



Local Government Standards Panel

Complaint Number	20240352
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Carl Askew
Respondent	Councillor Camilo Blanco
Local Government	Town of Port Hedland
Regulation	Regulation 20 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i> Regulation 34D of the <i>Local Government (Administration) Regulations 1996</i>
Panel Members	Mr Tim Fraser (Presiding Member) Mrs Emma Power (Member) Ms Renee McLennan (Member)
Heard	14 March 2024 Determined on the documents
Finding	Breach x 1 Regulation 20(4)(a) Breach x 1 Regulation 34D

FINDING AND REASONS FOR FINDING

10 May 2024

DEFAMATION CAUTION

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



Summary of the Panel's decision

1. On 14 March 2024, the Panel found that Councillor Camilo Blanco, a councillor of the Town of Port Hedland ("**the Town**"):
 - a. did commit a minor breach pursuant to the *Local Government Act 1995 (WA)* ("**the Act**") and regulation 20 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* ("**the Regulations**"); and
 - b. did commit a minor breach pursuant to the Act and Regulation 34D of the *Local Government (Administration) Regulations 1996* ("**the Administration Regulations**"),

when at the Ordinary Council Meeting of 29 November 2023 he made various comments referring to an alleged "Cover-up" by the Town's administration as further set out in paragraph 17 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 and the *Local Government (Administration) Regulations 1996* provide for the circumstances in which a council member commits a minor breach.
4. Section 5.105(1) of the Act provides that a council or committee member commits a minor breach if the council or committee member contravenes a rule of conduct. Division 4 of the Regulations sets out the rules of conduct for council members and candidates.
5. Regulation 34D of the *Local Government (Administration) Regulations 1996* also provides that the contravention of a "*local law as to conduct*" is a minor breach pursuant to the Act.
6. 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.¹
7. 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.
8. 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 accurate²; and

¹ Section 5.106 of the Act

² *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1



- b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding³.
9. The Panel does not possess investigative or supervisory powers.⁴ The Panel makes decisions about complaints regarding minor breaches solely upon the evidence presented to it and, where appropriate, materials in the public domain or published by the relevant local authority's website.
10. 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.
11. The Panel also must have regard to the general interests of local government in Western Australia⁵.
12. 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

13. On 2 February 2024 the Panel received a complaint from Mr Tom Kettle on behalf of the complaints officer of the Town (**"the Complaints Officer"**). The same enclosed a Complaint of Minor Breach Form dated 01 February 2024.
14. In the Complaint of Minor Breach Form the Complainant has alleged that Cr Blanco has breached Regulation 20 of the Act and Regulation 34D of the Administration Regulations when at the Ordinary Council Meeting of 29 November 2023 he made various comments referring to a "cover-up" by the Town's Administration as set out in paragraph 17 (**"The Complaint"**).
15. The Panel convened on 14 March 2024 to consider the Complaint.
16. 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 Blanco was:
 - i. last elected to the Council of the Town in October 2023 for a term expiring in October 2027;
 - ii. a Councillor at the time of the alleged breach; and
 - iii. a Councillor when the Panel met on 14 March 2024;
 - b. was satisfied the Complaint was made within six months after the alleged breach occurred⁶;

³ Briginshaw v Briginshaw (1938) 60 CLR 336

⁴ Re and Local Government Standards Panel [2015] WASC 51 (at paragraph 24)

⁵ Section 8(6) of Schedule 5.1 of the Act

⁶ Section 5.107(4) and 5.109(2) of the Act



- c. was satisfied that the Towns's Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach⁷;
- d. was satisfied the Department had provided procedural fairness to Cr Blanco; and
- e. found it had jurisdiction to consider the Complaint.

The Specifics of the Complaint

17. The Complainant provided the following comments and arguments in respect to the Complaint as summarised by the Panel:
 - a. Cr Blanco breached clause 20(4)(a), in statements during open debate at the 29 November 2023 Ordinary Council Meeting ("**the OCM**") that local government employees acted incompetently and dishonestly.
 - b. Facts:
 - i. Cr Blanco was elected to the Council at the 20 October 2023 Local Government Ordinary Election.
 - ii. Cr Blanco lodged a notice of motion for the 29 November 2023 Ordinary Council Meeting to revoke a decision to approve a home-based business (massage service) made at the 30 August 2023 Ordinary Council Meeting;
 - c. At 4:04:27 – Cr Blanco stated:

*"While the officer's recommendation states that there is not enough evidence to revoke the motion, there are issues with the item and the way the item was presented to the Council, **that's quite clear in my opinion and it's obvious when no investigation is done then no evidence is going to be found. But when we find information that's been withheld in the agendas, um and then again following concerns from members of the public it seems that there's some sort of cover up going on here to minimise any reputational damage to the administration. Yet the administration is quite happy to suggest the fault lay with the council, stating that they received all the information relevant to the approval...***
 - d. At 4:05:56 – Cr Blanco stated:

*"Past council members have state that they did not know about the complaint submitted by the member of the public that specifically stated it was a brothel and they were not issued with the email trail and advertising stating this was a brother. **But the Mayor approved the media release suggesting the Council knew; so either some Council members are privy to all the documents and the evidence and some are not, or***

⁷ Section 5.107 and 5.109 of the Act



someone is not being truthful when it comes to the interaction with Council members the public and the media...

e. At 4:09:05 – Cr Blanco stated:

“ So I don’t think the administration has been neutral on this subject. It’s clear to me from what I’ve seen that we’ve had some restriction in certain information. The Admin has released media information that the Councillor’s knew about the intricate details in the complaint and they clearly did not...if Council members do nothing about this conduct you’re effectively agreeing that this sought of behaviour is your standard and you’re happy for it to continue.”

f. At 4:17:05 – Cr Turner stated:

“ My concern is around some of the language that has been used to describe the problem and the idea that there is some kind of cover up being driven by the administration is just outrageous. It’s quite clear that the administration has done an investigation and it is clear that there is insufficient evidence to substantiate the allegation...the idea that you would prosecute this by the chamber floor and the community, without a statutory investigation by the Council itself, or dare I say it the police...and I reiterate the point that I find it really offensive that we would imply that this administration is undertaking a cover-up or hiding information, that’s just unacceptable...”

g. At 4:18:35 – Cr Blanco stated:

“ None of my comments are out of order; we’re in debate and we’re debating an item and that’s all there is to it. This is a planning matter, it’s not a criminal investigation...”

18. The Complainant also provided:

- a. a background of the relevant matter before Council (no reproduced here);
- b. a newspaper article titled “Sex service claims to be investigated” by Sam Jones published in the North West Telegraph d 6 December 2023; and
- c. a link to the OCM recording.

The Respondent’s Response

19. By an email dated 19 February 2024, Cr Blanco provided a response to the Complaint.
20. Cr Blanco denies that he has committed any minor breach.
21. Cr Blanco provided the following comments and arguments regarding the Complaint:
 - a. Council members have the responsibility to discuss matters affecting the local government within the debate section of the motion, restricting the ability for council members to speak on the issues within the subject is not a fair and reasonable position to hold and definitely is not the intent of a healthy



democracy, especially when the wording used by the council member within the debate section of the item, has already been stated in the public arena by members of the public and council members throughout multiple meetings of council before this debate was conducted.

- b. While people and staff may be uncomfortable with statements made, this should have been considered by the people and staff involved in the subject discussed.
- c. Cr Blanco does not agree that his debate content suggested the local government employees acted incompetently and dishonestly, Cr Blanco stated it was quite clear to him and in his opinion, because what he said was based on all the information provided, emails, statements by the public and statements made by elected members between 30 August 2023 and 15 December 2023 (there were media articles about the 29 November OCM stating issues after the 29th).
- d. It is important to note, this item was presented to the council because the planning scheme requires the discretion of the elected body, the administration was not able to approve the development approval under delegation. This requires that all information be provided so the council can make a decision while being fully informed. The original item that approved the massage parlour did not list the complaint that stated it was a brothel, that was omitted from the report. This is a key piece of information that would have been required by council to be fully informed of all issues facing their decision making.
- e. The intent of any report developed and presented to the Council should result in all information being provided and the report being unbiased, the Council stated themselves this did not happen based on all the information provided in addition to the agenda item, allowing this creates a precedent.
- f. It was quite clear, in Cr Blanco's opinion, that information was restricted to the Council based on the statements made by the public and serving council members, before the October elections and again by the ex-council members after the October elections. If these statements were untrue why did the CEO not submit a formal complaint against the council members stating such facts? The reason Cr Blanco say 'facts', is because the minutes of the meetings were approved with those statements included, no objection was requested by any member to remove the comments based on misleading information.
- g. If there was any issues with the content of the debate that contravened the rules of conduct, a point of order should have been called by the aggrieved council member and an opportunity given to withdraw any comments that may have breached the code, but that did not happen, Cr Turner made his comments that suggested Cr Blanco's comments were based on insufficient evidence and offensive, is Cr Turners comment and conduct reasonable towards Cr Blanco within his debate and my comment within the debate not appropriate?
- h. In my opinion, there seems to be some bias in the issuing of the minor complaint process, considering Cr Blanco was the only member to receive a breach.



- i. Additionally, if the debate was out of order, the presiding member should have called the point of order or called the member to explain the comment that may be causing detriment to another member or officer and then made a ruling, this did not happen, indicating to me, that the discussion points were appropriate.
- j. The CEO who is responsible for providing advice on procedural issues relating to standing orders or the LGA 1995, at the meeting did not issue any explanation to the Mayor on the point of order or that anything was out of order, obviously allowing any member the opportunity to retract or rephrase any comment deemed to be an issue.
- k. Cr Blanco does not consider any breach of conduct has occurred, considering the discussion was held within the debate of the motion and the content of the debate has been stated by the public and council members directly affected by the omission of key information affecting decision making, this is well within the rights of any elected member representing their community.
- l. Cr Blanco has used information within his debate that has been stated in the public forum previously, by multiple people and himself before and after being elected, including the complainant that lives on the same street as the brothel and informed the administration by email that the house was a brothel. As well as, Cr Gillingham and Cr Coles that have stated they did not receive any information that suggested the house was being used as a brothel.
- m. The CEO was informed about the issue directly after the vote was taken on but did not act according to Cr Coles.
- n. Restricting the ability of Council member to speak on matters within the debate area of the item, based on all the information provided within the agenda item and all the information provided by members of the public as well as the statements made by the council members serving and retired, would be a serious erosion of the democratic process that allows discussion on contentious issues facing the decision making body.

PANEL'S CONSIDERATION

Regulation 34D

22. Regulation 34D of the Administration Regulations reads:

"(1) In this regulation —

***"local law as to conduct"** means a local law relating to conduct of people at council or committee meetings.*

(2) The contravention of a local law as to conduct is a minor breach for the purposes of section 5.105(1)(b) of the Act."

23. Section 5.105(1)(b) of the Act states as follows:

"A council member commits a minor breach if he or she contravenes



...
(b) *a local law under this Act, contravention of which the regulations specify to be a minor breach.*"

24. To make a finding of a minor breach of regulation 34D of the Administration Regulations the Panel must be satisfied, to the required standard, that:
- Cr Blanco was a councillor at the time of the alleged breach and the time of the determination;
 - the conduct occurred during a council or committee meeting; and
 - Cr Blanco breached a valid provision of a local law as to conduct being the Town of *Port Hedland Standing Orders Local Law 2014* ("**the Standing Orders**").

Cr Blanco was a Councillor at the relevant times

25. Cr Blanco was a councillor at the time of the alleged breach and at the date the Panel considered the Complaint.
26. This element is met.

The conduct occurred at a council or committee meeting

27. The relevant conduct occurred during the Ordinary Council Meeting of 29 November 2023.
28. This element is met.

Cr Blanco breached a valid provision of the *Port Hedland Standing Orders Local Law 2014*

29. It is an essential element to find a minor breach of Regulation 4 that the breach is of a "*local law relating to conduct of people at council or committee meetings*".
30. This has two requirements being that:
- the same is a "local law", being the formal gazetted meeting procedures or standing orders local law⁸ (the Standing Orders is such a law); and
 - the relevant Meeting Procedure clause breached must relate to "conduct" rather than being concerned as to procedure.
31. In this case the relevant clause of the Standing Orders to be section 4.11 which provides as follows:

" 9.14 No Adverse reflection

- (1) *A member is not to reflect adversely on a decision of the council except on a motion that the decision be revoked or changed (see Part 17).*
- (2) *A member is not—*

⁸ See *Ryan and Local Government Standards Panel* [2009] WASAT 154 and *Steck and Local Government Standards Panel* [2011] WASAT 117.



- (a) *to reflect adversely on the character or actions of another member or employee; or*
- (b) *to impute any motive to a member or employee,*
unless the meeting resolves, without debate, that the question then before the meeting cannot otherwise be adequately considered.”
32. The State Administrative Tribunal has previously established that a local government’s standing orders/meeting procedures that refer to the prohibition on a elected member’s conduct in terms substantially similar to provision 9.14 relates to “conduct” for the purposes of Regulation 34D (then regulation 4 of the *Local Government (Rules of Conduct) Regulations 2007*)⁹.
33. To make a finding that this provision has been breached, the comments by Cr Blanco must reflect adversely on the character or actions of another member or employee.
34. There is no definition of “*adverse reflection*” in the Standing Orders, Act or Regulations.
35. “*Adverse*” is defined as “*acting against or in a contrary direction or Hostile*”¹⁰.
36. The Panel considers that the use of the word “*adverse*” requires a higher level of negativity than mere disapproval or disagreement.
37. In respect to the word “*reflection*”, the Panel has taken this word in its common usage, and in the context of the Act, to mean “*consideration of some subject matter, idea, or purpose*”¹¹.
38. Therefore, a council member will reflect adversely upon the actions of another member if the council member makes a remark or observation that relates to anything done by the other elected member or staff member, and the remark or observation would be perceived by a reasonable person as tending to lower a person in the estimation of his or her fellow persons by making them think less of him or her¹².
39. A council member will “*impute a motive*” to another member if the council member attributes something to the other member as the other member’s goal or object for acting or not acting in the manner that the other member acted or did not act¹³.
40. In this case the Panel does not consider that the relevant fall under the category of imputing a motive.
41. The Panel has reviewed the recording of the OCM and notes the relevant phrases spoken by Cr Blanco were as follows:

⁹ *Treby and Local Government Standards Panel* [2009] WASAT 224

¹⁰ “*Adverse*.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/adverse>. Accessed 5 Aug. 2020.

¹¹ “*Reflection*.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/reflection>. Accessed 5 Aug. 2020.

¹² Local Government Standards Panel SP 30 of 2008

¹³ Local Government Standards Panel SP 30 of 2008



“seems that there’s some sort of cover up going on here to minimise any reputational damage to the administration” – Comment 1

“...or someone is not being truthful when it comes to the interaction with Council members the public and the media...” - Comment 2

“So I don’t think the administration has been neutral on this subject.” - Comment 3

42. This comments and the relevant speech were made in the context of a planning approval decision to be made by Council and an allegation by a member of the public that the relevant premises was being operated as a brothel.
43. It is clear that Cr Blanco considered that the administration had withheld relevant information from Council, however, the evidence provided indicates that:
 - a. there was an allegation of use as a brothel by a member of the public;
 - b. such allegation initially was investigated by Town officers and found to be without substance;
 - c. a Report regarding the approval was prepared and there was discussion as to the issue by councillors and Town staff at the agenda feedback meeting of 23 August 2023;
 - d. Cr Blanco (then not elected) raised new evidence in respect to the matter at the Ordinary Council Meeting of 27 September 2023;
 - e. this new evidence was considered and further investigated by the Town, but there was no evidence of confirm of activities of a sexual nature; and
 - f. the Town eventually sought legal advice as to the matter and was advised (in addition to other matters) that, there was insufficient evidence on which to base a prosecution in respect to the alleged illegal activities.
44. As such, the Panel considers that the Town fully and actively investigated the allegations and provided reports and feedback to the Town and councillors in respect to the same.
45. In this case it is important is note that, despite having been on Council some time ago, Cr Blanco was recently re-elected to Council and was not an elected member when the matter was originally complained of or investigated/assessed by the Town.
46. The Panel finds that the mere assertion by a member of the public and Cr Blanco before he was elected that the relevant residence was a “brothel” or even his sincere belief that such assertion was true, is simply not enough of a basis to allege that the Town had “covered up” the matter, was “not being truthful” or “was not neutral” and that Cr Blanco had no reasonable basis for these assertions.
47. Even if Cr Blanco was concerned that not all material had been presented to Council in order to make a decision, the manner in which he made the comments was clearly an adverse reflection against the administration of the Town administration and designed to make people think less of the administrative staff of the Town.



48. Further, by asserting that the administrative staff was hiding information to protect themselves was imputing an unsubstantiated motive to these actions.
49. This was not an appropriate manner in which to deal with the matter.
50. Cr Blanco asserts to the Panel that *“Council members have the responsibility to discuss matters affecting the local government within the debate section of the motion”*. However, this does not extend to making adverse reflections.
51. A councillor is able to meaningfully participate in the good government of the persons in the district and to duly, faithfully, honestly and with integrity fulfil the duties of the office for the people in the district according to his or her best judgment and ability, without reflecting adversely upon the character or actions of, or imputing any motive to, another member or an officer of the local government. Indeed, good government requires courtesy amongst those elected to government.¹⁴
52. It is not necessary to discuss a subject by engaging in adverse reflection.
53. It was open in Cr Blanco’s comments to argue that Council did not give enough consequence to the matter when deciding the issue, however it was not proper for Cr Blanco to assert some kind of wrongdoing by the Town administration for, in essence, making a finding based on the evidence that the allegation of illegal activity was not sufficiently supported.
54. Further, Cr Blanco based the assertions purely on his own opinion, not the relevant facts or background of the matter. Cr Blanco was not elected and therefore present when the matter was first discussed by Council.
55. The allegation of the residence being a brothel was clearly presented to Council and was considered and discussed. The fact that an issue may be referred to in a public report or summarised in some way, and not provided in its original entirety is:
 - a. common practice, so that Councillors may consider all the relevant facts, without having to read all originating documentation; and
 - b. not indicative of the administration “hiding” any issue.
56. Further, it is important for Cr Blanco to note that one complaint or allegation from a member of the public, is not necessarily substantive proof of that matter or allegation.
57. The Officers at least twice investigated the allegations but did not find evidence to support the same. It was then open to them to mention the issue in the Report and for the Council to decide to give what weight they wished to the matter.
58. The Panel considers that Cr Blanco thought that the town administration did not treat the issue with enough gravity, and that consequently that amounted to the Town administration “covering up” the issue. With respect, this is not the same thing.
59. Neither is the fact that the actual initial public complaint itself was not provided to Council “covering up” a matter. The fact that an issue may be referred to in a report or summarised in some way, and not provided in its original entirety is:

¹⁴ *Treby and Local Government Standards Panel [2009] WASAT 224 at 19*



- a. common practice, so that Councillors may consider all the relevant facts, without having to read all originating documentation; and
 - b. not indicative of the administration “hiding” any issue.
60. That is the purpose of the administration providing a report to Council to consider. Clearly the earliest report flagged the alleged use as a “brothel” a relevant matter.
61. In respect to the issue of whether a point of order should have been called, the Panel agrees this would have been appropriated. However, this does not prevent a Minor Breach complaint being made.
62. Given the above, the Panel finds to the required standard that Cr Blanco did breach clause 9.14(2)(a) of the Standing Orders and made an adverse reflection in respect to the actions of Town administration and officers.
63. This element is met.

Conclusion

64. The elements required to find a breach of regulation 34D of the Regulations have been met.

REGULATION 20

65. Regulation 20 regulates councillors’ interactions with local government employees:
- “ 20. Relationship with local government employees**
- (1) *In this clause —*
 - local government employee means a person —***
 - (a) *employed by a local government under section 5.36(1) of the Act;*
 - or
 - (b) *engaged by a local government under a contract for services.*
 - (2) *A council member or candidate must not —*
 - (a) *direct or attempt to direct a local government employee to do or not to do anything in their 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 local government employee in their capacity as a local government employee; or*
 - (c) *act in an abusive or threatening manner towards a local government employee.*
 - (3) *Subclause (2)(a) does not apply to anything that a council member does as part of the deliberations at a council or committee meeting.*
 - (4) *If a council member or candidate, in their capacity as a council member or candidate, is attending a council or committee meeting or other*



organised event (for example, a briefing or workshop), the council member or candidate must not orally, in writing or by any other means —

- (a) make a statement that a local government employee is incompetent or dishonest; or*
- (b) use an offensive or objectionable expression when referring to a local government employee.*

(5) Subclause (4)(a) does not apply to conduct that is unlawful under The Criminal Code Chapter XXXV.”

66. The Complainant has not specified which sub-section of Regulation 20 is alleged to be breached, however, the Panel considers that the Complainant is making an allegation of a breach of regulation 20(4)(a) of the Regulations.
67. To make a finding of a minor breach of regulation 20(4)(a) of the Regulations the Panel must be satisfied that it is more likely than not that:
 - a. Cr Blanco was a councillor at the time of the alleged breach and was acting in his capacity as a councillor at the time of the alleged conduct;
 - b. Cr Blanco was attending a council meeting, committee meeting or other organised event at the time of the alleged conduct; and
 - c. Cr Blanco made a comment that stated or imply that the government employee was incompetent or dishonest.

Regulation 20(4)

Cr Blanco was a councillor and was acting in his capacity as a councillor at the time of the alleged conduct

68. Cr Blanco was a councillor at the time of the alleged breach and at the time the Panel considered the Complaint and was attending and acting in his capacity as a councillor at the relevant OCM.
69. This element is met.

Cr Blanco was attending a council meeting, committee meeting or other organised event at the time of the alleged conduct

70. The relevant conduct occurred at Ordinary Council Meeting of 29 November 2023.
71. This element is met.

Regulation 20(4)(a) - The comments made state or imply that the government employee was incompetent or dishonest

72. The relevant comments are as set out in paragraph 41 above.
73. Cr Blanco asserts his comments were justified in the circumstances even if they may make people “uncomfortable”.
74. The Panel finds that:



- a. Comment 1 strongly implies that one or more government employee was acting dishonestly in withholding information from Council and that the accusation of “covering up” expressly accuses such employees of dishonestly attempting to minimise reputation damage to themselves;
 - b. Comment 2 expressly accuses local government employees (and particularly the director of regulatory services who was quoted in the news article of 6 December 2023) of not being truthful and therefor being dishonest; and
 - c. Comment 3 implies that the administration has been incompetent in managing the issue due a failure to provide the relevant information to Council.
75. Given the above, the Panel finds it is more likely than not that the above the comments by Cr Blanco implied that Town employees were incompetent and/or dishonest in breach of regulation 20(4)(a).
76. This element is met.

Conclusion

77. The elements required to find a breach of regulation 20(4)(a) of the Regulations have been met.



PANEL'S FINDINGS

78. Cr Blanco did commit a breach of Regulation 34D of the Administration Regulations and therefore did commit a minor breach.
79. Cr Blanco did commit a breach of Regulation 20(4)(a) of the Regulations and therefore did commit a minor breach.

Signing

Tim Fraser (Presiding Member)

Renee McClennan (Deputy Member)

Emma Power (Member)



Local Government Standards Panel

Complaint Number	20240352
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Chief Executive Officer - Mr Carl Askew
Respondent	Councillor Camilo Blanco
Local Government	Town of Port Hedland
Regulation	Regulation 20 <i>Local Government (Model Code of Conduct) Regulations 2021 (WA)</i> Regulation 34D <i>of the Local Government (Administration) Regulations 1996</i>
Panel Members for Penalty Consideration	Ms Emma Power (Presiding Member) Ms Suleila Felton (Member) Cr Peter Rogers (Member)
Heard	14 March 2024 Determined on the documents
Penalty Considered	10 June 2024
Outcome	Public Censure and Public Apology

DECISION AND REASONS FOR DECISION

17 July 2024

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 14 March 2024, the Panel found that Councillor Camilo Blanco, a councillor for the Town of Port Hedland (**“the Town”**), committed a breach under:
 - a. the *Local Government Act 1995 (WA)* (**“the Act”**) and regulation 20 of the *Local Government (Model Code of Conduct) Regulations 2021* (**“the Regulations”**); and
 - b. the Act and Regulation 34D of the *Local Government (Administration) Regulations 1996 2021* (**“the Administration Regulations”**),when he made various public comments at an Ordinary Council Meeting falsely accusing the Town’s administration of improper conduct (**“the Minor Breach”**).

Jurisdiction and Law

2. The Panel convened on 10 June 2024 to consider how it should deal with the Minor Breach.
3. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries (**“the Department”**) that on this date there was no available information to indicate that Cr Blanco had ceased to be, or was disqualified from being, a councillor.
4. If the Panel finds that a councillor has committed a minor breach, it must give the councillor an opportunity to make submissions to the Panel about how it should deal with the breach under section 5.110(6).¹
5. By a letter dated 10 May 2024, Cr Blanco was:
 - a. notified of the Panel’s finding of the Minor Breach;
 - b. provided with a copy of the Panel’s Finding and Reasons for Finding; and
 - c. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the Act.

Possible Sanctions

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

¹ *Local Government Act 1995 (WA)*, s 5.110(5).



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)."*

Cr Blanco's Submissions

7. Despite being given an opportunity to provide written submissions, Cr Blanco did not provide a response to the Department.

Panel's Consideration

8. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach.
9. The Panel may order under section 5.110(6)(a), that no sanction be imposed, not to reverse the Panel's finding of a breach, but to indicate that in all the circumstances the relevant councillor should not be penalised further.
10. Guidance as to the factors which the Panel may consider in determining the appropriate penalty to impose include, but are not limited to, the following:
- a. the nature and seriousness of the breaches;
 - b. the councillor's motivation for the contravention;
 - c. whether or not the councillor has shown any insight and remorse into his/her conduct;
 - d. whether the councillor has breached the Act knowingly or carelessly;
 - e. the councillor's disciplinary history;
 - f. likelihood or not of the councillor committing further breaches of the Act;
 - g. personal circumstances at the time of conduct, and of imposing the sanction;
 - h. need to protect the public through general deterrence and maintain public confidence in local government; and
 - i. any other matters which may be regarded as aggravating conduct or mitigating its seriousness².

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



11. The Panel notes that Cr Blanco did not provide any response as to the minor breach finding, but in his initial response to the Complaint he demonstrated a lack of understanding as to the nature of his conduct.
12. In the decision, the Panel found that Cr Blanco made various comments that comprised express adverse reflections against the staff of the Town accusing them of improper and illegal activity without any justification.
13. The Panel considers this conduct to be most serious. A local councillor cannot make, especially in public, unfounded allegations of corruption and dishonesty by local government staff (i.e., what would amount to criminal activity) without any foundation or proof.
14. Further Cr Blanco is an experienced local councillor and should be well aware of his obligations not to make adverse reflections of this serious nature. The Panel considers Cr Blanco's conduct to be a deliberate breach of his obligations or for Cr Blanco to be negligently indifferent to those obligations.
15. In these circumstances, the Panel considers that the appropriate sanctions are that Cr Blanco:
 - a. is publicly censured; and
 - b. provides a public apology.
16. A censure is a public statement of disapprobation of a councillor's conduct. This is an appropriate penalty in this case to send a message to the community and other councillors, that Cr Blanco's conduct was improper and that the conduct was deserving of a serious penalty.
17. The Panel further considers that as the conduct was a public comment on the Town staff a public apology to the Council and Town administration staff is appropriate.
18. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing³. It is a suitable and appropriate penalty when a councillor's conduct:
 - a. adversely affects particular individuals⁴; and/or
 - b. does not meet the standards other councillors seek to uphold.
19. In this case, the Panel considers it is not necessary for Cr Blanco to be further sanctioned to bear to cost of the Town's costs in respect to the minor breach complaint.

³ *Treby and Local Government Standards Panel* [2010] WASAT 81 (Pritchard J).

⁴ *Treby and Local Government Standards Panel* [2010] WASAT 81 [127] (Pritchard J).



Panel's decision

20. The Panel orders pursuant to section 5.110(6)(b)(i), section 5.110(6)(b)(ii) and section 5.110(6)(c) of the Act that, in relation to the Minor Breach of regulation 20 of the Regulations and section 34D of the Administration Regulations, Cr Blanco:
- a. be publicly censured in terms of the attached Orders; and
 - b. publicly apologise as specified in the attached Orders.

Signing

Emma Power (Member)

Peter Rogers (Member)

Suleila Felton (Deputy Member)



ORDER

17 July 2024

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

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Camilo Blanco, a councillor for the Town of Port Hedland:
 - a. be **publicly censured** as specified in paragraph 2 below; and
 - b. **publicly apologise** as specified in paragraph 3 OR failing compliance with paragraph 3 within the specified timeframe, then paragraph 4 shall apply.

Public Censure

2. Within the period falling between 29 days to 43 days from the day following the date of service of this Order on Councillor Camilo Blanco the Chief Executive Officer of the Town of Port Hedland shall arrange for the following Notice of Public Censure to be published, in no less than 10 point print or font:
 - a. on the Facebook Page, and any other social media page or account, of the Town of Port Hedland (if any);
 - b. on an appropriate page of the website of the Town of Port Hedland; and
 - c. in every Town of Port Hedland public or community newsletter (whether in electronic or print copy) (if any).



NOTICE OF PUBLIC CENSURE

The Local Government Standards Panel has found that Councillor Camilo Blanco, a Councillor of the Town of Port Hedland breached regulation 20 of the *Local Government (Model Code of Conduct) Regulations 2021 (WA)* and Regulation 34D of the *Local Government (Administration) Regulations 1996* when he made various comments at the Ordinary Council Meeting of the Town on 29 November 2023 accusing the Town's administration of improper conduct.



Cr Blanco's conduct was found to be inappropriate and to falsely adversely reflect upon the Town's administrative staff.

The Panel censures Councillor Camilo Blanco for the breach of regulation 20 of *Local Government (Model Code of Conduct) Regulations 2021 (WA)* and Regulation 34D of the *Local Government (Administration) Regulations 1996*

**LOCAL GOVERNMENT
STANDARDS PANEL**

Public Apology

3. On the ordinary council meeting of the Town of Port Hedland first occurring after the expiration of **28 days** from the date of service of this Order on him, Councillor Camilo Blanco shall:
- i. attend the relevant ordinary council meeting;
 - ii. ask the presiding person, or acting presiding person, for his or her permission to address the meeting to make a public apology to the public;
 - iii. 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
 - iv. 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 Regulation 20 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* and Regulation 34D of the *Local Government (Administration) Regulations 1996* when I made unfounded accusations relation to the conduct of the Town's administrative staff at the Ordinary Council Meeting of 29 November 2023.
- ii. The Panel found that I breached Regulation 20 and Regulation 34D by my conduct and that my comments constituted a false adverse reflection against the Town's staff.
- iii. I acknowledge that I should not have made the relevant comments and I now apologise to the Town's administrative staff, the Town and my fellow councillors."



4. If Councillor Camilo Blanco fails to, or is unable to, comply with the requirements of paragraph 3 above in the required time frame THEN, within the next **28 days** following the ordinary council meeting referred to in paragraph 3 above the Chief Executive Officer of the Town of Port Hedland shall arrange for the notice of public apology to be published:
 - a. on the Facebook Page and any other social media pages of the Town of Port Hedland in no less than 10 point font size; and
 - b. in an appropriate place on the website of the Town of Port Hedland in no less than 10 point font size; and
 - c. in the next occurring issue of any Town of Port Hedland public newsletter (if any) whether in electronic or print copy) in no less than 10 point font size.

PUBLIC APOLOGY BY COUNCILLOR CAMILO BLANCO

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Regulation 20 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* and Regulation 34D of the *Local Government (Administration) Regulations 1996* when I made unfounded accusations relation to the conduct of the Town's administrative staff at the Ordinary Council Meeting of 29 November 2023.

The Panel found that I breached Regulation 20 and Regulation 34D by my conduct and that my comments constituted a false adverse reflection against the Town's staff.

I acknowledge that I should not have made the relevant comments and I now apologise to the Town's administrative staff, the Town and my fellow councillors.

Appeal

5. In the event that, prior to the date for compliance with the above Orders, Councillor Camilo Blanco:
 - b. commences an appeal the decision of the Standards Panel to the State Administrative Tribunal in accordance with section 5.125 of the *Local Government Act 1995*; and
 - c. notifies the Complaints Officer of the Town of Port Hedland of such appeal in writing,THEN:
 - d. compliance with such Orders may be delayed until the State Administrative Tribunal has made a finding in respect to the decision; and
 - e. such Orders may be amended by an order of the State Administrative Tribunal



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.”*