this court

45 I am grateful for the assistance that has been provided by the respondent's counsel. In his written Outline of Submissions, filed on 11 April 2023, the respondent's counsel addressed the following issues, which he drew from the Grounds of Appeal and the issues raised in the voluminous materials before the Court:

1. Whether the Parking Local Law is invalid (paragraphs [9], [15]).

2. Whether the 2000 Local Laws are invalid by operation of the *Local Government Act 1995* and the *Road Traffic Code 2000* (paragraph [21]).

3. The absence of a Council resolution in relation to cl 8 of the Parking Local Law (paragraph [11]).

4. The validity of the infringement notice and the effect of its withdrawal (paragraph [12]).

5. Whether the prosecution was validly commenced or commenced and conducted with an improper purpose (paragraphs [10], [12], [13], [14(b)], [15(d)]).

6. Whether the Appellant was denied procedural fairness during the trial (paragraphs [14(a)], [14(b)], [14(c)]).

7. The alleged failure of the prosecution to provide certain documents in answer to a summons or as directed by the learned Magistrate (paragraphs [14(b)], [14(c)]).

8. The giving of evidence by the prosecution at trial (paragraph [15]).

9. The validity of the s 9.41(3) certificate (paragraph [15]).

10. The validity of the Certificate of Authority for an Authorised Person (paragraph [15]).

11. The validity of the 'no parking' signs (paragraph [16]).

12. Other alleged errors by the learned Magistrate (paragraphs [10], [14(b)], [14(c)], [15], [17], [21]).

13. Decision as to legal costs (Paragraph [22]).[12]

46 Doing my best and based on all of the materials that are before me, I am satisfied that counsel's formulation of the relevant issues captures the contentions that the appellant seeks to make on the appeal. Accordingly, I will deal with this appeal by reference to those issues.[13]

47 According to the appeal notice that was filed in this matter, the appellant also appeals against the sentences that were imposed on him. However, at a directions hearing on 20 February 2023, the appellant confirmed that he took no issue with the fines that were imposed on him, describing them as 'fair and just'. The appellant's complaint appears to be that he should not have been convicted and, as a result, he should not have been fined at all. Accordingly, I intend dealing with the appeal against sentence on the basis that it will be dismissed unless the appellant is successful in his appeal against conviction.

48 The appellant has also appealed against the magistrate's order that he pay the respondent's costs in the sum of $8,074. I will deal with this appeal separately.

## Appeal against conviction

### *First issue: whether the Parking Local Law is invalid*[14]

49 By this ground the appellant contends, in the context of the conviction entered in respect of Charge 1 only, that there was a miscarriage of justice because cl 26(1)(e) of the Parking Law was invalid at the time that offence was alleged to have been committed. The appellant submits that cl 26(1)(e) of the Parking Law was invalid because the City of Cockburn did not have the power to make a local law regulating the parking and stopping of vehicles on roads, including by creating offences relating to such activity. The appellant submits that Parliament has expressly provided that only the Governor may make regulations that operate as local laws, or which confer power on local governments to make local laws, for the purpose of regulating the parking and stopping of vehicles on roads, by exercising the power to make regulations pursuant to s 111 of the *Road Traffic Act 1974* (WA).

[12] References to paragraph numbers are to paragraphs in the Grounds of Appeal.
[13] The appellant also filed a number of applications in the appeal. At the hearing of the appeal the appellant confirmed that he was not pursuing any of those applications.
[14] Paragraphs [9], [15].

50 A necessary premise of the appellant's argument is that, by operation of s 111 of the *Road Traffic Act*, only the Governor may make regulations (or local laws) that create offences relating to the parking and stopping of vehicles on roads, and which provide for the punishment of persons found to have committed those offence. However, that premise is wrong.

51 Section 111 of the *Road Traffic Act* is in the following terms:

> **111**. **Regulations etc.**
>
> (1) The Governor may make regulations for any purpose for which regulations are contemplated or required by this Act and may make all such other regulations as may, in his opinion, be necessary or convenient for giving full effect to the provisions of, and for the due administration of, this Act, for the equipment and use of vehicles and for the regulation of traffic, generally.
>
> (2) Without limiting the generality of subsection (1), the Governor may make regulations -
>
> (a) empowering an authority therein named to -
>
> (i) prohibit, and to authorise and regulate, processions; or
>
> (ii) restrict or prohibit the use of such roads, for such periods, as it may specify; or
>
> (iii) erect, establish or display traffic or road signs, road markings, traffic control signals and similar devices; or
>
> (iiia) authorise any person or body or class of person or body to erect, establish or display traffic or road signs, road markings, traffic control signals and similar devices, or any class or type thereof, in accordance with the instrument of authorisation;
>
> (aa) regulating or prohibiting stock on roads;
>
> (b) relating to the duties, obligations, conduct and behaviour of persons in charge, drivers and passengers of vehicles or of any class of vehicle;

(c) requiring the drivers and passengers of -

(i) motor vehicles; and

(ii) 2-wheeled or 3-wheeled vehicles that are designed to be propelled through a mechanism operated solely by human power; and

(iii) 2-wheeled or 3-wheeled vehicles that are power assisted pedal cycles,

to wear prescribed items of equipment, whether or not the items are items required to be fitted to the vehicles;

*[(d)-(g) deleted]*

(h) regulating or prohibiting the parking or standing of vehicles;

*[(i) deleted]*

(j) prescribing matters for or in respect of which fees shall be charged or charges shall be made and prescribing the amounts of such fees or charges;

(k) imposing penalties not exceeding a fine of 64 PU for a first offence, and not exceeding a fine of 96 PU for any subsequent offence, against any regulation made under this section;

*[(l), (m) deleted]*

(n) defining the previous offences that shall be taken into account in determining whether an offence is a first or subsequent offence for the purpose of the regulations.

*[(2a), (2b) deleted]*

(2c) The regulations may make it an offence to contravene a condition imposed by or under the regulations, but this subsection does not limit the other consequences that the regulations may attach to a contravention.

(3) The regulations may in respect of any fee or charge (whether prescribed by the Act or by the regulations) provide for -

> (a) exemptions from the requirement to pay the fee or charge; or
>
> (b) the fee or charge to be reduced or refunded (in whole or in part); or
>
> (c) the payment of the fee or charge to be deferred.
>
> (4) The regulations may provide that the exemption, reduction, refund or deferral -
>
> (a) only applies in specified circumstances or in respect of specified classes of persons or vehicles; or
>
> (b) is at the discretion of the CEO or a specified person; or
>
> (c) applies subject to specified requirements being satisfied; or
>
> (d) applies subject to conditions -
>
> (i) specified in the regulations; or
>
> (ii) imposed by the CEO or a specified person and specified in a licence or permit.
>
> (5) Without limiting subsection (4)(c), the regulations may require a matter to be verified by statutory declaration.

52 Section 111 of the *Road Traffic Act* confers a regulation-making power on the Governor that 'may' be exercised subject to the limits placed on the exercise of that power that are expressed in that provision. Further, and without limiting that broad regulation-making power, s 111(2) sets out several specific matters in relation to which regulations may be made, including regulations making it an offence to contravene a condition imposed by or under the regulations.[15] However, there is nothing in s 111, or in any other provision in the *Road Traffic Act*, that supports a conclusion that Parliament intended the Governor to have the exclusive power to make subsidiary legislation relating to the parking and stopping of vehicles on roads. As the text of s 111(1) of the *Road Traffic Act* makes clear, the Governor's power to make regulations is limited to regulations that 'are

[15] *Road Traffic Act 1974* (WA), s 111(2c).

contemplated or required' by the *Road Traffic Act*, and to regulations that 'may, in his opinion, be necessary or convenient for giving full effect to the provisions of, and for the due administration of' the *Road Traffic Act*. In that conventional way, the Governor's power to make regulations is tethered to the provisions of the *Road Traffic Act*.

53 The appellant's argument ignores the fact that Parliament has also seen fit to confer a legislative function on local governments, in accordance with the various provisions in pt 3 div 2 of the LGA. Relevantly, s 3.5 of the LGA provides as follows:

> **3.5. Legislative power of local governments**
>
> (1) A local government may make local laws under this Act prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed, for it to perform any of its functions under this Act.
>
> (2) A local law made under this Act does not apply outside the local government's district unless it is made to apply outside the district under section 3.6.
>
> (3) The power conferred on a local government by subsection (1) is in addition to any power to make local laws conferred on it by any other Act.
>
> …
>
> (4) Regulations may set out -
>
> (a) matters about which, or purposes for which, local laws are not to be made; or
>
> (b) kinds of local laws that are not to be made, and a local government cannot make a local law about such a matter, or for such a purpose or of such a kind.
>
> (5) Regulations may set out such transitional arrangements as are necessary or convenient to deal with a local law ceasing to have effect because the power to make it has been removed by regulations under subsection (4).

54 Accordingly, pursuant to s 3.5(1) of the LGA, the City of Cockburn had the power to make local laws that had legislative effect, and which were subsidiary legislation within the meaning of s 5 of the

*Interpretation Act*.[16] The question that arises is whether s 3.5(1) conferred power on the City of Cockburn to make the Parking Law and, specifically, cl 26(1)(e) of the Parking Law.

55 It has not been suggested that cl 26(1)(e) is supported by s 3.5(1) on the basis that it is 'required or permitted to be prescribed by a local law'. Accordingly, the question is whether cl 26(1)(e) concerns matters that are 'necessary or convenient to be so prescribed, for [the City of Cockburn] to perform any of its functions under this Act'.

56 In ***Tallott v The City of Stirling***,[17] the Court of Appeal had occasion to consider the proper construction of s 3.5(1) of the LGA:

> By s 3.5(1), a local government may make local laws under the *Local Government Act* prescribing all matters that are 'necessary or convenient ... for it to perform any of its functions' under the *Local Government Act*. A power of that kind was considered in ***Morton v Union Steamship Co of New Zealand Ltd***:
>
> > 'A power expressed in such terms to make regulations enables the Governor-General in Council to make regulations incidental to the administration of the Act. Regulations may be adopted for the more effective administration of the provisions actually contained in the Act, but not regulations which vary or depart from the positive provisions made by the Act or regulations which go outside the field of operation which the Act marks out for itself. The ambit of the power must be ascertained by the character of the statute and the nature of the provisions it contains. An important consideration is the degree to which the legislature has disclosed an intention of dealing with the subject with which the statute is concerned.
> >
> > *In an Act of Parliament which lays down only the main outlines of policy and indicates an intention of leaving it to the Governor-General to work out that policy by specific regulation, a power to make regulations may have a wide ambit. Its ambit may be very different in an Act of Parliament which deals specifically and in detail with the subject matter to which the statute is addressed*. In the case of a statute of the latter kind an incidental power of the description contained in s 164 cannot be supposed to express an intention that the Governor-General should deal with the same matters in another way. (emphasis added)'
>
> Also, in ***Shanahan v Scott*** the court said that such a power will not support attempts 'to widen the purposes of the Act' or to add 'new and

[16] ***Tallott v The City of Stirling*** [2017] WASCA 126 [195].
[17] ***Tallott*** [188] - [190].

> different means' of carrying out the legislative purpose or to 'depart from or vary' the legislative plan.
>
> Under the *Local Government Act*, the provision of good government for persons in its district is the general function of a local government, and a liberal approach is to be taken to the construction of the scope of the 'general function': s 3.1(1) and s 3.1(3) of the *Local Government Act*. The scope of the general function of the City is also to be construed in the context of its other functions under any written law: s 3.1(2) of the *Local Government Act*. (footnotes omitted)

57 At the relevant time, s 3.1 of the LGA, which was referred to by the Court of Appeal in ***Tallott***, was in the following terms:

> **3.1. General function**
>
> (1) The general function of a local government is to provide for the good government of persons in its district.
>
> (2) The scope of the general function of a local government is to be construed in the context of its other functions under this Act or any other written law and any constraints imposed by this Act or any other written law on the performance of its functions.
>
> (3) A liberal approach is to be taken to the construction of the scope of the general function of a local government.

58 As can be seen, the scope of the general function of the City of Cockburn is to be construed in the context of its other functions under any other written law, pursuant to s 3.1(2) of the LGA. Relevantly, for the purposes of this appeal, this includes the function provided for by s 55(2) of the *Land Administration Act 1997* (WA), which is in the following terms:

> Subject to the *Main Roads Act 1930* and the *Public Works Act 1902*, the local government within the district of which a road is situated has the care, control and management of the road.

59 It follows that the City of Cockburn's general functions, for the purposes of s 3.1 of the LGA, include the care, control and management of roads that are situated in its district.[18] In my view cl 26(1)(e) of the Parking Law, which is a local law that regulates the stopping or parking of vehicles on a 'thoroughfare' that is situated within the district of the City of Cockburn, is a local law that is 'necessary or convenient' for the

[18] Subject to the *Main Roads Act 1930* and the *Public Works Act 1902*.

City to perform its function under s 55(2) of the *Land Administration Act* of having care, control and management of roads. In that regard it is necessary to note that for the purposes of the Parking Law, a 'thoroughfare' has the meaning given to it by the LGA,[19] which is as follows:

> '**thoroughfare**' means *a road* or other thoroughfare and includes structures or other things appurtenant to the thoroughfare that are within its limits, and nothing is prevented from being a thoroughfare only because it is not open at each end. (emphasis added)[20]

60 There is nothing in the *Main Roads Act 1930* (WA) or the *Public Works Act 1902* (WA) that affects this conclusion. In brief, the effect of the *Main Roads Act* and the *Public Works Act* is that despite s 55(2) of the *Land Administration Act*, local governments do not have the care, control and management of some roads, such as 'highways' and 'main roads',[21] and may not have such responsibility for '[g]overnment roads'.[22]

61 It is also necessary to observe that pursuant to s 3.10 of the LGA, a local law may also create offences and prescribe penalties:

> **3.10. Creating offences and prescribing penalties**
>
> (1) A local law made under this Act may provide that contravention of a provision of the local law is an offence, and may provide for the offence to be punishable on conviction by a penalty not exceeding a fine of $5 000.
>
> (2) If the offence is of a continuing nature, the local law may make the person liable to a further penalty not exceeding a fine of $500 in respect of each day or part of a day during which the offence has continued.
>
> (3) The local law may provide for the imposition of a minimum penalty for the offence.
>
> (4) The level of the penalty may be related to -
>
> (a) the circumstances or extent of the offence;

[19] Parking Law, cl 4: definition of 'thoroughfare'.
[20] Definition of 'thoroughfare' in s 1.4 of the LGA.
[21] Highways and main roads are dealt with under the *Main Roads Act 1930* (WA).
[22] Government roads are dealt under the *Public Works Act 1902* (WA).

> (b) whether the offender has committed previous offences and, if so, the number of previous offences that the offender has committed.
>
> *[(5) deleted]*
>
> (6) A local law made under this Act may specify the method and the means by which any fines imposed are to be paid and collected, or recovered.

62 Accordingly, on the basis that cl 26(1)(e) of the Parking Law is supported by s 3.5(1) of the LGA, it follows that cl 69 of the Parking Law, which provides that where a person contravenes or fails to comply with a provision of that local law it constitutes an offence carrying a maximum penalty of $5,000 and a daily maximum penalty of $500, is also supported by that provision.

63 In my view, none of the appellant's contentions in relation to the matters raised in the context of the first issue have any merit.

***Second issue: whether the 2000 Local Laws are invalid by operation of the* Local Government Act 1995 *(WA) and the* Road Traffic Code 2000 *(WA)***[23]

64 The appellant submits that the magistrate erred in law by convicting the appellant of Charge 1. The appellant says that it was not open to the magistrate to convict him of that offence because the relevant local law, cl 26(1)(e) of the Parking Law, was inoperative pursuant to s 3.7 of the LGA.

65 Section 3.7 of the LGA provides as follows:

> **3.7. Inconsistency with written laws**
>
> A local law made under this Act is inoperative to the extent that it is inconsistent with this Act or any other written law.

66 It is the appellant's case that cl 26(1)(e) is inoperative because it is inconsistent with other legislation, namely the *Road Traffic Act*, s 111(2), and the *Road Traffic Code*. It is unclear why the appellant says that cl 26(1)(e) is inconsistent with s 111(2) of the *Road Traffic Act*. As I have already noted, s 111(2) of the *Road Traffic Act* sets out a non-exhaustive list of the matters in respect of which the Governor may exercise the regulation-making power provided for in s 111(1). The appellant's real contention, which appears to be that cl 26(1)(e) of the

[23] Paragraph [21].

Parking Law is inconsistent with the *Road Traffic Code 2000* (WA) (**Code**), is easier to understand. This is because the Code contains several provisions that are concerned with regulating the stopping and parking of vehicles on roads, including reg 141, which relevantly provides that '[a] driver shall not stop on a length of carriageway or in an area to which a "no parking" sign applies'.

67 However, the appellant's argument overlooks reg 8 of the Code, which is in the following terms:

> **8. Offence against local laws not offence against this Code**
>
> (1) Where, in any particular case, the parking or stopping of a vehicle constitutes an offence against local laws in force in a local government district under the provisions of Part 3 Division 2 Subdivision 1 of the Local Government Act 1995, the parking or stopping of that vehicle does not constitute an offence against the provisions of this Code (other than regulation 108).
>
> (2) Where a parking or stopping offence against a local law to which subregulation (1) applies is subject to conditions or exceptions, then a person who complies with all the conditions or is subject to the exceptions does not commit an offence under either the local law or this Code.

68 In the circumstances of the appellant's case, to the extent that the parking of a vehicle constituted an offence against the Parking Law at the relevant time, the effect of reg 8 of the Code was that the same act of parking would not also constitute an offence against the Code.

69 The question of what constitutes an inconsistency for the purposes of s 3.7 of the LGA has not yet been the subject of detailed consideration by this court or the Court of Appeal. In particular, consideration has not been given to what may be large questions about whether its meaning can and should be informed by reference to jurisprudence concerning the operation of s 109 of the *Commonwealth Constitution*. However, for present purposes, and consistently with the approach taken by Tobias JA (with whom Bell J agreed) in ***Castle Constructions Pty Ltd v North Sydney Council***,[24] it is sufficient for the resolution of this matter to adopt the ordinary meaning of the word 'inconsistent', namely, incongruity, incompatibility, or lack of harmony.

[24] ***Castle Constructions Pty Ltd v North Sydney Council*** [2007] NSWCA 164; (2007) 155 LGERA 52 [55(h)].

70 On that approach, it is clear that s 3.7 of the LGA did not render cl 26(1)(e) of the Parking Law inoperative because it was inconsistent with any provision in the Code. By operation of reg 8 of the Code, there was no incongruity, incompatibility or lack of harmony between those laws. The whole purpose of reg 8 of the Code is to *remove* any inconsistency by ensuring that, in relation to offences concerning the parking or stopping of a vehicle, relevant local laws will prevail over the Code. I note that my conclusion in this regard is consistent with the views that were recently expressed by Forrester J in ***Gilbert v CEO Chief Executive Officer Cockburn Council***.[25]

71 Before leaving this topic of inconsistency, and the operation of s 3.7 of the LGA, it should be noted that the appellant expressly disavowed any argument that s 9.4(b) of the Local Laws, which is the offence charged in Charge 2, was inconsistent with any written law such that it was relevantly inoperative. This can be very clearly seen in the appellant's amended grounds and 'comments' column in the Grounds of Appeal at [10] and at [21].

72 Prior to the hearing of the appeal, I raised with the appellant and the respondent's counsel a question about whether it was arguable that s 9.4(b) of the Local Laws was rendered inoperative by s 3.7 of the LGA on the basis that it was inconsistent with reg 253 of the Code.[26] I sought submissions from the parties on this question.

73 Although counsel for the respondent did file some helpful written submissions addressing this issue, and he dealt with it in oral submissions, at the hearing of the appeal the appellant maintained his position that he did not contend that s 9.4(b) of the Local Laws was rendered inoperative by force of s 3.7 of the LGA because it was inconsistent with any provision in the Code, including reg 253.[27] Accordingly, I have determined this appeal on the basis that this is not an issue that falls to be determined. However, nothing in these reasons should be read as suggesting that I have reached any conclusion about the effect, if any, that s 3.7 of the LGA has on the operation of s 9.4(b) of the Local Law.

74 Although it is not entirely clear, the appellant also appears to contend that the magistrate erred in convicting him of an offence

[25] ***Gilbert v CEO Chief Executive Officer Cockburn Council*** [2022] WASC 419 [32] - [44].
[26] *Road Traffic Code 2000* (WA), reg 253 prohibits a person from driving a vehicle on a path, subject to specific exceptions in reg 253(2). A contravention of reg 253 constitutes an offence: reg 9.
[27] ts 191.

contrary to s 9.4(b) of the Local Laws. The appellant's argument seems to be that the existence of s 9.4(c) of the Local Laws, which prohibits vehicles being driven across a kerb or footpath if the vehicle is so heavy or is of such a nature that is causes or is likely to cause damage to the kerb or to the paving of the footpath, was relevant to the question of whether he contravened s 9.4(b).

75 It is extremely difficult to follow the appellant's argument. However, I note that s 9.4(b) of the Local Laws prohibits the driving of vehicles across kerbs and footpaths, presumably so that the City of Cockburn can fulfill its obligations of care, control and management of roads under the *Land Administration Act*. But the Local Laws also recognise that it may be necessary to drive across kerbs and footpaths from time to time. Accordingly, such activity is permitted where it occurs at a 'specially constructed crossing place',[28] otherwise it will only be permitted where the required permission has been obtained. Other sections in the Local Laws then set out the various requirements relating to obtaining permission.

76 On the other hand, s 9.4(c) is concerned with a specific class of vehicles, namely, heavy vehicles that may cause damage to kerbs or footpaths. In those circumstances such vehicles can *only* drive across kerbs and footpaths with the requisite permission, even if such driving occurs at a specially-constructed crossing place.

77 In my view all of the appellant's contentions raised in connection with the second issue are without merit.

***Third issue: the absence of a Council resolution in relation to cl 8 of the Parking Local Law***[29]

78 This issue is concerned only with the appellant's conviction for the offence of contravening cl 26(1)(e) of the Parking Law. To understand this issue, it is first necessary to identify the elements of that offence, which are:

(1) The accused parked a vehicle on a portion of a thoroughfare; and

(2) The portion of the thoroughfare was one to which a no parking sign applied.

[28] This phrase is not defined in the Local Law
[29] Paragraph [11].

79 In addition, the prosecution was required to prove that the thoroughfare was within the district of the City of Cockburn. This was necessary because cl 5 of the Parking Law provides that those laws apply to 'the parking region', which, with some exceptions that do not need to be mentioned for the purposes of this appeal, means 'the whole of the [City of Cockburn]'.[30]

80 At trial the prosecution adduced evidence from Mr Williams, including photographic evidence, from which it was open to the magistrate to conclude that the appellant's car was parked on a portion of a thoroughfare, namely The Grange, to which a 'no parking' sign applied.[31] Further, in cross-examination the appellant said that he had 'no problems' with the proposition that there were 'no parking' signs on the relevant portion of The Grange at the time.[32]

81 On appeal, the appellant raised a question about whether the prosecution had proved that the 'no parking' signs relied on had been erected with the authority of the City of Cockburn. I will proceed, without deciding, that it was necessary for the prosecution to prove that the 'no parking' signs had been erected with the respondent's authority to prove that the appellant had committed an offence contrary to cl 26(1)(e) of the Parking Law.

82 There was no evidence adduced at the trial about whether the relevant 'no parking' signs had been erected with the respondent's authority. However, cl 7(3) of the Parking Law provided that:

> A sign regulating the parking or stopping of vehicles is presumed to be, in the absence of evidence to the contrary, a sign placed, marked or erected under the authority of this Local Law.

83 Accordingly, as there was no evidence to the contrary, if the issue had been raised the magistrate would have been entitled to presume that the 'no parking' signs relied on by the prosecution had been erected under the authority of the Parking Law.

84 Further, cl 7(4) of the Parking Law provided that:

> An inscription or symbol on a sign operates and has effect according to its tenor, and where the inscription or symbol relates to the stopping of vehicles, it shall be deemed for the purposes of this Local Law to operate and have effect as if it also related to the parking of vehicles.

[30] Parking Law, cl 5, read with the definitions of 'parking region', 'district' and 'local government' in cl 4(1).
[31] Exhibits P7, P8 and P10.
[32] ts 46.

85 This means that not only was the magistrate entitled to presume that the 'no parking' signs relied on by the prosecution had been erected under the authority of the Parking Law, he was *required* to proceed on the basis that the inscriptions and symbols that appeared on the relevant signs operated and had effect according to their tenor.

86 In the face of these provisions, the appellant submits that a miscarriage of justice was occasioned because the respondent had not, *by resolution*, prohibited or regulated by signs, the parking of cars on that part of The Grange where the appellant's car was parked at the relevant time. In this regard the appellant relies on cl 8 of the Parking Law, which is in the following terms:

> The local government may, by resolution, prohibit or regulate by signs or otherwise, the stopping or parking of any vehicle, any class of vehicles or any class of drivers in any part of the parking region but must do so consistently with the provisions of this Local Law.

87 The appellant submits that the respondent did not in fact make a resolution as required by cl 8. Further, the appellant in effect submits that even if such a resolution was made it had not come into operation at the relevant time, for reasons that I will come to explain.

88 As the magistrate was never asked to decide whether the respondent had made a resolution for the purposes of cl 8 of the Parking Law, it is not open to argue that he erred in fact or in law in proceeding on the basis that the parking signs that were relied on by the prosecution did prohibit or regulate the parking of vehicles on The Grange for the purposes of cl 26(1)(e) of the Parking Law.[33] However, it is also not open to conclude that a miscarriage of justice was occasioned because the respondent did not make a resolution for the purposes of cl 8 of the Parking Law. Quite apart from the fact that the respondent was entitled to rely on cl 7(3) and cl 7(4) of the Parking Law, there is no admissible evidence before me that supports the appellant's assertion that the respondent did not make such a resolution. The appellant's contentions in that regard do not rise above the level of mere assertion.

89 However, the appellant also submits that the respondent did not make a resolution that had effect for the purposes of cl 8 of the Parking Law because the resolution was not published in the *Gazette* (or on the WA legislation website) as required by s 41 of the *Interpretation Act*

[33] ***R v Soma*** [2003] HCA 13; (2003) 212 CLR 299 [11], [79].

*1984* (WA). Accordingly, ignoring the effect of cl 7(3) and cl 7(4), and proceeding on an assumption favourable to the appellant that the existence of a resolution pursuant to cl 8 is a necessary precondition to the prohibition or regulation by signs of the parking of vehicles in the City of Cockburn, it is necessary to set out the text of s 41 of the *Interpretation Act* in full to make sense of the appellant's submission:

> **41. Publication and commencement of subsidiary legislation**
>
> (1) Where a written law confers power to make subsidiary legislation, all subsidiary legislation made under that power shall -
>
> (a) be published in the *Gazette* or on the WA legislation website; and
>
> (b) subject to section 42, come into operation on the day of publication, or where another day is specified or provided for in the subsidiary legislation, on that day.
>
> (2) A power to fix a day on which subsidiary legislation shall come into operation does not include power to fix different days for different provisions of that legislation unless express provision is made in that behalf.

90 The appellant submits that if any resolution had been made by the respondent for the purposes of cl 8 of the Parking Law, then it would amount to 'subsidiary legislation' for the purposes of s 41 of the *Interpretation Act*. He makes this submission because the definition of the phrase 'subsidiary legislation' in s 5 of the *Interpretation Act* is as follows:

> ***subsidiary legislation*** means any proclamation, regulation, rule, local law, by-law, order, notice, rule of court, local or region planning scheme, *resolution*, or other instrument, made under any written law and having legislative effect. (emphasis added)

91 As I understand it, the appellant's argument is that if the respondent had made a resolution under cl 8 of the Parking Law then, unless it was published in the *Gazette* or on the WA legislation website, it did not come into operation in accordance with s 41(1)(b) of the *Interpretation Act*. In that regard, the appellant submits that his searches of the *Gazette* establish that the respondent has never published a resolution made for the purposes of cl 8 of the Parking Law. It follows, the appellant says, that any parking signs erected on The Grange at the time of the alleged offences did not 'prohibit or

regulate by signs or otherwise, the stopping or parking of any vehicle'. Therefore, a miscarriage of justice was occasioned because it was not open to convict the appellant of an offence contrary to cl 26(1)(e) of the Parking Law because there were no 'no parking' signs that applied to the relevant portion of The Grange.

92 The appellant has not established a necessary premise of his argument, namely, that the respondent has never published a resolution made for the purposes of cl 8 of the Parking Law in the *Gazette*. As a result, his contentions on this point must be rejected. In any event, I will proceed to deal with the appellant's argument on the assumption that his assertions that the respondent has never published a resolution made under cl 8 of the Parking Law have been established on evidence properly admitted at the appellant's trial and on the appeal. I will also proceed on the assumption that it would be open to reach a conclusion that a miscarriage of justice was occasioned if the appellant's argument was accepted, notwithstanding the fact that the point was not made at trial, and in circumstances in which the prosecution was entitled to rely on the presumption in cl 7(3) and the deeming effect of cl 7(4).

93 The question raised by the appellant's argument falls to be determined by reference to whether a resolution made for the purposes of cl 8 is 'subsidiary legislation', as defined by s 5 of the *Interpretation Act*. As it is tolerably clear that a resolution made by the respondent under cl 8 would be a 'resolution … made under any written law', for the purposes of the definition of 'subsidiary legislation' in s 5, the answer to that question turns on whether such a resolution has 'legislative effect'.

94 As Tottle J observed in ***Montalbano v Morris***,[34] the distinction between instruments of a legislative character and those of an administrative character is not always easy to draw. However, considerable assistance in drawing that distinction can be obtained from what was said about this issue by Edelman J in ***Sea Shepherd Australia Ltd v The State of Western Australia***,[35] which was referred to with apparent approval in ***Tallott***.[36]

[34] ***Montalbano v Morris*** [2019] WASC 309 [44].
[35] ***Sea Shepherd Australia Ltd v The State of Western Australia*** [2014] WASC 66 [63].
[36] ***Tallott*** [180] - [182].

95 In ***Sea Shepherd***, Edelman J described the following extract from the judgment of Latham CJ in ***Commonwealth v Grunseit***[37] as a 'significant starting point':[38]

> The general distinction between legislation and the execution of legislation is that legislation determines the content of a law as a rule of conduct or a declaration as to power, right or duty, whereas executive authority applies the law in particular cases. Attention has been given in the United States of America to this distinction for the purpose of applying the doctrine which is there accepted of the separation of legislative, executive, and judicial power. My brother *Williams* referred to the case of ***J W Hampton Jr & Co v United States*** [(1928) [1928] USSC 69; 276 US 394, 407], where it was said: 'The true distinction, therefore, is, between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law'.[39]

96 His Honour also referred to a decision of the Full Federal Court in ***RG Capital Radio Ltd v Australian Broadcasting Authority***,[40] from which he extracted the following non-exhaustive factors relevant to the question of whether an instrument has legislative effect:[41]

> (i) the greater the control that Parliament has over the power reposed in the executive the more legislative the instrument will be in effect;
>
> (ii) a requirement of wide public consultation before an instrument takes effect is an indicator that it has legislative effect;
>
> (iii) the wider the range of considerations that the decision maker is entitled to take into account, the more likely the instrument will be characterised as legislative in effect;
>
> (iv) a broad nature and impact of the decision will be another indicator of legislative effect;
>
> (v) the absence of executive control of the decision indicates that it has a legislative effect; and
>
> (vi) the omission of a power of merits review by an administrative tribunal is another indicator of legislative effect.

[37] ***Commonwealth v Grunseit*** [1943] HCA 47; (1943) 67 CLR 58.
[38] ***Sea Shepherd*** [63].
[39] ***Commonwealth v Grunseit*** 82.
[40] ***RG Capital Radio Ltd v Australian Broadcasting Authority*** [2001] FCA 855; (2001) 113 FCR 185.
[41] ***Sea Shepherd*** [80].

97 After noting that these are not exhaustive factors, Edelman J said that:

> At the end of the day, the question of whether an instrument has legislative effect is to be answered by considering whether the instrument bears sufficient resemblance to legislation, having regard to those qualities usually present in legislation. The more legislative qualities that are present in the instrument the more it is likely to have a legislative effect.[42]

98 It may be accepted that the Parking Law itself has legislative effect. In that regard I note that in ***Tallott*** the Court of Appeal rejected an argument that a local law made by the City of Stirling pursuant to s 3.3 of the LGA was not subsidiary legislation for the purposes of s 5 of the *Interpretation Act* because it did not have legislative effect. For similar reasons to those expressed in ***Tallott***, the Parking Law plainly determines the content of the law relating to the parking and stopping of vehicles in the City of Cockburn as a rule of conduct, and may be considered to amount to a declaration as to power, right or duty.[43] The relevant question in the context of this appeal, however, is whether a resolution made in the exercise of the power provided for in cl 8 of the Parking Law to regulate by signs the parking of vehicles on The Grange would, if made, have legislative effect.

99 In my view a resolution made by the respondent pursuant to cl 8 of the Parking Law to regulate by signs the parking of vehicles on The Grange, if made, would not have legislative effect. This is because the content of the relevant rule of conduct for the purposes of this appeal is found in cl 26(1)(e) of the Parking Law, a rule that prohibits the parking of a vehicle on a thoroughfare, or a portion of a thoroughfare, to which a 'no parking' sign applies. Any resolution made under cl 8 of the Parking Law to 'prohibit or regulate by signs … the stopping or parking of any vehicle, any class of vehicles or any class of drivers in any part of the parking region' would have the effect of *applying* the rule of conduct in cl 26(1)(e) in particular circumstances, including by reference to the times when, and the places where, the rule of conduct is to apply.

100 Not all the non-exhaustive factors that were identified by Edelman J in ***Sea Shepherd*** readily apply to a resolution made under cl 8 of the Parking Law. However, to the extent that they are applicable, those factors generally support a conclusion that a

[42] ***Sea Shepherd*** [81].
[43] ***Tallott*** [183].

resolution under cl 8 would not have legislative effect. Parliament has no control over the respondent's power to make a resolution under cl 8. Further, the respondent is not required to consult before deciding where and how it will prohibit or regulate the parking or stopping of vehicles by signs, and it is not required to take into account any particular considerations in making resolutions. A resolution made under cl 8 will, obviously, have an effect. However, a resolution for the purposes of prohibiting or regulating the stopping or parking of vehicles on The Grange, or even in the City of Cockburn as a whole, could not properly be described as something that is of a broad nature and having broad impact. Finally, while there is no relevant executive control over the respondent in its exercise of power to make a resolution under cl 8, and there does not appear to be any possibility of merits review by an administrative tribunal, in my view those factors are not determinative. Ultimately, I am of the view that a resolution made under cl 8 would not bear sufficient resemblance to legislation, having regard to the qualities usually present in legislation.

101 Before leaving this issue, it is convenient to deal with one further matter that was raised by the appellant in his written and oral submissions. Among the exhibits that the appellant tendered during the defence case was an aerial photograph entitled 'Beeliar Primary School and Surrounding Area', which became part of exhibit A5. This photograph shows a portion of The Grange adjacent to what appears to be a carpark servicing the Beeliar Primary School. Various annotations have been made to the photograph to demonstrate the position of the relevant 'no parking' signs, as well as two arrows painted onto the road surface, indicating the entry to and exit from a part of the carpark.[44]

102 As I understand it the appellant argues, based on this photograph, that he was not parking contrary to the 'no parking' signs, for the purposes of cl 26(1)(e), because those signs did not apply to the area of the verge on which his car was parked. He says that those signs did not apply because of the operation of cl 7(1) of the Parking Law, which provides as follows:

> (1) Where the stopping or parking of vehicles in a thoroughfare is regulated by a sign, then the sign shall for the purposes of this Local Law apply to that part of the thoroughfare which -
>
> (a) lies beyond the sign;

[44] A copy of exhibit A5 is attached to these reasons as Annexure 2.

> (b) *lies between the sign and the next sign beyond that sign*; and
>
> (c) is on that side of the thoroughfare nearest to the sign. (emphasis added)

103 Relying on cl 7(1)(b), the appellant contends that the parking signs only applied to that part of The Grange between each sign and the next sign beyond that sign. He says that this means that in this case the parking signs only applied to regulate parking between each sign and the painted arrow leading into or out of the school carpark, leaving the area between the painted arrows unaffected by any parking signs. It follows, the appellant submits, that his car was not parked contrary to any parking signs, and that he therefore did not contravene cl 26(1)(e).

104 The appellant's submissions in this regard cannot be accepted.

105 The appellant's argument turns on whether the two relevant painted arrows constitute 'signs' for the purposes of cl 7(1) of the Parking Law. The answer to that question can be found in the meaning of the word 'sign' as it is defined in cl 4 of the Parking Law:

> '**sign**' means a traffic sign, mark, structure, inscription, road marking, symbol or device placed, marked or erected on or near a thoroughfare, a parking station, a parking facility or a public reserve for the purpose of prohibiting, regulating, guiding or directing the stopping or parking of vehicles.

106 Accordingly, while painted arrows such as the ones relied on by the appellant may well constitute a 'traffic sign, mark, structure, inscription, road marking, symbol or device placed, marked or erected on or near a thoroughfare, a parking station, a parking facility or a public reserve', and could therefore constitute a 'sign' as defined in cl 4, the critical issue in this case is concerned with the purpose of the arrows. Specifically, for the arrows to amount to a 'sign' the purpose of those arrows must be 'prohibiting, regulating, guiding or directing ***the stopping or parking of vehicles***'.

107 In my view, the photographic evidence demonstrates that the painted arrows relied on by the appellant are not 'signs', for the purposes of cl 7 of the Parking Law. The photographs that formed part of the evidence before the magistrate clearly establish that the purpose of those arrows was not to prohibit, regulate, guide or direct the stopping or parking of vehicles. Their purpose was to regulate the direction of travel for vehicles moving into and out of an area that

appears to have been set aside for parking relating to the Beeliar Primary School.

108 Accordingly, I do not accept the appellant's contentions in relation to any of the matters raised in the context of the third issue. All of those contentions are without merit.

***Fourth issue: the validity of the infringement notice and the effect of its withdrawal***[45]

109 According to the evidence adduced at trial, after Mr Williams observed the appellant's car parked on The Grange, and took a photograph of it, he returned to his normal duties before issuing an infringement notice the following morning. Based on Mr Williams' evidence, the infringement notice was posted to the appellant.[46]

110 The infringement notice set out some details of the alleged parking contravention, including the date and place where the infringement was alleged to have taken place, and a description of the relevant offence, namely, '[s]topping or parking on part of a thoroughfare indicated by a 'no parking' sign', which corresponded to an offence contrary to cl 26(1)(e) of the Parling Law. The notice stated that the penalty was $100, and that this amount was payable by 21 November 2019. It also contained information about the recipient's options, including paying the amount due to the respondent or electing to have the matter dealt with in court.

111 Mr Williams gave evidence that the amount in the infringement notice had not been paid.

112 The appellant cross-examined Mr Williams about the infringement notice. Much of the cross-examination appeared to be directed towards the question of whether it complied with the formal requirements for infringement notices issued under the LGA. The appellant also tendered a further copy of the infringement notice (exhibit A2). The second page of this document appeared to have been signed by the appellant on 20 December 2019 in a manner suggesting that he had, by that time, elected to have the matter dealt with by a court. The appellant also tendered a Notice of Offence and Infringement Notice (exhibit A3). The evidence about this document was not very clear but it appears as though it was a copy of a parking ticket issued by Mr Williams on 16 October 2019.

[45] Paragraph [12].
[46] A copy of the infringement notice was tendered as exhibit P9.

113 Mr Emery also gave evidence about the infringement notice. In summary he said that he became involved with the appellant's matter when the appellant sought to appeal the infringement. Mr Emery said that the appellant initially sought to have the infringement waived and then, after communications between the appellant and the respondent, the appellant elected to have the matter heard by a court. Mr Emery also referred to matters surrounding the infringement notice that are not presently relevant, but he also confirmed that the amount due under the infringement notice had not been paid. In cross-examination Mr Emery said that the infringement notice was withdrawn on 17 January 2020.

114 The appellant is convinced that the alleged invalidity of any infringement notices or tickets issued to him because his car was parked on the verge at The Grange on 15 October 2019 has given rise to some error of law, or that it has occasioned a miscarriage of justice, such that his convictions should be set aside. However, it is unnecessary to delve into the appellant's lengthy submissions about this issue, or to deal with questions concerned with what, if anything, might render an infringement notice 'invalid'. Even if the infringement notice that was issued to the appellant was 'invalid' it does not follows that there is any reason for concluding that the convictions that were subsequently entered against the appellant should be set aside.

115 Pursuant to s 9.16(1) of the LGA, an authorised person who has reason to believe that a person has committed a prescribed offence against a local law made under the LGA may, within 28 days after the alleged offence is believed to have been committed, give an infringement notice to the alleged offender. Relevantly, an offence is a 'prescribed offence' if it is one prescribed by a local law. In that regard, cl 70(1) of the Parking Law provides that an offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of s 9.16(1) of the LGA. An offence constituted by a contravention of cl 26(1)(e) of the Parking Law appears in Schedule 2. Accordingly, it is open to an authorised person to give a person an infringement notice in circumstances in which they have reason to believe that an offence contrary to cl 26(1)(e) of the Parking Law has been committed.

116 Pursuant to s 9.19 of the LGA, the chief executive officer of a local government may extend the period of time within which a modified penalty is required to be paid, and the extension may be allowed whether or not the period of 28 days has elapsed. Further, s 9.20 of the LGA enables an infringement notice to be withdrawn. If a modified penalty specified in an infringement notice has been paid

within 28 days, or within such further time as is allowed, and the notice has not been withdrawn, s 9.21 operates to prevent the bringing of proceedings and the imposition of penalties to the same extent as if the alleged offender had been convicted by a court of, and punished for, the alleged offence.

117 A prosecution for an offence against the LGA, which includes an offence against a local law,[47] may be commenced by the relevant person or persons referred to in s 9.24 of the LGA, provided that proceedings are commenced within 2 years after the offence was committed.[48] However, there are no other statutory limits. In particular, there is nothing in the LGA to suggest that a valid infringement notice is a necessary precondition to the proper commencement of a prosecution.

118 In ***Rodi v City of Joondalup***[49] the respondent had previously issued an infringement notice to a corporate entity, alleging that it had committed a vehicle offence. According to the appellant in that matter, after the corporate entity received the infringement notice it elected to have the matter dealt with by a court. Subsequently, however, the respondent commenced a prosecution against the appellant in the Magistrates Court. The appellant argued, on appeal, that it was not open to prosecute him. He contended that after the corporate entity had made its election the respondent had no alternative but to commence proceedings against that entity.

119 The appellant's argument was rejected by Chaney J, who made the following observations:[50]

> [W]hether or not the applicable legislation dealing with the infringement notice regime is the *Local Government Act 1995* (WA) in pt 9, div 2, subdiv 2 or the *Criminal Procedure Act*, it remains open, in my view, for a prosecuting authority to commence such proceedings as it wishes against whomsoever it wishes regardless of who might have received an infringement notice, unless, of course, the penalty has been paid under the infringement notice, which would then bar any action from proceeding.
>
> My view is that the applicable legislative provision is the *Local Government Act*, which deals with infringement notices. The scheme of pt 9, div 2, subdiv 2 is that the giving of an infringement notice is

[47] *Interpretation Act 1984* (WA), s 46.
[48] LGA, s 9.25(2).
[49] ***Rodi v City of Joondalup*** [2014] WASC 330.
[50] ***Rodi*** [14] - [16].

> facilitated and has the consequence, by s 9.21 of the Act, that where a modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed, then the bringing of proceedings and the imposition of penalties is barred in relation to the alleged offence.
>
> ***However, where the infringement notice has not been paid within 28 days and the notice has not been otherwise withdrawn, there is nothing to prevent the local authority from instituting such proceedings as it considers necessary and appropriate***. It is not, in my view, committed to a process which requires that any proceedings which it might commence be commenced against the person to whom it has issued infringement notice reminders and demands. (emphasis added)

120 In my view, his Honour's conclusions are plainly correct. It necessarily follows that it is open to commence a prosecution even if an 'invalid' infringement notice may have been issued. The only bar to the bringing of proceedings provided provisions of the LGA arises when the modified penalty in an infringement notice has been paid. In that regard, it is not in dispute that that the appellant did not pay the amount sought in the infringement notice or the ticket. In fact, the evidence suggests that the appellant elected to have the matter dealt with by a court. Accordingly, there was nothing to prevent the respondent instituting such proceedings as it considered necessary and appropriate.

121 It should be noted, in conclusion, that an infringement notice was only issued in relation to the appellant's alleged contravention of cl 26(1)(e) of the Parking Law. Accordingly, even if I am wrong in my conclusion that the validity or otherwise of the infringement notice has no bearing on the respondent's decision to commence a prosecution in the Magistrates Court, or on the validity of the prosecution itself, the conviction entered against the appellant as a result of the decision to commence a prosecution for an offence contrary to s 9.4(b) of the Local Laws remains unaffected.

122 None of the issues raised in connection with the fourth issue are capable of giving rise to a conclusion that the magistrate fell into appellable error or that a miscarriage of justice occurred.

***Fifth issue: whether the prosecution was validly commenced or commenced and conducted with an improper purpose***[51]

123 The appellant appears to submit that the prosecution which resulted in him being convicted of the offences in Charge 1 and Charge 2 was invalidly commenced. As I understand it, the appellant's contention is that the prosecution notice (which, when lodged with the Magistrates Court, commenced the prosecution against him) was invalid because it was signed by a person who was not authorised to commence that prosecution.

124 Section 20 of the *Criminal Procedure Act 2004* (WA) sets out who may commence a prosecution. Relevantly, s 20(2) provides that '[i]f another written law limits who may commence a prosecution for an offence, a prosecution for the offence may only be commenced in accordance with that law'. In that regard, s 9.24(2) of the LGA provides as follows:

> A prosecution for an offence against a local law may be commenced by
>
> (a) a person who is acting in the course of his or her duties as an employee of the local government or regional local government that made the local law; or
>
> (b) a person who is authorised to do so by the local government or regional local government that made the local law.

125 As I have already mentioned, the prosecution notice in this matter was signed[52] by Mr Michael Emery. The relevant part of the prosecution notice is in the following form:

| | | | | | |
|---|---|---|---|---|---|
| **Prosecutor** | CITY OF COCKBURN | | Work address | 9 Colville Crescent SPEARWOOD WA 6163 | |
| **Person issuing this notice** | Given name<br>Surname | Michael<br>Emery | Work Telephone | Official title | Authorised Employee of the City of Cockburn |
| **Witness's signature*** | | | | Date | 22 January 2020 |
| | Justice of the Peace or Prescribed Court Officer | | | This prosecution notice is signed on | |
| * If required pursuant to s21(3) or 23(5) of the *Criminal Procedure Act 2004* | | | | | |

[51] Paragraphs [10], [12], [13], [14(b)], [15(d)].

[52] The prosecution notice was not physically signed. However, the appellant did not take any issue with that point. In any event, the prosecution notice was lodged electronically in accordance with the *Courts and Tribunals (Electronic Process Facilitation) Act 2013* (WA). In that regard I refer to, without repeating, the discussion about the requirements for signing prosecution notices in ***Kelly v Fiander*** [2023] WASC 187.

126 Section 174 of the *Criminal Procedure Act* provides that:

> If a document that -
>
> (a) under Part 3 is required to be signed by a person who is an authorised investigator; or
>
> (b) under Part 4 is required to be signed by a person who is an authorised officer,
>
> purports to be signed by such a person, it is to be taken to have been signed by such a person unless the contrary is proved.

127 Pursuant to s 18 of the *Criminal Procedure Act* an 'authorised investigator', for the purposes of Part 3 of that Act, includes 'an officer of a prescribed public authority who is authorised by the public authority, or under a written law, to commence prosecutions'. A 'prescribed public authority' for the purposes of s 18 includes each local government.[53]

128 As can be seen from the relevant part of the prosecution notice reproduced above it purports to be signed by an officer of a local government,[54] the City of Cockburn, who is authorised to commence prosecutions, either by the City itself or under a written law. It follows that at the appellant's trial it was to be taken that the prosecution was signed by such a person unless the contrary was proved.

129 At the trial, Mr Emery gave evidence that he was the Rangers and Community Safety Services Manager for the City of Cockburn. He said that since 2017 the signing of prosecution notices was typically part of his role, and that he would probably sign 'a dozen or so prosecution notices each year'.[55] It was put to him in cross-examination that he was not an 'authorised officer', and that he hadn't been authorised by the City of Cockburn to commence prosecutions. However, Mr Emery disagreed and said that '[u]nder the Local Government Act, it's in my course of duties to regularly commence prosecutions'.[56] Further, Mr Emery also said:

> [I]t was based on, under the Local Government, if it's an officer's course of duty - so the section within the Local Government Act that allows Local Government officers to commence prosecution. The acting chief executive officers, both of them during the - during this entire time of

[53] *Criminal Procedure Regulations 2005* (WA), reg 7A.
[54] ***Kelly v Fiander*** [85] - [86].
[55] Trial ts 34.
[56] Trial ts 39.

> this prosecution, were fully aware and cognisant that I - that I commenced legal proceedings … against yourself.'[57]

130 It is apparent that Mr Emery was referring to s 9.24(2)(a) of the LGA. The effect of his evidence was that the prosecution against the appellant was commenced by a person who was acting in the course of his duties as an employee of the City of Cockburn. Accordingly, far from there being evidence to the contrary, the evidence that was actually adduced at the trial positively established that the prosecution of the appellant had been validly commenced. It follows that the appellant's submission that the prosecution was not validly commenced is without merit.

131 Quite apart from the question of whether the prosecution had been validly commenced, in the numerous documents filed by the appellant in this matter the appellant has made several serious broad-ranging allegations about some of the respondent's employees. Those allegations include contentions that certain employees improperly commenced and maintained the prosecution of the appellant, and that they did so 'fraudulently', with 'malice', and 'recklessly'. The appellant has also submitted that an investigation purportedly carried out by one of the respondent's employees in relation to an objection to the infringement notice was 'unreasonable, illogical, contrived with the intent to deceive and fraudulent'.

132 To the extent that these very serious allegations concern the motivations of, or the degree of care taken by, individuals who made decisions to issue and then withdraw an infringement notice, and to then prosecute the appellant, they were made without evidentiary foundation. Although I appreciate that the appellant is unrepresented, they should not have been made and they are without merit.

### ***Sixth issue: whether the appellant was denied procedural fairness during the trial***[58]

133 The appellant contends that, in a number of respects, he was denied procedural fairness in the course of his trial. Firstly, he says that he was denied procedural fairness because he was denied the opportunity to use his computer during the trial, despite having obtained permission to do so in advance of the trial. Secondly, he says he was denied the opportunity to raise matters relating to what he says

[57] Trial ts 39.
[58] Paragraphs [14(a)], [14(b)], [14(c)].

was the improper commencement of the prosecution before the prosecution's opening address.

134 The appellant contends that the magistrate denied him the opportunity to use his computer during the trial. He says that the magistrate 'summarily revoked' approval that he had obtained from the Chief Magistrate to use his computer at the trial. In that regard, the appellant submits that he was denied the opportunity to present evidence, and to refer to materials during his addresses.

135 There is no evidence about why the magistrate may have denied the appellant access to his computer during the trial. However, the respondent does not suggest that the magistrate was not required to accord procedural fairness to the appellant. Further, the respondent does not appear to challenge the appellant's contention that he did obtain approval to use his computer at the trial, or that this approval was revoked by the magistrate, even though these facts do not emerge from the transcript of the proceedings below. Accordingly, and operating on the assumption that the appellant was denied the ability to access and use his computer during the trial, the question for determination is whether this constituted a breach of the requirements of procedural fairness that amounted to a miscarriage of justice.

136 The expression 'a miscarriage of justice' used in s 8(1)(b) of the CA Act 'covers cases where, by reason of irregularity or otherwise, an accused has not received a trial according to law or has not received a fair trial'.[59] Pursuant to s 144(1) of the *Criminal Procedure Act* the appellant was entitled to defend the charges. If, by refusing to allow the appellant access to his computer during the trial the appellant was denied his entitlement to defend the charges, then that would amount to a miscarriage of justice.

137 In this case, in compliance with an order made by this court on 20 February 2023, the appellant provided a list of the documents and other materials that he says were on his computer at the time of the trial, to which he wanted to have access in order to defend himself. The respondent did not challenge the appellant's assertions about those matters. Amongst the documents listed by the appellant are an opening and a closing address, and copies of various authorities. Copies of those particular documents are not before the court; however their contents can be inferred. Based on those documents alone, and bearing in mind that the appellant was not represented at his trial, I am prepared

[59] ***Filippou v The Queen*** [2015] HCA 29; (2015) 89 ALJR 776 [14] (French CJ, Bell, Keane & Nettle JJ).

to proceed on an assumption favourable to the appellant that he was not afforded his right to defend the charges provided for by s 144(1) of the *Criminal Procedure Act*, and that a miscarriage of justice occurred as a result.

138 However, by s 14(2) of the CA Act, despite s 14(1)(b), even if a ground of appeal might be decided in favour of the appellant, including on the basis that there has been a miscarriage of justice, the Supreme Court may dismiss the appeal 'if it considers that no *substantial* miscarriage of justice has occurred' (emphasis added). This is the effect of what was submitted by the respondent, namely, that if the appellant was denied procedural fairness, then it could not have had a bearing on the ultimate outcome of the trial.[60]

139 The principles to be applied in determining, for the purposes of s 14(2), where no substantial miscarriage of justice has occurred were referred to ***Parfenova v Diss***[61]:

> 61. There is no universally applicable description of what constitutes no substantial miscarriage of justice.
>
> 62. The High Court has considered the application of the so-called 'proviso' in four recent cases: ***Kalbasi v The State of Western Australia***, ***Collins v The Queen***, ***Lane v The Queen*** and ***OKS v The State of Western Australia***. The effect of those decisions was summarised in ***Wark v The State of Western Australia***:
>
> The majority in ***Kalbasi v The State of Western Australia*** observed that the appellate court's determination of whether the proviso applies does not turn on 'its estimate of the verdict that [might have been returned] had the error not occurred'. Rather, the task of determining whether, notwithstanding an error, there has been no substantial miscarriage of justice is committed to the appellate court. In undertaking that task the following principles apply:
>
> (1) The appellate court must undertake an independent assessment of the whole of the record of the trial. That examination requires account to be taken of the guilty verdict.
>
> (2) It is a necessary, although not sufficient, condition of the application of the proviso that the appellate court is persuaded that the evidence properly admitted at trial proved the accused's guilt beyond reasonable doubt.

[60] Respondent's Outline of Submissions [51] - [52].
[61] ***Parfenova v Diss*** [2021] WASCA 50 [61] - [62].

> That is because the conviction of a person whose guilt has not been proved beyond reasonable doubt will always be a substantial miscarriage of justice.
>
> (3) Consideration of the application of the proviso requires identification of, and consideration of the nature and effect of, the error(s) made at trial. Some errors will prevent the appellate court from being able to assess whether guilt was proved beyond reasonable doubt.
>
> (4) There are natural limitations on the appellate court's ability to determine, based on the record, whether guilt was proved beyond reasonable doubt, particularly in cases in which the credibility of witnesses is of importance. In such cases, because the appellate court has not seen and heard the witnesses give their evidence, the court may be precluded from concluding that guilt was proved beyond reasonable doubt.
>
> (5) In some cases, the appellate court may rely on the guilty verdict in a manner that enables those limitations to be overcome. However, the appellate court will not be able to rely on the verdict where the verdict may have been affected by the error(s).
>
> (6) In some extreme cases, which are likely to be rare, the appellate court may be able to rely on its own conclusion, based on the record, that oral evidence contrary to the prosecution case is obviously false. The respondent did not suggest that this was such a case.
>
> (7) Some errors are so fundamental or breach the fundamental presuppositions of the trial so as to be beyond the reach of the proviso regardless of whether, in the eyes of the appellate court, the evidence at trial proved guilt beyond reasonable doubt. This is not a case of that kind. (citations omitted)

140 In my view, the evidence that was properly admitted at the trial proved that the appellant was guilty of the offences charged.[62] In that regard, the appellant accepted, in his evidence, that his car was parked where it was seen and photographed by Mr Williams. He also said, in cross-examination, that it was more likely to have been him, as opposed to his wife, who had parked the car in that place on the day in question. The appellant frankly accepted the relevant 'no parking' signs were in

[62] ***Kalbasi v State of Western Australia*** [2018] HCA 7; (2018) 264 CLR 62 [13] - [15] (Kiefel CJ, Bell, Keane & Gordon JJ); ***OKS v State of Western Australia*** [2019] HCA 10; (2019) 265 CLR 268 [31] (Bell, Keane, Nettle & Gordon JJ), [38] (Edelman J).

the places depicted in the photographs taken by Mr Williams at the relevant time, and that it would be 'ridiculous' to conclude that his car had got to that point other than by driving over the footpath. Consistent with the approach the appellant has taken to the appeal, the only substantive arguments that he relied on at the trial were legal arguments.

141 In my view, the appellant's guilt was proved beyond reasonable doubt.

142 To the extent that the appellant may have been deprived of the opportunity to defend himself at the trial because he was denied access to materials on his computer that may have assisted him in presenting technical legal arguments, the appellant has now had the opportunity to put all those arguments before this court. There is no doubt, having regard to the large volume of material that the appellant has seen fit to put before this court, that the appellant has certainly taken every opportunity in that regard. Accordingly, whether a substantial miscarriage of justice has occurred because the appellant was deprived of the opportunity of adequately presenting those arguments at trial is a matter that will necessarily be resolved in separately dealing with the various issues raised in the context of other grounds of appeal.

143 As will be seen, I have reached the view that none of the other grounds relied on by the appellant, and none of the issues raised in connection with those grounds, have any merit. I am therefore satisfied that, even on the assumption that the appellant was deprived of the opportunity to defend himself at the trial because he was denied access to various materials that were on his computer, no substantial miscarriage of justice has occurred.

***Seventh issue: the alleged failure of the prosecution to provide certain documents in answer to a summons or as directed by the learned magistrate***[63]

144 The appellant submits that a miscarriage of justice was occasioned because the respondent failed to produce certain documents under summons, failed to produce certain witness statements and failed to provide an agreed statement of facts contrary to directions he says were made by a magistrate at a hearing in advance of the appellant's trial.

[63] Paragraphs [14(b)], [14(c)].

145 There is no substance to the appellant's contention that a miscarriage of justice was occasioned by a failure on the part of the respondent to produce an agreed statement of facts for the purposes of trial. Contrary to the appellant's submissions, the respondent was not ordered to produce a statement of material facts. The transcript of the relevant proceedings that took place before Magistrate Lemmon on 5 June 2020 quite clearly reveals that the presiding magistrate merely suggested to the parties that a statement of agreed facts might be of assistance to the court in narrowing down the issues in dispute at the trial. In any event, it is impossible to conclude that the absence of a statement of agreed facts resulted in an unfair trial, or that it meant the trial was conducted otherwise than in accordance with the law.

146 The appellant's submission that a miscarriage of justice occurred because the respondent failed to properly comply with summonses to produce certain documents, and that it did not disclose certain witness statements, also cannot be accepted. Pursuant to orders made by this court on 20 February 2023, the appellant filed and served a list of the documents that he asserted he sought by way of summons issued to the respondent, but which were not provided. The respondent submits, in effect, that it produced all relevant documents to the court and to the respondent. The appellant also complains that the respondent did not disclose witness statements from Mr Emery and Ms Bold that he says were created prior to 5 June 2020. The appellant says that these documents must exist because the matter was due to proceed to trial on that day and, subsequently, he was provided with witness statements that were prepared on a later date.

147 The question, on appeal, is not whether the respondent provided all documents that were sought by summon, or whether it disclosed all witness statements. The relevant question is whether a miscarriage of justice occurred.[64] In that regard it is not enough to simply assert, as the appellant has done, that certain documents were not provided. It is necessary to demonstrate that by reason of an irregularity or otherwise, the appellant did not receive a trial according to law or did not receive a fair trial.[65]

148 It is for the appellant to clearly identify why he says that a miscarriage of justice was occasioned. In my view he has not done so. Further, I have not been able to identify anything amongst the

[64] ***White v The Queen*** [2006] WASCA 62 [185] - [194] (McLure JA). See also, ***PAH v The State of Western Australia*** [2015] WASCA 159 [118] - [142] (Buss JA).
[65] ***Filippou*** [14] (French CJ, Bell, Keane & Nettle JJ).

voluminous materials that have been filed in this matter, including the appellant's list of documents filed in compliance with orders made on 20 February 2023, that supports a conclusion that a miscarriage of justice was occasioned by the fact that certain documents were not produced in answer to summonses issued to the respondent. I have also not been able to identify anything that suggests that the witness statements even existed, let alone that any failure to disclose them occasioned a miscarriage of justice.

149 The appellant also argues that the magistrate erred in law in failing to require the respondent to 'commence proceedings in according with reg 26 of the *Criminal Procedure Regulations 2005* (WA) in relation to a claim of legal professional privilege'. Presumably, the appellant relies on reg 26(4) and (5), which are in the following terms:

> (4) If the witness claims that any record or thing to which the summons relates is privileged, the witness -
>
> (a) must apply for an order that the record or thing is privileged; and
>
> (b) must produce the record or thing to the court at the hearing of the application.
>
> (5) An application under subregulation (4)(a) must be lodged as soon as practicable after the witness is served with the witness summons and in any event on or before the attendance date in the witness summons.

150 It is my understanding that the appellant's contention is concerned with what has been described as an 'Infringement Memo', which was apparently provided to the appellant by the respondent, albeit in a redacted form. The respondent submits that it was not required to comply with reg 26.

151 Based on the transcripts of the proceedings that took place in the Magistrates Court, no magistrate was ever asked to require the respondent to comply with reg 26 of the *Criminal Procedure Regulations*. Accordingly, it is not open to argue that there was an error of law.[66] In any event, whether the respondent did comply with reg 26, or whether the magistrate did not require such compliance, is beside the point. The question is whether a miscarriage of justice occurred. In that regard the appellant has not identified any circumstances arising out of any alleged failure to comply with reg 26,

[66] ***R v Soma*** [11], [79].

or with the provision of a redacted document, that is in any way suggestive of a miscarriage of justice.

152 The appellant's submissions and contentions in relation to the matters raised in the context of the seventh issue are without merit.

***Eighth issue: the giving of evidence by the prosecution at trial***[67]

153 The appellant submits that the way in which the prosecution tendered some evidence in the course of counsel's opening address occasioned a miscarriage of justice. Specifically, it is suggested that this was because this deprived the appellant of the opportunity of being able to cross-examine a witness.

154 During counsel for the respondent's opening address a number of documents were tendered and accepted as exhibits. Those documents were as follows:

1. A 'gazetted' copy of the Local Laws and the Parking Law.

2. A certificate prepared under s 9.41 of the LGA, evidencing the fact that The Grange was within the district of the City of Cockburn.

3. A certificate issued under s 110 of the *Road Traffic (Administration) Act 2008* (WA), certifying that the car found to have been parked on The Grange at the relevant time was licensed to the appellant.

4. An unsigned witness statement for a Tamara Bold, who was employed by the respondent in November 2019, and who had some dealings with the appellant about the infringement notice at that time.

155 It is difficult to see how it could be concluded that a miscarriage of justice was occasioned because these documents were tendered during the prosecution opening address, or that the magistrate in some way fell into error in allowing that to happen, or by subsequently taking this evidence into account. The copies of the relevant laws, and the two certificates, were admissible without the need for a witness to be called. Further, to the extent that the appellant's complaint concerns the unsigned witness statement, the transcript demonstrates that the appellant did not object to tender of that statement. In fact, it is evident

[67] Paragraph [15].

that the prosecutor spoke to the appellant before the start of the trial to inform him that the witness was not employed by the respondent anymore and that she had refused to attend court. On that basis the prosecutor informed the magistrate that he had advised the appellant that the witness was not going to be called as part of the prosecution case. The prosecutor then informed the court that ordinarily he wouldn't attempt to tender the witness statement but that, as the appellant had indicated a preference for it to be tendered, it would be tendered by consent. The statement was then tendered and it was received into evidence as an exhibit.

156 In those circumstances it is now not open to the appellant to complain that he was unable to cross-examine this witness. In any event, the appellant has not taken any steps to demonstrate the evidence the witness would or may have given had she been cross-examined. Further, and in any event, the witness statement is concerned only with events that occurred after the alleged commission of the offences. It is difficult to see how anything that occurred after the alleged commission of the offences could have been relevant to the question of whether the prosecution had proved that he was guilty.

157 The appellant's submissions in relation to the matters raised in the context of the eighth issue are without merit.

### *Ninth issue: the validity of the s 9.41(3) certificate*[68]

158 At the trial it was necessary for the prosecution to prove that the acts constituting each of the offences charged occurred within the district of the City of Cockburn. This is because, in the case of the Local Laws, s 1.4 of the LGA provides that those laws applied to the whole of the district[69] of the City of Cockburn. In the case of the Parking Law, cl 5(1) provided that those laws applied to the 'parking region', which, relevantly, meant the whole of the district of the City of Cockburn.[70]

159 The prosecution sought to prove that the appellant's acts occurred within the district of the City of Cockburn by tendering a certificate which, on its face, purported to have been made under s 9.41(3) of the LGA. The certificate, which was signed by an employee of the City of Cockburn who had been authorised by the chief executive officer of the

[68] Paragraph [15].
[69] According to the definition of 'district' in s 1.4 of the LGA, a district is an area of the State that is declared to be a district under s 2.1 of the LGA.
[70] Relevant definitions of the words 'parking region' and 'district' are set out in cl 4(1) of the Parking Law.

City to sign the certificate, stated that on 15 October 2019 The Grange, Beeliar, was within the district of the City of Cockburn. The certificate was signed, and dated 22 January 2020.

160 The appellant's contentions in relation to this certificate are unclear and difficult to understand. To the extent that there is any suggestion that the certificate was invalid, in the sense that it did not comply with s 9.41(3) of the LGA, that contention is without substance. Pursuant to s 9.41(3), evidence as to whether anything is within a local government's district may be given by tendering a certificate signed by the chief executive officer, or by an employee of the local government who purports to be authorised by the chief executive officer to so sign, which contains a statement to that effect. The certificate that was tendered by the respondent plainly complied with those requirements.

161 Quite apart from any question of the validity of the certificate, the appellant appears to also submit that it was not open to the magistrate to accept the certificate as evidence of the fact that The Grange was within the district of the City of Cockburn. The appellant submits that the facts sought to be proved by the certificate could only have been proved by the tender of a certified copy of a plan or diagram of land in accordance with s 9.48 and s 9.69 of the LGA. Section 9.48 of the LGA provides that evidence of the existence, alignment or width of a thoroughfare at a particular time may be given by tendering a document purporting to be a certified copy of an official plan. Section 9.69 of the LGA allows for the admission into evidence of a certified copy of a plan or diagram deposited with the Western Australian Land Information Authority for any purpose for which the original would be admissible.

162 The appellant's argument is based on a false premise. There is absolutely nothing in the text of s 9.48 and s 9.69 of the LGA, properly construed, supporting a conclusion that they are the only provisions that govern the admission of evidence that establishes (or is capable of establishing) that the acts the subject of the alleged offences occurred within the district of the City of Cockburn. The argument also completely ignores that fact that s 9.41(3)(a) of the LGA expressly refers to evidence as to whether anything 'is within a local government's district'. It is beyond question that one of the functions of that provision is to facilitate proof of that specific fact.

163 The appellant's submissions and contentions in relation to the matters raised in the context of the ninth issue are without any merit.

***Tenth issue: the validity of the Certificate of Authority for an Authorised Person***[71]

164 As I have already observed, Mr Williams gave evidence at the appellant's trial about where the appellant's car was parked on the date the offences were alleged to have been committed. The appellant cross-examined Mr Williams about several topics. One of those topics concerned a certificate that had been issued by the respondent's chief executive officer on 25 September 2019, and which was ultimately tendered by the appellant as exhibit A1.

165 The relevant certificate appears to have been intended to constitute a written appointment made pursuant to s 9.10 of the LGA, which provides that the chief executive officer of a local government may, in writing, appoint persons or classes of persons to be authorised persons for the purposes of specified laws or provisions. The appellant conducted his cross-examination of Mr Williams with a view to establishing that the certificate was invalid in some respect. In that regard, the appellant drew Mr William's attention to the fact that the certificate referred to two 'sections' of the Local Laws, and suggested that they were in fact 'clauses'.[72] He also suggested that where the certificate referred to the 'City of Cockburn Parking Local Laws 2007' this was an error, because the correct citation was 'City of Cockburn Parking & Parking Facilities Local Laws 2007'. Finally, he noted that the certificate referred to an 'authorised officer', whereas s 9.10 of the LGA referred to an 'authorised person'.

166 It is not at all clear why the validity of the certificate was, or could ever be, affected by the matters the appellant raised in his cross-examination of Mr Williams. Even if the appellant's contentions were to be accepted, it is difficult to see how those matters appearing on the face of the certificate would render the certificate a nullity. In any event it is unnecessary to reach any conclusion about this issue. This is because even if the certificate was invalid it is not a matter that has a logical bearing on the question of whether the prosecution had proved to the requisite standard that the appellant was guilty of either of the offences with which he was charged.

167 The certificate was the means by which Mr Williams was appointed as a 'authorised officer' for the purposes of s 3.4(h) and s 9.4(b) of the Local Laws, and an 'authorised officer' for the purposes

[71] Paragraph [15].
[72] Despite the fact that the Local Laws refers to its provisions as 'sections'.

of the Parking Law. Under s 3.4(h) and s 9.4(b) of the Local Laws, an authorised officer is able to grant permission for certain activity in relation to property under the care, control or management of a local government, and to allow persons to drive vehicles across kerb and footpaths. For the purposes of the Parking Law, a person appointed to be an authorised officer can perform the various functions of an authorised officer under those laws. Those functions include giving certain directions in relation to the movement of traffic, placing notices on vehicles, and giving permission for certain parking-related activities.

168 Issues about whether Mr Williams was validly appointed as an authorised officer, and whether the certificate was valid, were irrelevant to the question of whether the prosecution had proved that the appellant had committed the offences charged.

169 The appellant's submissions in relation to the matters raised in the context of the tenth issue are without merit.

***Eleventh issue: the validity of the 'no parking' signs***[73]

170 I have already dealt with this above, in the context of the third issue.

***Twelfth issue: other alleged errors by the learned Magistrate***[74]

171 The appellant submits that the magistrate erred in convicting the appellant of the offence comprising Charge 2 because the words used in the prosecution notice to describe the offence did not correlate with the words used in s 9.4(b) of the Local Laws. In order to understand the appellant's contention, it is necessary to set out the charge as it appears in the prosecution notice:

> Within the district of the City of Cockburn, drove a vehicle, namely a [description of appellant's car] across a footpath, contrary to Claude [sic] 9.4(b) and Clause 12.24 of the City of Cockburn (Local Government Act) Local Laws 2000.

172 The prosecution notice also referred to the date on which that offence was allegedly committed, namely, 15 October 2019.

173 As has already been seen, the words used in s 9.4(b) of the Local Laws are as follows:

[73] Paragraph [16].
[74] Paragraphs [10], [14(b)], [14(c)], [15], [17], [21].

> A person shall not, without the permission of the local government or an authorised person:
>
> …
>
> (b) drive any vehicle over or across a kerb or footpath except at a specially constructed crossing place[.]

174 The appellant's complaint appears to be that the words 'without the permission of the local government or an authorised person' and the words 'except at a specially constructed crossing place', which appear in s 9.4(b) of the Local Law, did not form part of the wording of the charge that was set out in the prosecution notice. However, the appellant's contention that a discrepancy between the wording of the charge in the prosecution notice and the words used in s 9.4(b) of the Local Law led to the magistrate committing an error of law, or that it occasioned a miscarriage of justice, cannot be accepted.

175 Firstly, the charge in the prosecution notice complied with the formal requirements referred to in s 23 of the *Criminal Procedure Act*. Relevantly, it complied with cl 5 of sch 1 of the *Criminal Procedure Act*, which sets out what is required to adequately describe the alleged offence charged. Clause 5 is in the following terms:

> **5. Alleged offence to be described**
>
> (1) A charge in a prosecution notice or indictment must inform the accused of the alleged offence in enough detail to enable the accused to understand and defend the charge, and in particular must -
>
> (a) describe the offence with reasonable clarity; and
>
> (b) identify the written law and the provision of it that creates the offence; and
>
> (c) identify with reasonable clarity -
>
> (i) the date when the offence was committed or, if the date is not known, the period in which the offence was committed; and
>
> (ii) where the offence was committed;
>
> and

> (d) if the offence is one against a person, identify the person concerned in accordance with clause 6(2); and
>
> (e) if the offence relates to property, comply with clause 6(4) and (5).
>
> (2) For the purposes of subclause (1) -
>
> (a) it is sufficient to describe an offence in the words of the written law that creates it; and
>
> (b) if that written law states that alternative acts, omissions, capacities, or intentions, constitute the offence, the alternatives may be set out; and
>
> (c) a charge is not defective only because an element of the offence is not stated; and
>
> (d) it is not necessary to allege -
>
> (i) any matter, or any particulars as to a person or thing, that need not be proved; or
>
> (ii) the means or thing used to do an act constituting an offence unless the means or thing is an element of the offence.

176 In my view, the words that were used to describe the offence charged in Charge 2 were sufficient to inform the appellant of the alleged offence in enough detail to enable him to understand and defend the charge. By reference to the relevant requirements set out in cl 5(1)(a) - (c), the charge described the offence with reasonably clarity, it identified the provisions of the Local Law that created the offence, and identified with reasonable clarity the date on which, and the place at which, that offence was alleged to have been committed. In any event the appellant did not make any complaint in the court below about his ability to understand or defend either of the charges.

177 Secondly, to the extent that the charge did not pick up some of the words used in s 9.4(b) of the Local Law, and on the assumption that those words described elements of the offence created by that provision, cl 5(2)(c) of sch 1 of the *Criminal Procedure Act* provides that a charge is not defective only because an element of the offence is not stated. In any event, the words that appear in s 9.4(b) of the Local

Law, which did not appear in the charge, were not elements of the offence but were 'exceptions'[75] in respect of a simple offence. Accordingly, pursuant to s 78 of the *Criminal Procedure Act*, those exceptions did not need to be specified in the charge.

178 Thirdly, and in any event, if the appellant wished to object to the prosecution notice on the basis that it was defective, s 178(2) of the *Criminal Procedure Act* provides that the time to do that was before the prosecutor's opening address. As the appellant did not raise any objection to the prosecution notice before the prosecutor's opening address, it is now too late.

179 The appellant also contends that the prosecution notice misidentified him because his date of birth was incorrectly recorded in the prosecution notice. On the assumption that the prosecution notice did incorrectly record the appellant's date of birth it is impossible to see how this resulted in the magistrate falling into appealable error, or how it could be said to have occasioned a miscarriage of justice. An accused's date of birth is only required to be included on a prosecution notice for the purposes of identifying the accused, and then only if the date of birth is known. Further, there was no question about the appellant's identity in this case. The appellant appeared at the trial in person, identified himself when called upon to do so by the presiding magistrate, and enthusiastically contested both charges. In any event, to the extent that an erroneous date of birth might be considered to amount to a defect in a court document, the appellant did not raise any objection to the prosecution notice on those grounds before the prosecutor began his opening address.

180 The appellant also asserts that the prosecution notice was defective because it did not record his plea. Quite apart from the fact that there is nothing in the *Criminal Procedure Act* that suggests that the validity or otherwise of a prosecution notice depends on whether a plea entered by an accused has been recorded in the prosecution notice, according to the appellant's own submissions he provided a written plea of not guilty on the Court Hearing Notice to the charges as recorded on the face of the prosecution notice. A written plea in relation to charges of simple offences is permitted by s 50 of the *Criminal Procedure Act*.

181 Finally, the appellant argues that the magistrate erred in accepting oral evidence of the dimensions of The Grange. The appellant appears

[75] Section 78(1) of the *Criminal Procedure Act* defines an 'exception' to include 'a condition, excuse, exemption, proviso and qualification'.

to contend that this evidence was 'unreliable' because it was informed by the respondent's 'Intramap' system, when the respondent itself has stated that its accuracy is unknown, that it should not be used for legal purposes, and because 'evidence of fact is to be provided in accordance with s 9.49 LGA'.[76]

182 At the trial the appellant cross-examined Mr Williams about a document that was produced under summons. It is not entirely clear from the transcript of the proceedings to which document the appellant was referring, but it seems likely that it was one of the documents that became part of exhibit A5, comprising a screen shot of an aerial photograph of the area surrounding the Beeliar Primary School. This document bears some similarity to exhibit P7, which contains some of the information from exhibit A5, and which was used to demonstrate where the appellant's car was parked, as well as the approximate location of the relevant 'no parking' signs. There is a disclaimer at the bottom of A5 that says, relevantly, that the 'accuracy provided is not to be used for legal purposes, but reference made to original documents'.

183 The appellant did not object to the tender of P7, and so the magistrate was not required to make a decision about its admissibility. Further, it is by no means clear that the magistrate relied on A5 in reaching his conclusion that the prosecution had proved the appellant's guilt beyond reasonable doubt. Accordingly, the premise of the appellant's complaint has not been established. In any event, the appellant did not challenge Mr Williams' evidence that his car was parked in an area in which a 'no parking' sign applied, for the purposes of cl 26(1)(e). Further, in his own evidence the appellant accepted that the 'no parking' signs were 'there and they were there when the offence occurred … I have no problems with that'.[77]

184 The appellant's reliance on s 9.48 of the LGA also cannot assist him. Section 9.48 allows for evidence of the existence of a thoroughfare or its alignment or width at a particular time to be given by tendering a document purporting to be a copy of an official plan that is certified in accordance with s 9.48(1)(b). Contrary to the appellant's submission, s 9.48 is permissive and not compulsory. It facilitates the admissibility of *evidence* of the matters to which it refers. However, it does not limit the range of evidence that might be deployed to prove those matters.

[76] Grounds of Appeal [15(b)].
[77] ts 46.

### *A further issue: the reasonableness and evidential basis of the verdicts*[78]

185 The appellant asserts that the verdict(s) were unreasonable or cannot be supported having regard to the evidence. An allegation that a magistrate's verdict is unreasonable or cannot be supported by the evidence is, for the purposes of s 8 of the CA Act, an allegation that a miscarriage of justice has occurred.[79]

186 Doing my very best, I have not been able to identify any cogent argument in all of the appellant's copious materials that might support a conclusion that either of the magistrate's verdicts were unreasonable or could not be supported, having regard to the well-known principles that must be applied.[80]

187 What is clear is that the following was not in dispute at the trial, based on the appellant's own evidence: firstly, the appellant was the owner of the relevant vehicle that was alleged to have been used in the commission of both offences.[81] Secondly, the vehicle was driven across a footpath[82] and was then parked where it was photographed by Mr Williams on 15 October 2019.[83] Thirdly, the appellant accepted that it was more likely to have been him who parked the vehicle,[84] and that he was 'wearing it'.[85] Fourthly, that the 'no parking' signs relied on by the respondent were 'there and they were there when the offence occurred'.[86] It was also not in dispute that the alleged offences occurred within the district of the City of Cockburn.

188 In that light, and in circumstances in which I have concluded that the appellant's legal arguments are without merit, having undertaken my own independent assessment of the sufficiency and quality of the evidence, I am of the view that it was well open to the magistrate to be satisfied beyond reasonable doubt that the appellant was guilty of both offences.

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[78] Paragraph [17].
[79] ***The State of Western Australia v Olive*** [2011] WASCA 25; (2011) 57 MVR 269 [43] - [44]; ***Tu v McLean*** [2022] WASC 176 [135].
[80] ***Wells v The State of Western Australia*** [2017] WASCA 27 [13].
[81] ts 41.
[82] ts 41 - 42, 47.
[83] ts 41.
[84] ts 45.
[85] ts 46.
[86] ts 46.

**Conclusion on appeal against conviction**

189 I have concluded that none of appellant's complaints have merit, except for his contention that a miscarriage of justice was occasioned by the magistrate's refusal to allow him to have access to his computer during his trial. In relation to that contention, I have concluded that no substantial miscarriage of justice occurred. Accordingly, I would refuse the applications to extend time within which to appeal against conviction and sentence.

190 Given my conclusions about the appellant's applications to extend time it is strictly unnecessary for me to consider the question of leave to appeal against conviction or sentence. This is because the effect of refusing to extend time is that the appeals are taken not to have commenced. However, to the extent that it may be necessary, I would also refuse leave to appeal against conviction and against sentence on all grounds on all grounds other than on the ground relating to the magistrate's refusal to allow the appellant access to his computer during his trial. I would, however, dismiss that ground because no substantial miscarriage of justice occurred. On that basis I would dismiss the appeals against conviction, and against the sentences that were imposed.

**Appeal against costs order**

191 The appellant contends that the magistrate erred in making an order that the respondent was entitled to his costs in the amount of $8,074. As I understand it, the appellant says that:

(1) The magistrate erroneously used the maximum costs that were allowable under the *Legal Profession (Official Prosecutions) (Accused's Costs) Determination 2020* (**Costs Determination**).

(2) The magistrate erred by including amounts not permitted under the Costs Determination.

(3) The amount ordered to be paid was unreasonable, including because the magistrate did not make any inquiries about the appellant's means and because the amount was disproportionate.

192 The appellant does not contend that the respondent was not entitled to its costs. Indeed, the respondent, as a successful party, was entitled to its costs by operation of s 67(1) of the *Criminal Procedure Act*.

193 Section 67(2) of the *Criminal Procedure Act* provides that if a court convicts an accused of a charge, the court may order that the accused pay all or part of the prosecutor's costs. Further, pursuant to s 67(3):

> The amount of costs ordered under subsection (2) may be determined in accordance with the relevant determination made under the *Legal Profession Act 2008* section 275 for the purposes of the *Official Prosecutions (Accused's Costs) Act 1973* and with the *Legal Profession Act 2008* section 280.

194 In ***Fry v Keating***[87] the Court of Appeal said that s 67(3) gives the court a discretion in determining the amount of costs to be paid to the prosecutor. Further, the determination referred to in s 67(3) is only binding for the purposes of determining the costs of an accused. However, the court said that for the purposes of determining the amount of costs under s 67(3) that are payable to a prosecutor, the determination may be used as a 'guide' or by way of 'an analogy'.

195 Accordingly, the question of whether the magistrate erred in deciding to make an order that the appellant was to pay the respondent's costs in the amount of $8,074 must be determined by reference to the principles in ***House v The King***:[88]

196 It is unnecessary for me to deal with the appellant's contentions in any detail. This is because I am of the view that the magistrate erred in the exercise of his discretion in ordering that the appellant pay the respondent's costs in the amount of $8,074. In particular, I am of the view that the order that the appellant pay the respondent's costs in that amount was unreasonable or plainly unjust.

197 I appreciate that where an appeal against a costs order goes to quantum only, a court will be reluctant to interfere with the decision unless a significant error is found in the magistrate's approach and it will only do so in an extreme case.[89] However, an award of costs must be logical, fair and reasonable.[90] Further, proportionality between the costs, or the total burden of fine and costs, on the one hand, and the offence, or the criminality of the offender's conduct, on the other is a

[87] ***Fry v Keating*** [2013] WASCA 109 [76].
[88] ***House v The King*** [1936] HCA 40; (1936) 55 CLR 499, 505.
[89] ***Lockett v Commissioner of Consumer Protection*** [2017] WASC 358 [43].
[90] ***Basham v City of Joondalup*** [2015] WASC 345 [33].

relevant consideration.[91] Factors that will inform whether costs are proportionate include:[92]

> (a) the burden on the offender of the combination of any financial penalty and costs, relative to the nature of the offence and the criminality of the offending conduct, which is an aspect of taking into account the offender's personal circumstances; and
>
> (b) the objective in litigation that costs should bear a reasonable relationship to the nature of the proceedings and the issues to be resolved, which will require consideration of factors directly connected with the litigation.

198 I accept that the magistrate was entitled to exercise his discretion in deciding the amount of costs the appellant should be ordered to pay to the respondent, and he was entitled to do that using a relevant costs determination as a guide. I note that the appellant contends, in effect, that the magistrate erred in applying the Costs Determination. He points to the fact that the Costs Determination only applied to legal work done after 1 July 2020, and says that some of the legal work done for the respondent must have been done before that date, because the trial was originally listed to take place on 5 June 2020. However, the magistrate's discretion to make a costs order was not constrained by any costs determination, and he was entitled to apply a broad-brush approach to fixing costs.[93]

199 According to the record of the proceedings in the Magistrate's Court, the parties made only one appearance in court prior to the appellant's trial. On that occasion the Magistrate's Court was unable to accommodate the appellant's trial and, after a short hearing, the prosecution was adjourned to another trial date. When the trial eventually took place, it only took approximately two hours to complete. The trial itself was straightforward. Only two witnesses were called by the prosecution, and the appellant himself gave some brief evidence. Issues that were ultimately raised at the trial were not complex. Although the respondent's counsel would have been required to spend some time preparing for the trial, including preparing for any technical arguments that the appellant was bound to make, a full day of preparation would not have been reasonably required. I also do not consider that any costs associated with time spent by legal advisors in answering summonses that had been issued by the appellant should

[91] ***Basham v City of Joondalup [No 2]*** [2016] WASC 120 [101].
[92] ***Basham [No 2]*** [100].
[93] ***Basham*** [33]; ***Lockett*** [44].

have been sought to be recouped from the appellant pursuant to a costs order. It seems to me that if there were any such costs then they should have been sought from the appellant as a 'reasonable expense' for the purposes of s 162(3)(a) of the *Criminal Procedure Act*.

200 In my view, the combination of the fines and the costs that the appellant was ordered to pay did not reflect the criminality of the offending conduct. The appellant was found to have driven over a footpath, without any suggestion that this caused any damage to the footpath, and then parked his car outside a school for an unknown duration. On the other hand, there is no doubt that the appellant's pre-trial conduct will have resulted in the need for more legal work to be carried out on behalf of the respondent than would otherwise be required for a matter of this nature.

201 In the end the question of whether error should be inferred from the result embodied in the order that the appellant pay the respondent's costs in the sum of $8,074 is a matter of judgment. In my view, having regard to all the relevant circumstances, the costs order was unreasonable or plainly unjust, and it should be set aside.

202 I have already noted that the appellant filed his appeal almost 16 months out of time, and he requires an order extending time within which to appeal. The delay in commencing this appeal was substantial and, in my view, despite the very lengthy affidavit relied on by the appellant,[94] that delay has not been satisfactorily explained. However, I am required to exercise a discretion in deciding whether it is in the interests of justice to grant the extension of time within which to appeal.[95] In that regard the delay is not the only relevant consideration. In this case it is relevant to observe that I have found that the costs order was unreasonable or plainly unjust. I should also take into account the fact that it is likely that the appellant has now paid all or at least a substantial amount of those costs to the respondent. Accordingly, the respondent may suffer some prejudice if it were required to disgorge money that it has already received.

203 Considering all the matters to which I have referred, and with some misgivings because of the lengthy delay, I have reached the view that it is in the interests of justice to grant the appellant an extension of time within which to appeal against the costs order that was made by the magistrate. Accordingly, I would grant an extension of time within

[94] Affidavit of Donald Graham Barrett sworn 17 March 2022.
[95] ***Eastough v The State of Western Australia [No 2]*** [2010] WASCA 88 [13].

which to appeal against the costs order. I would also grant leave to appeal against that order, allow the appeal against the costs order, set aside the order that the appellant pay the respondent's costs and, adopting a broad-brush approach, order that the appellant pay the respondent's costs in the sum of $6,000.

## Orders

204 For the above reasons, the following orders should be made in this appeal:

1. The application for an extension of time within which to appeal against conviction is refused.

2. The application for an extension of time within which to appeal against sentence is refused.

3. The application for an extension of time within which to appeal against the order that the appellant is to pay the respondent's costs is allowed.

4. The appellant is granted leave to appeal against the costs order.

5. The appeal against the costs order is allowed.

6. The order that the appellant pay the respondent's costs in the sum of $8,074 is set aside and is substituted by an order that the appellant pay the respondent's costs in the sum of $6,000.

205 I will hear the parties in relation to the issue of costs of the appeal.

# Annexure 1

| **Paragraph from Enclosure 1** | **Ground of Appeal** | **Amended Ground of Appeal** | **Relevant Appellant's comments or *maybe not so relevant*** |
|---|---|---|---|
| [9] | The magistrate erred in law in convicting the appellant of count 1 because cl 26(1)(e) of the City of Cockburn Parking and Parking Facilities Local Law is invalid, as only the Governor in Executive Council has power to make regulations regarding the parking and stopping of vehicles in accordance with s 111(2) of the Road Traffic Act 1974. | The magistrate erred in law in convicting the Appellant of the offence at Charge 1 because cl 26(1)(e) and its precedent and dependent clauses of the *City of Cockburn Parking and Parking Facilities Local Law 2007* were made by the City of Cockburn (City) under the LGA without the pre-essential ambit of authority from Parliament. | Parliament delegated its legislative making authority to the Governor in Executive Council for the Governor to make a regulations in accordance with via s 111(2) Road Traffic Act 1974 (RTA 1974) which are to operate as a local law or a local law to empower the City to prohibit or regulate inter alia the stopping and parking of vehicles within the boundary or a road. The regulation or empowering local law made within the remit of s 111(2) RTA is to be consistent with those regulations made under s 111(1) RTA for the purpose of a national coordinated approach. |
| [10] | The magistrate erred in law in convicting the appellant of count 2 because cl 9.4(b) of the City of Cockburn (Local Government Act) Local Laws 2000 is invalid by operation of s 3.7 of the Local Government Act 1995, as it is inconsistent with the Road Traffic Code | A miscarriage of justice occurred in convicting the Appellant of the offence at charge 2, because the magistrate erred in the interpretation and statutory construction of the local law scheme at cls 9.4(b)-(c), 9.5, 9.8 2000 that the Appellant's vehicle was not permitted to be driven over the footpath at that | The offence at charge 2 on the prosecution notice is similar to the offence at reg 253(2)(g) RT Code 2000 but has no correlation to the offence prescribed under cls 1.5, 9.4(b) 2000 Local Laws. Clause 9.4(c) permit the Appellant's vehicle to be driven over the footpath in the vicinity |

| **Paragraph from Enclosure 1** | **Ground of Appeal** | **Amended Ground of Appeal** | **Relevant Appellant's comments or *maybe not so relevant*** |
|---|---|---|---|
| | 2000. | location under that local law scheme.<br>The magistrate erred in law in convicting the Appellant of the offence at charge 2 because the offence at charge 2 on the prosecution notice is not the offence as particularised at s 9.4(b) 2000 Local Laws. | of the location shown in Exhibit 6.<br><br>There appears to have been a misunderstanding at the direction hearing between charge 1 and charge 2 concerning the RT Code 2000. The inconsistency between the 2007 Parking Local Laws and the RT Code 2000 relates to Charge 1 and not Charge 2. |
| [11] | The magistrate erred in law in convicting the appellant count 1 because no council resolution had been passed in accordance with cl 8 of the City of Cockburn Parking and Parking Facilities Local Law in relation to the location where the appellant's vehicle was parked. | The magistrate erred in law and in fact in convicting the Appellant of the offence at charge 1 as the requisite council resolution in accordance with cl 8 of the City of Cockburn Parking and Parking Facilities Local Law in relation to the location where the appellant's vehicle was parked had never been made. | *The council resolution is a requirement for the purpose of reg 297(2),(4)-(4A), 300(3) RT Code 2000 and CMR's Authorisation* [96].<br>*The presumption at reg 300(3) RT Code 2000 would lack any real force notwithstanding regs 299, 300(2)-(3), 301, 303 RT Code 2000, where no council resolution had been made as those signs erected, installed or altered by the City's employees were erected, installed or altered during the likely commission of an offence under reg 297(4)-(4A) RT Code 2000.*<br>*The reliance of the presumption of* |

[96] CMR - Commission of Main Roads

| **Paragraph from Enclosure 1** | **Ground of Appeal** | **Amended Ground of Appeal** | **Relevant Appellant's comments or *maybe not so relevant*** |
|---|---|---|---|
| | | | *regularity to accepts that the relevant cl 8 20007 Parking Local Law council resolution had been made as a substantive fact of law when it is an evidentiary fact that no council resolution had been made is broad ultra vires, thus an error of law.*<br>*A central element of an offence can not be proved by a presumption.* |
| [12] | A miscarriage of justice occurred due to the ~~issue~~ and withdrawal of the infringement notice by the City of Cockburn. | A miscarriage of justice occurred because the exercise of statutory powers under the Local Government Act 1995 and the Road Traffic (Administration) Act 2008 by employees of the City of Cockburn contrary to the requirements made essential of the Acts, leads to the invalidity of the infringement and withdrawal notices; given to the Appellant.<br>A miscarriage of justice occurred because Mr Emery could not have formed the requisite belief on the evidence in possession of the City of Cockburn to form a decision to charge the Appellant of charge 1 or charge 2 per his investigation.<br>A miscarriage of justice occurred to the | The question to be answered:<br>Is there a legal requirement for the Appellant to have paid the modified penalty recorded on face of the Infringement Notice [Letter] where that notice is invalid?<br><br>Mr Emery's Investigation of the Appellant's objection to the Infringement Notice [Letter] was contrary to the accepted Administration Law and the outcomes of that investigation were unreasonable, illogical, contrived with the intent to deceive and fraudulent on the information in |

| **Paragraph from Enclosure 1** | **Ground of Appeal** | **Amended Ground of Appeal** | **Relevant Appellant's comments or *maybe not so relevant*** |
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| | | Appellant because prosecutor 1 and prosecutor 2 could not have formed a belief of the reasonableness to prosecute and then make the decision to prosecute and maintain the prosecution on the evidence before them or as evidence came into their knowledge or possession. | possession of the City.<br><br>The correct terminology under the LGA concerning the creation, management and providing to an alleged offender a valid infringement notice per s 9.16 LGA is 'given, give, giving'. Issue in context only means create, produce, construct an infringement notice but still within the control of the City - ie not posted.<br>Give etc means all action from the discretionary decision from the time of the identification of the offence to the posting of a valid infringement notice or placing the valid infringement notice on the vehicle. |
| [13] | A miscarriage of justice occurred because the prosecution was commenced and conducted with an improper purpose. | A miscarriage of justice occurred because the prosecution was commenced and conducted with an improper purpose. | |
| [14a] | A miscarriage of justice occurred because the appellant was denied the opportunity to properly defend himself because the magistrate denied him permission to use | (i) A miscarriage of justice occurred because the appellant was denied the opportunity to properly defend himself because the magistrate revoked the Appellant's pre-approved permission to use his computer and | The grounds 14(a)(i),(iii) are also to be read or duplicated with the replacement of the pre-approval with the Chief Magistrate's direction as evidenced at Exhibit E p, 65, para 268. |

| **Paragraph from Enclosure 1** | **Ground of Appeal** | **Amended Ground of Appeal** | **Relevant Appellant's comments or *maybe not so relevant*** |
|---|---|---|---|
| | him computer at his trial. | to tender evidence electronically at his trial;<br><br>(iii) A miscarriage of justice occurred because the magistrate denied the lawful existence of information and evidence on the Appellant's computer to the Court and himself, thus that information and evidence was not incorporated into his judicial decision-making because the magistrate revoked the Appellant pre-approved permission to use him computer at his trial and to tender evidence electronically;<br><br>thereby denying procedural fairness and causing a practical injustice to the Appellant, bring the court into disrepute. | |
| [14b] | A miscarriage of justice occurred because the City of Cockburn did not provide certain documents in answer to a summons that was issued by the Court at the appellant's request. | The magistrate erred in law and in fact when he denied the existence of evidence produced to the court by witnesses Downing and Arndt in-accordance with ss 64, 163 CP Act 2004.<br>The magistrate erred in law in not requiring the Respondent to commence proceedings in-accordance with reg 26 Criminal Procedure Regulations 2005 concerning the professional privilege claimed by the | Validity of signed prosecution notice, and court hearing notice given to Appellant.<br><br>Mr Gillett informed the Appellant via email of the claimed LLP on 2 June 2020. The Appellant informed the Fremantle Court on 3 June 2020. The Fremantle Court advised email placed the court file for the presiding magistrate to deal with. It was not. |

| **Paragraph from Enclosure 1** | **Ground of Appeal** | **Amended Ground of Appeal** | **Relevant Appellant's comments or *maybe not so relevant*** |
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| | | Respondent of the redacted section on Exhibit P12..<br><br>The magistrate erred in law in not requiring the Respondent to comply with both witness summons and to produce all relevant records or to make an application to for the summon or part-there-of to be set aside.<br><br>(iii) The magistrate made an error in law in denying the Appellant the opportunity to make any application or provide evidence to the contrary that the prosecution was commenced improperly and that any matter raised by the Appellant concerning the prosecution had to have been raised via s 178 CP Act 2004 before the prosecutors opening address. | The failure of the Respondent to comply with the summons or for the court to enforce its orders brough the integrity of the administration of justice into question by denying the Appellant a legitimate forensic purpose to examine those documents for the purpose of his defence. |
| [14c] | (a) A miscarriage of justice occurred because:<br>• the appellant was not given the opportunity to cross-examine Ms Bold at trial on matters relating to the infringement notice; | (a) A miscarriage of justice occurred because:<br>• the appellant was not given the opportunity to cross-examine Ms Bold at trial on matters relating to the infringement notice, matters mentioned in EXHIBIT P12; | *In the trial, the prosecutor, Mr. Beckett, mistakenly cited a Supreme Court decision, Rodi-v-City of Joondalup [2014] WASC 330, as an authority despite the former prosecutor, Mr. Gillett, agreeing with the appellant that the case was not relevant. The appellant argues that Mr. Beckett* |

| Paragraph from Enclosure 1 | Ground of Appeal | Amended Ground of Appeal | Relevant Appellant's comments or *maybe not so relevant* |
|---|---|---|---|
| | ~~• the prosecution did not provide the original witness statements at trial that were previously provided to the appellant; and~~<br>~~• the prosecutor misled the appellant as to the application of *Rodi v Western Australia [2018] HCA 44* to the matter at trial.~~<br>(b) The magistrate made an error in law by misapplying ~~Rodi v Western Australia [2018] HCA 44~~ to the appellant's case in regard to the validity of the infringement notice. | • the prosecution did not provide a copy of the witness statements created prior to 5 June 2020 that were to be used as the basis of the prosecution's evidence at the 5 June 2020 aborted trial and only provided two signed and a draft witness statements which were created after 11 August 2020 but signed on 18-20 November 2020 contrary to the direction of the Magistrate on 5 June 2020; and<br>• The magistrate erred in accepting Rodi -v- City of Joondalup [2014] WASC 330 as a relevant authority and then misapplied the facts in that matter to the Appellant's case in regard to the validity of infringement notice and s 20-23 Criminal Procedure Act 2004. | *should not be held responsible for this mistake as he was given the responsibility of conducting the trial at the last minute and may not have been thoroughly briefed.*<br><br>Incorporated 15(c)(i) |

| **Paragraph from Enclosure 1** | **Ground of Appeal** | **Amended Ground of Appeal** | **Relevant Appellant's comments or *maybe not so relevant*** |
|---|---|---|---|
| [15] | (a) A miscarriage of justice occurred when the Magistrate convicted the appellant of charge 1 because:<br>• the certificate that was used to prove that The Grange was within the district of the City of Cockburn was not the right certificate, incorrectly identified Mr Williams as an authorised officer when he was not, and was otherwise invalid.<br>• the prosecution gave evidence about the dimensions of The Grange, but the evidence used was unreliable because it was informed by the City of Cockburn's Intramap system, which cannot be used for legal purposes. | A miscarriage of justice occurred when the magistrate convicted the appellant of the offences for both charge 1 and charge 2 because:<br>(a) The s 9.41(3) LGA certificate that was used to prove that *The Grange* was within the district of the City of Cockburn was contrary to the requirements under the LAG to prove the evidence of that fact, thus the magistrate erred in law and fact in accepting that certificate as a substantive fact;<br>(b) The magistrate erred in law and in fact in accepting oral evidence provided by the prosecution's witness of the dimensions of the relevant road section of The Grange, when that evidence was unreliable because it was informed by the City of Cockburn's Intramap system, when the City of Cockburn stated that its accuracy is unknown and could not be used for legal purposes and that | and convict the Appellant for the offence at charge 2 recorded on the on the face of the notice does not reflect the offence provision cl 9.4(b) of the City of Cockburn (Local Government Act) 2000. |

| **Paragraph from Enclosure 1** | **Ground of Appeal** | **Amended Ground of Appeal** | **Relevant Appellant's comments or *maybe not so relevant*** |
|---|---|---|---|
| | • the prosecution notice was inaccurate in that it misidentified the appellant, and the words used to charge the appellant in the notice did not ~~completely~~ reflect the relevant provisions.<br>(b) The magistrate erred in law by allowing the prosecution to tender evidence during their opening address, preventing that evidence from being tendered by a witness capable of being cross-examined. | evidence of fact is to be provided in accordance with s 9.48 LGA.<br>(d) the prosecution was improperly commenced;<br>(e) the prosecution notice misidentified the appellant; the words used to charge, prosecute and convict the appellant, and for the purpose of pleading, do not correlate to the applicable provisions creating the offences;<br>(f) The magistrate erred in law by allowing the prosecution to tender evidence - paper or otherwise - during its opening address, preventing that evidence from being tendered by a witness capable of being cross-examined.<br>• A miscarriage of justice occurred because the exhibits tendered by the prosecution were provided to the Appellant in an electronic format and the Appellant in complying with the public health directives | |

| **Paragraph from Enclosure 1** | **Ground of Appeal** | **Amended Ground of Appeal** | **Relevant Appellant's comments or *maybe not so relevant*** |
|---|---|---|---|
| | | of the Commonwealth, State and the Magistrate Court's relating to COVID 19 and transmission vectors; the Appellant therefore potentially did not touch or view those physical documents.<br>(g) The City of Cockburn Parking Local Laws 2007 which contains the offence provision for charge 1 is invalid because it was improperly made and amended.<br>(h) the s 9.10(2) LGA certificate of authorisation issued to Mr Williams contained errors on the face of the certificate which incorrectly identified Mr Williams as being appointed as an authorised officer, referred to a purported written law unknown to law, did not contain the information made essential by the Act, identified his purported jurisdiction incorrectly, and is otherwise invalid. | |

| **Paragraph from Enclosure 1** | **Ground of Appeal** | **Amended Ground of Appeal** | **Relevant Appellant's comments or *maybe not so relevant*** |
|---|---|---|---|
| [16] | A miscarriage of justice occurred because the parking signs relevant to count 1 were not subject to a resolution passed by the council to prohibit or regulate parking in that location. | A miscarriage of justice occurred because the no parking signs relevant to offence at charge 1 were not subject to a resolution passed by the council to prohibit or regulate parking in that location. | |
| [17] | The verdict was unreasonable or cannot be supported having regard to the evidence. | (c). The verdict was unreasonable or cannot be supported having regard to the evidence | |
| [21] | The magistrate erred by imposing a penalty for charge 1 ~~and charge 2~~ because the relevant offence creating provisions are inconsistent with other legislation, namely the Road Traffic Act, s111(~~1~~), and the Road Traffic Code, by operation of s 3.7 of the Local Government Act. | The magistrate erred by imposing a penalty for charge 1 because the relevant offence creating provisions are inconsistent with other legislation, namely the Road Traffic Act, s111(2), and the Road Traffic Code, by operation of s 3.7 of the Local Government Act. | Covering the field. Has nothing to do with inconsistency re s 109 Constitution. Was used to describe the principle between a Federal and State law. |
| [14c] | A miscarriage of justice occurred because the prosecution failed to abide by the magistrate's order to provide an agreed statement of facts prior to trial, which would have reduced the costs incurred by the prosecution. | A miscarriage of justice occurred because the prosecution failed to abide by the magistrate's order to provide an agreed statement of facts prior to trial, which would have reduced the costs incurred by the prosecution. | |
| [22] | The magistrate erred in | The magistrate erred in | |

| **Paragraph from Enclosure 1** | **Ground of Appeal** | **Amended Ground of Appeal** | **Relevant Appellant's comments or *maybe not so relevant*** |
|---|---|---|---|
| | law:<br>• in applying the wrong costs scale;<br>• in making an unreasonable costs order;<br>• in making a costs order that was disproportionate to the offences convicted; and<br>• by failing to inquire about the appellant's financial means. | law and in fact:<br>• in interpreting the 2020 costs scale wrongly and accepting as fact $8074 as the relevant amount;<br>• in accepting the prosecutions legal cost amount which include matters not permitted under the cost scales;<br>• in accepting that the amount of legal costs expended by the Respondent was reasonable in the circumstances;<br>• by failing to inquire about the appellant's financial mean before sentencing and making of the cost order;<br>• in making an unreasonable and uninformed costs order;<br>• in making a costs order that was disproportionate to the offences convicted; and<br>• in the making of the sentencing amounts and the cost order, expressly rejected that he was going to following case law concerning proportionally | |

| Paragraph from Enclosure 1 | Ground of Appeal | Amended Ground of Appeal | Relevant Appellant's comments or *maybe not so relevant* |
|---|---|---|---|
| | | and total burden which he was required to follow.<br>In not taking into account the prosecutions conducted with respects to s 67 CP Act. | |

# Annexure 2

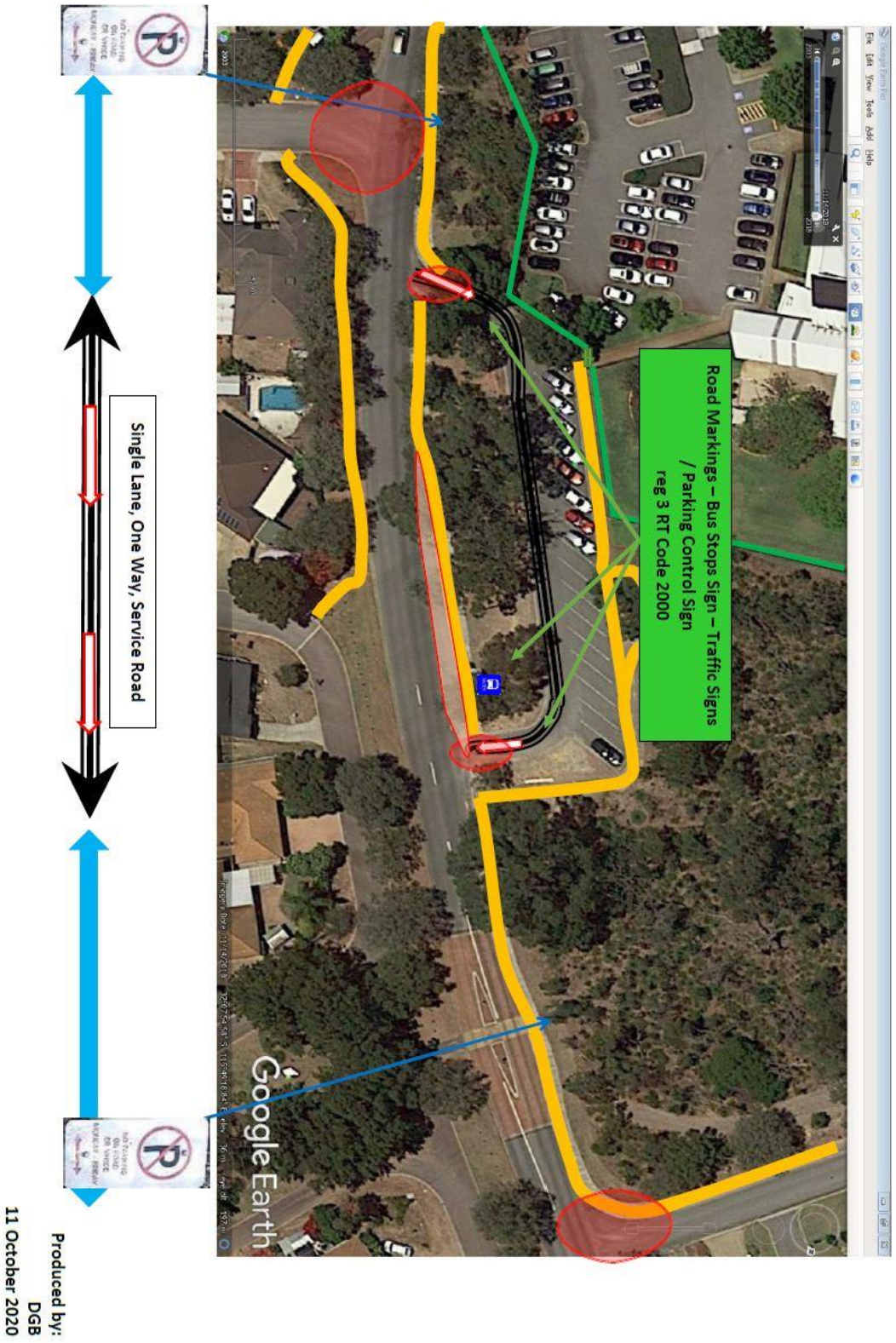
EXHIBIT A5 p. 1
Beeliar Primary School and Surrounding Area
Road Markings – Bus Stops Sign – Traffic Signs / Parking Control Sign reg 3 RT Code 2000
Single Lane, One Way, Service Road
Google Earth
Produced by:
DGB
11 October 2020

Intramaps – City of Cockburn

Intramaps Login Disclaimer




EXHIBIT A5 p. 2

Produced by
**Donald Barrett**

EXHIBIT A5 p. 3

Intramaps – City of Cockburn

Not secure | maps.cockburn.wa.gov.au/public80/Overview/disclaimer.htm

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IMPORTANT: The accuracy provided is not to be used for legal purposes, but reference made to original documents. For current Easement, Dimension and Area measurement information etc, please verify on the Certificate of Title.

Disclaimer

***IMPORTANT: The accuracy provided is not to be used for legal purposes, but reference made to original documents. For current Easement, Dimension and Area measurement information etc, please verify on the Certificate of Title***

***Disclaimer***

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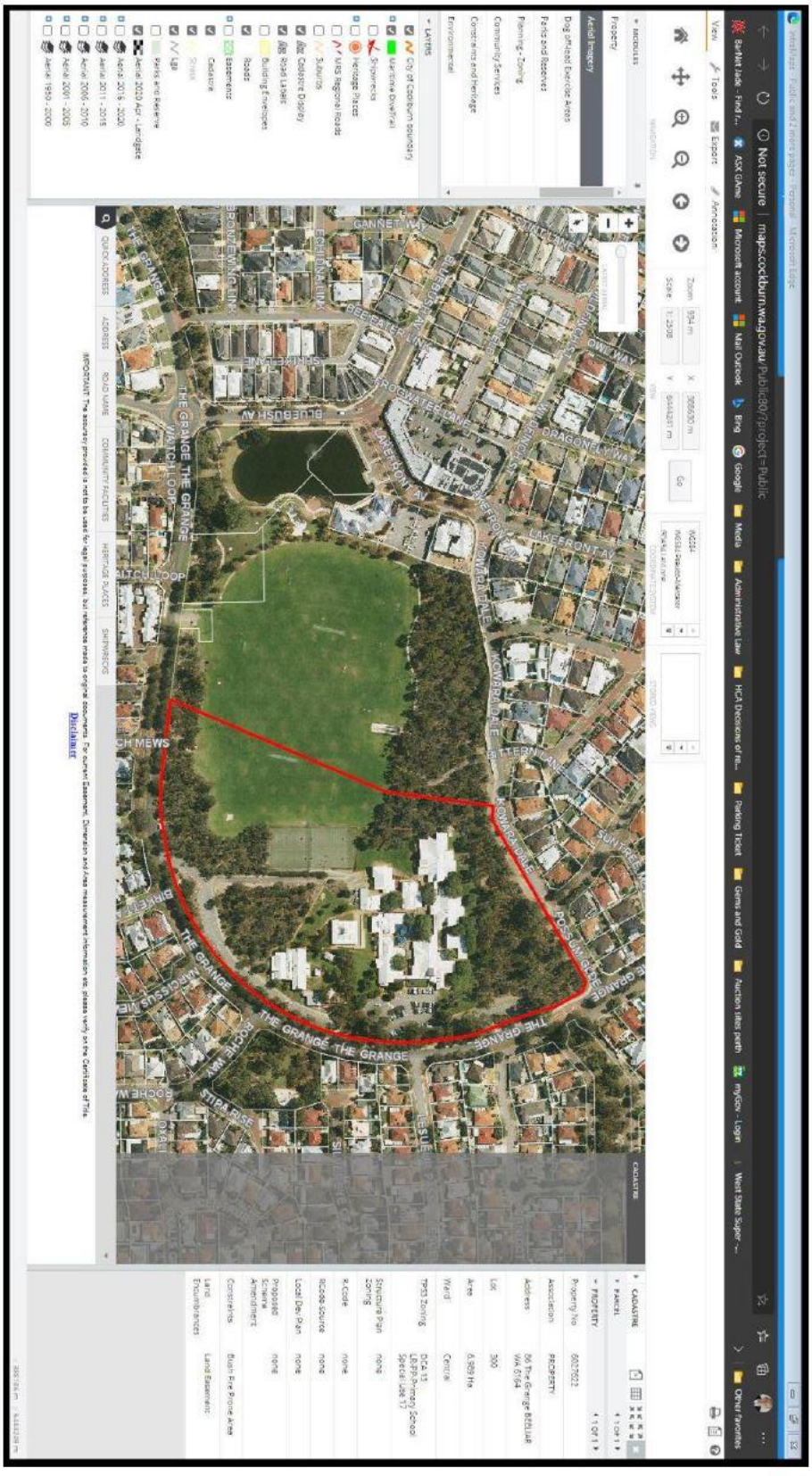
**Donald Barrett**




Intramaps – City of Cockburn

EXHIBIT A5 p. 4

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**Donald Barrett**

EXHIBIT A5 p. 5

| DA | LOCAL GOVERNMENT ACT, 1995 – LEGAL PROCEEDINGS | LGAES5 |
|---|---|---|

| | |
|---|---|
| **DELEGATED AUTHORITY CODE:** | LGAES5 |
| **DIRECTORATE:** | Governance & Community Services |
| **BUSINESS UNIT:** | Executive Services |
| **SERVICE UNIT:** | Executive Services |
| **RESPONSIBLE OFFICER:** | Director, Governance & Community Services |
| **FILE NO.:** | 086/003 |
| **DATE FIRST ADOPTED:** | 1997 |
| **DATE LAST REVIEWED:** | 13 June 2019 |
| **ATTACHMENTS:** | N/A |
| **VERSION NO.** | 9 |

| **Dates of Amendments / Reviews:** | | |
|---|---|---|
| DAPPS Meeting: | 24 May 2012<br>23 May 2013<br>22 May 2014<br>2 June 2015 | 26 May 2016<br>18 May 2017<br>24 May 2018<br>23 May 2019 |
| OCM: | 9 June 2011<br>14 June 2012<br>13 June 2013<br>12 June 2014 | 11 June 2015<br>9 June 2016<br>8 June 2017<br>14 June 2018 |

**FUNCTION DELEGATED:**

The Authority to initiate legal proceedings and the signing of prosecution complaint forms in relation to breaches appurtenant to the Local Government Act, 1995, (Part 9 Division 2).

**CONDITIONS/GUIDELINES:**

(1) Copy of duly completed Summons of Complaint form to be retained.

(2) Any delegate has the authority to deal with such matters relevant to this declaration.

(3) All transactions utilising this delegation are to be recorded in the Recording of Delegated Decisions Register by the officer responsible for initiating the action taken, or by another officer under the direction of the initiating officer.

*Delegate to be satisfied that:-*

(a) All other avenues to attain compliance that have been exhausted or;

(b) The alleged offender has been convicted of the same or a similar offence in the past or;

(c) The alleged offender has been formally warned on another occasion or;

[1]

Document Set ID: 4124397
Version: 7, Version Date: 27/06/2019

EXHIBIT A5 p. 6

| DA | LOCAL GOVERNMENT ACT, 1995 – LEGAL PROCEEDINGS | LGAES5 |
|---|---|---|

(d) the nature of the offence is such so as to warrant immediate prosecution action

**AUTONOMY OF DISCRETION:**

As indicated in conditions (1) to (3) and (a) to (d) above.

**LEGISLATIVE REQUIREMENTS/COUNCIL POLICY:**

Local Government Act, 1995.

**DELEGATE:**

Chief Executive Officer
Note: The Chief Executive Officer will further sub-delegate this authority to:-

**SUB-DELEGATE/S:**

Director, Governance & Community Services
Director, Engineering & Works
Director, Finance & Corporate Services
Director, Planning & Development
Manager, Building Services
Manager, Environmental Health
Manager, Statutory Planning
Manager, Financial Services

[2]

EXHIBIT A5 p. 7

**Deficiencies in City of Cockburn Infringement Notices**

| **Prescribed requirement** | **Information entered onto the Infringement Notices** | |
|---|---|---|
| **Section 9.17 LGA / Regulation 26, Form 2 in Schedule 1 of the *Local Government (Function and General) Regulations 1996*,** | | |
| **Material Particulars** | **Infringement Notice [Letter] 2130018097**<br>**Received: 26-27 October 2019** | **Notice of Offence and Infringement Notice – [Ticket]**<br>**2130018097**<br>**Received: 26-27 November 2019** |
| Serial No. | 2130018097 | 2130018097 |
| Date of Issue: | **Not recorded** | 16/10/2019 7:49 AM |
| City/Town/Shire or: | City of Cockburn | City of Cockburn |
| To: | Donald Barrett | Not required |
| Address: | [redacted] | Not required |
| Date of offence: | 15/10/2019 | 15/10/2019 |
| Time of offence: | **Not recorded** | 8:38 AM |
| Location of offence: | The Grange, Beeliar | The Grange, Beeliar |
| Offence: | Stopping or parking on part of a throughfare indicated by a 'no parking' sign. | Stopping or parking on part of a throughfare indicated by a 'no parking' sign. |
| Regulation / Clause: | **Not recorded** | **Not recorded** |
| Regulation / Local Law: | **Not recorded** | **Parking & Parking Facilities Local Law 2007** |
| Modified penalty: | $100.00 | $100.00 |
| Vehicle make: (Local Law | ***Not recorded*** | Ford |
| Vehicle model: (Local Law | ***Not recorded*** | ***Wagon* [note 3]** |
| Vehicle registration: | [redacted] | [redacted] |
| Place where modified penalty to be | Council Offices / CEO | Phone/internet/in person/by mail |

EXHIBIT A5 p. 8

**Deficiencies in City of Cockburn Infringement Notices**

| **Prescribed requirement** | **Information entered onto the Infringement Notices** | |
|---|---|---|
| **Section 9.17 LGA / Regulation 26, Form 2 in Schedule 1 of the *Local Government (Function and General) Regulations 1996,*** | | |
| Name of Authorised Person giving | Not recorded | **Officer ID: 6225 [note 4]** |
| Title of Authorised Person giving the | Not recorded | Not recorded |
| Signature of Authorisation Person: | Not recorded | Provided *(confirmed Mr Williams signature from Mr Williams statement dated November 2020)* |
| Modified penalty due date: | *21/11/2019* | *13/11/2019* |

Notes:

1. The comparison does not compare the required text on page 2 for both infringement notices per s 9.13 LGA; albeit, both infringement notices do not reproduce the required text per the LGA.
2. Wrong citation: Correct citation of Local Law should read: ***City of Cockburn Parking and Parking Facilities Local Law 2007***.
3. Vehicle model is entered as '***wagon***'. This corresponds to what is entered on the DCA Infringement Management System's '*Record Form*' [SR1 – p 12] and is different to what was provided by to the City of Cockburn by the DoT on 21 October 2019 of '***STNSDN***' [SR1 – p. 17] which stands for Station Sedan.
4. Email ME to DGB: 11 Dec 2019, 10:46 AM: ["*The Authorised Officer has provided his unique employee identification number as a substitute for his name. The substituting of a full name with a unique identifier is common practice.*"] (ME: Michael Emery / DGB: Donald Graham Barrett).

I certify that the preceding paragraph(s) comprise the reasons for decision of the Supreme Court of Western Australia.

KB
Associate to the Hon Justice Vandongen

4 OCTOBER 2023