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## Local Government Standards Panel

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Complaint Number	SP 2018-113
Legislation	<i>Local Government Act 1995</i>
<b>Complainants</b>	<b>Mayor Keri Shannon</b> <b>Deputy Mayor Rod Bradley</b> <b>Cr Kathryn McKerracher</b> <b>Cr Ian Everett</b>
<b>Respondent</b>	<b>Cr Louis Carr</b>
Local Government	<b>Town of Cambridge</b>
Regulation	Regulations 6 and 7 of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Ms Sarah Rizk (Presiding Deputy Member) Ms Elanor Rowe (Deputy Member) Ms Rebecca Aubrey (Deputy Member)
Heard	26 April 2019 Determined on the documents
Outcome	One breach of regulation 6 One breach of regulation 7

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### FINDING AND REASONS FOR FINDING

Published 29 May 2019

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## Summary of the Panel's decision

1. The Local Government Standards Panel ("Panel") found that Councillor Louis Carr ("Cr Carr"), a councillor for the Town of Cambridge ("the Town"), committed two breaches under the *Local Government Act 1995 (WA)* ("the Act") and regulations 6 and 7 of the *Local Government (Rules of Conduct) Regulations 2007* ("the Regulations") when he sent a letter to The Post newspaper that was published on 21 April 2018.

## Jurisdiction

2. The Act provides for the circumstances in which a council member commits a minor breach.<sup>1</sup>
3. On 18 September 2018, the Department of Local Government, Sport and Cultural Industries ("Department") received a Complaint of Minor Breach Form, dated 13 September 2018 ("Complaint") submitted by Mayor Kerri Shannon, Deputy Mayor Rod Bradley, Councillor Kathryn McKerracher and Councillor Ian Everett (together "the Complainants"). The Complaint contained one allegation of a breach of regulation 6 and one allegation of a breach of regulation 7 in relation to the same conduct by Cr Carr when he sent a letter that disclosed confidential information to the Post newspaper that was published on 21 April 2019.
4. On 16 November 2018, the Department advised Cr Carr of the Complaint and invited him to respond. The Department sent Cr Carr a copy of the original Complaint and all the supporting documents provided by the Complainants.
5. Under the Act the Panel is required to consider a complaint of a minor breach and make a finding as to whether the alleged breach occurred.<sup>2</sup> On 26 April 2019 the Panel convened to consider the Complaint.
6. The Panel:
  - (a) accepted the Department's advice, based on information from the Western Australian Electoral Commission, that Cr Carr was a Councillor at the time of the alleged breaches, having been elected on 17 October 2015, and was still a Councillor when the Panel met on 26 April 2018;
  - (b) was satisfied the Complaint had been made within two years after the alleged breaches are said to have occurred<sup>3</sup>;
  - (c) was satisfied the Complaint had been dealt with in accordance with the administrative requirements in the Act for dealing with complaints of minor breaches<sup>4</sup>; and
  - (d) was satisfied that the Department had provided procedural fairness to Cr Carr.
7. If a councillor has previously committed two or more minor breaches, the Panel may send the complaint to the Chief Executive Officer of the department assisting

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

<sup>2</sup> Section 5.110(2)(a) of the Act.

<sup>3</sup> Section 5.107(4) of the Act

<sup>4</sup> Sections 5.107, 5.108, 5.109 of the Act.



the relevant Minister at the time instead of considering the Complaint itself.<sup>5</sup> Cr Carr was not found to have previously committed any minor breaches therefore the Panel did not consider sending the Complaint to the Chief Executive Officer of the Department.

8. Based on the information referred to in paragraphs 2 to 7 above the Panel found it had jurisdiction to determine whether Cr Carr had breached regulations 6 and 7 in connection with the allegations made against him.

### Panel's role

9. The Panel is not an investigative body. It determines complaints of minor breaches solely upon the evidence presented to it.
10. Any finding that a councillor has committed a minor breach must be based on evidence from which it may be concluded that it is more likely than not that the breach occurred than that it did not occur (the required standard of proof).<sup>6</sup>
11. Where direct proof of an alleged fact, proposition or conduct is not available, in order to find the allegation, proposition or conduct has been established, the Panel must be satisfied on the evidence that it is more probable than not that the alleged fact, proposition or conduct occurred. The Panel cannot make a finding that the alleged fact, proposition or conduct occurred if the evidence merely supports two or more conflicting but equally possible inferences.<sup>7</sup>
12. For a finding that a councillor has breached a particular regulation the Panel must be satisfied that every element of the particular regulation has been established to the required standard of proof.

### Regulation 6

13. Regulation 6 provides:

#### **"6. Use of information**

- (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 s5.23(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 –*

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<sup>5</sup> Sections 5.110(2)(b), 5.111(1) of the Act.

<sup>6</sup> Section 5.106 of the Act.

<sup>7</sup> *Bradshaw v McEwens Pty Ltd* (1951) 217 ALR 1, paragraph 5.



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

#### Elements of regulation 6(2)(a)

14. Regulation 6(2)(a) provides that a person who is a council member must not disclose information that the council member derived from a confidential document.
15. In light of regulation 6(3), the essential issues or elements which need to be satisfied in order for a contravention of regulation 6(2)(a) to have occurred are that it is more likely than it is not that:
- a) a Councillor disclosed information<sup>8</sup> to someone who at the time was not also a Councillor of the same local government; and
  - b) the disclosed information was information the disclosing Councillor derived from a document that was marked by his or her local government's CEO, or at the CEO's direction, to clearly show that the information in the document was not to be disclosed; and
  - c) the disclosed information was not already in the public domain (ie it was not generally available to all persons<sup>9</sup>) at the time of the disclosure by the disclosing Councillor, and the disclosure did not occur in any of the ways identified in regulation 6(3).

#### Elements of regulation 6(2)(b)

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<sup>8</sup> The word 'information' is given its ordinary meaning, which is knowledge or facts communicated about a particular subject, event etc; Shorter Oxford English Dictionary (6<sup>th</sup> edition). It is not limited to 'advice', legal, strategic or otherwise; *Corr and Local Government Standards Panel* [2012] WASAT 14 at para [50].

<sup>9</sup> *Mazza and Local Government Standards Panel* [2009] WASAT 165 at paragraphs [82] – [85]



16. Regulation 6(2)(b) provides that a person who is a council member must not disclose information they acquired at a closed meeting other than information derived from a non-confidential document.
17. Generally, the essential elements which need to be satisfied in order for a contravention of regulation 6(2)(b) to have occurred are that it is more likely than it is not that:
- a. a councillor disclosed information to someone who at the time was not also a councillor of the same local government; and
  - b. the disclosed information was information the disclosing councillor acquired 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
  - c. the disclosing Councillor did not derive the disclosed information from a non-confidential document; and
  - d. the disclosed information was not information already in the public domain at the time of the disclosure by the disclosing Councillor, and the disclosure did not occur in any of the ways identified in regulation 6(3).
18. “Disclose” is defined as “make (secret or new information) known”<sup>10</sup>.

### **Regulation 7**

19. Regulation 7 provides:

#### ***“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 Panel decided that the alleged conduct is not conduct that contravenes section 5.93 of the Act or section 83 of *The Criminal Code*.

### **Elements of regulation 7**

21. In order to find a breach of regulation 7, the Panel must be satisfied to the required standard of proof that:

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<sup>10</sup> Oxford English Dictionary online edition



- (a) the person, the subject of the Complaint, engaged in the alleged conduct (first element);
- (b) the person, the subject of the Complaint, was a council member both at the time of the conduct and the time when the Panel makes its determination (second element);
- (c) by engaging in the conduct, the person, the subject of the complaint, made use of his or her office as a council member (in the sense that he or she acted in their capacity as a councillor, rather than in some other capacity (third element);
- (d) that when viewed objectively, such use was an improper use of the person's office as a council member in that it:
  - (i) involved a breach of the standards of conduct that would be expected of a person in the position of a councillor by reasonable persons with knowledge of the duties, power and authority of the councillor and the circumstances of the case; and
  - (ii) was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty;(fourth element)
- (e) the person engaged in the conduct in the belief that:
  - (i) [in the case of regulation 7(1)(a)] an advantage would be gained either directly or indirectly for the person or any other person; or
  - (ii) [in the case of regulation 7(1)(b)] detriment would be suffered by the local government or any other person.(fifth element).

*Fourth element - meaning of "to make improper use of....office"*

22. The Macquarie dictionary definition of "*improper*" is "*not in accordance with propriety of behaviour, manners, etc; unsuitable or inappropriate for the purpose or occasion; abnormal or irregular.*"<sup>11</sup> The Shorter Oxford dictionary definition is "*irregular, wrong; unsuitable, inappropriate; unbecoming, unseemly.*"<sup>12</sup>

23. Whether there is impropriety is to be assessed objectively: would a reasonable person with knowledge of the duties, powers and authority of a councillor, and all the circumstances of the particular case, form the view that the councillor had breached the standards of conduct expected of a councillor?<sup>13</sup> "*For behaviour to be improper it must be such that a right-thinking person would regard the conduct*

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<sup>11</sup> Macquarie Dictionary, Revised Third Edition.

<sup>12</sup> Shorter Oxford English Dictionary, Sixth Edition.

<sup>13</sup> *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraph 27, referring to *R v Byrnes* (1995) 183 CLR 501.



*as so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty.*<sup>14</sup>

24. Under the Act, Panel members must have regard to the general interests of local government in Western Australia.<sup>15</sup> It is in the interests of local government that councillors are, and are seen to be, professional and respectful in their dealings with fellow councillors, local government employees and members of the public.
25. Regulation 3 of the Regulations sets out general principles to guide councillors' behaviour, although contravention of any of any of these does not amount to a minor breach.<sup>16</sup> Regulation 3 provides, among other things, that councillors should act with reasonable care, diligence and integrity and treat others with respect and fairness.
26. The meaning of "*improper*" must be considered in the context of relevant legislation, such as the Act and the Regulations, and other rules and standards that apply to a councillor's role and conduct, such as the local government's Code of Conduct, and the circumstances and context of the case.<sup>17</sup> All these provisions form part of the backdrop to the Regulations and give context to a complaint but the alleged conduct must also be judged in the particular circumstances.
27. Conduct can be improper even though the councillor's judgment is that it isn't improper. A councillor's use of his or her office can be improper even though the councillor is intending to benefit the local government, the council or the ratepayers and residents.<sup>18</sup>

Fifth element - meaning of "to gain directly or indirectly an advantage for the person or any other person" and "to cause detriment to the local government or any other person"

#### *Advantage*

28. "*Advantage*" is defined as "*favouring a circumstance; something which gives one a better position ... benefit; increased well-being or convenience ... pecuniary profit ...*"<sup>19</sup>
29. "*To*" in "*to gain directly or indirectly an advantage*" indicates that for this element to be established, a councillor must have intended to gain an advantage for themselves or another person.
30. For this element to be established, it is not necessary to find that the councillor's actions did, or reasonably could have, delivered the result sought.<sup>20</sup>

#### *Detriment*

<sup>14</sup> *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 9, referring to *Robbins v Harness Racing Board* [1984] VR 641.

<sup>15</sup> Section 5.122(3) of the Act, Schedule 5.1 of the Act, clause 8(6).

<sup>16</sup> Regulation 3.

<sup>17</sup> *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 10.

<sup>18</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59, paragraph 64, referring to *Treby* 2010.

<sup>19</sup> Shorter Oxford English Dictionary, Sixth Edition

<sup>20</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59, paragraphs 71,72



31. “*Detriment*” means loss, damage or injury.<sup>21</sup> It includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage. A person can suffer detriment through others thinking less favourably of them.<sup>22</sup>
32. For regulation 7(1)(b) to be satisfied it is not necessary to show that the local government or the person concerned actually suffered detriment.<sup>23</sup> However it is not enough to show that the local government or the person concerned suffered detriment, or could have suffered detriment. The Panel must find that it is more likely than not that the councillor believed that his or her actions would cause detriment and intended to cause detriment.<sup>24</sup>
33. “*To cause detriment*” has been interpreted as meaning “*in order to*” or “*for the purpose of*” causing detriment, or “*with the will to*” cause detriment.<sup>25</sup> There can be a finding of intent if, after considering all the evidence, the only reasonable inference is that the councillor intended to cause detriment.<sup>26</sup>

## Substance of the Complaint

### First Allegation – breach of regulation 6

34. On 6 April 2018, a Notice of Special Meeting was circulated for a Special Meeting of Council on 9 April 2018 (“First SCM”). The purpose of the First SCM was stated in the Agenda as being:

*“to consider a Confidential Report relating to a legal review and matters relating to the Chief Executive Officer”.*

At the commencement of the First SCM the matter was determined to be confidential.

35. Items in the confidential motion were considered and voted on separately. One of those items related to the status, terms and conditions of the City’s former CEO’s employment (“CEO Matter”). The former CEO (“Former CEO”) was suspended at the First SCM.
36. A second Special Council Meeting was called for the following day on 10 April 2018 (“Second SCM”). Whilst the purpose of the Second SCM was not specified in the Notice of Special Meeting, the agenda included at Item 4.1 “*Confidential Notice of Motion – Interim Appointment*”.
37. At the commencement of the Second SCM the matter was determined to be confidential. Council unanimously resolved to appoint Mr Jason Lyon as the Town’s Acting Chief Executive Officer.

<sup>21</sup> Macquarie Dictionary Revised Third Edition, 2001.

<sup>22</sup> *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraphs 31, 32.

<sup>23</sup> *Treby* 2010, paragraph 96, referring to *Chew v The Queen* 1992 CLR 626 (*Chew* 2010).

<sup>24</sup> *Re and Local Government Standards Panel* [2014] WASAT 111, paragraph 51, referring to *Australian Securities and Investments Commission v Australian Property Custodian Holdings Ltd* [2013] FCA 1342.

<sup>25</sup> *Chew* 2010.

<sup>26</sup> *Treby* 2010.

38. On 14 April 2018, an article ("Article") appeared in the local newspaper, The Post ("The Post") concerning the CEO Matter and Council's decisions at the First and Second SCMs. Below is a copy of the Article:

seated win ... Michael Thomas made Cottesloe's missing b

# Buckley out in Shannon coup



Jason Buckley      Jason Lyon



By KIM CHRISTIAN

**Secrecy surrounds Jason Buckley's sudden absence from his CEO's office after 12 years in the job.**

It follows a performance review and years of tension with current Cambridge mayor Keri Shannon.

Mr Buckley left his position at a secret council meeting in Floreat on Monday night.

In another secret meeting less than 24 hours later, councillors appointed council director Jason Lyon as acting CEO.

Ms Shannon confirmed Mr Lyon's appointment but declined to say whether Mr Buckley had been suspended on full pay.

"Mr Jason Lyon has been appointed," she said on Tuesday after the meeting.

"The rest of the matters are confidential."

In a statement released on Wednesday, Ms Shannon said both the council and executive fully supported Mr Lyon in the interim role.

Mr Buckley and Ms Shannon have clashed over the years.

In January, Ms Shannon said Mr Buckley's decision to attend a superannuation conference in Adelaide on council time in March 2016 was inappropriate.

She did not believe he could "double dip" by claiming

• Please turn to page 84

Cambridge mayor Keri Shannon outside Tuesday's special secret meeting at which the council appointed Jason Lyon as acting CEO.

5361 5613 or sms 0438 452 862      couple, no pets, available soon 0417 909 205      MATURE Age gentlemen looking at R.P.H. looking for room to rent. Mobile 0413 701 489

# Buckley out in Shannon coup

• From page 1

salaries from two employers at the same time (CEO rapped over conference gig, POST, January 27).

Mr Buckley is a member of the WA Super board and was paid \$59,757 in salary, fees and superannuation by WA Super in 2016.

Mr Buckley's WA Super appointment expires in June and he has said he will not be continuing after that date.

In February, the council considered several obscurely worded reports about the collection of staff performance data and a confidential report about investigating a potential claim. The reports had been submitted by Ms Shannon.

The February 27 council agenda said the council had been taking part in a "PWC benchmarking project" in 2016 and 2017 and that the 2017 data was being reviewed.

Ms Shannon said the motivation for Monday's meeting was confidential.

But council sources say the special meeting was called after Mr Buckley's scheduled performance review.

Councillors and council staff are banned by law from discussing personnel matters outside council. Councillors were forbidden to speak to the media before and after Tuesday's meeting.

The confidential notice of motion for Monday's meeting was entitled, "Legal review and chief executive matters", while the agenda item listed

for Tuesday's special secret council meeting was entitled "Interim appointment".

Ms Shannon now has a majority voting bloc on the council following last year's local government elections.

Council spokeswoman Carrie Tansey said Mr Buckley was not available for comment and had not been present in the council building on Tuesday.

"Jason is not here," she said. "He's not on leave."

A councillor who did not want to be named, said Monday's council decision had been unanimous.

"The best thing for everybody is that we don't have any noise out there causing disruptions," the councillor said.

Mr Buckley has been CEO for 12 years.

He was previously the council's executive manager of corporate and customer services from 1995 to 2006, according to his LinkedIn profile.

Mr Buckley's total annual remuneration was reportedly more than \$300,000 in the 2016-17 financial year.

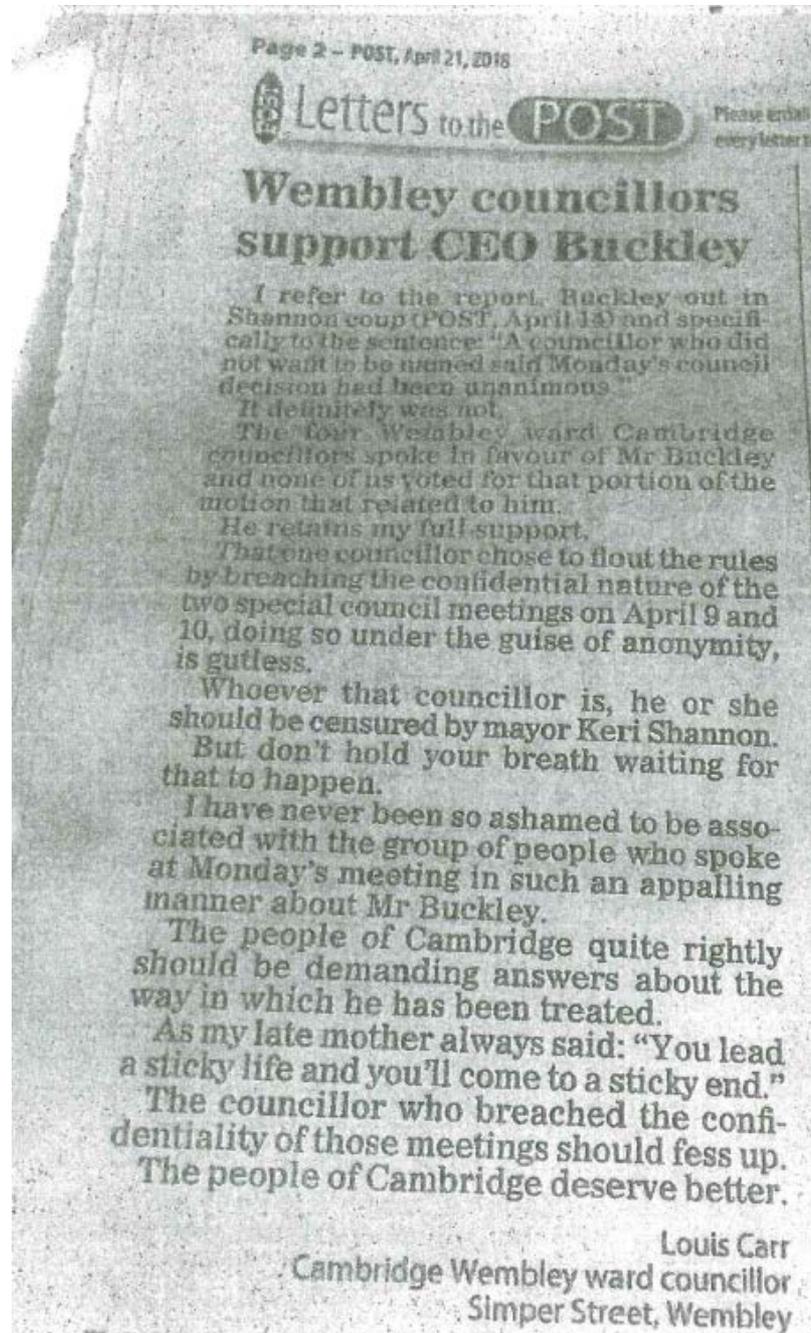
Mr Lyon has been a director at Cambridge, where he was responsible for finance, property and contracts.

Former councillor Corinne MacRae said it was an open secret that Ms Shannon wanted to get rid of Mr Buckley now her clique had control of the council.

"The signs are not good for Mr Buckley," she said.

She said Mr Buckley was an outstanding CEO and she could not conceive of any reason to dismiss him.

39. Sometime after 14 April 2018 but before 21 April 2018, Cr Carr submitted a letter ("Letter") to The Post. The Letter was published on page 2 of The Post on 21 April 2018. Below is a copy of the Letter titled "Wembley councillors support CEO Buckley":



40. To the best of the Complainants' knowledge, there had been no public statements by the Town at the time Cr Carr's Letter was published in The Post regarding the issues he raised in it. At the time of disclosure, the issues relating to the conduct / performance of the Former CEO were not in the public domain and Council had not resolved to make the information public knowledge.

First Allegation – breach of regulation 6



41. The Complainants refer to the following statements in the Letter and state that Cr Carr disclosed confidential information concerning the CEO Matter and the nature and content of the First and Second SCMs by referring to the CEO and how certain councillors voted:

*“The four Wembley ward Cambridge Councillors spoke in favour of Mr Buckley”*

*“...none of us voted in favour of that portion of the motion that related to him”*

*“He retains my full support.”*

42. Whilst the minutes of the First SCM disclosed how Councillors voted for and against an item, they do not contain details of what each item was specifically about or what was resolved at the First SCM.
43. However, in the Letter Cr Carr made public information that by inference discloses that employment or conduct issues concerning the Former CEO were being discussed at those closed meetings and councillors' views. By stating that Councillors discussed matters requiring them to “support” the CEO, that must by inference mean they were discussing items relating to the CEO's performance, conduct or disciplinary proceedings or employment issues. That was confidential information and could not be discerned from the agenda or minutes of the First SCM. The Town had not issued any media statements to release the information into the public domain.
44. Cr Carr clearly understood he was not to disclose confidential information, as in his Letter he complained about another councillor doing so. However, his Letter went too far in revealing the nature, content and views of elected members at the First SCM which were confidential.
45. It is unknown if the Letter was submitted with the consent of, or its content approved by, other councillors. If not, Cr Carr has in his Letter breached confidentiality by disclosing the views of council members to the public.

#### Second Allegation – breach of regulation 7.

46. The Letter seeks to undermine the public's confidence in the Town's Councillors and the decisions of its Council. Under the Town's *Code of Conduct*, Cr Carr is not to reflect adversely upon a decision of the Council however the Letter plainly does so and seeks to question Council's decision regarding the Former CEO. Cr Carr has also breached the Town's *Code of Conduct* by reflecting adversely on the character and actions of elected members.
47. Alternatively, the Complainants state that Cr Carr has used his office to gain an advantage for himself.

#### Improper statements

48. The Complainants refer to the following specific statements in Cr Carr's Letter:
- a. In the Letter, Cr Carr writes:



*"I refer to the report, Buckley out in Shannon coup (POST, April 14) and specifically the sentence "A councillor who did not want to be named said Monday's council decision had been unanimous".*

*It definitely was not."*

Cr Carr is correct in that the vote regarding the dismissal of the Former CEO was not unanimous. However, Cr Carr has assumed The Post's reporting on this subject was accurate and that a councillor was in fact to blame for the incorrect information regarding the unanimous vote. However, there were two Special Council Meetings on two successive nights and it is conceivable that The Post made an error; it may also be that it was not a councillor who made the statement, or that it was quoted incorrectly.

- b. The Letter *"labels"* the actions of the councillor who revealed the result of the vote regarding the Former CEO's dismissal as *"gutless"*. This description denigrates and casts aspersions on the councillor who allegedly spoke to The Post and in doing so, Cr Carr also cast an adverse reflection on all councillors at the Town (other than himself) because the inference was that it could be any elected member who had made the statement. The Letter made the Town and Councillors seem reckless and unprofessional.

- c. In the Letter Cr Carr stated:

*"Whoever that councillor is, he or she should be censured by mayor Keri Shannon. But don't hold your breath waiting for that to happen."*

The statement above cast an adverse reflection on the Mayor and is of detriment to the Mayor and the Town. It suggests the Mayor does not uphold the Town's *Code of Conduct* or standards of personal behaviour by councillors. It is also of detriment to the Town as it suggests its Councillors do not understand or abide by rules, are reckless and do not fear consequences.

- d. Cr Carr states:

*"I have never been so ashamed to be associated with the group of people who spoke at Monday's meeting in such an appalling manner about Mr Buckley"*.

Cr Carr's inference in the statement above is that those people who did not support the Former CEO spoke in an appalling manner about him. It is designed to denigrate the standing of certain elected members and the Mayor, while promoting the interests of the Former CEO, Cr Carr and the other Wembley Ward councillors who spoke in favour of the Former CEO. Cr Carr seeks to place his own conduct above that of others and gain some moral, political or personal advantage.

- e. The statement: *"the people of Cambridge quite rightly should be demanding answers about the way in which he has been treated"* seems designed to undermine the public's confidence in the decision of its Council and its elected members and is designed to cause detriment to certain elected members and the Town as a whole.



- f. Similarly, Cr Carr's comment "*You lead a sticky life and you'll come to a sticky end*" is directed towards certain councillors and adversely reflects on them.
- g. Finally, the statement "*The People of Cambridge deserve better*" also casts an adverse reflection on Council, its Councillors and Council's decision on the matter.

### Conclusion

49. The Letter was endorsed with the following statement "*Louis Carr Cambridge Wembley ward councillor Simper Street, Wembley*". This clearly demonstrates an intention by Cr Carr to have his Letter published in the media and circulated in the district. The Letter is not qualified in any sense and in his capacity as councillor, Cr Carr has criticised his fellow Councillors and Council's decision.
50. The Complainants were all, subsequently, asked by concerned ratepayers what occurred at the confidential SCMs; the Letter has inflamed relations with the public.
51. The Letter was intended to cause detriment to those who did not vote the same way as Cr Carr and the Town itself. It appears Cr Carr's Letter was designed to apply pressure to certain elected members to deal with a matter before it in a particular way.
52. Cr Carr placed Council in a position of being unable to address the issues in Cr Carr's Letter to explain to the public the decisions to which Cr Carr's Letter refers, because those matters were determined at confidential meetings. The Complainants were effectively "*gagged*" from being able to respond to Cr Carr's assertions and makes them appear like they are trying to hide or conceal something, rather than protect an employee's reputation from damage.
53. If Cr Carr was concerned that The Post reported incorrect information, he could have asked it to print a retraction and raised his concerns with the Mayor. Also, if Cr Carr thought elected members had breached any standing orders or local laws of conduct at either the First or Second SCMs, he had an opportunity of addressing them at the relevant special council meeting under the Town's standing orders or by lodging a complaint with the Panel.
54. The Letter has:
  - i. harmed the standing and reputation of the Town, its Council and certain of its elected members;
  - ii. caused anyone reading it to question or think less favourably of the Council as a governing body and some elected members;
  - iii. caused detriment to the Town because its contents could be used by the Former CEO against the Town in the course of legal proceedings on the basis it caused injury to his reputation and professional standing in a public forum by making employment issues public and drawing attention to them

### **Cr Carr's Response**



55. In his Response, Cr Carr denies the allegations.

First Allegation – breach of regulation 6

56. Cr Carr confirms he did not consult with the other three Wembley Ward councillors about the contents of the Letter prior to it being published.

57. The First SCM was to do with the position of CEO. At the meeting, elected members were given a hand-written Notice of Motion drawn up by Councillor Andres Timmermanis that essentially sought to suspend the Former CEO and issue him with a 'Show Cause Notice'. The contents of the First SCM and result of the vote were confidential.

58. The vote on the motion was 5/4 with the Mayor and four Coast Ward councillors voting in favour of it, and the four Wembley Ward councillors (including Cr Carr) voting against it.

59. On 14 April 2018, the Article was published with the headline "*Buckley out in Shannon coup*". The outcome of the First SCM was clearly common knowledge given the content of the Article. Whilst the Mayor may have made no comment to the media, the Article clearly stated:

*"A councillor who did not wish to be named said Monday's council decision had been unanimous."*

Therefore, it was the councillor who spoke to The Post about the decision being "*unanimous*" who made the issue public, and not Cr Carr. Furthermore, Cr Carr is not the councillor who breached the confidentiality of the First SCM.

60. Cr Carr wrote to The Post on or about 17 April 2018 and his Letter was published in the 21 April 2018 edition. Cr Carr states that if he did disclose confidential information from the First SCM in the Letter, he did so because incorrect information was stated in the Article.

61. Cr Carr states that it is true that the Notice of Motion for the First SCM did not contain details revealing what was involved or discussed, however that was because the hand-written motion was only provided to elected members on the night of the First SCM itself. The general content of the meeting became public knowledge when the Article was published.

Second Allegation – breach of regulation 7

62. Cr Carr denies that anyone reading the Letter would question or think less favourably of the Council as a governing body or of some elected members, and states that the Letter simply corrected misinformation supplied to The Post. The assertion that the Letter could be relied upon by the Former CEO in any legal action is an "*overreaction*". Cr Carr's actions have not caused damage to the CEO's reputation unlike the actions of others.

63. Cr Carr signed the Letter with his name, address and position as a councillor. To do otherwise would be to "*lower his standards*". As for fidelity and loyalty, Cr Carr was not prepared to allow misinformation to be published without giving the true facts of the decision at the First SCM. It was not a unanimous vote and the Article did not state the decision was by absolute majority.



64. Cr Carr took particular exception to the statement in the Article "*The councillor who did not wish to be named*" and he believed the City was able to ascertain who the councillor was. He also had no reason to believe that '*the unnamed councillor*' was quoted inaccurately in the Article otherwise they would have sought a retraction.
65. In the days after the Article was published, Cr Carr received many calls from ratepayers wanting to know why he had voted to suspend the Former CEO. He believes he had the right to correct what was clearly an incorrect statement.
66. Furthermore, in relation to the specific statements from the Letter that the Complainants highlight and take issue with:
- Cr Carr's strongly held view is that the person who leaked the information was "*gutless*". He was not casting an adverse reflection on all councillors but he was saying that the one who was responsible showed a lack of courage. He was merely pointing out that one breached the confidentiality of the meeting and did so anonymously. Cr Carr has been instilled with the importance of telling the truth and a reasonable person would expect that councillor to put his or her name to a comment.
  - The statement "*the people of Cambridge quite rightly should be demanding answers about the way in which he has been treated*" is a comment that reflects the opinions expressed to him in the wake of the Former CEO's suspension.
  - He stands by his statement in the Letter about the Mayor.
  - As for his words "*I have never been so ashamed to be associated.....*" Cr Carr states that the comments about the Former CEO at the First SCM were appalling. The decision at the First SCM created a depth of feeling and a toxic relationship. Cr Carr does not retract one word.
67. Subsequent to the Article being published, the Mayor did send an email seeking a retraction however the damage was done.
68. Cr Carr did not seek any advantage in self-promotion and the public have the opportunity to make their collective minds up about who to vote for, every two years at an election.
69. Cr Carr sent the Letter to The Post for two reasons:
- a. to correct misinformation and point out an inaccuracy in the Article; he wanted to make it clear he did not vote for the Former CEO's suspension, that the decision was not unanimous, and whoever the '*unnamed*' councillor was had lied; and
  - b. to object to someone making false statements under the "guise of anonymity."

## **Panel's Consideration**

### **First Allegation – breach of regulation 6**



70. The Complainants do not state whether it is a breach of regulation 6(2)(a) or 6(2)(b) that is alleged. Regulation 6(2)(a) is concerned with disclosure by a council member of information from a confidential document and regulation 6(2)(b) with disclosure of information a council member acquires at a closed meeting. The allegation is that Cr Carr disclosed confidential information concerning the CEO Matter and the nature and content of the First and Second SCMs by referring to the Former CEO and how certain Councillors voted. Therefore, the Panel finds that the allegation against Cr Carr is that he disclosed information that he acquired at a closed meeting pursuant to Regulation 6(2)(b).

71. For a finding that a councillor has breached a particular regulation, the Panel must be satisfied that every element of the regulation has been established to the required standard of proof. The Panel has considered all the evidence before it and is satisfied that Cr Carr disclosed information that he acquired from the First SCM in the Letter:

- a. The Letter was sent to the Post newspaper and the information contained therein was disclosed to the general public and not only Cr Carr's fellow Councillors;
- b. In response to whether the vote on the CEO Matter was unanimous, Cr Carr stated in the Letter:

*'It definitely was not.*

*The four Wembley ward Cambridge councillors....none of us voted for that portion of the motion that related to him".*

In doing so, Cr Carr disclosed the following information ("Confidential Information"):

- i. that the vote was not unanimous;
- ii. how the vote was split between those in favour and against; and
- iii. how individual councillors had voted.

The information above was information Cr Carr had acquired from the First SCM that was closed to members of the public.

- c. There is no evidence put forward that the information Cr Carr disclosed was derived from a non-confidential document; and
- d. The Confidential Information was not already in the public domain at the time Cr Carr disclosed it:
  - i. The only public information regarding the First SCM in the Notice of Motion was that it was a meeting "*to consider a Confidential report relating to a legal review and matters relating to the Chief Executive Officer*".
  - ii. In the Minutes of the First SCM published after the meeting, there was no specific information on what each item related to:



**COUNCIL DECISION:**

Moved by Cr Everett, seconded by Cr McKerracher

That the confidential motion, point (i), be adopted.

Carried 5/4

For: Mayor Shannon, Crs Bradley, Everett, McKerracher and Timmermanis  
Against: Crs Carr, McAllister, Nelson and Powell

**COUNCIL DECISION:**

Moved by Cr Everett, seconded by Cr McKerracher

That the confidential motion, point (ii), be adopted.

Carried 9/0

Nor did the disclosure occur in any of the ways identified in regulation 6(3).

- iii. The Article was published after the First SCM and stated that the vote was unanimous (which was incorrect) however it did not disclose any of the Confidential Information.

72. In the Letter, Cr Carr spelled out how Councillors voted and disclosed new information to the public. Based on the evidence before it, the Panel is satisfied to the required standard that Cr Carr disclosed information acquired from the First SCM (which was a closed meeting) when he wrote the Letter.

### **Panel's finding**

73. The Panel finds that Cr Carr did commit a breach of regulation 6(2)(b) in relation to the First Allegation.

#### Second Allegation – Regulation 7

##### *First, second and third elements satisfied*

74. The Panel finds that Cr Carr engaged in the conduct which is the subject of the Second Allegation and that he was a councillor and was acting as a councillor at all relevant times.

75. The first, second and third elements of regulation 7(1)(a) and 7(1)(b) are established.

##### *Whether Cr Carr acted improperly (fourth element)*

76. The Panel has considered all the evidence before it and it is satisfied that the fourth element has been established in relation to the Second Allegation and finds that Cr Carr did act improperly. The Panel makes this finding because it is satisfied to the required standard of proof that a reasonable person would consider that Cr Carr did not meet the standards of conduct expected of a councillor when he sent the Letter to The Post intending for it to be published:



- a. Cr Carr disclosed how his fellow Councillors voted in relation to the CEO Matter at the First SCM and the Panel has already found he was in breach of the regulations by doing so. Cr Carr submits that if he did in fact breach the confidentiality provisions (which he acknowledges may have occurred in his Response), it was justified, because he wanted to correct the inaccuracy in the Article regarding the vote and because he strongly disagreed with the actions of the Councillor who spoke to The Post anonymously. However, matters of confidentiality are extremely serious and the responsibility of Councillors to respect the rules are imperative as breaches can cause significant harm in multiple ways. The Panel finds that simply because Cr Carr believed another Councillor had breached confidentiality, that does not provide justification for Cr Carr to do likewise, and he in fact disclosed information that was not otherwise in the public domain. The Panel also finds that Cr Carr contravened the Town's Code of Conduct provisions regarding the use of confidential information because he failed to act impartially and in good faith and caused detriment to his fellow Councillors and the city by disclosing the Confidential Information.<sup>27</sup>
- b. Cr Carr states that Mayor Shannon had sought a retraction from The Post regarding the inaccurate information in the Article and his own evidence supports this. Cr Carr attaches several emails between himself and Mayor Shannon and it is evident from this correspondence that Mayor Shannon was investigating which councillor had spoken to The Post and was also seeking a retraction and she advised Councillors of this in an email dated 16 April 2018. However, despite this, Cr Carr proceeded to write to the Post on or around 17 April 2018, suggesting that the Mayor's handling of the matter was inadequate. In his Response, Cr Carr reiterates that the Mayor's actions came "*too late*". The Panel finds Cr Carr's comments regarding Mayor Shannon in the Letter and his conduct in usurping the action she took to deal with the matter, by writing to The Post directly himself, showed a lack of respect for the Mayor and publicly undermined her position.
- c. The Letter is reasonable in length, is permanent in form and contains a number of derogatory statements regarding Mayor Shannon and Cr Carr's fellow councillors; suggesting they are not doing a good enough job and are not adequately serving the City. Those accusations are at least partly based on what was said and what occurred at the First SCM. The Letter calls for residents to ask questions about what happened at the First SCM when Cr Carr writes: "*The people of Cambridge quite rightly should be demanding answers about the way in which he has been treated*". However, Mayor Shannon and the other councillors were unable to respond or defend themselves against the accusations in Cr Carr's Letter; the First SCM was confidential and councillors were precluded from discussing it therefore they were placed at an unfair disadvantage. It is likely that this compounded the negative feelings amongst the community surrounding the First SCM and reflected on the City in a negative light.
- d. The Letter as a whole casts aspersions on the First SCM and undermined the decision that was taken. Although Cr Carr was clearly unhappy with the decision regarding the CEO Matter and how it came about, his fellow councillors were entitled to vote as they saw fit and Cr Carr had a duty to

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<sup>27</sup> Clause 3 of the Town's Code of Conduct



respect the decision or alternatively follow the correct process to report any wrongful behaviour.

- e. In light of the above, the Panel also finds that Cr Carr contravened the following subsections of the Town's *Code of Conduct*:

**"4 CONDUCT OF COUNCIL MEMBERS, COMMITTEE MEMBERS AND STAFF**

*Personal Behaviour*

(a) *Council Members, Committee Members and staff will:-*

- (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 or professional duties, which may cause any reasonable person unwarranted offence or embarrassment;*

.....

(b) *Council Members, Committee Members and staff are not to reflect adversely upon the character or actions of another Member or officer not use offensive or objectionable language or expressions in reference to any Member, employee of the Council or any other person;*

4.5 *A Council or Committee Member is not to reflect adversely upon a decision of the Council except on a motion that the decision be revoked or changed.*

77. Based on the evidence before it, the Panel is satisfied that Cr Carr acted improperly.

Whether Cr Carr intended to gain an advantage for himself or cause detriment to the local government or any other person (fifth element)

78. The Complainants allege both a breach of regulation 7(1)(a) and 7(1)(b), however, based on the evidence before it, the Panel finds the argument that Cr Carr intended to gain an advantage for himself, not compelling. Cr Carr was clearly upset at the apparent disclosure of information by one of his fellow elected members and also by what had occurred at the First SCM and responded by writing the Letter.

79. In relation to the allegation of a breach of regulation 7(1)(b), the Panel is satisfied to the required standard of proof that Cr Carr intended to cause detriment to Mayor Shannon, his fellow Councillors and the City. Based on the evidence before it, the Panel finds:

- a. The Letter is of a reasonable length and was sent to the Post on 17 April 2018 (three days after the Article appeared in the Post and more than a week after the First SCM). It was not a spur of the moment response and Cr Carr would have had time to consider its contents carefully.
- b. Cr Carr sent the Letter intending for it to be published in the Post – it was a clear, intentional statement by Cr Carr that did not allow for further discussion or debate.



- c. Cr Carr was aware that Mayor Shannon was taking action regarding seeking a retraction from The Post and in investigating which councillor had spoken to the newspaper, however in the Letter Cr Carr fails to acknowledge that and simply states *“Whoever that councillor is, he or she should be censured by mayor Keri Shannon. But don’t hold your breath waiting for that to happen.”*
- d. Cr Carr acknowledges that he did not confer with or speak to his fellow Councillors before submitting the Letter, therefore he boldly decided to speak on their behalf. Cr Carr was clearly aware he was dealing with Confidential Information yet proceeded to act as he did. Cr Carr knowingly placed his fellow councillors in a position whereby they were on unequal footing and could not respond without potentially also disclosing confidential information.
- e. The Panel finds it reasonable that anyone reading the Letter would be likely to think less favourably of Mayor Shannon, Cr Carr’s fellow Councillors and the City and the evidence before the Panel shows there was clear intent on the part of Cr Carr in this respect.

80. The Panel finds that the fifth element is satisfied.

81. The Panel is satisfied that a reasonable person with the knowledge of the duties, powers and authority of a Councillor would form the view that Cr Carr had breached the standards of conduct expected of a Councillor.

### **Panel’s finding**

82. The Panel finds that Cr Carr did commit a breach of regulation 7(1)(b) in relation to the Second Allegation.

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Sarah Rizk (Presiding Deputy Member)

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Elanor Rowe (Deputy Member)

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Rebecca Aubrey (Deputy Member)



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## Local Government Standards Panel

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Complaint Number	SP 2018-113
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Councillor Cr Kathryn McKerracher</b> <b>Councillor Ian Everett</b> <b>Deputy Mayor Rob Bradley</b> <b>Mayor Keri Shannon</b>
<b>Respondent</b>	<b>Councillor Louis Carr</b>
Local Government	<b>Town of Cambridge</b>
Regulation	Regulations 6 and 7 of the <i>Local Government (Rules of Conduct)</i> <i>Regulations 2007 (WA)</i>
Panel Members	Ms S Rizk (Presiding Member) Ms E Rowe (Deputy Member) Ms R Aubrey (Deputy Member)
Heard	26 July 2019 Determined on the documents
Outcome	Public apology

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### DECISION AND REASONS FOR DECISION

Published: 28 August 2019

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#### DEFAMATION CAUTION

The general law of defamation, as modified by the *Defamation Act 2005 (WA)*, 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



## Introduction

1. At its meeting on 26 April 2019, the Panel found that Councillor Louis Carr (“Cr Carr”), a council member of the Town of Cambridge (“the Town”) committed one breach of regulation 6 and one breach of regulation 7 of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (“the Regulations”) when he sent a letter to The Post newspaper that was published on 21 April 2019.
2. On 29 May 2019 the Panel published its Finding and Reasons for Finding (“Findings”) that Cr Carr had breached Regulations 6 and 7. The Panel reviewed all the evidence presented to it and said:

### “First Allegation – breach of regulation 6

71. ....

- a. The Letter was sent to the Post newspaper and the information contained therein was disclosed to the general public and not only Cr Carr’s fellow Councillors;

72. In the Letter, Cr Carr spelled out how Councillors voted and disclosed new information to the public. Based on the evidence before it, the Panel is satisfied to the required standard that Cr Carr disclosed information acquired from the First SCM (which was a closed meeting) when he wrote the Letter.

### Second Allegation – breach of Regulation 7

76. ....

- a. Cr Carr disclosed how his fellow Councillors voted in relation to the CEO Matter at the First SCM and the Panel has already found he was in breach of the regulations by doing so....matters of confidentiality are extremely serious and the responsibility of Councillors to respect the rules are imperative as breaches can cause significant harm in multiple ways. The Panel finds that simply because Cr Carr believed another Councillor had breached confidentiality, that does not provide justification for Cr Carr to do likewise, and he in fact disclosed information that was not otherwise in the public domain. The Panel also finds that Cr Carr contravened the Town’s Code of Conduct provisions regarding the use of confidential information because he failed to act impartially and in good faith and caused detriment to his fellow Councillors and the Town by disclosing the Confidential Information.
- b. ....Cr Carr proceeded to write to the Post on or around 17 April 2018, suggesting that the Mayor’s handling of the matter was inadequate. In his Response, Cr Carr reiterates that the Mayor’s actions came “*too late*”. The Panel finds Cr Carr’s comments regarding Mayor Shannon in the Letter and his conduct in usurping the action she took to deal with the matter, by writing to The Post directly himself, showed a lack of respect for the Mayor and publicly undermined her position.
- c. The Letter is reasonable in length, is permanent in form and contains a number of derogatory statements regarding Mayor Shannon and Cr Carr’s fellow councillors; suggesting they are not doing a good enough job and are not adequately serving the Town. Those accusations are at least partly based on what was said and what occurred at the First SCM. The Letter calls for residents to ask questions about what happened at the First SCM when Cr Carr writes: “*The people of Cambridge quite rightly should be demanding answers*”



*about the way in which he has been treated*'. However, Mayor Shannon and the other councillors were unable to respond or defend themselves against the accusations in Cr Carr's Letter; the First SCM was confidential and councillors were precluded from discussing it therefore they were placed at an unfair disadvantage. It is likely that this compounded the negative feelings amongst the community surrounding the First SCM and reflected on the Town in a negative light.

- d. The Letter as a whole casts aspersions on the First SCM and undermined the decision that was taken. Although Cr Carr was clearly unhappy with the decision regarding the CEO Matter and how it came about, his fellow councillors were entitled to vote as they saw fit and Cr Carr had a duty to respect the decision or alternatively follow the correct process to report any wrongful behaviour.

79. ....

- a. The Letter is of a reasonable length and was sent to the Post on 17 April 2018 (three days after the Article appeared in the Post and more than a week after the First SCM). It was not a spur of the moment response and Cr Carr would have had time to consider its contents carefully.
- b. Cr Carr sent the Letter intending for it to be published in the Post – it was a clear, intentional statement by Cr Carr that did not allow for further discussion or debate.
- c. Cr Carr was aware that Mayor Shannon was taking action regarding seeking a retraction from The Post and in investigating which councillor had spoken to the newspaper, however in the Letter Cr Carr fails to acknowledge that and simply states *"Whoever that councillor is, he or she should be censured by mayor Keri Shannon. But don't hold your breath waiting for that to happen."*
- d. Cr Carr acknowledges that he did not confer with or speak to his fellow Councillors before submitting the Letter, therefore he boldly decided to speak on their behalf. Cr Carr was clearly aware he was dealing with Confidential Information yet proceeded to act as he did. Cr Carr knowingly placed his fellow councillors in a position whereby they were on unequal footing and could not respond without potentially also disclosing confidential information.
- e. The Panel finds it reasonable that anyone reading the Letter would be likely to think less favourably of Mayor Shannon, Cr Carr's fellow Councillors and the Town and the evidence before the Panel shows there was clear intent on the part of Cr Carr in this respect."

### **Jurisdiction**

3. The Panel convened on 26 July 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 Carr 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 Carr'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 31 May 2019, the Department notified Cr Carr of the Panel's findings, providing him with a copy of its Findings published on 29 May 2019 and inviting him to make submissions on how the Panel should deal with the breach under section 5.110(6).
- 8. In an email dated 28 June 2019, the Panel received a response from Cr Carr stating that he accepted the Panel's Finding but that it is not appropriate to impose any further penalty. The submissions state:
  - a. at the time of writing the letter Cr Carr understood that he was correcting misinformation published as a matter on the public record, and believed he was acting in the public interest. As a result of this process, Cr Carr now understands that the method he chose was not the correct one to achieve that result;
  - b. this process has been a chastening and learning experience for him;
  - c. Cr Carr has provided service to the community as a councillor for the Town for over seven years and he will not be standing for re-election at the forthcoming Council elections; and
  - d. if a penalty is to be imposed, the appropriate penalty is to require him to undertake training through an authorised training organisation.

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



### **Panel's consideration**

9. The Panel found that Cr Carr committed one breach of Regulation 6 and one breach of Regulation 7 that related to his conduct when he sent a letter to The Post newspaper that was published on 21 April 2019. Cr Carr has previously not been found to have committed any minor breaches.
10. The Panel has considered Cr Carr's submissions as to how the Complaint should be dealt with. Cr Carr's response demonstrates that he understands why he was found to have committed two breaches of the Act, and he shows some remorse for his actions.
11. However, the Panel found that Cr Carr disclosed confidential information from a closed meeting and publicly showed a lack of respect for a decision made by Council, as well as Mayor Shannon and his fellow councillors.
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. Given that Cr Carr states in his response that he will not be seeking re-election, the Panel does not consider that ordering Cr Carr to undergo further training is appropriate. Furthermore, the seriousness of Cr Carr's conduct warrants a more serious penalty.
14. The options left for the Panel to consider are to order the publication of a Notice of Public Censure or to order Cr Carr to make a Public Apology (or both).
15. When the Panel makes an order that a Notice of Public Censure be published, the Notice is published by the local government's CEO, at the expense of the local government; such expense is significant where the Notice is to be published in a newspaper or newspapers.
16. In the present case, on the evidence available to the Panel, the Panel does not consider that it should order a public censure.
17. Cr Carr's comments were published in the local newspaper. In the circumstances, a public apology is appropriate as it reflects the impact of Cr Carr's statements on Mayor Shannon, his fellow councillors, Council and the Town, and may go some way to repairing the damage caused by his conduct amongst the community. Matters of confidentiality are very serious and an apology in public is also appropriate when a councillor's conduct does not meet the standards other councillors seek to uphold.
18. The Panel considers a public apology to those who suffered the damage, Mayor Shannon, Cr Carr's fellow councillors, Council and the Town, is the appropriate penalty.

### **Panel's decision**

19. Having regard to the Findings, the matters set out herein, and the general interests of local government in Western Australia, the Panel's decision on how the Minor Breach is to be dealt with under s5.110(6) of the Act, is that pursuant to subsection



(b)(ii) of that section, Cr Carr is ordered to publicly apologise to Mayor Shannon, his fellow councillors, Council and the Town.

A handwritten signature in black ink, appearing to read 'SRizk'.

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Sarah Rizk (Presiding Deputy Member)

A handwritten signature in black ink, appearing to read 'ERowe'.

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Elanor Rowe (Deputy Member)

A handwritten signature in black ink, appearing to read 'RAubrey'.

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Rebecca Aubrey (Deputy Member)



## ATTACHMENT

Complaint Number	SP 2018-113
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Councillor Kathryn McKerracher</b> <b>Councillor Ian Everett</b> <b>Deputy Mayor Rod Bradley</b> <b>Mayor Keri Shannon</b>
<b>Respondent</b>	<b>Councillor Louis Carr</b>
Local Government	<b>Town of Cambridge</b>
Regulation	Regulations 6 and 7 of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Ms S Rizk (Presiding Member) Ms E Rowe (Deputy Member) Ms R Aubrey (Deputy Member)
Heard	26 July 2019 Determined on the documents
Outcome	Public apology

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### ORDER FOR PUBLIC APOLOGY

Published 28 August 2019

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#### DEFAMATION CAUTION

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## THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Louis Carr (“Cr Carr”), a Councillor for the Town of Cambridge (“the Town”), publicly apologise to Mayor Shannon, his fellow councillors, Council and the Town as specified in paragraph 2 below.
2. At the Town’s first ordinary council meeting Cr Carr attends after the expiration of 28 days from the date of service of this Order on him, Cr Carr shall:
  - (a) ask the presiding person for his or her permission to address the meeting to make a public apology to Mayor Shannon, his fellow councillors, Council and the Town;
  - (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 two provisions of the *Local Government (Rules of Conduct) Regulations 2007* when I sent a letter to The Post newspaper that was published on 21 April 2018.
- (ii) The Panel found that by behaving in this manner I disclosed confidential information and made improper use of my office as Councillor with the intention of damaging Mayor Shannon, my fellow councillors, Council and the Town, thereby committing one breach of Regulation 6 and one breach of Regulation 7 of the *Local Government (Rules of Conduct) Regulations 2007*.
- (iii) I accept that I should not have acted in such a manner towards Mayor Shannon, my fellow councillors, Council and the Town, and I apologise to the parties concerned for having done so.”

3. If Cr Carr fails or is unable to comply with the requirements of paragraph 2 above then within the next 28 days following the ordinary council meeting referred to in paragraph 2 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 Post newspaper.

### **PUBLIC APOLOGY BY CR LOUIS CARR**

A formal complaint was made to the Local Government Standards Panel alleging that I contravened two provisions of the *Local Government (Rules of Conduct) Regulations 2007* when I sent a letter to The Post newspaper that was published on 21 April 2018.

The Panel found:



(1) I committed one breach of Regulation 6 and one breach of Regulation 7 of the Rules of Conduct Regulations when I sent a letter to The Post newspaper that was published on 21 April 2018.

(2) By behaving in this way to Mayor Shannon, my fellow councillors, Council and the Town, I failed to meet the standards of conduct expected of a councillor

I apologise to Mayor Shannon, my fellow councillors, Council and the Town for acting in such a manner.

Date of Order – 28 August 2019



## 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."*