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## Local Government Standards Panel

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Complaint Number	SP 2020-079
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Councillor Jennifer Catalano</b>
<b>Respondent</b>	<b>Councillor Cate McCullough</b>
Local Government	<b>City of Swan</b>
Regulation	Regulation 7 of the <i>Local Government (Rules of Conduct)</i> <i>Regulations 2007</i>
Panel Members	Mr Michael Connolly (Presiding Member) Cr Peter Rogers (Member) Mrs Emma Power (Member)
Heard	2 September 2020 Determined on the documents
Finding	One (1) breach of Regulation 7(1)(b)

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### FINDING AND REASONS FOR FINDING

Delivered 2 October 2020

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#### DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005*, applies to the further release or publication of all or part of this document or its contents. Accordingly, appropriate caution should be exercised when considering the further dissemination and the method of retention of this document and its contents.



## Summary of the Panel's decision

1. On 2 September 2020, the Panel found that Councillor Cate McCullough, a councillor of the City of Swan (**"the City"**) did commit a minor breach pursuant to the *Local Government Act 1995 (WA)* (**"the Act"**) regulation 7 of the *Local Government (Rules of Conduct) Regulations 2007* (**"the Regulations"**) when she made a comment endorsing a Facebook post that made detrimental comments regarding councillors as set out in paragraph 15 below.

## The Panel's Role

2. Under section 5.110(2) of the Act the Panel is required to consider a minor breach complaint and make a finding as to whether the alleged minor breach occurred.
3. The Act provides for the circumstances in which a council member commits a minor breach.<sup>1</sup>
4. The Panel may make a finding that a councillor has committed a minor breach of the Act and Regulations based on evidence from which it may be concluded that it is more likely that the alleged breach occurred than it did not occur.<sup>2</sup>
5. In order to find a breach, it must be established that each element of the relevant Regulation is more likely than not to have been breached or met.
6. In considering whether a minor breach is established the Panel must consider:
  - a. all evidence provided and, where there are conflicting circumstances, inferences or evidence, must come to a reasonable conclusion that any circumstance, inference or evidence relied upon is more likely than not to have occurred or be accurate<sup>3</sup>; and
  - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding<sup>4</sup>.
7. The Panel does not possess investigative or supervisory powers.<sup>5</sup> The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials published by the relevant local authority's website.
8. It is the responsibility of both complainants and respondents to provide the Panel with all information they wish the Panel to consider when making its determination.
9. The Panel also must have regard to the general interests of local government in Western Australia<sup>6</sup>.
10. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

## Jurisdiction and Procedural Fairness

11. On 23 July 2020 the Panel received a complaint from Mr Michael Foley acting as complaints officer of the City (**"the Complaints Officer"**). The same enclosed a Complaint of Minor Breach Form dated 20 July 2020.

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<sup>1</sup> Section 5.105 of the Act

<sup>2</sup> Section 5.106 of the Act

<sup>3</sup> *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1

<sup>4</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336

<sup>5</sup> *Re and Local Government Standards Panel* [2015] WASC 51 (at paragraph 24)

<sup>6</sup> Section 8(6) of Schedule 5.1 of the Act



12. In the complaint form, the Complainant alleges that, on 9 May 2020 Cr McCullough breached regulation 7 of the Regulations when she made a comment endorsing a Facebook Post that made detrimental comments regarding certain councillors as set out in paragraph 15 below (“**the Complaint**”).
13. The Panel convened on 2 September 2020 to consider the Complaint.
14. The Panel:
  - a. accepted the advice of the Department that, based on information published on the Western Australian Electoral Commission’s website, Cr McCullough was:
    - i. elected to the Council of the City in October 2019 for a term expiring in October 2023;
    - ii. a Councillor at the time of the alleged breach; and
    - iii. a Councillor when the Panel met on 2 September 2020;
  - b. was satisfied the Complaint was made within six months after the alleged breach occurred<sup>7</sup>;
  - c. was satisfied that the City’s Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach<sup>8</sup>;
  - d. was satisfied the Department had provided procedural fairness to Cr McCullough; and
  - e. found it had jurisdiction to consider the Complaint.

### **The Specifics of the Complaint**


15. The Complainant provided the following arguments and comments in respect to the Complaint:
  - a. On 9 May 2020 Cr Cate McCullough published statements on her Facebook page “*Cr Cate McCullough-City of Swan*” about other City of Swan Councillors that are incorrect and detrimental to the reputation of those Councillors and thereby disadvantaged them.

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<sup>7</sup> Section 5.107(4) and 5.109(2) of the Act

<sup>8</sup> Section 5.107 and 5.109 of the Act

b. The relevant Facebook Post (**“the Post”**) is as follows:

**Cr Cate McCullough-City of Swan**  
9 May · 🌐

Wow! Just saw this very spot on clarification on what's happening with the rates situation... good to see some ratepayers are on to the real facts...

**CLARIFICATION - 2019/20 COUNCIL RATES**

Currently the representatives of Midland/Guildford & Altona Wards are busy spreading misinformation about this years Rates and are attempting to create unrest among other CoS residents, specifically those of us in the Pearce & Altona Wards, with their unsubstantiated information.

I watched the Council Meeting on Wednesday and listened to the debate and I doubt that Cr's Johnson, Kiely and Catalano even understand how rates work.

For our Members here I would like to clarify that the CoS WILL NOT be increasing Rates revenue this year, as agreed to at their April meeting by 14/1 Cr's. There is absolutely no change from last years Rates revenue to this coming year.

Unfortunately, the State Govt is not as sympathetic to the situation as Local Govt is and subsequently THE STATE GOVT has refused to defer the GRV revaluations. As a result, THE STATE GOVT's decision not to defer GRV this year does not allow Local Governments to freeze rates and in some cases some Ratepayers will get an increase and some will get a decrease.

The CoS and other Local Governments have written to the State Govt requesting they defer GRV revaluations for the 19/20 Financial Year, however The State Govt has refused and they are not even giving any justification for their decision.

It is interesting to note that the Councillors behind this misinformation and fear campaign all live in Midland or Guildford.

Midland already pays the lowest rates of any suburb in The City of Swan, their rates for the current year average about \$1210 and will drop by \$100 in 20/21. The average rate in Ellenbrook last year were about \$1300. These

Midland already pays the lowest rates of any suburb in The City of Swan, their rates for the current year average about \$1210 and will drop by \$100 in 20/21. The average rate in Ellenbrook last year were about \$1300. These Cr's even tried to get the rate in the dollar down further so that Midland would pay even less! Why are we supplementing Midland for their benefit of these Cr's??? These were the same Cr's who earlier this year tried to impose an 8% increase to Ellenbrook Rates under the guise of the Security Patrols. One them even tried to pursue a 20% Rate increase last year (Andrew Kiely)

These Ward Councillors and their minions are using this confusion to their advantage and not giving people the whole story. They are making out they have our Wards best interests at heart. DO NOT BE FOOLED, this is an orchestrated attempt to put us offside with some of our current hard working Councillors so that come the LG elections next year, we will be swayed into voting for others. Specifically representatives these Cr's have put in the race in the hope they will be elected and thereby give them the controlling vote in Council.

If you are unhappy about the increase to our properties GRV, and therefore a possible increase to some of our Rates then pls contact those State Representatives who have allowed this to happen - that is Jessica Shaw, Rita Saffioti and Premier Mark McGowan and demand from them a reason why the revaluations could not be deferred!!!

The City of Swan WANTED TO FREEZE RATES for all ratepayers but the Treasurer refused to give them the capability to do so!

- c. The detrimental and disadvantaging statements were made in response to Council debate on 6 May 2020 regarding a proposed increase by the City in 2020 to the differential rates.
- d. The particular statements were:
- “representatives of Midland/Guildford & Altona Wards are busy spreading misinformation about this years Rates and are attempting to create unrest*



- among other CoS residents, specifically those of us in the Pearce & Altone Wards, with their unsubstantiated information.”;*
- ii. *“I doubt that Cr’s Johnson, Kiely and Catalano even understand how rates work”;*
  - iii. *“Councillors behind this misinformation and fear campaign all live in Midland or Guildford”;*
  - iv. *“These Cr’s even tried to get the rate in the dollar down further so that Midland would pay even less!”;*
  - v. *“These Ward Councillors and their minions are using this confusion to their advantage and not giving people the whole story.”*
- e. Cr McCullough endorsed these statements in the Post as a “spot on clarification of what’s happening”.
- f. Cr McCullough would have known that;
- i. the statements made in the Post about Councillors Johnson, Kiely and Catalano were incorrect;
  - ii. publishing these statements would be detrimental to the reputation of these Councillors amongst the City of Swan community because it alleges that these Councillors were engaged in improper conduct such as “spreading misinformation”, “attempting to create unrest” and that they were “behind this misinformation and fear campaign”;
  - iii. publishing these statements would be detrimental to the reputation of Councillors Johnson, Kiely and Catalano because it alleges these Councillors did not understand the issue in Council debate; and
  - iv. these statements would disadvantage, and be detrimental to, the reputation of these Councillors because it implies they are inept, ignorant, dishonest, malicious, financially irresponsible and greedy.
- g. The facts are that;
- i. Councillors Johnson, Kiely and Catalano were correct in informing Council and ratepayers at the meeting of 6 May 2020 that an increase in differential rates would result in some City of Swan residential ratepayers having to pay more rates in 2020;
  - ii. these Councillors were not concerned about the rates in Midland but informed Council during the debate that they were concerned that young families in newer suburbs who could least afford it would likely have a higher rates bill;
  - iii. in a Joint Media Statement (“JMS”) on 1 July 2020 Jessica Shaw, Rita Saffioti, David Kelly and Janine Freeman described that rates were determined in the same way as that presented in Council debate by Councillors Johnson, Kiely and Catalano; and
  - iv. the JMS did not support the statements made in the Post and it concluded that *“individual councillors - need to be accountable for ...the information they circulate”*.
- h. Cr McCullough should make a retraction to:
- i. be pinned at the top of the Cr Cate McCullough - City of Swan Facebook page for at least 2 weeks;



- ii. include that she acknowledges that the Post may have caused damage to the reputation of these Councillors and that she unreservedly apologises for any loss of reputation that she may have been caused.

### **Respondent's Response**

16. By an email dated 23 August 2020, Cr McCullough provided a response to the Complaint.
17. Cr McCullough denies that she has committed any minor breach.
18. Cr McCullough makes the following comments in respect to the Complaint:
  - a. The comments in the Post were those of a City of Swan ratepayer and not Cr McCullough's own.
  - b. Cr McCullough did repost them on her Councillor Facebook Page as to what she believed to be a fairly factual response to the misinformation being circulated at the time regarding the rates situation for our Local Government.
  - c. Cr McCullough does not believe that the comments that she reposted from the ratepayer were detrimental and disadvantaged certain Councillors.
  - d. It is stated in the Complaint that Cr McCullough would have known:
    - i. that the statements were incorrect - Cr McCullough believes that the statements made by the ratepayer were in fact correct.
    - ii. that publishing these statements would be detrimental to the reputation of these Councillors - These comments were that of the ratepayer and not Cr McCullough's.
    - iii. that publishing these statements alleges these Councillors did not understand the issue in Council debate - Again, these comments were those made by a ratepayer and not Cr McCullough. As elected members we are all subject to levels of scrutiny within the community and this is what the ratepayer sincerely believed.
    - iv. that these statements would disadvantage the Councillors because it implies they are inept, ignorant, dishonest, malicious - These are the strong words of Cr Catalano and her opinion of how these statements would be seen, not the ratepayer who made the comments in the Post and not Cr McCullough's.
  - e. Respectfully, Cr McCullough does not believe that she committed the alleged conduct as detailed in the Complaint.
  - f. Cr McCullough did not make improper use of her position to gain advantage over anyone.
  - g. Cr McCullough reposted information that was the opinion of a ratepayer who had had already posted it in the public arena and on Social Media.
  - h. If that information had been sent personally to Cr McCullough via email it would, Cr McCullough believes, have not been appropriate for her to publish.



## Regulation 7

19. Regulation 7 prohibits councillors engaging in conduct to either gain an advantage for themselves (or another party) or cause detriment to another party and specifically provides as follows:

### ***“7. Securing personal advantage or disadvantaging others***

- (1) *A person who is a council member must not make improper use of the person’s office as a council member —*
    - (a) *to gain directly or indirectly an advantage for the person or any other person; or*
    - (b) *to cause detriment to the local government or any other person.*
  - (2) *Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.*
20. The Complainant has not made any allegation that there was any intention to provide an advantage to any particular party, so the Panel has only considered regulation 7(1)(b) of the Regulations in this decision.

## **Panel’s Consideration**

### **Regulation 7(1)(b)**

21. To make a finding of a minor breach of regulation 7(1)(b) of the Regulations the Panel must be satisfied to the required standard that:
- a. Cr McCullough was an elected member at the time of the alleged breach and the time of the determination;
  - b. Cr McCullough made use of her office as Council member of the City;
  - c. when viewed objectively, such use was an improper use of Cr McCullough’s office in that it:
    - i. involved a breach of the standards of conduct that would be expected of a person in the position of councillor by reasonable persons; and
    - ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty; and
  - d. Cr McCullough engaged in the conduct in the belief that detriment would be suffered by another person.

### **Cr McCullough was an Elected Member at the relevant times**

22. Cr McCullough was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
23. This element is met.

### **Cr McCullough made use of her office as Council Member of the City**

24. In this case:
- a. Cr McCullough reposted the Post on her “Cr Cate McCullough-City of Swan” Facebook page; and
  - b. the subject matter of the Post was directly related to matters concerning the City and elected members of the City.





25. This indicates that Cr McCullough acted in her capacity as an elected member and therefore made use of her office as a council member of the City.
26. This element is met.

Cr McCullough's use was improper

27. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or a lack of wisdom<sup>9</sup>. It requires an abuse of power or the use of the councillor's position in a manner that such councillor knew (or ought to have known) was not authorised.
28. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent<sup>10</sup>.
29. Any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context including the specifics of the relevant event as well as councillor's formal role and responsibilities.
30. The City has a "*Code of Conduct for Councillors and Committee Members*" published September 2015 ("**the Code**") which sets out certain expectations in respect to the conduct of Councillors to be read in conjunctions with the Regulations. The relevant sections of the Code are as below:
  - a. High Ethical Standard  
*"Councillors and Committee Members of the City of Swan should aspire to high ethical standards including those in Regulation 3(1) of the Local Government (Rules of Conduct) Regulations 2007. The standards in Regulation 3(1) prescribe the following conduct:-*  
....  
*7. Treat others with respect and fairness; and*  
....."
  - b. Personal Behaviour  
*"(a) Councillors and Committee Members will:*
    - (i) *act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code;.....*  
.....
    - (iii) *act in good faith (i.e. honestly, for the proper purpose, and without exceeding their powers) in the interests of the City and the community as a whole;*
    - (iv) *make no allegations which are improper or derogatory (unless true and in the public interest) and refrain from any form of conduct, in the performance of their official duties, which may cause any reasonable person unwarranted offence or embarrassment....."*
31. A breach of the Code may indicate that the conduct of a councillor is "improper" as contemplated by the Regulations.
32. The Complainant asserts that Cr McCullough acted improperly as she would have known that the contents of the Post that she shared showed Councillor Johnson, Councillor Kiely and Councillor Catalano in as negative light and would likely cause detriment to them.
33. Cr McCullough asserts that she did not act improperly:
  - a. as she only shared the Post and did not contribute to the contents; and
  - b. she believed that the statements made by the ratepayer were, in fact, correct.

<sup>9</sup> Complaint of Minor Breach No. SP 3 of 2013

<sup>10</sup> *Chew v R* [1992] HCA 18





34. The Panel acknowledges that the actual content of the portion of Post being shared was not authored by Cr McCullough. However, due to the nature of the “share” it is simply not clear from where the text was copied or who the author was. There is no visible differentiation between the “introduction” and the remainder of the Post to clearly indicate that the authors were different.
35. Further, the words used to introduce the Post are as follows:
- “Wow! Just saw this very spot on clarification on what's happening with the rates situation... good to see some ratepayers are on to the real facts...”*
36. This goes one step further than merely “liking” a controversial post or sharing a post without comment. The wording used strongly implies that Cr McCullough:
- a. was in total agreement with the comments made by the member of the public in the Post; and
  - b. was promoting and endorsing this point of view in her capacity as a local councillor.
37. In addition, Cr McCullough does not differentiate between parts of the Post that may have had a factual basis and part that are clearly simply intended to insult the relevant councillors. It is supported by her in its entirety.
38. With due respect to Cr McCullough, it is a disingenuous argument that she could not have been acting improperly as the Post was already in the public arena.
39. The fact that the Post was already in the public arena is immaterial. By sharing the same, Cr McCullough was ensuring the Post reached a wider audience and the contents were given credibility by her support.
40. On reviewing the Post itself, the Panel finds that it is more likely than not that the Post, as a whole, is of a nature that was intended to disparage Councillor Johnson, Councillor Kiely and Councillor Catalano and indicate that they were incompetent and possibly acting dishonestly, or at least not in good faith.
41. The Panel further finds to the required standard that Cr McCullough should have reasonably been aware that to further share and promote the Post would be considered to be disrespectful and likely to be offensive and embarrassing to the named councillors in breach of the Code.
42. The standards of behaviour expected of councillors are of a generally higher standard than a member of the public due to their public position.
43. It is not sufficient for councillors to attempt to distance themselves from their actions by claiming they were only passing on a third party’s genuinely held opinions. Cr McCullough’s actions ensured that the Post was given greater exposure and credibility.
- For the reasons given above, the Panel finds that it is more likely than not that Cr McCullough publishing the Post was improper as:
- a. the conduct was in breach of the Code as her actions were disrespectful and likely to cause offense and embarrassment to Councillor Johnson, Councillor Kiely and Councillor Catalano; and
  - b. the conduct was of such a nature that a reasonable individual would consider the same to be inappropriate or not in keeping with the conduct that would be expected of a councillor; and
  - c. the conduct is deserving of a penalty.
44. This element is met.



Cr McCullough intended to cause a disadvantage

45. "Detriment" means loss, damage or injury. It is construed widely and includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage.
46. It is not necessary to find whether any detriment was actually suffered<sup>11</sup>, but an intent to cause such detriment must be established.
47. Cr McCullough asserts that she did not intend any advantage to be gained but does not address the issue of intention to disadvantage.
48. The Complainant argues that Cr McCullough would have known that the re-posting of the Post would cause a detriment to Councillor Johnson, Councillor Kiely and Councillor Catalano.
49. Although, on a generous interpretation, the Panel may find that a part of Cr McCullough's motivation was to share the factual information contain in the Post that she agreed with, the Panel finds that it is more likely than not that Cr McCullough also shared the Post with the clear intention to show Councillor Johnson, Councillor Kiely and Councillor Catalano in a poor light in front of a wider audience.
50. If Cr McCullough's only objective was to put forward her opinion regarding the factual rates matters, then this could have been achieved in a different post, without negative reflection on other councillors.
51. The Panel finds to the required standard that in sharing the Post Cr McCullough had an intention to disparage and embarrass, and therefore cause a detriment to, Councillor Johnson, Councillor Kiely and Councillor Catalano.
52. This element is met.

Conclusion

53. Given the above, the elements required to find a breach of regulation 7(1)(b) of the Regulations have been met.

**Panel's Findings**

54. Cr McCullough did commit a breach of Regulation 7(1)(b) of the Regulations and therefore did commit a minor breach.

Mick Connolly (Presiding Member)

Emma Power (Member)

Peter Rogers (Member)

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<sup>11</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



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## Local Government Standards Panel

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Complaint Number	SP 2020-079
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Councillor Jennifer Catalano</b>
<b>Respondent</b>	<b>Councillor Cate McCullough</b>
Local Government	<b>City of Swan</b>
Regulation	Regulation 7 of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mr Michael Connolly (Presiding Member) Councillor Peter Rogers (Member) Mrs Emma Power (Member)
Heard	2 September 2020 Determined on the documents
Penalty Considered	10 November 2020
Outcome	Public Apology and Training

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### DECISION AND REASONS FOR DECISION

Delivered 15 January 2021

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#### DEFAMATION CAUTION

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## Introduction

1. At its meeting on 2 September 2020, the Panel found that Councillor Cate McCullough, councillor for the City of Swan (**“the City”**), committed one minor breach under the Local Government Act 1995 (WA) (**“the Act”**) and regulation 7 of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (**“the Regulations”**) when she made a comment endorsing a Facebook Post that contained detrimental comments regarding other councillors of the City (**“the Minor Breach”**).

## Jurisdiction and Law

2. The Panel convened on 10 November 2020 to consider how it should deal with the Minor Breach.
3. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries (**“the Department”**) that on this date there was no available information to indicate that Cr McCullough had ceased to be, or was disqualified from being, a councillor.
4. If the Panel finds that a councillor has committed a minor breach, it must give the councillor an opportunity to make submissions to the Panel about how it should deal with the breach under section 5.110(6).<sup>1</sup>
5. By a letter dated 6 October 2020, Cr McCullough was:
  - a. notified of the Panel’s finding of the Minor Breaches;
  - b. provided with a copy of the Panel’s Finding and Reasons for Finding; and
  - c. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the *Act*.

## Possible Sanctions

6. Section 5.110(6) of the *Local Government Act 1995* (WA) (**“the Act”**) provides that the Panel is to deal with a minor breach by:
  - (a) *ordering that no sanction be imposed; or*
  - (b) *ordering that —*
    - (i) *the person against whom the complaint was made be publicly censured as specified in the order;*  
*or*
    - (ii) *the person against whom the complaint was made apologise publicly as specified in the order;*  
*or*
    - (iii) *the person against whom the complaint was made undertake training as specified in the order;*  
*or*
    - (iv) *the person against whom the complaint was made pay to the local government specified in the order an amount equal to the amount*

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<sup>1</sup> *Local Government Act 1995* (WA), s 5.110(5).



*of remuneration and allowances payable by the local government in relation to the complaint under Schedule 5.1 clause 9;*

*or*

*(c) ordering 2 or more of the sanctions described in paragraph (b).*

## **Respondent's Submissions**

7. Cr McCullough did not make any submissions regarding how the Minor Breach should be dealt with.

## **Panel's Consideration**

8. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach.
9. The Panel may order under section 5.110(6)(a), that no sanction be imposed with respect to the complaint, not to reverse the Panel's finding of a breach, but to indicate that in all the circumstances the relevant councillor should not be penalised further.
10. Guidance as to the factors which the Panel may consider in determining the appropriate penalty to impose include, but are not limited to, the following:
  - a. the nature and seriousness of the breaches;
  - b. the councillor's motivation for the contravention;
  - c. whether or not the councillor has shown any insight and remorse into his/her conduct;
  - d. whether the councillor has breached the Act knowingly or carelessly;
  - e. the councillor's disciplinary history;
  - f. likelihood or not of the councillor committing further breaches of the Act;
  - g. personal circumstances at the time of conduct, and of imposing the sanction;
  - h. need to protect the public through general deterrence and maintain public confidence in local government; and
  - i. any other matters which may be regarded as aggravating conduct or mitigating its seriousness<sup>2</sup>.
11. The Panel does not consider it appropriate to impose no sanction in relation to the Minor Breach as this would condone Cr McCullough's conduct.
12. The Panel notes that the relevant Post was made in a public forum and that Cr McCullough attempted to mitigate the impact of her conduct by arguing that the actual comments were made by a third party. Cr McCullough has shown no insight or remorse as to the effect her conduct in actively and publicly supporting the negative comments of others may have had on third parties.

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<sup>2</sup> Chief Executive Officer, Department of Local Government and Communities and Scaffidi [2017] WASAT 67 (S)



13. The standards of behaviour expected of councillors are of a generally higher standard than a member of the public due to their public position. It is not enough to simply state a councillor was “sharing” a Post without giving due consideration as to how that act of “sharing” may be perceived by the public and the legitimacy that it may lend to misleading or derogatory comments.
14. It is further apparent that there is a level of disfunction in the City of Swan and that the various elected members have difficulty communicating with each other in a respectful and non-adversarial manner.
15. In this instance, the Panel considers that the appropriate penalties are that Cr McCullough:
  - a. publicly apologise; and
  - b. undertake training.
16. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing. It is a suitable and appropriate penalty when a councillor’s conduct:
  - a. adversely affects particular individuals<sup>3</sup>; and/or
  - b. does not meet the standards other councillors seek to uphold.
17. Further, the Panel considers it appropriate that Cr Richardson undertake training to assist her to effectively deal with disputes and conflict in a manner which reflects the standards of conduct expected of local councillors.
18. The sanction of an order to undertake training also aligns with the intent of the Act and the purpose of the civil penalties under the Act to ensure future compliance with the statutory obligations imposed on councillors for the better protection of the public.

#### **Panel’s decision**

19. The Panel orders pursuant to section 5.110(6)(b)(ii), section 5.110(6)(b)(iii) and section 5.110(6)(c) of the Act that, in relation to the Minor Breach of regulation 7 of the Regulations, Cr McCullough publicly apologise and undertake training as set out in the attached Order.

Michael Connolly (Presiding Member)

Peter Rogers (Member)

Emma Power (Member)

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<sup>3</sup> *Treby and Local Government Standards Panel* [2010] WASAT 81 [127] (Pritchard J).



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## ORDER

Delivered 15 January 2021

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### DEFAMATION CAUTION

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### THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Cate McCullough, a councillor for the City of Swan **publicly apologise**, as specified in paragraph 3, or failing compliance with paragraph 3, then paragraph 4 below shall apply.
2. Councillor Cate McCullough, a councillor for the City of Swan, undertake **training** as specified in paragraph 5 below.

#### Public Apology

3. On the ordinary council meeting first occurring after the expiration of **28 days** from the date of service of this Order on her, Councillor McCullough shall:
  - a. attend the relevant ordinary council meeting;
  - b. ask the presiding person for his or her permission to address the meeting to make a public apology to the public;
  - c. make the apology immediately after Public Question Time or during the Announcements part of the meeting, or at any other time when the meeting is open to the public, as the presiding person thinks fit; and
  - d. address the Council and public as follows, without saying any introductory words before the address, and without making any comments or statement after the address:

"I advise this meeting that:

- i. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened *the Local Government (Rules of Conduct) Regulations 2007 (WA)* when I shared and supported a Facebook Post which contained derogatory comments regarding my fellow councillors.
- ii. The Panel found that I breached regulation 7(1)(b) of the said Regulations three times as my conduct was in breach of the Shire's Code of Conduct and deserving of a penalty and, further, my conduct was intended to disparage and embarrass Councillor Johnson,





Councillor Kiely and Councillor Catalano and was therefore likely to cause detriment to them.

- iii. I accept that I should not have engaged in the relevant conduct.
- iv. I now apologise to Councillor Johnson, Councillor Kiely and Councillor Catalano my other fellow Councillors and the public.”

4. If Councillor McCullough fails to, or is unable to, comply with the requirements of paragraph 3 above THEN, within the next **28 days** following the ordinary council meeting referred to in paragraph 3 above, the Chief Executive Officer shall arrange for the following notice of public apology to be published in no less than 10 point print or font:
- a. on the Facebook Page of the City of Swan;
  - b. on an appropriate page of the website of the City Swan; and
  - c. be published in every City of Swan public or community newsletter (whether in electronic or print copy) (if any):

**PUBLIC APOLOGY BY COUNCILLOR CATE MCCULLOUGH**

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the *Local Government (Rules of Conduct) Regulations 2007 (WA)* when I shared and supported a Facebook Post which contained derogatory comments regarding my fellow councillors.

The Panel found that I breached regulation 7(1)(b) of the said Regulations three times as my conduct was in breach of the Shire’s Code of Conduct and deserving of a penalty and, further, my conduct was intended to disparage and embarrass Councillor Johnson, Councillor Kiely and Councillor Catalano and was therefore likely to cause detriment to them.

I accept that I should not have engaged in the relevant conduct.

I apologise to Councillor Johnson, Councillor Kiely and Councillor Catalano my other fellow Councillors and the public.



### **Training**

5. Within 4 months of the date of this Order Councillor Cate McCullough, a councillor for the City of Swan, shall undertake:
  - a. the training course for Elected Members “*Dealing with Conflict*” provided by WA Local Government Association (WALGA) for a period of no less than 7.5 hours, attending either in person or via e-learning; or
  - b. a training course with substantially similar learning outcomes provided by an alternative registered training organisation for a period of not less than 7.5 hours.

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Michael Connolly (Presiding Member)

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Peter Rogers (Member)

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Emma Power (Member)



## NOTICE TO THE PARTIES TO THE COMPLAINT

### RIGHT TO HAVE PANEL DECISION REVIEWED BY THE STATE ADMINISTRATIVE TRIBUNAL

The Local Government Standards Panel (the Panel) advises:

- (1) Under section 5.125 of the *Local Government Act 1995* the person making a complaint and the person complained about each have the right to apply to the State Administrative Tribunal (the SAT) for a review of the Panel's decision in this matter. In this context, the term "decision" means a decision to dismiss the complaint or to make an order.
- (2) By rule 9(a) of the *State Administrative Tribunal Rules 2004*, subject to those rules an application to the SAT under its review jurisdiction must be made within 28 days of the day on which the Panel (as the decision-maker) gives a notice [see the Note below] under the *State Administrative Tribunal Act 2004 (SAT Act)*, section 20(1).
- (3) The Panel's *Breach Findings and these Findings and Reasons for Finding – Sanctions*, constitute the Panel's notice (i.e. the decision-maker's notice) given under the *SAT Act*, section 20(1).

**Note:**

- (1) This document may be given to a person in any of the ways provided for by sections 75 and 76 of the *Interpretation Act 1984*. [see s. 9.50 of the *Local Government Act 1995*]
- (2) Subsections 75(1) and (2) of the *Interpretation Act 1984* read:
  - "(1) Where a written law authorises or requires a document to be served by post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, **service shall be deemed to be effected by properly addressing and posting (by pre-paid post) the document as a letter to the last known address of the person to be served, and, unless the contrary is proved, to have been effected at the time when the letter would have been delivered in the ordinary course of post.** [Bold emphases added]
  - (2) Where a written law authorises or requires a document to be served by registered post, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, then, if the document is eligible and acceptable for transmission as certified mail, the service of the document may be effected either by registered post or by certified mail."
- (3) Section 76 of the *Interpretation Act 1984* reads:

"Where a written law authorises or requires a document to be served, whether the word "serve" or any of the words "give", "deliver", or "send" or any other similar word or expression is used, without directing it to be served in a particular manner, service of that document may be effected on the person to be served —

  - (a) by delivering the document to him personally; or
  - (b) by post in accordance with section 75(1); or
  - (c) by leaving it for him at his usual or last known place of abode, or if he is a principal of a business, at his usual or last known place of business; or
  - (d) in the case of a corporation or of an association of persons (whether incorporated or not), by delivering or leaving the document or posting it as a letter, addressed in each case to the corporation or association, at its principal place of business or principal office in the State."