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## Local Government Standards Panel

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Complaint Number	SP 2020-033
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Councillor Michael Separovich</b>
<b>Respondent</b>	<b>Mr Don Green</b>
Local Government	<b>City of Cockburn</b>
Regulation	Regulation 10 of the <i>Local Government (Rules of Conduct)</i> <i>Regulations 2007</i>
Panel Members	Mr Michael Connolly (Presiding Member) Cr Peter Rogers (Member) Mrs Emma Power (Member)
Heard	8 July 2020 Determined on the documents
Finding	No Breach of Regulation 10(1)(a) 1 x Breach of Regulation 10(1)(b)

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### FINDING AND REASONS FOR FINDING

Delivered 12 August 2020

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#### DEFAMATION CAUTION

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## Summary of the Panel's decision

1. On 8 July 2020, the Panel found that Councillor Michael Separovich a councillor of the City of Cockburn (**"the City"**):
  - a. did not commit a minor breach pursuant to the Local Government Act 1995 (WA) (**"the Act"**) and regulation 10(1)(a) of the Local Government (Rules of Conduct) Regulations 2007 (**"the Regulations"**) when he sent an email to the CEO suggesting a number of recommendations aimed at altering the record of the minutes for the Special Council Meeting of 24 October 2019; and
  - b. did commit a minor breach pursuant to the Act and regulation 10(1)(b) of the Regulations when he sent an email with an alleged threatening tone to a senior member of council staff,as set out in paragraph 15 below.

## The Panel's Role

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

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

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

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

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

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

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



10. The Panel is obliged to give notice of the reasons for any finding it makes under section 5.110(2) of the Act.

### **Jurisdiction and Procedural Fairness**

11. On 30 April 2020 the Panel received an email from Mr Don Green, acting as complaints officer of the City ("**the Complaints Officer**"). The same enclosed a Complaint of Minor Breach Form (with attachments) dated 23 April 2020.
12. In his letter of complaint, Mr Green (Director Governance and Community Services of the City) alleges that Cr Separovich breached:
  - a. regulation 10(1)(b) of the Regulations when he when he sent an email with an alleged threatening tone to a senior member of council staff ("**Allegation 1**"); and
  - b. regulation 10(1)(a) of the Regulations when he sent an email to Mr Green suggesting a number of recommendations aimed at altering the record of the minutes for the Special Council Meeting of 24 October 2019 ("**Allegation 2**"), as further described in paragraph 15 below ("**the Complaint**").
13. The Panel convened on 8 July 2020 to consider the Complaint.
14. 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 Separovich was:
    - i. elected to the Council of the City in October 2017 for a term expiring in October 2021;
    - ii. an elected councillor at the time of the alleged breach; and
    - iii. a Councillor when the Panel met on 8 July 2020;
  - b. was satisfied that the Complaint was made within six months after the alleged breach occurred<sup>7</sup>;
  - c. was satisfied that the City's Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach<sup>8</sup>;
  - d. was satisfied the Department had provided procedural fairness to Cr Separovich; and
  - e. found it had jurisdiction to consider the Complaint.

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

15. Mr Green makes the following particular comments and arguments in respect to the Complaint:
  - a. A Special Meeting of the Council of the City was called to be held on 24 October 2019 ("**the Special 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



- b. For Ordinary Meetings of Council, it is Council policy for elected members to provide any alternative motions for consideration at the Council Meeting, to the administration in advance of the Meeting.
- c. The reason for proposing an amendment to an officer recommendation should be provided with the alternative motion to eliminate unnecessary questions and debate at the Meeting.
- d. On the day of any Council meeting, a summary of the Agenda proceedings is prepared and provided to elected members prior to the meeting.
- e. On the afternoon of the Special Meeting (at 3.37pm) Mr Green forwarded a memo to all elected members detailing the proposed Meeting proceedings and how they would be managed. This was done in the interests of assisting the understanding of the elected members (particularly newly elected members).
- f. Included with the memo was a copy of a spreadsheet which highlighted the nominations received from members expressing their interest in being appointed to the various Committees and Groups, for consideration by Council.
- g. The purpose of the memo was to inform members that the appointment procedure had been administratively amended to provide officer recommendations for these appointments, based on a variety of factors, but highlighting that it was considered an equitable way to achieve an optimum outcome in distributing the commitments of elected members to these Committees and Groups.
- h. Following this, the Special Meeting proceeded in the manner outlined in the memo and the recommendations were adopted either by way of alternative motions submitted by members at the meeting, or by adoption of the officer recommendations.
- i. The following day (25 October 2019), Cr Green received a number of written enquiries from Cr Separovich about the process undertaken at the meeting and also making a number of remarks about the legality of the proceedings.
- j. These emails were also copied into all elected members.
- k. Mr Green first responded to these enquiries and statements on the Friday, and in addition contacted Cr Separovich to verbally explain what had occurred.
- l. The conversation was not achieving any satisfactory outcome, so it was terminated by Mr Green.
- m. Subsequently, Mr Green responded in writing on Monday 28 October, in an effort to clarify some of the enquiries, as well as correcting Cr Separovich on some irregularities in his reasoning.
- n. The emails from Cr Separovich continued regularly over the ensuing few days and were increasingly erratic in their content.
- o. Cr Separovich suggested that he would be prepared to submit an illegal motion to the following Ordinary Council Meeting to have the Minutes of the Special Council Meeting changed, but without first being revoked, as required by the Act.
- p. Cr Separovich's correspondence was antagonistic and responded with accusations of misconduct by Mr Green.
- q. Mr Green considers Cr Separovich's actions irrational, but acknowledges that there had undoubtedly been some confusion created by his misunderstanding of the appointment process associated with the 24 October Meeting.



- r. On the day of the Ordinary Council Meeting of 14 November 2019 (“**the OCM**”), there were two incidents which occurred that crossed the line of acceptability.
- s. Allegation 1
- i. There was a matter for consideration on the Meeting Agenda which required Council to appoint members as its representatives for the Metro South West Joint Development Assessment Panel. This involved Council appointing two (primary) members and two alternate (deputy) members.
  - ii. The officer with carriage of this item was the City's Director, Planning & Development, Mr Daniel Arndt.
  - iii. On the morning of the OCM (at 7.13am) a Councillor required some clarification of what was being proposed by the staff as a recommended motion.
  - iv. Mr Arndt responded clearly and concisely at 9.07 am and both of these communications were copied into all elected members and executive staff, as well as the Meeting clerks.
  - v. At 11.23 am, Cr Separovich submitted an abrasive email (the Allegation 1 Email referred to below) castigating Mr Arndt for his response, which Cr Separovich related to the process which occurred for matters decided at the 24 October Special Council Meeting.
  - vi. Mr Arndt was visibly upset at the threatening tone of the email and the accusations made by Cr Separovich and questioned whether the comments were a breach of the Code of Conduct. He left the matter with Mr Green to consider.
- t. Allegation 2
- i. At 11.14am on the morning of the OCM, Cr Separovich submitted an alternative recommendation which suggested a number of illegal recommendations, aimed at altering the record of the minutes for the Special Council Meeting of 24 October 2019, which was an item on the Agenda for the 14 November, 2019 Council Meeting.
  - ii. Mr Green responded with a logical and considered response which explained that what he was suggesting was not possible to achieve in the manner he was proposing.
  - iii. Despite this, at 4.56 pm Cr Separovich submitted another illogical email to Mr Green which was again challenging the accuracy of his response and “demanding” that his (illegal) motion be included on the summary of proceedings for the OCM that evening.
  - iv. Mr Green did not respond further until Cr Separovich raised the matter verbally at the pre-meeting dinner and stated that he intended to introduce the matter at the Meeting. Mr Green strongly advised him not to do so as it would represent a deliberate illegal act which could be acted upon.
  - v. Despite this advice, Cr Separovich raised the matter at the OCM. Despite the fact that Mr Green advised the Meeting that it was against the City's Standing Orders to debate anything but the accuracy of the Minutes of the Meeting, the Presiding Member allowed Cr Separovich to ask a series of unrelated questions at the Special Meeting.
- u. Summary



- i. The behaviour of Cr Separovich in his dealings with senior staff on the occasions detailed above were both unprofessional and insulting.
  - ii. At all times during the process, Mr Green encouraged Cr Separovich to contact him to discuss the issue in more detail, which he refused on all but one occasion at the beginning of the proceedings.
  - iii. Cr Separovich's extreme lack of understanding of basic administrative procedures had tainted his views to such a point where he became totally illogical and irrational in his behaviour.
  - iv. Cr Separovich's refusal to heed advice was compounded by his forwarding illegal motions as a means of making his point.
  - v. Cr Separovich's conduct was shameful to the point where it became harassing, took a considerable amount of time to respond to, and achieved absolutely no purpose, other than to offend staff.
  - vi. Mr Green is of the opinion that this behaviour is reprehensible and Cr Separovich has contravened Regulation 10(1)(a) and 10(1)(b) of the Regulations.
16. The Complainant also provided the following supporting documentation:
- a. Copy of the Notice of Meeting Summary of Agenda document for the Special Meeting;
  - b. Extract of the City policy document for Meetings Procedures referring to alternative motions procedure ("**the Meeting Policy**");
  - c. Summary Agenda for the Special Meeting;
  - d. Email dated 24 October 2019 from Mr Green to elected members setting out new procedure for appointments etc and spreadsheet of nominations;
  - e. Various email chains dated 24 October 2019 to 25 October 2019 from various councillors to Mr Green and Mr Green to various councillors regarding the varied method of appointment of councillors to committees;
  - f. Email chain dated 24 October 2019 to 28 October 2019 between Mr Green and Cr Separovich regarding the procedural issues of appointments to committees see **Attachment 1**;
  - g. Email exchange dated 30 October 2019 between Cr Smith and Cr Separovich relating to variation of minutes of the Special Meeting;
  - h. Email dated 28 October 2019 from Cr Separovich to Mr Green;
  - i. Email exchange dated 30 October 2019 to 5 November 2019 between Mr Green, Cr Separovich and other elected members regarding the procedure for variation of the minutes of a Council Meeting; and



- j. Various emails regarding the appointment of councillors to the Metropolitan South West Joint Development Assessment Panel and setting out various alternative motions, including an email dated 14 November 2019 from Cr Separovich to Mr Arndt and various Councillors as follows:

**From:** Cr Michael Separovich  
**Sent:** Thursday, 14 November 2019 11:23 AM  
**To:** Daniel Arndt  
**Cc:** Cr Chontelle Stone; Cr Dr Chamonix Terblanche; Cr Kevin Allen; Cr Lee - Anne Smith; Cr Philip Eva; Cr Phoebe Corke; Cr Tom Widenbar; Deputy Mayor Lara Kirkwood; Mayor - Logan K Howlett; Minute Clerk; Stuart Downing; Don Green; Sue D'Agnone  
**Subject:** Re: Alternative Recommendations - Item 14.5 - Nomination of Members for the Metro South West Joint Development Assessment Panel  
**Attachments:** image1.png

WAIT A GODDAM SECOND.

Since when did officers start compiling nominations?

DID YOU LEARN NOTHING FROM THE OCTOBER SCM DANIEL.

This is an ordinary council meeting and if i get to the ordinary council meeting and elected members alternative recommendations have been deleted from the agenda without them being withdrawn i will be making an official complaint.

Violate that policy at your peril Daniel.

**(“the Allegation 1 Email”).**

- k. Email chain dated 14 November 2019 containing email from Cr Separovich to Mr Green requesting inclusion of an alternative motion in the Agenda of the OCM – see **Attachment 2**.

**Respondent’s Response**

17. By an email dated 15 May 2020, Cr Separovich provided a response to the Complaint.
18. Cr Separovich denies that he has committed any minor breach.
19. Cr Separovich made the following particular comments and arguments in respect to the circumstances of the allegations of minor breach:
- The Complaint appears to be in relation to Cr Separovich’s concerns about the breakdown in governance at the City of Cockburn, in particular in relation to whether the Meeting Policy, Standing Orders and the committee terms of reference had been followed.
  - In the City’s Standing Orders Local Law 2016 (**“the Standing Orders”**) part 10.9 states  
*“ 10.9 Order of Amendments: Any number of amendments may be proposed to a motion, but when an amendment is moved to a substantive motion, no second or subsequent amendment is to be moved or considered until the first amendment has been withdrawn or determined.”*
  - Part 5.5 of the Meeting Policy states:



*“ Having received all proposed amendments in accordance with this Policy, a listing will be compiled with all proposed amendments received, together with relevant reasons, for provision to the Council Meeting. Where there are multiple proposed amendments for the same item, they will be listed in the order they have been received from Elected Members.”*

- d. Mr Green has delayed bringing this Complaint to prevent Cr Separovich from lodging a formal complaint about Mr Green.
  - e. In the Allegation 1 Email Cr Separovich brings to the attention of the Director of Planning and Development Services (Mr Arndt) that he was going to be paying special attention to the process by which elected members’ alternative recommendations are dealt with, that he intends to report to relevant bodies any complaints he has with the process and makes the “threat” that they violate the councils policies at their own risk.
  - f. How is Cr Separovich meant to be able to ensure that the City is being properly governed, if informing people that they will be held to account for breaking rules is considered “a threat”?
  - g. Cr Separovich agrees that in the purest definition of the word it was a threat in the exact same way that a police officer threatens you with fines and demerits for traffic offences and similar situations.
  - h. Cr Separovich would imagine that the position of the administration is that his response was “unwarranted” “excessive” or “aggressive in tone”, which perhaps it may have been.
  - i. Cr Separovich considers that it might be that the rest of the elected members are not forceful enough in their language to ensure that proper governance is adhered to in the City.
  - j. Considering that the City is now under an authorised inquiry by the Department, Cr Separovich strongly suspects that the case may be the latter.
20. Cr Separovich also provided:
- a. a copy of the City’s Standing Orders; and
  - b. a copy of the City’s Meeting Policy;
  - c. extract from email dated 28 October 2019 from Mr Green to Cr Separovich; and
  - d. Email regarding the inquiry into the City by the Department.

## **Regulation 10**

21. Regulation 10 regulates councillors’ interactions with local government employees:

### **“10. Relations with local government employees**

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

- (a) direct or attempt to direct a person who is a local government employee to do or not to do anything in the person’s capacity as a local government employee; or*
- (b) attempt to influence, by means of a threat or the promise of a reward, the conduct of a person who is a local government*



*employee in the person's capacity as a local government employee.*

- (2) *Subregulation (1) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.*
- (3) *If a person, in his or her capacity as a council member, is attending a council meeting, committee meeting or other organised event and members of the public are present, the person must not, either orally, in writing or by any other means —*
  - (a) *make a statement that a local government employee is incompetent or dishonest; or*
  - (b) *use offensive or objectionable expressions in reference to a local government employee.*
- (4) *Subregulation (3)(a) does not apply to conduct that is unlawful under The Criminal Code Chapter XXXV."*

## **Panel's Consideration**

### **Allegation 1 - Regulation 10(1)(b)**

22. To make a finding of a minor breach of regulation 10(1)(b) of the Regulations the Panel must be satisfied that it is more likely than not that:
  - a. Cr Separovich was a councillor at the time of the alleged breach; and
  - b. Cr Separovich tried or made an effort to affect, sway or produce an effect on the conduct of another person, who is an employee of his or her local government, in the other person's capacity as a local government employee which was carried out by means of:
    - i. a threat by the councillor; or
    - ii. a promise or undertaking by the councillor to provide to the employee something having a value or an advantage.

### **Capacity of Cr Separovich as Councillor**

23. It is established that Cr Separovich was a councillor at the time of the conduct.

24. This element is met.

### **Cr Separovich tried or made an effort to affect, sway or produce an effect by making a Threat, Promise or Undertaking**

25. It is alleged that Cr Separovich attempted to require Mr Arndt to comply with the City's Meeting Policy and to include various alternative motions in the agenda of the OCM by making a threat in the Allegation 1 Email.
26. A threat includes a declaration of an intention to take any action detrimental or unpleasant to, the employee in retaliation for, or conditionally upon, some action.
27. The intention of the party is highly relevant when deciding whether a threat is made out and a person's "motive" is different to a person's "intent"<sup>9</sup>. There must be able to

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<sup>9</sup> *De Gruchy v R* [2002] HCA 33 at paragraph [51]



be a reasonable inference (to the requisite standard) drawn from the party's motive and evidence provided.

28. The particular words used by Cr Separovich contained in the Allegation 1 Email are as follows:  

*“Violate that policy at your peril Daniel.”*
29. Cr Separovich asserts that, although the language may seem like a threat, his intention was to ensure proper governance and that the City followed proper policy.
30. The word “peril” means:
  - a. *“exposure to the risk of being injured, destroyed, or lost”*; or
  - b. *“something that imperils or endangers”*.<sup>10</sup>
31. The Panel considers the language used in the Allegation 1 Email, and particularly the use of the word “peril”, indicates that Cr Separovich intended to take action that would be detrimental to Mr Arndt (i.e. making a complaint against him) unless he complied with his wishes to include the relevant motion.
32. Irrespective of whether Mr Arndt was obligated, as part of the City's administration, to record all alternative motions in accordance with the City's Meeting Policy, the manner in which Cr Separovich attempted to require him to comply was inappropriate.
33. Given the above, the Panel finds to the required standard that Cr Separovich made an effort to require Mr Arndt (in his capacity as a local government employee) to undertake an action by means of a threat.
34. The Panel emphasises that Cr Separovich was entitled to request that Mr Arndt and the City comply with its policies. Further, the Panel appreciates Cr Separovich's frustration in the circumstances. However, the manner of demanding compliance was not justified and should have been communicated in a more suitable manner.
35. This element is met.

#### Conclusion

36. The elements required to find a breach of regulation 10(1)(b)(i) of the Regulations have been met.

#### **Allegation 2 - Regulation 10(1)(a)**

37. To make a finding of a minor breach of regulation 10(1)(a) of the Regulations the Panel must be satisfied that it is more likely than not that:
  - a. Cr Separovich was a councillor at the time of the alleged breach; and
  - b. Cr Separovich gave or tried, or made an effort, to give a direction, order or command to another person, who is an employee of his or her local government to do or not to do something in the other person's capacity as a local government employee; and
  - c. such direction, order or command was not part of anything that the councillor did as part of the deliberations at a council or committee meeting.

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<sup>10</sup> Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/peril>. Accessed 29 Jul. 2020.



### Capacity of Cr Separovich as Councillor

38. Cr Separovich was a councillor at the time of the conduct and at the time the Panel considered the matter.

### Cr Separovich gave or tried or made an effort to give a direction or an order or command to an employee to do or not do something

39. It is alleged that Cr Separovich gave a direction to Mr Green to include an “illegal” recommendation to vary the minutes of the Special Meeting in the summary of proceedings for the OCM.

40. The relevant extracts of the emails from Cr Separovich that indicate a direction was made to Mr Green are as follows:

*“ I WANT THIS ALTERNATIVE RECOMMENDATION ON THE AGENDA. THANK YOU.”*

and

*“ Don. I requested this be included on the run sheet. It appears to be missing. Attach your officers note.”*

41. The Panel notes that the City’s Meeting Policy specifically “encourages” councillors to provide alternative motions, and requires the City’s Minute Clerk to compile all such alternative motions for provision to the other elected members.
42. It is a vital component of a councillor’s role to be able to put forward variations or changes to proposed motions to be considered by Council.
43. Irrespective of whether Mr Green considered Cr Separovich’s motion “illegal”, the administration was required to accept, and then present, the same to the Council for consideration.
44. It is the role of the Presiding Member to decide whether an alternative motion is permissible in accordance with the Standing Orders. Although the administration may provide advice as to the motion, making a decision as to its “legality” is not the responsibility of the administration.
45. Given the above, the Panel finds that it is more likely than not that the above does not comprise a direction, order or command, but was in the nature of a request that Mr Green, and the administration generally, comply with his obligations under the Meeting Policy.
46. The Panel therefore finds that it is more likely than not that there was no “*direction, order or command*” given to Mr Green.
47. This element is not met.

### Any direction or an order or command was not part of anything that the councillor did as part of the deliberations at a council or committee meeting

48. As the Panel have found that no “direction, order or command” was made it is not necessary to further consider this element.
49. However, the Panel notes that the submission of an alternative motion is clearly an action undertaken to facilitate the proper and usual deliberation of a matter before Council at a council meeting.

### Conclusion

50. The elements required to find a breach of regulation 10(1)(a) of the Regulations have not been met.



### **Panel's Findings**

51. In respect to Allegation 1 Cr Separovich did commit a breach of Regulation 10(1)(b) of the Regulations and therefore did commit a minor breach.
52. In respect to Allegation 2 Cr Separovich did not commit a breach of Regulation 10(1)(a) of the Regulations and therefore did not commit a minor breach.

A handwritten signature in blue ink, appearing to read 'Mick Connolly', written over a horizontal line.

Mick Connolly (Presiding Member)

A handwritten signature in black ink, appearing to read 'Emma Power', written over a horizontal line.

Emma Power (Member)

A handwritten signature in black ink, appearing to read 'Peter Rogers', written over a horizontal line.

Peter Rogers (Member)



## Attachment 1

### Don Green

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**From:** Cr Michael Separovich  
**Sent:** Monday, 28 October 2019 1:58 PM  
**To:** Don Green  
**Subject:** Re: Special Council Meeting Running Sheet

**Sensitivity:** Confidential

Well no don. This is why i think you're wrong.

Because the part of that policy immediately preceding it. Reads as follows:

"Elected Members proposing amendments of a similar nature on the same item(s) may consult with each other in order to achieve a consensus position on any item and agree to withdraw any amendment, or part thereof, or to agree to provide an alternative of similar meaning and/or wording to one, or another, of the presented amendments"

Which is why on the night instead of 68 alternative recommendations they all get collapsed down into 30. There may be one or two that get argued over... but they're being argued over independently, not being argued over with one side having an officers recommendation backing them up over another elected member.

And thats what we always do.

That's what we did in 2017.

It's what happened in 2015. Probably happened in 2013. And I'm sure you can ask Kev for the previous years or maybe look at the run sheets but thats how the process has been run for as long as i know.

The current meetings policy accounts for multiple elected members putting forward multiple alt recs.

The policy that we have accounts for it... which is why i think that is the policy that was applying to this meeting.

And unless you can provide for me another policy that we have, a special council meeting policy, an appointment to committee policy, or anything else that the council has given you in writing, I'm going to maintain that as the policy we have in writing, and with no real indication to the contrary that it DOESNT apply to special council meetings, it IS the policy that should have been, but was not abided by for the October SCM.

Lets just leave all of that seperate from the whole issue that officers are now limiting councillors access to the CEO performance review, DAPPS, and Audit committees.

Effectively shutting them out from any form of actual oversight of the city.

I nominated for all 3 of those don.

Do you actually have any right to tell me i cant perform one of my core responsibilities as a councillor?

Or is it just that you prefer the elected members to be focusing on thinks like "what facilities would you like to be available for elected members in the news administration building"

Sent from my iPad

On 28 Oct 2019, at 12:34 pm, Don Green <[don@cockburn.wa.gov.au](mailto:don@cockburn.wa.gov.au)> wrote:

Michael



The Council Meetings Policy you refer to is aimed at application to Ordinary Council Meetings, where the intent of amendments to specific items are more obvious and relevant. The same intent has **never** been applied to the post elections Special Council Meeting in the specific manner outlined by the Council Policy. To do so would be impractical, as it would have required each EMs nomination to Committees, Reference Groups and External Organisations to be considered independently and as separate motions. In this case, Councillor Smith was the first to send nominations for 15 entities, then you with 11, the Mayor with 13 and so on. As mentioned, this has never been the case and there have been a number of slightly different approaches to resolving the appointments in the past, most of which have relied on EMs discussing their preferences with each other and coming to a consensus of opinion, which was ultimately reflected in the motion put to the Council meeting and decided upon.

While I acknowledge that there was a variation to the process at Thursday night's Meeting, I attempted to reflect this in the email sent to EMs on Thursday afternoon, which may not have been adequate time for EMs to digest the intent of the information. This was not done with any other outcome in mind other than to distribute the number of functions on an equitable basis to those who lodged an interest in particular appointments. I also acknowledge that for some EMs, this did not result in a satisfactory outcome. Ultimately, the onus of determining these outcomes rests with Council and this cannot be achieved by any other method than by resolution at the Meeting itself. Any other process to achieve that as contained in a Council Policy which is not considered by the administration to be appropriate to implement is irrelevant.

As the only matters which raised the concern/s of some councillors were those for the external organisations, I would propose that in future, these decisions not be included in the post elections SCM and are dealt with at an OCM, where the standard "alternative recommendation" protocols are more appropriate.

Regards

**Don Green**  
Director, Governance & Community Services  
P 08 9411 3444  
E [don@cockburn.wa.gov.au](mailto:don@cockburn.wa.gov.au)

Cockburn Nyungar moort Beeljar boodja-k kaadadjiny. Koors, yeyi, benang baalap nidja boodja-k kaaradjiny. Cockburn acknowledges the Nyungar people of Beeljar boodja. Long ago, now and in the future they care for country.

**Cr Michael Separovich**  
Councillor - West Ward  
9 Coleville Crescent, Spearwood WA 6163  
PO Box 1215, Bibra Lake DC WA 6965  
M 0432 653 369  
E [mseparovich@cockburn.wa.gov.au](mailto:mseparovich@cockburn.wa.gov.au)



*Please note that this correspondence is a personal message from your Councillor and does not necessarily represent the position of the City of Cockburn.*



**From:** Cr Michael Separovich  
**Sent:** Sunday, 27 October 2019 2:25 AM  
**To:** Don Green  
**Cc:** \_\_\_\_\_  
**Subject:** Re: Special Council Meeting Running Sheet  
**Sensitivity:** Confidential



[https://www.cockburn.wa.gov.au/getattachment/b130a3bb-7cf1-4341-8ce8-0fc4cc833305/ECM\\_4133909\\_v3\\_Council-Meetings-Policy-docx.aspx](https://www.cockburn.wa.gov.au/getattachment/b130a3bb-7cf1-4341-8ce8-0fc4cc833305/ECM_4133909_v3_Council-Meetings-Policy-docx.aspx)

5) Proposed Amendments by Elected Members to recommendations for Council Meeting

Elected Members are encouraged to provide suggested alternatives to officer recommendations to the Administration in advance of the relevant Council meeting, to enable consistency and clarity in terminology being proposed, as well as ensuring the legality of any proposed amendments.

1. Any proposed amendments to officer recommendations contained in the Council Agenda Paper are to be made personally by the Elected Member either with or without input from the relevant staff member.
2. All proposed amendments are to be forwarded to the Minute Clerk following the distribution of the Agenda Paper to Elected Members, by no later than 10.00am on the day of the Council Meeting. A copy of the proposed amendment will be circulated to all other Elected Members.
3. A reason for the proposed amendment must be included with the information provided in accordance with Clause (5) 2 above.
4. Elected Members proposing amendments of a similar nature on the same item(s) may consult with each other in order to achieve a consensus position on any item and agree to withdraw any amendment, or part thereof, or to agree to provide an alternative of similar meaning and/or wording to one, or another, of the presented amendments.
5. Having received all proposed amendments in accordance with this Policy, a listing will be compiled with all proposed amendments received, together with relevant reasons, for provision to the Council Meeting. Where there are multiple proposed amendments for the same item, they will be listed in the order they have been received from Elected Members.
6. When called upon to do so at the relevant time during the Council Meeting by the Presiding Member, the CEO will inform the Meeting of the items on the Agenda Paper for which notice of a proposed amendment/s has been received.
7. At the relevant point of the Council Meeting, the Presiding Member shall invite the Elected Member proposing the amendment(s) to move the alternative motion accordingly. In the case where more than one proposal has been received, the Presiding Member shall call for the amendment(s) to be put in order of their receipt as per Clause (5) 5 above and thereafter dealt with in accordance with Council's Standing Orders.

Where was the compiled listing of ALL the proposed amendments done?

When there were multiple proposed amendments for the same item (which there was) why were they not listed in the order in which they had been received by the elected members.

What policy were you working from on Thursday don?

When did you receive instruction from council to deal with the agenda for the SCM in that manner?

Is there a policy?

Have you attempted to bring such a policy forward in the past?

Did a previous council vote against such a policy?

I assumed that part of the role of the director of governance is ensuring that the council meetings policy was being followed.

Was it followed for the Thursday council meeting don?

Sent from my iPad

On 25 Oct 2019, at 12:13 pm, Don Green <[don@cockburn.wa.gov.au](mailto:don@cockburn.wa.gov.au)> wrote:



Michael

I am not aware of any violations of the Standing Orders taking place at the Council Meeting last night.

Just to be clear, officer reports prepared for a Council Meeting contain a **recommendation only** which has no effect until a **motion** is moved, seconded, debated (if necessary) and decided by vote at the meeting, when called upon by the Presiding Member to do so.

The purpose of clause 10.9 of the Standing Orders is to provide the process for moving **an amendment to a motion** which, again, is controlled through the Presiding Member and was appropriately dealt with at the relevant time during the Meeting.

If you were concerned that there may have been infractions of the Standing Orders, then these should have been raised as a point of order at the time for clarification.

I am happy to discuss the process with you in more detail, if you wish to give me a call.

Thanks

<image001.png>

<image002.png>

<image003.png>

**Don Green**

Director, Governance & Community Services

P 08 9411 3444

E [don@cockburn.wa.gov.au](mailto:don@cockburn.wa.gov.au)

Cockburn Nyungar moort Beeliar boodja-k kaadadjiny. Koora, yeyi, benang baalap nidja boodja-k kaaradjiny. Cockburn acknowledges the Nyungar people of Beeliar boodja. Long ago, now and in the future they care for country.

<image001.png>

<image002.png>

<image003.png>

**Cr Michael Separovich**

Councillor - West Ward

9 Coleville Crescent, Spearwood WA 6163

PO Box 1215, Bibra Lake DC WA 6965

M 0432 653 369

E [mseparovich@cockburn.wa.gov.au](mailto:mseparovich@cockburn.wa.gov.au)

<image004.png> <image005.png> <image006.png> <image007.png>

*Please note that this correspondence is a personal message from your Councillor and does not necessarily represent the position of the City of Cockburn.*

**From:** Cr Michael Separovich

**Sent:** Friday, 25 October 2019 11:19 AM

**To:** Don Green

**Cc:** \_\_\_\_\_

**Subject:** Re: Special Council Meeting Running Sheet

**Sensitivity:** Confidential

Don does it not concern you at all that there were at least 67 violations of standing order 10.9 at last nights meeting?

Sent from my iPad



On 24 Oct 2019, at 3:37 pm, Don Green <don@cockburn.wa.gov.au> wrote:

Dear Colleagues

Please find attached the Running Sheet for tonight's Special Council Meeting Agenda.

By way of explanation, the following sequence of events will take place;

- ? ..... declares the meeting open and undertakes the formalities of the initial part of the Meeting Agenda (Agenda Items 3 - 9)
- ? Upon consideration of Item 10.1 (Election of Deputy Mayor), the Mayor will hand over to the Acting CEO (.....) to undertake the election
- ? Following the result of the election, ..... will complete the Declaration with the new Deputy Mayor.
- ? The Mayor will resume control of the meeting and call for individual Motions for the remaining items dealing with elected member allowances (10.2 – 10.5) and the appointment of elected members to:
  1. Standing Committees (10.6 – 10.11)
  2. City of Cockburn administered Reference Groups (10.12 – 10.19)
  3. Externally administered Organisations (10.20 – 10.36)

This part of the Meeting has been procedurally amended from previous practice and now contains officer recommendations of appointments, based primarily on the priorities of members, as notified to the administration and as shown on the attached spreadsheet. Where practicable, member preferences have been aligned with the nominated entity, but it has not been possible to include every nomination because of caps on membership numbers in some instances.

However, I can advise that all councillors have been allocated to as many bodies as possible in either a member, or deputy member, role and have not been recommended to be excluded from any more than two of their preferred choices overall, regardless of the number of appointments sought.

This information is provided to you for your perusal and if you wish to discuss any proposed alternative arrangements, you are free to do so with the relevant staff prior to the Meeting. Otherwise, you may wish to approach a fellow elected member in order to facilitate any agreed amendments for consideration at the Meeting.

As always, please do not hesitate to contact me should you require any further details.

Regards



**Don Green**  
Director, Governance & Community Services

<image003.png>



9 Coleville Crescent, Spearwood WA 6163  
PO Box 1215, Bibra Lake DC WA 6965  
P 08 9411 3444

E [don@cockburn.wa.gov.au](mailto:don@cockburn.wa.gov.au)  
[www.cockburn.wa.gov.au](http://www.cockburn.wa.gov.au)

<image004.png> <image004.png> <image006.png> <image007.png>

Cockburn Nyungar moort Beeliar boodja-k kaadadjiny. Koora, yeyi, benang baalap nidja boodja-k kaal  
Cockburn acknowledges the Nyungar people of Beeliar boodja. Long ago, now and in the future they care for

<Running Sheet - Special Council Meeting - 24 October 2019.pdf>

<EM Nominations.pdf>

<image001.png>

<image002.png>

**Cr Michael Separovich**

Councillor - West Ward

9 Coleville Crescent, Spearwood WA 6163  
PO Box 1215, Bibra Lake DC WA 6965  
M 0432 653 369

E [mseparovich@cockburn.wa.gov.au](mailto:mseparovich@cockburn.wa.gov.au)

<image005.png> <image004.png> <image006.png> <image007.png>

*Please note that this correspondence is a personal message from your  
Councillor and does not necessarily represent the position of the City of  
Cockburn.*

<image003.png>

<mime-attachment>



## Attachment 2

**Don Green**

---

**From:** Cr Michael Separovich  
**Sent:** Thursday, 14 November 2019 4:56 PM  
**To:** Don Green  
**Cc:**  
**Subject:** Re: Alternative recommendation 9.2  
**Attachments:** image2.jpeg; image1.jpeg; image3.jpeg

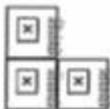
Don, I requested this be included on the run sheet. It appears to be missing.  
Attach your officers note.

Sent from my iPad

On 14 Nov 2019, at 1:23 pm, Cr Michael Separovich <[mseparovich@cockburn.wa.gov.au](mailto:mseparovich@cockburn.wa.gov.au)> wrote:

If you aren't able to point me towards a section of the adopted terms of reference for any of the 3 committees that say that there is any difference between any elected member appointed to them then i will push to have the somewhat confusing and redundant language removed from the minutes.

There's no such thing as a deputy for internal committees. The terms of reference for these committees don't allow for it.  
I will be showing up to all CEO and Audit meetings, and i will be there in my role as an elected member.



Sent from my iPad

On 14 Nov 2019, at 12:59 pm, Cr Michael Separovich <[mseparovich@cockburn.wa.gov.au](mailto:mseparovich@cockburn.wa.gov.au)> wrote:

Also don, i see nothing in section 5.22 that says that the minutes of the meeting cant be subject to alternative recommendations.

There's nothing in there that says that minutes cant be adjusted to fix mistakes that were made in the meeting.

And considering that in the meeting, due to an egregious overreach of power by directors prior to the meeting, we introduced the titles of "delegates" and "deputy" to these committees, which the terms of reference adopted do not account for, I'm simply adjusting the wording so that the appointees to these committees are referred to as they should be, instead of there being mention of "deputy"

A simple fix don.

Just changing the wording because the wording of what we voted for on the night almost makes it sound like theres elected members that wont have access to these committees, the terms of reference see them all as equals.

The alternative recommendation makes them all equals.

I WANT THIS ALTERNATIVE RECOMMENDATION ON THE AGENDA. THANK YOU.

Sent from my iPad



On 14 Nov 2019, at 12:47 pm, Cr Michael Separovich  
<[mseparovich@cockburn.wa.gov.au](mailto:mseparovich@cockburn.wa.gov.au)> wrote:

Don can i request wording that uses the same legality that was used  
at the august 8 OCM then?  
I cant remember you raising any complaints about that.



Sent from my iPad

On 14 Nov 2019, at 11:14 am, Cr Michael Separovich  
<[mseparovich@cockburn.wa.gov.au](mailto:mseparovich@cockburn.wa.gov.au)> wrote:

Well don if you are willing to put together the  
wording to the same effect that also removes the  
precedent for you or any future director of  
governance to ignore elected members alternative  
recommendations in the future ill be happy to hear  
it.

Sent from my iPad

On 14 Nov 2019, at 11:02 am, Don Green  
<[don@cockburn.wa.gov.au](mailto:don@cockburn.wa.gov.au)> wrote:

Colleagues.

Please note that the suggested  
amendment below is not  
acceptable as the requirement is  
for Council to confirm the  
accuracy of previous Council  
meeting Minutes only.  
Accordingly, to purposely amend  
the Minutes to include  
resolutions which were not made  
at the Meeting would contravene  
Section 5.22 of the Local  
Government Act and would  
therefore not be a legal decision.

This has been comprehensively  
explained to Cr Separovich  
previously.

Councillors not appointed to  
Standing Committees at the 24  
October Meeting and are  
wanting to nominate as  
members (or deputies) of any  
such Committee should do so in  
writing and an item to that effect  
can be prepared for the next  
Council Meeting, or, if requested  
by a councillor and with the  
permission of the Mayor, can be  
added to the Agenda this  
evening as "New Business of an  
Urgent Nature"



Regards

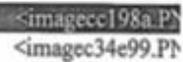


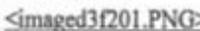
**Don Green**  
Director, Governance & Community Services  
P 08 9411 3444  
E [don@cockburn.wa.gov.au](mailto:don@cockburn.wa.gov.au)

Cockburn Nyungar moort Beeljar boodja-k kaadadjiny. Koora, yeyi, benang baalap nic  
Cockburn acknowledges the Nyungar people of Beeljar boodja. Long ago, now and in the fu

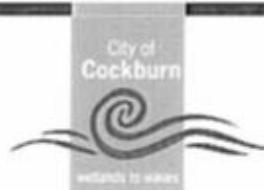


**Cr Michael Separovich**  
Councillor - West Ward  
9 Coleville Crescent, Spearwood WA 6163  
PO Box 1215, Bibra Lake DC WA 6965  
M 0432 653 369  
E [mseparovich@cockburn.wa.gov.au](mailto:mseparovich@cockburn.wa.gov.au)



     
*Please note that this correspondence is a personal message from your Councillor and does not necessarily represent the position of the City of Cockburn.*

**Cr Michael Separovich**  
Councillor - West Ward  
9 Coleville Crescent, Spearwood WA 6163  
PO Box 1215, Bibra Lake DC WA 6965  
M 0432 653 369  
E [mseparovich@cockburn.wa.gov.au](mailto:mseparovich@cockburn.wa.gov.au)



*Please note that this correspondence is a personal message from your Councillor and does not necessarily represent the position of the City of Cockburn.*

**From:** Cr Michael Separovich  
**Sent:** Thursday, 14 November 2019 10:36 AM  
**To:** [Redacted]  
**Subject:** Alternative recommendation 9.2

9.2 MINUTES OF THE  
SPECIAL COUNCIL MEETING -  
24/10/2019  
ALTERNATIVE  
RECOMMENDATION: That  
Council confirms the Minutes of  
the Special Council Meeting held  
on Thursday, 24 October 2019  
subject to the following;



1.  
Item 10.6. to be changed to read  
(1) Appoints .....  
and Councillors: .....  
....., Cr M Separovich;  
..... to the Audit  
and Strategic Finance  
Committee  
(2) adopts the attached Terms of  
Reference for the Committee;  
and  
(3) pursuant to Section 7.1B of  
the Local Government Act, 1995,  
(The Act) delegate the authority  
of Council to meet with Auditor  
to the Committee, as required by  
Section 7.12A of the Act.

2.  
Item 10.7. to be changed to read  
(1) appoints .....  
and Councillors: .....  
....., Cr M  
Separovich; .....  
..... to the Chief Executive  
Officer's and Senior Staff Key  
Projects Appraisal Committee  
(2) adopts the attached terms of  
reference for the committee

3.  
Item 10.8. to be changed to read  
(1) appoints .....  
and Councillors: Cr M  
Separovich ; .....  
.....  
to the Delegated Authorities and  
Policies Committee\*  
(2) adopts the attached terms of  
reference for the committee

Reason.  
WALGA own training courses,  
now a requirement for all elected  
members in the state of WA list  
the measurements of good  
performance of a local  
government as 5 things... the  
second of which is "adopting  
policy" which directly relates to a  
DAPP's committee, the 3rd of  
which is "demonstrating fiscal  
responsibility" which is directly  
related to the Audit and strategic  
finance committee, and the  
fourth of which is "monitor  
progress" which is directly  
related to the business of the  
CEO and senior key staff project



appraisal committee.  
At the October 24 special council meeting alternative recommendations by elected members seeking to carry out these aspects of their role, along with council meeting procedures policies relating to the management of alternative recommendations were both ignored. The purpose of this alternative recommendation is to rectify this by ensuring that all elected members have free and equal access to the committees required to ensure the good governance of the city now, and in the future.

<image001.png>

**Cr Michael Separovich**

Councillor - West Ward

9 Coleville Crescent, Spearwood WA 6163

PO Box 1215, Bibra Lake DC WA 6965

**M** 0432 653 369

**E** [mseparovich@cockburn.wa.gov.au](mailto:mseparovich@cockburn.wa.gov.au)

<image004.png> <image005.png> <image006.png> <image007.png>

*Please note that this correspondence is a personal message from your Councillor and does not necessarily represent the position of the City of Cockburn.*

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image2.jpeg>

image1.jpeg>

image3.jpeg>



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## Local Government Standards Panel

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Complaint Number	SP 2020-033
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Mr Don Green</b>
<b>Respondent</b>	<b>Councillor Michael Separovich</b>
Local Government	<b>City of Cockburn</b>
Regulation	Regulation 10(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mr Michael Connolly (Presiding Member) Councillor Deborah Hopper (Deputy Member) Ms Elanor Rowe (Deputy Member)
Heard	8 July 2020 Determined on the documents
Penalty Considered	16 December 2020
Outcome	Public Apology

---

### DECISION AND REASONS FOR DECISION

Delivered 1 February 2021

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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 8 July 2020, the Panel found that Councillor Michael Separovich (“Cr Separovich”), a councillor for the City of Cockburn (“the City”), committed one minor breach under the Local Government Act 1995 (WA) (“the Act”) and regulation 10(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (“the Regulations”) when he sent an email with a threatening tone to a senior member of Council staff (“Minor Breach”).
2. On 12 August 2020, the Panel published its Finding and Reasons for Finding (“Findings”) stating that Cr Separovich had breached Regulation 10(1)(b). The Panel reviewed all the evidence presented to it and made the following observations:
  27. *The intention of the party is highly relevant when deciding whether a threat is made out and a person’s “motive” is different to a person’s “intent”. There must be able to be a reasonable inference (to the requisite standard) drawn from the party’s motive and evidence provided.*
  28. *The particular words used by Cr Separovich contained in the Allegation 1 Email are as follows: “Violate that policy at your peril Daniel.”*
  29. *Cr Separovich asserts that, although the language may seem like a threat, his intention was to ensure proper governance and that the City followed proper policy.*
  30. *The word “peril” means:*
    - a. *“exposure to the risk of being injured, destroyed, or lost”; or*
    - b. *“something that imperils or endangers”.*
  31. *The Panel considers the language used in the Allegation 1 Email, and particularly the use of the word “peril”, indicates that Cr Separovich intended to take action that would be detrimental to Mr Arndt (i.e. making a complaint against him) unless he complied with his wishes to include the relevant motion.*
  32. *Irrespective of whether Mr Arndt was obligated, as part of the City’s administration, to record all alternative motions in accordance with the City’s Meeting Policy, the manner in which Cr Separovich attempted to require him to comply was inappropriate.”*

## Jurisdiction and Law

3. The Panel convened on 16 December 2020, 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 (“the Department”) that on this date there was no available information to indicate that Cr Separovich had ceased to be, or was disqualified from being, a councillor.

## Possible Sanctions

4. Section 5.110(6) of the Act provides that the Panel is to deal with a minor breach by:
  - (a) *ordering that no sanction be imposed; or*
  - (b) *ordering that —*



(i) *the person against whom the complaint was made be publicly censured as specified in the order;*

*or*

(ii) *the person against whom the complaint was made apologise publicly as specified in the order;*

*or*

(iii) *the person against whom the complaint was made undertake training as specified in the order;*

*or*

(iv) *the person against whom the complaint was made pay to the local government specified in the order an amount equal to the amount of remuneration and allowances payable by the local government in relation to the complaint under Schedule 5.1 clause 9;*

*or*

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

5. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach. Under section 5.110(6)(a), the Panel may order that no sanction be imposed; not to reverse the finding of a breach, but to however indicate that in all the circumstances the relevant councillor should not be penalised further.
6. Sub-section 5.110(6)(b)(iv) (in respect of a monetary sanction) was introduced in 2019 to allow the Panel to require a councillor to personally bear the cost of dealing with a complaint, which in other circumstances, would be paid by the local government concerned. This ensures the cost of a breach is borne by the councillor individually, and not simply passed onto the local government and therefore, ultimately, rate payers.

### **Cr Separovich's Submissions**

7. 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>
8. By a letter dated 12 August 2020, Cr Separovich was:
  - i. notified of the Panel's Finding of the Minor Breach;
  - ii. provided with a copy of the Panel's Findings; and
  - iii. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the Act.
9. On 14 September 2020, the Department received a response from Cr Separovich in which he submitted:
  - The Panel had found that his tone was inappropriate, which he agreed with. Therefore, an apology would be the correct sanction.

---

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



- However, a public apology would only serve to attract more attention to the details of the Complaint, and the fact that he had been trying to hold the administration to account. Accordingly, a private apology to the party concerned would be a better outcome.

### **Panel's Consideration**

10. The purpose of the imposition of a sanction under the Act is generally for the protection of the public and the maintenance of standards of council members. Furthermore, it reflects the disapproval of a contravention of the Regulations, dissuades councillors from other local governments from engaging in similar conduct and facilitates the maintenance of appropriate standards of behaviour by councillors. Guidance on the factors which the Panel may consider in determining the appropriate penalty to impose, include, but are not limited to:
  - a. the nature and seriousness of the breaches;
  - b. the councillor's motivation for the contravention;
  - c. whether or not the councillor has shown any insight and remorse into his / her conduct;
  - d. whether the councillor has breached the Act knowingly or carelessly;
  - e. the councillor's disciplinary history;
  - f. the likelihood or not of the councillor committing further breaches of the Act;
  - g. the councillor's personal circumstances at the time of the conduct, and at the time of imposing the sanction;
  - h. the need to protect the public through general deterrence and maintain public confidence in local government; and
  - i. any other matters which may be regarded as aggravating conduct or mitigating its seriousness.
11. Cr Separovich had not previously been found to have had committed any minor breaches.
12. In this case, the Panel found that Cr Separovich breached Regulation 10(1)(b) when he sent an email with a threatening tone to a senior member of Council staff. In its Finding, the Panel emphasised that Cr Separovich was entitled to request that staff and the City comply with its policies. Furthermore, the Panel appreciated Cr Separovich's frustration in the circumstances. However, it also found that the manner that Cr Separovich demanded compliance was not justified and should have been communicated in a more suitable way.
13. The Panel does not consider it appropriate to impose no sanction in relation to the Minor Breach, as this would indicate that it was so minor that no penalty is warranted.



14. However, the Panel also does not consider it is appropriate to make an order for censure for Cr Separovich's actions, as they were not so serious to justify such an order. When the Panel makes an order that a Notice of Public Censure be published, the Notice is published by the local government's Chief Executive Officer, at the expense of the local government; such expense is significant where the Notice is to be published in a newspaper or newspapers. Likewise, the Panel also does not find that an order that Cr Separovich pay to the City a sum of money is warranted.
15. The options left for the Panel to consider are to order Cr Separovich to undertake training or make a Public Apology.
16. Cr Separovich used his opportunity to respond to how the Panel should deal with the matter to reiterate indirectly that he believed that his actions were justified. However, he also acknowledged that his tone when speaking to the member of staff was perhaps inappropriate. The Panel finds it fair and reasonable that Cr Separovich makes a public apology to the party that he had been found to have attempted to influence by means of a threat. The standards of behaviour expected of elected members are of a generally higher standard than a member of the public, due to their prominent position in the community. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing. It is a suitable and appropriate penalty when an elected member's conduct:
- adversely affects a particular individual; and / or
  - does not meet the standards other councillors seek to uphold.

An apology will go some way to make amends for the potential damage caused by Cr Separovich's conduct.

### **Panel's Decision**

17. 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 Separovich is ordered, in terms as set out in the attached Order, to make a public apology to the City's Director Planning and Development, Mr Daniel Arndt.



---

Mick Connolly (Presiding Member)



---

Elanor Rowe (Deputy Member)



---

Deborah Hopper (Deputy Member)



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## ORDER

Delivered 1 February 2021

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### DEFAMATION CAUTION

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### THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Michael Separovich, a councillor for the City of Cockburn, publicly apologise, as specified in paragraph 2 below, or failing compliance with paragraph 2, then paragraph 3 below.

#### Public Apology

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

"I advise this meeting that:

- i. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) when I sent an email and used a threatening tone towards a senior member of Council staff.



- ii. The Panel found that by behaving in this manner I committed one breach of Regulation 10(1)(b) of the said Regulations as I attempted to influence, by means of a threat, the conduct of a person who is a local government employee in their capacity as a local government employee.
- iii. I accept that I should not have acted in such a manner and I now apologise to Mr Daniel Arndt for having done so.”

3. If Cr Separovich fails to, or is unable to, comply with the requirements of paragraph 2 above in the required timeframe then, within the next 28 days following the ordinary council meeting referred to in paragraph 2 above:
- a. Cr Separovich 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 “*Cockburn Gazette*” newspaper; and
  - b. the Chief Executive Officer of the City of Cockburn shall arrange for the following notice of public apology to be published:
    - i. on the Facebook page of the City of Cockburn in no less than 10-point font size; and
    - ii. in an appropriate place on the website of the City of Cockburn in no less than 10-point font size; and
    - iii. in the next occurring issue of any City of Cockburn public newsletter (if any) (whether in electronic or print copy) in no less than 10-point font size.

#### **PUBLIC APOLOGY BY COUNCILLOR MICHAEL SEPAROVICH**

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) when I sent an email and used a threatening tone to a senior member of Council staff.

The Panel found that by behaving in this manner I committed one breach of Regulation 10(1)(b) of the said Regulations as I attempted to influence, by means of a threat, the conduct of a person who is a local government employee in the person’s capacity as a local government employee.

I accept that I should not have acted in such a manner and I now apologise to Mr Daniel Arndt for having done so.”

**Date of Order: 1 February 2021**



## 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."*