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## Local Government Standards Panel

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Complaint Number	SP 2018-101
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Councillor Brian Hearne</b>
<b>Respondent</b>	<b>Councillor Michael Southwell</b>
Local Government	<b>Shire of Capel</b>
Regulation	Regulation 6 Regulation 7 of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mrs Sheryl Siekierka (Presiding Member) Mrs Emma Power (Member) Councillor Paul Kelly (Member)
Heard	5 March 2019 Determined on the documents
Finding	No Breach of Regulation 6 One minor breach of Regulation 7

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### FINDING AND REASONS FOR FINDING

Delivered 4 April 2019

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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 5 March 2019, the Panel found that Councillor Michael Southwell, a councillor of the Shire of Capel (**"the Shire"**):
  - a. did not commit any minor breach pursuant to the Local Government Act 1995 (WA) (**"the Act"**) and regulation 6 of the Local Government (Rules of Conduct) Regulations 2007 (**"the Regulations"**); and
  - b. did commit a minor breach in relation to the Act and regulation 7 of the Regulations;  
when he made comments in public regarding the payment of funds by the Shire towards legal costs regarding advice provided that were:
    - c. published in an article on the Busselton-Dunsborough Mail website on 27 September 2018 as set out in paragraph 33 below; and
    - d. broadcast on ABC Southwest Radio several times on 28 September 2018 as set out in paragraph 35 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.

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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)



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.

### Regulation 6

11. Regulation 6 prevents the disclosure of confidential or restricted information obtained by a councillor and reads as follows:

*“(1) In this regulation —*

*“closed meeting” means a council or committee meeting, or a part of a council or committee meeting, that is closed to members of the public under section 5.23(2) of the Act;*

*“confidential document” means a document marked by the CEO to clearly show that the information in the document is not to be disclosed;*

*“non-confidential document” means a document that is not a confidential document.*

*(2) A person who is a council member must not disclose —*

*(a) information that the council member derived from a confidential document; or*

*(b) information that the council member acquired at a closed meeting other than information derived from a non-confidential document.*

*(3) Subregulation (2) does not prevent a person who is a council member from disclosing information —*

*(a) at a closed meeting; or*

*(b) to the extent specified by the council and subject to such other conditions as the council determines; or*

*(c) that is already in the public domain; or*

*(d) to an officer of the Department; or*

*(e) to the Minister; or*

*(f) to a legal practitioner for the purpose of obtaining legal advice; or*

*(g) if the disclosure is required or permitted by law.”*

12. In this Complaint it is alleged that Cr Southwell obtained the relevant information from information that he acquired at a closed meeting so the Panel has considered regulation 6(2)(b).

### Regulation 7

13. 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***

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



- (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.*
14. It is not alleged that Cr Southwell or any other person received any advantage, so the Panel has only considered regulation 7(1)(b) in this Complaint.

### **Jurisdiction and Procedural Fairness**

15. On 16 October 2018 the Panel received an email from Mr Ian McCabe, acting as complaints officer of the Shire (**"the Complaints Officer"**). The same enclosed a Complaint of Minor Breach Form (with an explanatory letter and attachments) dated 3 October 2018.
16. In his letter of complaint Cr Hearne alleges that Cr Southwell has breached:
- a. regulation 6(2)(b) of the Regulations by revealing information obtained in the closed portion of the Ordinary Council Meeting of 27 June 2018 (**"the June OCM"**) by making public comments that were:
    - i. then published in an article by Sophie Elliot entitled *"Shire of Capel council back legal dispute funding"* dated 27 September 2018 on the Busselton Dunsborough Mail website and in other local publications as set out in paragraph 33 below; and
    - ii. broadcast several times on ABC SouthWest Broadcasts on 28 September 2018 as set out in paragraph 35 below; and
  - b. regulation 7(1)(b) of the Regulations by causing a detriment to the Council and other councillors by making public comments that were:
    - i. then published in an article by Sophie Elliot entitled *"Shire of Capel council back legal dispute funding"* dated 27 September 2018 on the Busselton Dunsborough Mail website and in other local publications as set out in paragraph 33 below; and
    - ii. broadcast several times on ABC SouthWest Broadcasts on 28 September 2018 as set out in paragraph 35 below;
- (together **"the Complaint"**).
17. The Panel convened on 5 March 2018 to consider the Complaint.
18. The Panel notes that the Article Comments are also the subject of complaint SP 2018-100. This decision can be considered the primary decision relating to the matter and conduct in respect to these particular comments and the breach of regulation 6 and regulation 7(1)(b).
19. The Panel:
- a. accepted the advice of the Department of Local Government, Sport and Cultural Industries (**"the Department"**) that, based on information published on the Western Australian Electoral Commission's website, Cr Southwell was:



- i. last elected to the Council of the Shire in October 2017 for a term expiring in October 2021;
    - ii. a Councillor at the time of the alleged breach; and
    - iii. a Councillor when the Panel met on 5 March 2018;
  - b. was satisfied the Complaint was made within two years after the alleged breach occurred<sup>7</sup>;
  - c. was satisfied that the Shire'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 Southwell; and
  - e. found it had jurisdiction to consider the Complaint.
20. A recurrent breach is a minor breach that has occurred after the council member has been found to have committed two or more other minor breaches.<sup>9</sup>
21. The Panel may send the complaint which if found would be a recurrent breach to the Chief Executive Officer of the Department assisting the relevant Minister at the time instead of considering the Complaint itself.<sup>10</sup>
22. Although Cr Southwell had previously be found to have committed more than ten minor breaches, the Panel did not find that the Complaint ought to be sent to the Chief Executive Officer of the Department as the alleged breaches, if found to have been committed, would not be recurrent breaches as they had not occurred after the Panel had made its earlier findings and provided the Respondent with an opportunity to **appeal the same**<sup>11</sup>.

## Background

23. The background of the Complaint is that in 2018 it was alleged that certain members of the public had defamed two of the Shire's officers being the former Chief Executive Officer Paul Sheedy and Shire President Cr Murray Scott.
24. At the Ordinary Council Meeting of the 27 June 2018 part of the meeting was closed to members of the public to consider Item 21.1 being a motion relating to a confidential new business matter of an urgent nature affecting a Shire employee (**"the Motion"**).
25. The Minutes of the Council Meeting (**"the Minutes"**) were posted on the Shire's website on Monday 2 July 2018. The Minutes reflect that all councillors except for Cr Southwell voted in favour of the Motion (also known as Decision OCO626).
26. Subsequent to the June OCM, it came into the public domain that the Motion was for the Shire to provide funds, to a maximum of \$6,000.00 combined, to obtain legal advice on behalf of Mr Sheedy and Cr Scott in respect to the defamation dispute.
27. Following the June OCM, a Special Electors' Meeting was called for by a ratepayer's petition and held on 14 September 2018 (**"the Electors' Meeting"**).

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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

<sup>9</sup> Section 5.105(2) of the Act

<sup>10</sup> Sections 5.110(2)(b), 5.111(1) of the Act.

<sup>11</sup> Sections 5.111 and 5.105(2) of the Act



28. At the Electors' Meeting three substantive motions were proposed being:
- to revoke the approved funding of any legal action related to the alleged defamation;
  - that no further rate payers' money be spent on related legal costs; and
  - that amended sections of policy 1.5 Legal Representation Costs and Indemnification Councillors and Employees be reinstated,  
(together the "**Electors' Motions**").
29. Before and at the Elector's Meeting certain issues were also clarified by the Chief Executive Officer that:
- legal advice had been sought that as the defamation action was connected to the role of the parties as former CEO and Shire President, the Council could indemnify those persons for costs in relation to the issue of notices of concern;
  - the relevant funds were not paid to the former CEO or the Shire President and were not in the nature of a personal expenditure; and
  - the funds had been paid directly to the legal advisors and therefore the decision of the June OCM had been given full effect.
30. At the next occurring Ordinary Council meeting of 26 September 2018 ("**the September OCM**") the Electors' Motions were considered and the CEO provided written notes addressing each of the Electors' Motions.
31. The Electors' Motions were recommended not to be supported at that time and, following debate, amended motions were voted on in the following terms:
- "The Council:*
- 1. Receives the motion of the Special Electors' Meeting to revoke Decision OC0626 of 27 June 2018 and recover the funds while noting that the request is not actionable;*
  - 2. Not support the motion of the Special Electors' Meeting to expend no further funds on the matter addressed by Decision OC0626 of 27 June 2018; and*
  - 3. Support the inclusion of Policy 1.5 Legal Representation in a policy review; that this be done in a timely manner once the matter addressed the Decision OC0626 of 27 June 2018 is concluded; and that the motion of the Special Meeting of Electors addressing clause 7 of the policy be included for consideration in that review. "*
32. At the September OCM Cr Southwell also provided three questions on notice in accordance with the Standing Orders regarding the matter and responses were provided as follows:
- " Cr Michael Southwell submitted the following questions with notice:*
- Question 1:** *In relation to Council decision OC0626, payment of legal fees to the President and former CEO to pursue Legal Action over alleged defamatory statements on Facebook, did the President Cr Murray Scott and former CEO Paul Sheedy comply with policy 1.5, Section 3 which says that anyone seeking such assistance should prepare an application as set out in 3.1 of the policy, and accompanied by a signed statement as set out in 3.2 and 3.3 of the policy?*
- Question 2:** *If not, why not?*



**Question 3:** *If so, why were these applications not presented to Council when it was asked to decide whether to allocate funds? Chief Executive Officer*

**Response:** *I thank the elected member for his questions. Each of these questions relates specifically to the Decision by Council OC0626 at the meeting of 27 June 2018 and the following applies to each of the questions.*

*This matter was considered by Council as a Confidential Item and the meeting was closed in accordance with s.5.23 (2) of the Local Government Act 1995 as the matter involved a matter affecting an employee and legal advice obtained.*

*Cr Murray Scott left the room as an interested party; the Deputy President moved to be presiding member; and the meeting was closed following a unanimous vote by the remaining elected members.*

*Council considered the legal advice and the application made to them and in accordance with the Act only the Decision is made public.*

*The material considered by Council is subject to confidentiality and legal privilege; I have not read any of the documents presented to Council at that meeting and to comment or speculate about the documents or the debate would contravene the relevant provisions of the Local Government Act 1995 and breach legal privilege. ”*

(together “**the September OCM Questions on Notice**”).

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

33. The comments the subject of the Complaint that were published in an article by Sophie Elliot entitled “*Shire of Capel council back legal dispute funding*” dated 27 September 2018 in the Busselton Dunsborough Mail (“**the Article**”) are as follows:

*“ Councillor Michael Southwell, who was the only councillor who did not support the June decision, earned rounds of applause and cheers from ratepayers.*

*He said things had come to light since June that may have changed the decision.*

*“It is flawed decision making,” he said.*

*“I did not know at the time \$4000 had already been spent, I did not know Cr Scott had not made a written application. I don’t think all the information was at hand,” he said.*

*“It is an absurd situation for council to pay money to help Cr Scott pay a legal bill, when he hasn’t made an application.*

*“So, in essence, the council has agreed to give money to a person who didn’t even ask for it.*

*“What disturbs me is that it remained in the June meeting, looking back, it was presented as urgent. Why did we only find out on that night? There was no urgency. It was presented on the hop.” ”*

(“**the Article Comments**”).

34. The Panel also note that these comments were replicated in several local publications.



35. The relevant comments that were broadcast several times on ABC SouthWest Broadcasts on 28 September 2018 are as follows:

ABC-SW News 6.30 AM

Excerpts from Introduction by newsreader

...money used to pursue residents ...at a Special Electors Meeting Residents urged councillors not to spend more on legal fees and said councillors should recover funds already spent. ....

Newsreader continues.....

But Councillor Michael Southwell backs the community in their calls .He says claims that the money cannot be recovered are untrue

**Southwell speaks:**

*"But the money has essentially benefitted the President Murray Scott and the former CEO Mr Sheedy and if possible the money can be recovered ahh then it can be recovered from them personally"*

ABC - SW News 7.30 AM

Announcer:

A Capel councillor says the shire president and former CEO should be asked to *pay back* [Sic] ratepayers after council spent thousands of dollars pursuing residents who allegedly made defamatory comments on social media after approval by council earlier in the year

After approval by council earlier this year lawyers representing MS Paul Sheedy and Murray Scott sent letters to a handful of residents *accusing* [sic] them of defamation....At a meeting last night council said it couldn't [ pay back the money} because the money had already been spent .

**Michael Southwell says that he thought the community's request was justified**

**Southwell speaks:**

*" but I just feel disappointed that they go to all the trouble of organising a Special Electors Meeting, they vote in favour of very sensible motions and they come to council and they just get defeated out of hand*

ABC Mornings between 10.00 and 11.00 AM

**One of the councillors at that meeting was Michael Southwell and he has backed the council's majority decision but um as an individual he was pretty**



disappointed with the decision. I had a bit of chat to him after the meeting and this is what he told me

(Southwell speaks😊)

Yeah I agree it would be difficult to recover the money from the law firm because the money has been spent and the work has been done. *But the money has essentially benefitted the President Murray Scott and the former CEO Mr Sheedy* and if possible the money can be recovered then it can be from them personally

(Jacqui : Do you think this is the end of the matter?..)

(Southwell speaks😊)

No I don't. this is the thing, I think, I sense the council want to move on but there's a lot of people in the community myself included who don't think it's the end because we haven't got to the bottom of the matter *because we don't think things were done properly*

I feel a lot of sympathy for the ratepayers and the residents who see this as an important issue and I just feel disappointed for them they go to all the trouble of organising a Special Elector's Meeting, they vote in favour of very sensible motions, they come to council and they just get defeated out of hand

Jackie: So that was Michael Southwell, one of the councillors. *He wasn't speaking on behalf of the council there*

(together "**the Broadcast Comments**").

36. The Complainant make the following comments:
  - a. in addition to making the comments in the Article, Cr Southwell endorsed the same by reposting the article on his councillor Facebook feed;
  - b. on September 21 the CEO sent an email to all Councillors, marked "in confidence", reminding them of their legal responsibility to maintain confidentiality in relation to the Motion made at the June OCM. A copy of this email was not provided to the Panel; and
  - c. Cr Southwell provided comments to the media despite the knowing that his discussion of these matters would breach confidentiality.
37. The Complainant's particular concerns (numbered 1-7 in the Complaint) are as follows:
  - a. Cr Southwell is not the spokesperson of the Shire of Capel. Although the Media Contact Policy 1.1 ("**Media Contact Policy**") of the Shire does not prevent a councillor from expressing their own opinions clauses 4 and 5 of the policy statement are pertinent;



- b. Cr Southwell's statement "*Things have come to light since June that may have changed the decision*" is incorrect. No additional information was presented to Council for consideration by Cr Southwell or anyone else in the June OCM. The matters alluded to in the question raised by Cr Southwell and any doubts as in his press statements were effectively covered in the confidential briefing paper provided to Councillors at the closed portion of the June OCM;
  - c. Cr Southwell's comment "*It is a flawed decision making process*" was not appropriate for a Councillor to make in the media. There has been no information presented which supports Cr Southwell's public contention;
  - d. Cr Southwell's statement "*I did not know at the time \$4,000 had already been spent to help Cr Scott pay a legal bill, when he hasn't made written application*" is incorrect as the confidential advice provided at the June OCM covered this information. Further, this statement implies that Paul Sheedy had applied for financial assistance. No information was provided to Cr Southwell that supports this allegation;
  - e. Cr Southwell's statement "*It's an absurd situation for Council to pay money to help Cr Scott to pay a legal bill, when he hasn't made an application*" singles out Cr Scott for potential public criticism;
  - f. Cr Southwell's statement "*We don't think things were done properly, and if things are done improperly you can just say 'bad luck fair bump move on' you have to deal with it and get answers to all these questions*" is improper as it is up to Cr Southwell (an experienced councillor) to be aware of the procedures he can follow if he believes things are not done correctly. Making statements in the press on confidential matters that other councillors cannot refute publicly, because they do respect confidentiality, does not help the Council resolve matters; and
  - g. the use of "we" in Cr Southwell's statements implies that Cr Southwell has discussed this matter in the broader community as this "we" does not include the other councillors (who were the only people involved with any information about the process).
38. In the Complaint, the Complainant also provided:
- a. a copy of the Motion being Decision OC0626 of 27 June 2018;
  - b. a Notice of Special Electors Meeting to be held 14 September 2018;
  - c. pages 10-14 inclusive of the Minutes of the September OCM;
  - d. a copy of the Article;
  - e. various references to other publications showing where the Article and the comments by Cr Southwell had been reproduced; and
  - f. a copy of the extract of the Shire's Media Contact Policy.

### **Respondent's Response**

39. By an email dated 12 November 2018 Cr Southwell provided a response to the Complaint.
40. Cr Southwell denies that he has committed any minor breach.
41. Cr Southwell makes the following general comments and arguments in respect to the allegations of Minor Breach:



- a. the fundamental misunderstanding at the core of the Complaint is that just because the CEO says something does not make it incontrovertible;
- b. the CEO's statement that "*no moneys were paid to Scott and Sheedy and that is was not a personal matter*" is wrong as the money was paid to a lawyer acting on their behalf. This was a payment for legal services provided to Cr Scott and Mr Sheedy personally on a defamation matter that was taken in their own names. In any event, this does not have any relevance to the Complaint;
- c. it is difficult to find relevance in the numbered concerns raised by Cr Hearne. Are these concerns part of his complaint or simply concerns he wishes the Standards Panel to be aware of? His understanding of the complaints process is that someone identifies a breach, reports it and it is assessed against the rules;
- d. Cr Hearne fails to identify specific breaches of the standards instead simply venting his spleen with lots of gripes and commentary, perhaps expecting the Panel to pick through his dissertation and find a breach of standards if they can;
- e. the specific numbered concerns are a combination of obvious statements of fact along with vague conjecture and supposition. The meandering, pontificating nature of the Complaint is evidence that it is simply vexatious and part of recent bullying behaviours directed at him by a group of Capel Councillors;
- f. he urges the Panel to refuse to deal with the Complaint under section 5.110(3A) of the Act because it is frivolous, trivial and vexatious;
- g. at all times he has acted properly and lawfully, carrying out his role as councillor as defined in the Act;
- h. he was simply keeping rate payers and residents informed as striving for openness and accountability, whilst respecting the rules around confidentiality and speaking to the media;
- i. the Complainant has used one complaint form to accuse him of two breaches of the Regulations, this Complaint is therefore defective and should be rejected;
- j. in each case, each accusation of a breach should be the subject of a separate complaint form due to the reference to the singular in the form itself. It is not intended that the process be used by vexatious people who wish to throw lots of information and assertions at the Panel and let the Panel find a breach if one exists;
- k. it is not clear how he caused a detriment to Cr Murray Scott by publicly asking questions. No questions are identified, is the Complainant complaining about the questions or the manner in which they were asked or the detriment?
- l. the questions were reasonable, responsible and valid in the circumstances. The questions themselves are incapable of causing a detriment, only the answers;
- m. the numbered concerns appear only to be an airing of concerns, not a complaint;
- n. he did not state or imply that he was speaking on behalf of the Council, he simply exercised his right of freedom of speech, without criticising or causing detriment to anyone;
- o. by "flawed decision making" he was referring to the decision (which he was a party to) being made without all of the relevant information. It is no criticism of a person to say they made a decision based on information to hand at the time. When new information emerges (as it did here) the decision may be reconsidered;



- p. Cr Hearne is wrong to imply that the discovery of the confidential information provided would reveal that Councillors were informed that \$4,000 had already been spent when they were asked to approve an additional \$10,000 to be spent on legal advice for the individuals concerned. This information was only elicited in an answer given by the CEO to a question at the Special Electors Meeting; and
- q. he did not breach confidentiality and did not cause a detriment. He sought only to communicate with and assist the ratepayers and residents of Capel, whilst respecting the collective decision making of Council.

### **Panel's Consideration**

#### **Regulation 6(2)(b)**

42. To make a finding of a minor breach in respect to regulation 6 the Panel must be satisfied that:
  - a. Cr Southwell was an elected member at the time of the breach and at the time the matter was determined; and
  - b. that it is more likely than not that:
    - i. Cr Southwell disclosed information to someone who at the time was not also a Councillor of the same local government; and
    - ii. the disclosed information was acquired by Cr Southwell either:
      1. from a confidential document; or
      2. at a council or committee meeting, or a part of a council or committee meeting, that was closed to members of the public under section 5.23(2) of the Act; and
    - iii. if the information was acquired at a closed council or committee meeting, Cr Southwell did not derive the disclosed information from a non-confidential document; and
    - iv. the disclosed information was not information already in the public domain or the disclosure did not occur in any of the ways identified in regulation 6(3).

#### **Cr Southwell was an elected member at the relevant times**

43. Cr Southwell was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.

#### **Cr Southwell disclosed information to someone who at the time was not also a Councillor**

44. The information the subject of the Complaint was provided by Cr Southwell to a member of the media and was subsequently released to the public by way of the Article and the ABC radio broadcasts.

45. This element is met.

#### **The disclosed information was information Cr Southwell acquired:**

- from a confidential document; or
- at a council or committee meeting (or part thereof) that was closed to members of the public under section 5.23(2) of the Act



46. The Complainant alleges that Cr Southwell's comments in the Article disclosed certain confidential information that was acquired by Cr Southwell during the closed portion of the June OCM.
47. In particular, the Complainant relies on the response of the CEO to the September OCM Questions on Notice to confirm that the issue of whether the parties had made application for the relevant legal funds was confidential.
48. In considering the specific answer by the CEO it is noted that he said "*he had not read any of the documents presented to the Council at that meeting*". In addition, the Panel has not been provided with the documentation that was given to councillors in the closed portion of the June OCM.
49. Further, in the minutes of the Special Electors Meeting, when asked if Mr Sheedy and Cr Scott had signed the relevant application paperwork, the CEO:
  - a. answered that he would take the question on notice and check; and
  - b. made a subsequent note that all papers considered by the Council were presented at the closed portion of the June OCM and are subject to s5.23(2) of the Act and legal privilege,which response does not confirm whether that particular matter was discussed or was the subject of a confidential document.
50. The remainder of the comments by Cr Southwell centre on his opinions as to:
  - a. what information he was not aware of;
  - b. the perceived flaws in the decision-making process; and
  - c. whether any of the legal funds could be recovered from the individuals concerned.
51. The Panel finds it is more likely than not that that such comments were based on Cr Southwell's opinion, not derived from confidential information.
52. Although there was certainly confidential information provided in the closed portion of the June OCM, it is not certain or confirmed what actual documents may have been supplied and marked confidential in the manner required by the Regulations.
53. Further, as set out below, by the time the relevant comments were made much of the information that may have been classified as confidential was then in the public domain.
54. As such, the Panel cannot find to the required standard that the Article Comments or the Broadcast Comments were based on information derived either:
  - a. at a council meeting, or a part of a council meeting, that was closed to the public; or
  - b. from a document marked as confidential in the strict manner required by the Regulations.
55. This element is not met.

Cr Southwell did not derive the disclosed information from a non-confidential document or the disclosure did not occur in any of the ways identified in regulation 6(3)
56. In this case, although the initial source of some of the information that Cr Southwell based his comments on *may* have been confidential, at the stage that Cr Southwell was speaking to the media (following the September OCM) it is clear from content of



- the Article and ABC broadcasts that much of the information was already in the public domain.
57. In addition, much of the information appears to have been the subject of public discussion at either the Special Electors' Meeting or the September OCM.
58. Cr Southwell states that he was striving for openness and accountability, however, this would not excuse the release of confidential information.
59. It is unclear whether any of the disclosed information was derived from a non-confidential document. The Panel does not have enough information to come to any conclusion on this ground.
60. The Panel finds that it is more likely than not that, even if some information referred to in the Article Comments and the Broadcast Comments was obtained from a confidential document, exception (c) set out in regulation 6(3) of the Regulations applies that the information was already in the public domain.
61. This element is not met.
- Conclusion
62. Given the above, the elements required to find a breach of regulation 6(2)(b) of the Regulations have not been met.

- Regulation 7**
63. 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 Southwell was an elected member at the time of the alleged breach and the time of the determination; and
  - b. Cr Southwell made use of his office as Council member of the Shire;
  - c. when viewed objectively, such use was an improper use of Cr Southwell'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 Southwell engaged in the conduct in the belief that detriment would be suffered by another person.
- Cr Southwell was an Elected Member at the relevant times
64. Cr Southwell was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
- Cr Southwell made use of his office as Council Member of the Shire
65. Cr Southwell was expressly referred to as being a councillor in both the Article and the ABC broadcasts.
66. In addition, the Article Comments and the Broadcast Comments directly related to the Shire and matters discussed at the June OCM and September OCM.



67. Given the above, the Panel finds, to the required standard, that any reasonable person would conclude that Cr Southwell made the comments in his capacity as an elected member and therefore made use of his office as a council member.
68. This element is met.
- Cr Southwell's use was improper
69. 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>12</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.
70. 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>13</sup>.
71. 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.
72. The Complainant alleges that the Article Comments and the Broadcast Comments were improper as:
- they indicate that Cr Southwell has breached his confidentiality obligations;
  - his critical comments regarding the decision by the Council were not appropriate;
  - Cr Southwell breached the Media Contact Policy and is not the spokesperson for the Shire; and
  - Cr Scott was singled out for public criticism.
73. The Panel has considered the Shire of Capel Code of Conduct dated 26 July 2017 and, in particular, Part 2 - Values, principles and behaviour, including the following:
- " - Respect decisions made by Council.  
- Refrain from publicly criticising either a Councillor, Committee Member or employee in a way that casts aspersions on their competence or credibility."*
74. The Panel finds that it is more likely than not that the following particular comments by Cr Southwell were in breach of the Shire's Code of Conduct:
- "It is flawed decision making."*
  - "It is an absurd situation for council to..."*
  - "...we don't think things were done properly."*
- as the same showed clear disagreement with a decision made by Council as well as clearly implying that that decision was made wrongfully.
75. In addition, Cr Southwell's various comments stating that he considered that the relevant funds could be recovered was clearly in opposition to what the Council's official position was on the matter.
76. Although Cr Southwell expresses concern that the decision was not made on the basis of all the facts, the circumstances were that the decision made at the September OCM expressly affirmed the decision and Motion made previously at the June OCM. This indicates that, if any relevant information was not provided at the June OCM (which on the evidence provided cannot be accurately ascertained), by

<sup>12</sup> Complaint of Minor Breach No. SP 3 of 2013

<sup>13</sup> *Chew v R* [1992] HCA 18



- the September OCM all the councillors would have been aware of such matters, especially due to the extensive discussion of the matter at the Electors' Meeting.
77. The Complainant also alleges that Cr Southwell's actions were in breach of the Media Contact Policy of the Shire.
78. The relevant clauses of the Media Contact Policy are clauses 4 and 5 are as follows:
- “ 4. *If a Councillor or employee is approached by the press to answer questions or make a comment on council business or a council decision, the press should be referred to the President or CEO (if authorised) for a response.*
5. *Nothing in this policy shall prevent a Councillor expressing his/her personal opinion to the media. However, as a general principle, Councillors approached by a representative from any form of media to make a statement or private comment on a matter of Council business, should have regard to any resolutions of the Council affecting the matter in question.*”
79. Cr Southwell does not address this specifically in his response, however, the Panel notes that in his response to Complaint SP 2018-100, Cr Southwell alleges that:
- a. it was clear he was not speaking on behalf of the Council; and
  - b. before making the comments to members of the press he did refer reporters to the President in line with the Media Policy section 4 and was advised that the President had declined to comment.
80. The Panel finds that it is more likely than not that in making the Article Comments and the Broadcast Comments Cr Southwell was in breach of the Shire's Media Contact Policy as:
- a. if he did refer the media to the President for comment, he then disregarded the President's position to make no comment; and
  - b. he clearly did not have regard to the resolutions that had been made by Council.
81. Given the above, the Panel finds that it is more likely than not that the Article Comments and the Broadcast Comments made by Cr Southwell were improper in that they were:
- a. in breach of the Shire's Code of Conduct and Media Contact Policy;
  - b. of such a nature that a reasonable individual would consider the same to be inappropriate and not in keeping with the conduct that would be expected of a councillor; and
  - c. deserving of a penalty.
82. This element is met.
- Cr Southwell intended detriment to be suffered by another person
83. “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.
84. It is not necessary to find whether any detriment was actually suffered<sup>14</sup>, but an intent to cause such detriment must be established.
85. Cr Southwell's explanation that he was exercising his “freedom of speech” and was not criticising or causing a detriment to anyone is not compelling.

<sup>14</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



86. It is hard to interpret Cr Southwell's comments as anything but a direct criticism of the Council's decision regarding the matter and a denigration of the other Councillors who participated in that decision.
87. The decision made at September OCM affirmed the initial decision made at the June OCM. Cr Southwell's implication that the relevant Councillors made their decisions wrongfully in both instances denigrates both the councillors concerned as well as the Shire as a whole.
88. The Panel finds that it is more likely than not that the Article Comments and the Broadcast Comments were made in an attempt to bring into question the decision making ability of the councillors involved and the quality and accuracy of the information provided by the Shire.
89. Councillors have a duty to support the properly made decisions of the local Council and not to publicly denigrate such decisions. If there is concern that any decision was not made properly, then there is a suitable internal procedure by which to address such concerns. Making critical public statements is simply not appropriate.
90. As such, the Panel finds that it is more likely than not that the Article Comments and the Broadcast Comments by Cr Southwell was intended to cause damage or detriment to the Shire and the Councillors of the Shire.
91. This element is met.

#### Conclusion

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

#### **General Comments**

93. In addition to the above, the Panel makes the following comments regarding the manner in which Cr Southwell chose to respond to the Complaint.
94. Very little in the response actually deals with the substance of the Complaint and the relevant conduct.
95. To include supposition as to the "correct" manner a form is to be filled out, or the "intent" of such a form and to air criticisms regarding the format of the complaint is of very little use to the Panel, and further, does not take into account the purpose of the Panel, which is to consider evidence as to a breach of the Regulations, not to make judgments on the subjective "quality" of a Complaint.
96. Further, the response indicates a clear lack of understanding as to the elements which may comprise a breach of the Regulations and what evidence may assist the Panel in demonstrating improper conduct by a councillor.
97. The aggressive and dismissive attitude shown by Cr Southwell is not helpful to the Panel and does not assist in the consideration of the evidence before the Panel.
98. Finally, the Panel makes the point to Cr Southwell that, just because someone makes a complaint he does not like, or agree with, this does not make the same "vexatious" or "frivolous".



### Panel's Findings

99. Cr Southwell did not breach Regulation 6 of the Regulations and therefore did not commit a minor breach.
100. Cr Southwell did breach Regulation 7(1)(b) of the Regulations and therefore did commit a minor breach.

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Sheryl Siekierka (Presiding Member)

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Emma Power (Member)

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Paul Kelly (Member)



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## Local Government Standards Panel

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Complaint Number	SP2018-101
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Councillor Brian Hearne</b>
<b>Respondent</b>	<b>Councillor Michael Southwell</b>
Local Government	<b>Shire of Capel</b>
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct)</i> <i>Regulations 2007 (WA)</i>
Panel Members	Mrs S Rizk (Presiding Member) Ms E Rowe (Deputy Member) Ms R Aubrey (Deputy Member)
Heard	23 May 2019 Determined on the documents
Outcome	Public censure Public apology

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### DECISION AND REASONS FOR DECISION

Published 16 July 2019

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#### DEFAMATION CAUTION

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## Introduction

1. At its meeting on 5 March 2019, the Panel found that Councillor Michael Southwell (“Cr Southwell”), a council member of the Shire of Capel (“the Shire”) committed one breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (“the Regulations”) when he made comments in public regarding the payment of funds by the Shire towards legal costs for advice provided, that were subsequently published and broadcast in the media in September 2018.
2. On 4 April 2019 the Panel published its Finding and Reasons for Finding (“Findings”) that Cr Southwell had breached regulation 7(1)(b). The Panel reviewed all the evidence presented to it and said:
  - “74. The Panel finds that it is more likely than not that the following particular comments by Cr Southwell were in breach of the Shire’s Code of Conduct:
    - a. *“It is flawed decision making.”*
    - b. *“It is an absurd situation for council to...”*
    - c. *“...we don’t think things were done properly.”*as the same showed clear disagreement with a decision made by Council as well as clearly implying that that decision was made wrongfully.
  75. In addition, Cr Southwell’s various comments stating that he considered that the relevant funds could be recovered was clearly in opposition to what the Council’s official position was on the matter.

.....
  80. The Panel finds that it is more likely than not that in making the Article Comments and the Broadcast Comments Cr Southwell was in breach of the Shire’s Media Contact Policy as:
    - a. if he did refer the media to the President for comment, he then disregarded the President’s position to make no comment; and
    - b. he clearly did not have regard to the resolutions that had been made by Council.

.....
  86. It is hard to interpret Cr Southwell’s comments as anything but a direct criticism of the Council’s decision regarding the matter and a denigration of the other Councillors who participated in that decision.
  87. The decision made at September OCM affirmed the initial decision made at the June OCM. Cr Southwell’s implication that the relevant Councillors made their decision wrongfully in both instances denigrates both the councillors concerned as well as the Shire as a whole.
  88. The Panel finds that it is more likely than not that the Article Comments and the Broadcast Comments were made in an attempt to bring into question the decision making ability of the councillors involved and the quality and accuracy of the information provided by the Shire.



89. Councillors have a duty to support the properly made decision of the local Council and not to publicly denigrate such decisions. If there is concern that any decision was not made properly, then there is a suitable internal procedure by which to address such concerns. Making critical public statement is simply not appropriate.”

### **Jurisdiction**

3. The Panel convened on 23 May 2019 to consider how it should deal with the Minor Breach. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries that on this date there was no available information to indicate that Cr Southwell had ceased to be or was disqualified from being a councillor.

### **Possible Sanctions**

4. 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) *dismissing the complaint;*
  - (b) *ordering that —*
    - (i) *the person against whom the complaint was made be publicly censured as specified in the order;*
    - (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
- (c) *ordering 2 or more of the sanctions described in paragraph (b).*
5. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach. The Panel may dismiss a complaint under section 5.110(6)(a), not to reverse the Panel’s finding of a breach but to indicate that in all the circumstances the councillor should not be penalised and the breach should not be recorded against the councillor’s name.

### **Councillor Southwell’s Submissions**

6. 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>
7. In a letter dated 4 April 2019, the Department notified Cr Southwell of the Panel’s findings, providing him with a copy of its Findings published on 4 April 2019 and inviting him to make submissions on how the Panel should deal with the breach under section 5.110(6).
8. In an emailed letter dated 4 April 2019, the Panel received submissions from Cr Southwell asking that the Complaint be dismissed on the following basis:

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



- a. The Complaint was defective because it was an “*omnibus complaint*” and each grievance should be the subject of a single complaint that can be fairly argued and judged on its own merits.
- b. There is a lack of natural justice and procedural fairness in putting aside his objections and hearing all the complaints together, as each could have “*infected*” and prejudiced the fair hearing of another.
- c. The Findings include “*general comments*” regarding his Response. This suggests he may not have been given a fair hearing.
- d. He does not believe that an ordinary, reasonable person would consider that he did not meet the standards of conduct expected of a councillor. On the contrary, he would expect an ordinary resident or ratepayer to be grateful that a councillor was prepared to be honest and forthright and help bring matters of considerable public interest to light.
- e. As he has already faced penalties for other breaches and has not repeated the behaviours complained of since those findings, he submits there is no beneficial purpose to be served by imposing an additional penalty in this case.

### **Panel’s consideration**

9. The Panel found that Cr Southwell committed one breach of regulation 7(1)(b) that related to his conduct when he made comments in public regarding the payment of funds by the Shire towards legal costs for advice provided, that were subsequently published and broadcast in the media in September 2018. The Panel found that Cr Southwell did not breach regulation 6 in relation to the same conduct. Cr Southwell has previously been found to have committed nine minor breaches.
10. The Panel has considered Cr Southwell’s submissions as to how the Complaint should be dealt with. Cr Southwell shows no remorse for his actions and he does not apologise. Rather he trivialises the matter and continues to justify his conduct as being both reasonable and commendable. Cr Southwell also takes the opportunity when responding to be dismissive and critical of the Panel and its Findings.
11. The Panel found that Cr Southwell’s comments seriously undermined Council’s decision and demonstrated a lack of respect for the other councillors involved and their decision-making ability. Cr Southwell chose to make those comments publicly and they were subsequently published in the media in articles appearing online as well as being broadcast on the radio several times.
12. The Panel does not consider that dismissal of the Complaint is appropriate because this would indicate that the breach is so minor that no penalty is warranted.
13. Nor does the Panel consider that training is appropriate given Cr Southwell’s clear disregard for the Complaint and the Panel’s Finding. Cr Southwell has not used the opportunity when responding to acknowledge he has done anything wrong, or to show a willingness to constructively engage in a programme that may reinforce the standards of conduct expected of a councillor. Cr Southwell has previously been



ordered by the Panel to undergo training for previous breaches, but the repetitive nature of his offending conduct strongly suggests that a further order for training would be futile.

14. The options left for the Panel to consider are to order the publication of a Notice of Public Censure or to order Cr Southwell to make a Public Apology (or both).
15. Cr Southwell's comments were published publicly online and broadcast on the radio. In the circumstances, a public apology is appropriate as it reflects the impact of Cr Southwell's statements on Council and the Shire, and may go some way to repairing the potentially serious and widespread damage caused by his conduct.
16. Furthermore, the sanction imposed by the Panel must send a message to councillors, local government employees, ratepayers, residents and the wider public that councillors must maintain appropriate standards of conduct. Cr Southwell used his position as a council member to publicly criticise a legitimate decision of Council and imply that it was wrongful, and it was simply unacceptable.
17. While the Panel notes that when an order that a Notice of Public Censure be published, that Notice is published by the local government's CEO, at the expense of the local government, and such expense is significant where the Notice is to be published in a newspaper or newspapers, the Panel also finds that it is appropriate that Cr Southwell be publicly censured for the breach of regulation 7(1)(b).
18. A censure is a public statement of disapprobation of a councillor's conduct and the Panel considers this to be the appropriate penalty as it will send a message to the community and other councillors that Cr Southwell's conduct was unacceptable and deserving of a serious penalty.
19. The penalties of a public apology and a public censure are commensurate with the seriousness of the breach concerned.

### **Panel's decision**

20. The Panel orders that in relation to the breach of regulation 7(1)(b) and in terms of the attached order, that:
  - i. under section 5.110(6)(b)(i) of the Act, Cr Southwell be publicly censured (PART A); and
  - ii. under section 5.110(6)(b)(ii) of the Act, Cr Southwell publicly apologise to the Council and the Shire (PART B).

Sarah Rizk (Presiding Deputy Member)

Rebecca Aubrey (Deputy Member)

Elanor Rowe (Deputy Member)



## Attachment

Complaint Number	SP 2018-101
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Councillor Brian Hearne</b>
<b>Respondent</b>	<b>Councillor Michael Southwell</b>
Local Government	<b>Shire of Capel</b>
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members	Ms S Rizk (Presiding Member) Ms E Rowe (Deputy Member) Ms R Aubrey (Deputy Member)
Heard	23 May 2019 Determined on the documents
Outcome	Public censure Public apology

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## ORDER

Published 16 July 2019

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## THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

### PART A - ORDER FOR PUBLIC CENSURE

1. Councillor Michael Southwell, a Councillor for the Shire of Capel (“the Shire”), be censured as specified in paragraphs 2 and 3 below.
2. Within the period of 29 days to 43 days from the day following the date of service of this Order on Councillor Southwell, the Chief Executive Officer of the Shire arrange for the following Notice of Public Censure to be published, in no less than 10 point print:
  - (a) as a one-column or a two-column display advertisement in the first 15 pages of “The West Australian” newspaper; and
  - (b) as a one-column or a two-column display advertisement in the first 15 pages of the “Bunbury Mail” newspaper.
3. The Notice of Public Censure is to be published on a date other than the Notice of Public Censure ordered jointly in Complaints SP58 of 2018 and SP2018-099.



Government of Western Australia  
Local Government Standards Panel

**NOTICE OF PUBLIC CENSURE**

The Local Government Standards Panel has found that Councillor Michael Southwell, a Councillor of the Shire of Capel, breached:

- (a) regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007 (WA)* when he made comments in public regarding the payment of funds by the Shire towards legal costs for advice provided, that were subsequently published and broadcast in the media in September 2018.

In engaging in this conduct, Councillor Southwell made improper use of his office as a council member.

The Panel censures Councillor Southwell for a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007 (WA)*.

**LOCAL GOVERNMENT  
STANDARDS PANEL**



## PART B - ORDER FOR PUBLIC APOLOGY

4. Councillor Michael Southwell, a Councillor for the Shire of Capel ("the Shire"), publicly apologise to the Council and the Shire.
5. At the Shire's first ordinary council meeting Cr Southwell attends after the expiration of 28 days from the date of service of this Order on him Cr Southwell shall:
  - (a) ask the presiding person for his or her permission to address the meeting to make a public apology to the Council and the Shire;
  - (b) 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;
  - (c) address the Council 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 regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulations 2007 when I made comments in public regarding the payment of funds by the Shire towards legal costs for advice provided, that were subsequently published and broadcast in the media in September 2018.
- ii. The Panel found that by behaving in this manner I made improper use of my office as Councillor with the intention of damaging Council and the Shire thereby committing one breach of regulation 7(1)(b) of the Local Government (Rules of Conduct) Regulation 2007.
- iii. I accept that I should not have acted in such a manner towards the Council and the Shire and I apologise to the parties concerned for having done so."

6. If Cr Southwell fails or is unable to comply with the requirements of paragraph 5 above he shall cause the following notice of public apology to be published in no less than 10 point print, as a one-column or two-column display advertisement in the first 10 pages of the Bunbury Mail newspaper.

### **PUBLIC APOLOGY BY CR MICHAEL SOUTHWELL**

A formal complaint was made to the Local Government Standards Panel alleging that I contravened a provision of the *Local Government (Rules of Conduct) Regulations 2007* when I made comments in public regarding the payment of funds by the Shire towards legal costs for advice provided, that were subsequently published and broadcast in the media in September 2018.



The Panel found:

(1) I committed one breach of regulation of 7(1)(b) of the Rules of Conduct Regulations when I made comments in public regarding the payment of funds by the Shire towards legal costs for advice provided, that were subsequently published and broadcast in the media in September 2018.

(2) By behaving in this way to the Council and the Shire, I failed to meet the standards of conduct expected of a councillor

I apologise to the parties concerned for acting in such a manner.

Sarah Rizk (Presiding Deputy Member)

Elanor Rowe (Deputy Member)

Rebecca Aubrey (Deputy 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."*