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## Local Government Standards Panel

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Complaint Number	20220169
	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Councillor Ian Johnson</b>
<b>Respondent</b>	<b>Councillor Cate McCullough</b>
Local Government	<b>City of Swan</b>
Regulation	Regulation 18 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members	Mr Tim Fraser (Presiding Member) Mrs Emma Power (Member) Cr Peter Rogers (Member)
Heard	8 December 2022 Determined on the documents
Finding	Breach x 1

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### FINDING AND REASONS FOR FINDING

Delivered 24 January 2023

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#### DEFAMATION CAUTION

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



## Summary of the Panel's decision

1. On 8 December 2022, the Panel found that Councillor Cate McCullough a councillor of the City of Swan ("**the City**") did commit a minor breach pursuant to the *Local Government Act 1995 (WA)* ("**the Act**") and Division 4 and Regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021* ("**the Regulations**") when she made certain comments in respect to a local community organisation at the Ordinary Council Meeting of 5 October 2022 (adjourned and reconvened on 12 October 2022) 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.<sup>1</sup>
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 accurate<sup>2</sup>; and
  - b. the seriousness of any allegation made, as well as the gravity of the consequences flowing from a particular finding<sup>3</sup>.
9. The Panel does not possess investigative or supervisory powers.<sup>4</sup> The Panel makes decisions about complaints regarding minor breaches solely upon the evidence

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<sup>1</sup> Section 5.106 of the Act

<sup>2</sup> *Bradshaw v McEwans Pty Ltd* (1951) 217 ALR 1

<sup>3</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336

<sup>4</sup> *Re and Local Government Standards Panel* [2015] WASC 51 (at paragraph 24)



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 Australia<sup>5</sup>.
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 9 November 2022 the Panel received a complaint from Mr Cliff Frewing acting as complaints officer of the City ("**the Complaints Officer**"). The same enclosed a Complaint of Minor Breach Form dated 3 November 2022.
14. In the complaint form, the Complainant alleges that Cr McCullough has breached regulation 18 of the Regulations when she made certain comments in respect to a local community organisation at the Ordinary Council Meeting of 5 October 2022 (adjourned and reconvened on 12 October 2022) as further set out in paragraph 17 below ("**the Complaint**").
15. The Panel convened on 8 December 2022 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 McCullough was:
    - i. elected to the Council of the City in October 2019 for a term expiring in October 2023;
    - ii. a candidate at the time of the alleged breach; and
    - iii. a Councillor when the Panel met on 8 December 2022;
  - b. was satisfied the Complaint was made within six months after the certain of the alleged breaches occurred<sup>6</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>7</sup>;
  - d. was satisfied the Department had provided procedural fairness Cr McCullough; and
  - e. found it had jurisdiction to consider the Complaint.

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<sup>5</sup> Section 8(6) of Schedule 5.1 of the Act

<sup>6</sup> Section 5.107(4) and 5.109(2) of the Act

<sup>7</sup> Section 5.107 and 5.109 of the Act



## 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. At Ordinary Council meeting of 5 October 2022 [adjourned and reconvened on 12 October 2022] (“**the OCM**”) Cr McCullough spoke about a development application in Bullsbrook by West Australian Shalom Group Inc (“**Shalom House**”) at agenda item A13.9.
  - b. In her speech Cr McCullough made a number of inappropriate, defamatory, and detrimental statements about the Shalom House board and management team, families and supporters.
  - c. In Cr McCullough’s speech, the following are examples of a breach of Regulation 18:

### Example 1

- i. When making statements that allege negative or unlawful conduct in public, anyone, let alone a Councillor, should take care to stick to objective facts and avoid statements that are unproven or for which evidence is not offered.
- ii. Cr McCullough stated:

*“ Mr Mayor I have been poorly treated by some leaders in the Shalom Group for doing my job in this chamber. Sadly, I have been physically assaulted, had my personal property damaged and have on numerous occasions been verbally abused by supporters of Shalom House.”*
- iii. Cr McCullough appears to be suggesting that she has been assaulted by leaders of Shalom House. This is a wide group it is unclear who Cr McCullough is alleging physically assaulted her.
- iv. The board of directors are all respectable people, whose reputations have been damaged by Cr McCullough.
- v. As Cr McCullough does not name anyone and offers no evidence it's a detrimental smear against the whole board.
- vi. Did Cr McCullough report the assault for property damage to the police, or take some other action?

### Example 2

- vii. Cr McCullough stated:

*“ Over the years there have been many social media posts supporting the work of Shalom House that have contained misleading and untruthful information. This unfortunately has led to attacks on myself and residents and neighbours of Shalom residences. These posts have consistently led to loathing and animosity. Innocent people, residents and neighbours, have been traumatised by this behaviour.”*



- viii. It is unclear what Cr McCullough is alleging. As Cr McCullough does not name the perpetrators, the whole Shalom Board, Management, Residents, Family and supporters are caused a detriment.

### **Example 3**

- ix. Cr McCullough stated:

*“A town planner I believe is still a member of the Shalom board and one would think after over eight years of operation this expertise would assist Shalom Group with future focussed strategy through planning processes for Shalom's expansion. But it appears that this is not the case. We are not dealing with someone who does not understand the planning process in fact it is very much the opposite.”*

- x. In this section Cr McCullough appears to be referring to Simon O'Sullivan who is a member of the Shalom Board and a town planner.
- xi. This is clearly detrimental to Mr O'Sullivan.
- d. The speech as a whole is detrimental to Shalom House, board of directors, management, residents, families and supporters as it does not provide evidence of specific documents incidents and implies that even if such incidents occurred, and there is no evidence, then everyone involved in Shalom House or supporting Shalom House is at fault.
- e. The speech was used to damage Shalom House and persuade Councillors that Shalom did not deserve a full approval but only a temporary approval.
- f. The speech is also a detriment to Council as it damaged Council's standing.
- g. Cr McCullough made improper use of her office by making wild unsubstantiated allegations about anyone connected with Shalom House. No evidence was offered and she smeared the whole of Shalom House in a most disgraceful manner.
- h. In making the speech, Cr McCullough:
- i. caused detriment to Shalom House through Shalom House only being award a temporary approval;
  - ii. damaged people's reputations;
  - iii. damaged the reputation of board members; and
  - iv. brought discredit and detriment on the whole Council.
18. The Complainant also provided:
- a. a transcript of the speech by Cr McCullough; and
  - b. an extract from Minutes of Ordinary Meeting of Council 5 October 2022.



### The Respondent's Response

19. By an email dated 24 November 2022, Cr McCullough provided a response to the Complaint.
20. Cr McCullough denies that she has committed any minor breach.
21. Cr McCullough makes the following comments in respect to the Complaint as summarised by the Panel:
  - a. Cr McCullough does not accept that she committed the alleged conduct as detailed in the Complaint.
  - b. Cr McCullough's statements were broad and gave general information and she believes that they did not cause a detriment to any specific persons.
  - c. Cr McCullough's debate was truthful but she wanted to keep it respectful and sensitive to the issues pertaining to the Item that was before Council.
22. Cr McCullough also provided a transcript of her speech.

### Regulation 18

23. Regulation 18 prohibits councillors engaging in conduct to either gain an advantage for themselves (or another party) or cause detriment to another party and specifically provides as follows:
  - “ 18. Securing personal advantage or disadvantaging others**
    - (1) *A council member must not make improper use of their office —*
      - (a) *to gain, directly or indirectly, an advantage for the council member or any other person; or*
      - (b) *to cause detriment to the local government or any other person.*
    - (2) *Subclause (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.”*
24. To make a finding of a minor breach of regulation 18(1)(b) of the Regulations the Panel must be satisfied to the required standard that:
  - a. Cr McCullough was an elected member or a candidate at the time of the alleged breach and the time of the determination;
  - b. Cr McCullough made use of her office as Council member or candidate of the City;
  - c. when viewed objectively, such use was an improper use of Cr McCullough's office in that it:
    - i. involved a breach of the standards of conduct that would be expected of a person in the position of councillor by reasonable persons; and



- ii. was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty; and
  - d. Cr McCullough engaged in the conduct in the belief that detriment would be suffered by another person.
25. The Complainant did not allege that there was any advantage to be sought so the Panel has only considered regulation 18(1)(b) in this instance.

### **Code of Conduct**

26. The City has a Code of Conduct Elected Members, Committee Members and Candidates adopted by Council 3 May 2021 (**“the Code of Conduct”**).
27. The relevant provisions of the Code of Conduct are as follows:

#### **“ 5. Relationship with others**

*(1) A council member, committee member or candidate should —*

- (a) treat others with respect, courtesy and fairness; and*
- (b) respect and value diversity in the community.*

*(2) A council member or committee member should maintain and contribute to a harmonious, safe and productive work environment.”*

#### **“6. Accountability**

*A Councillor or committee member should –*

- a) Base decisions on relevant and factually correct information; and*
- b) Make decisions on merit, in the public interest and in accordance with statutory obligations and principles of good governance and procedural fairness; and*
- c) Read all agenda papers given to them in relation to Council or committee meetings; and*
- d) Be open and accountable to the public and represent the community in the district.”*

#### **“9. Relationship with others**

*A council member, committee member or candidate —*

- (a) must not bully or harass another person in any way; and*
- (b) must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and*
- (c) must not use offensive or derogatory language when referring to another person; and*



- (d) *must not disparage the character of another council member, committee member or candidate or a local government employee in connection with the performance of their official duties; and*
- (e) *must not impute dishonest or unethical motives to another council member, committee member or candidate or a local government employee in connection with the performance of their official duties.”*

**“10. Council and committee meetings**

*When attending a Council or committee meeting, a Councillor, committee member or candidate –*

- a) *Must not act in an abusive or threatening manner towards another person; and*
- b) *Must not make a statement that the member or candidate knows, or could reasonably be expected to know, is false or misleading; and*  
*.....”*

**PANEL’S CONSIDERATION**

**Regulation 18**

Cr McCullough was an Elected Member or a candidate at the relevant times

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

Cr McCullough made use of her office as Council Member or candidate of the City

- 30. In this case, Cr McCullough:
  - a. was attending the OCM in her capacity as an elected member; and
  - b. spoke in respect to a matter before the Council of the City
- 31. The Panel therefore finds that it is more likely than not that Cr McCullough was acting in her capacity as an elected member and made use of her office as a council member when he wrote the Post.
- 32. This element is met.

Cr McCullough’s use was improper

- 33. Deciding if conduct is an improper use of office requires something more than simply a demonstration of poor judgment or lack of wisdom. It requires an abuse of power or the use of the councillor’s position in a manner that such councillor knew (or ought to have known) was not authorised.





34. Impropriety does not depend on a councillor's consciousness of impropriety. It is to be judged objectively and does not involve an element of intent.
35. Any decision as to what is "improper" cannot be made in isolation but must be considered in the relevant context including the specifics of the relevant event as well as councillor's formal role and responsibilities.
36. In the case of impropriety arising from an abuse of power, a councillor's alleged knowledge or means of knowledge of the circumstances in which the power is exercised and his purpose or intention in exercising the power will be important factors in determining whether the power has been abused<sup>8</sup>.
37. The Complainant has alleged that certain comments in the speech were improper as they contained inappropriate, defamatory, and detrimental statements regarding persons connected to Shalom House.
38. The Panel has considered the speech given by Cr McCullough at the OCM.
39. The relevant item being discussed related to an application for use and additions to the premises for Shalom House.
40. It is apparent from the report and commentary that there had been historical issues regarding:
  - a. the correct process for building and usage applications being followed by Shalom House; and
  - b. objections by other local ratepayers.
41. The Panel considers that the speech as a whole is generally not entirely appropriate in content as it substantially deals with the alleged "*standard of behaviour*" of members and supporters of Shalom House, particularly online behaviours and other conduct specifically in relation to herself.
42. There are also certain comments made by Cr McCullough that the Panel considers to be problematic and specifically in breach of the Code of Conduct.
43. Although a breach of the Code of Conduct does not in and of itself constitute a minor breach, the same can be considered to be indication of improper conduct.
44. The following comments are of particular concern:
  - a. "*The issue here is that on the one hand Council is being informed that residents are being held to a high standard of behaviour but then Shalom Group, in media posts show a flagrant disregard for planning laws stating that laws will be broken if considered necessary for the residents of Shalom House. But what about the rights of the neighbouring properties and the residents that reside there? Residents amenity that time and time again is negatively impacted from consistent social media tirades that instigate hatred and anti-social behaviour from some supporters of Shalom.*"

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<sup>8</sup> Treby and Local Government Standards Panel [2010] WASAT 81 (at 31); Chew v The Queen (1992) 173 CLR 626 (at 640 - 641 [Dawson JJ]); R v Byrnes (1995) 183 CLR 501 – (at 514 - 515 [Brennan, Deane, Toohey and Gaudron JJ] and at 521 [McHugh J].



- b. *“A town planner is a member of the Shalom board and one would think that after over eight years of operation, this expertise would assist Shalom Group with future focused strategy through planning processes for Shalom’s expansion but it appears that this is not the case. Council is not dealing with someone who does not understand the planning process, in fact it is very much the opposite.”*
  - c. *“The bullying, the intimidation and slander of those who are not supportive of Shalom’s unregulated setup’s have significant consequences for everyday people.”*
  - d. *“I myself have experienced this treatment firsthand: intimidation bullying, and social media posts that are misleading and aggressive. Over time, these have taken their toll.”*
  - e. *“Over the years, there have been many social media posts supporting the work of Shalom House that have contained misleading and untruthful information. This unfortunately has led to attacks on myself, other Councillors, residents and neighbours of Shalom residences. These social media posts have consistently instigated loathing, animosity and aggression from some supporters of Shalom House.”*
  - f. *“... I have been poorly treated by leaders in Shalom Group in the past for doing my job in this chamber, sadly I have been physically assaulted, used by supporters of Shalom House. It is entirely possible Mr Mayor, that I along with any other councillors who do not support this application in its entirety will be subject to more of the same after this meeting.”*
45. The Panel considers that the above comments are in breach of the Code of Conduct as they:
- a. they were not respectful or courteous in tone or content;
  - b. imply that Cr McCullough has based her decision on material that was not relevant or necessarily factually correct;
  - c. indicate that Cr McCullough’s decision was possibly not made in accordance with statutory obligations and principles of good governance and procedural fairness; and
  - d. were derogatory about the board members and supporters of Shalom House and accuse them of improper, inappropriate and/or illegal conduct.
46. Further it is unclear in some instances whether Cr McCullough is referring to the conduct of the board members of Shalom House, residents of Shalom House or other “supporters” of Shalom House.
47. Without making any comment as to whether the allegations in the speech were accurate, the Chamber is not an appropriate place to:
- a. engage in negative or adverse commentary regarding the particular entity applying for an application when that particular conduct does not relate to the relevant application; or
  - b. make allegations as to conduct that may be considered illegal or criminal.



48. As such, the Panel finds that it is more likely than not that the Post was improper as:
- a. the conduct was in breach of the Code; and
  - b. the conduct was of such a nature that a reasonable individual would consider the same to be inappropriate or not in keeping with the conduct that would be expected of a councillor; and
  - c. the conduct is deserving of a penalty.
49. This element is met.

Regulation 18(1)(b) Cr McCullough intended to cause a disadvantage

50. “Detriment” means loss, damage or injury. It is construed widely and includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage.
51. It is not necessary to find whether any detriment was actually suffered, but an intent to cause such detriment must be established.
52. The nature of the allegations made by, and type of language that was used by, Cr McCullough indicate that Cr McCullough wished the audience listening to her speech to think less of the parties she was referring to and in particular:
- a. implying that the board of Shalom House had acted in an unconscionable manner with respect to Planning Laws, or, if not unconscionable, then incompetent;
  - b. stating certain unnamed parties had harassed her, other councillors, and members of the public and would likely do so in the future; and
  - c. stating that some parties were involved in conduct that was likely to be criminal.
53. The Panel finds, to the required standard, that Cr McCullough did intend cause a detriment to the board and supporters of Shalom House by making comments intended to make people think less of those parties.
54. This element is met.

Conclusion

55. The elements required to find a breach of regulation 18 of the Regulations have been met.



### **Panel's Findings**

56. Cr McCullough did commit a breach of Regulation 18 of the Regulations and therefore did commit a minor breach.

### **Signing**

A handwritten signature in black ink, appearing to be 'T Fraser'.

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Tim Fraser (Presiding Member)

A handwritten signature in black ink, appearing to be 'E Power'.

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Emma Power (Member)

A handwritten signature in black ink, appearing to be 'P Rogers'.

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Peter Rogers (Member)



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## Local Government Standards Panel

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Complaint Number	20220169
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Councillor Ian Johnson</b>
<b>Respondent</b>	<b>Councillor Cate McCullough</b>
Local Government	<b>City of Swan</b>
Regulation	Regulation 18 of the <i>Local Government (Model Code of Conduct) Regulations 2021 (WA)</i>
Panel Members for Penalty Consideration	Ms Emma Power (Presiding Member) Ms Suleila Felton (Member) Cr Peter Rogers (Member)
Heard	8 December 2022 Determined on the documents
Penalty Considered	7 March 2023
Outcome	Training and Public Apology

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### DECISION AND REASONS FOR DECISION

Delivered 13 April 2023

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## Introduction

1. At its meeting on 8 December 2022, the Panel found that Councillor Cate McCullough, councillor for the City of Swan (“**the City**”), committed a minor breach under the Local Government Act 1995 (WA) (“**the Act**”) and Regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021* (“**the Regulations**”) when she made certain comments in respect to a local community organisation at the Ordinary Council Meeting of 5 October 2022 (adjourned and reconvened on 12 October 2022) (“**the Minor Breach**”).

## Jurisdiction and Law

2. The Panel convened on 7 March 2023 to consider how it should deal with the Minor Breach.
3. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries (“**the Department**”) that on this date there was no available information to indicate that Cr McCullough had ceased to be, or was disqualified from being, a councillor.
4. If the Panel finds that a councillor has committed a minor breach, it must give the councillor an opportunity to make submissions to the Panel about how it should deal with the breach under section 5.110(6).<sup>1</sup>
5. By a letter dated 24 January 2023, Cr McCullough was:
  - a. notified of the Panel’s finding of the Minor Breaches;
  - b. provided with a copy of the Panel’s Finding and Reasons for Finding; and
  - c. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the *Act*.

## Possible Sanctions

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

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



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

*or*

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

### **Councillor McCullough's Submissions**

7. By an email dated 22 February 2023, the Department received a response Cr McCullough.
8. Cr McCullough provided the following comments and arguments as to penalty, as summarised by the Panel:
  - a. Cr McCullough requests that no sanction be imposed in this instance but if the Panel does not see fit to agree to that, then some additional training would be of benefit.
  - b. Cr McCullough requests that she not be made to give a public apology as she just don't think that she would cope with it considering the background to this long-term issue which she understands is not relevant to this Breach.
  - c. Cr McCullough believes that she was careful to not state names in her debate and to remain respectful. She stated only the truth in the information that she included in her debate.
  - d. Cr McCullough did her best to try and frame the debate in a respectful but strong way after seeing local residents and ratepayers treated so poorly by people within Shalom House and by supporters of Shalom House over an extended period of time.
  - e. Many people on both sides of the debate said to Cr McCullough at the time that they believe her debate was a respectful, considered and firm response on behalf of many residents.

### **Panel's Consideration**

9. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach.
10. The Panel may order under section 5.110(6)(a), that no sanction be imposed complaint not to reverse the Panel's finding of a breach, but to indicate that in all the circumstances the relevant councillor should not be penalised further.
11. Guidance as to the factors which the Panel may consider in determining the appropriate penalty to impose include, but are not limited to, the following:
  - a. the nature and seriousness of the breaches;
  - b. the councillor's motivation for the contravention;
  - c. whether or not the councillor has shown any insight and remorse into his/her conduct;
  - d. whether the councillor has breached the Act knowingly or carelessly;
  - e. the councillor's disciplinary history;
  - f. likelihood or not of the councillor committing further breaches of the Act;



- g. personal circumstances at the time of conduct, and of imposing the sanction;
  - h. need to protect the public through general deterrence and maintain public confidence in local government; and
  - i. any other matters which may be regarded as aggravating conduct or mitigating its seriousness<sup>2</sup>.
12. In this case the Panel found that the relevant comments made by Cr McCullough:
  - a. were not respectful or courteous in tone or content;
  - b. implied that Cr McCullough has based her decision on material that was not relevant or necessarily factually correct;
  - c. indicated that Cr McCullough's decision was possibly not made in accordance with statutory obligations and principles of good governance and procedural fairness; and
  - d. were derogatory about the board members and supporters of Shalom House and accused them of improper, inappropriate and/or illegal conduct.
13. The Panel does not consider that Cr McCullough has shown any insight into her conduct which she maintains was respectful.
14. In these circumstances, the Panel considers that the appropriate sanctions are that Cr McCullough:
  - a. make a public apology; and
  - b. undertake training.
15. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing. It is a suitable and appropriate penalty when a councillor's conduct:
  - a. adversely affects particular individuals<sup>3</sup>; and/or
  - b. does not meet the standards other councillors seek to uphold.
16. In this case, the comments particularly referenced Shalom House board members and supporters and it is appropriate that Cr McCullough provide an apology to those parties for any offence she may have caused.
17. Further, the Panel deems that it is prudent that Cr McCullough undertake training to refresh Cr McCullough's understanding of causes of conflict along with the costs of conflict that impact Elected Members performing their role in Local Government.
18. The Panel considers this will assist Cr McCullough to be able to set aside past and emotive conflicts when making administrative decision on behalf of the local government.
19. The sanction of an order to undertake training also aligns with the intent of the Act and the purpose of the civil penalties under the Act to ensure future compliance with the statutory obligations imposed on councillors for the better protection of the public.

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

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





20. In the relevant circumstances, the Panel considers that making a public apology and undertaking training is an adequate sanction and that it is not necessary to order that Cr McCullough recoup to the City the costs of the Department incurred in accordance with Schedule 5.1 clause 9 with respect to the Complaint.

### **Panel's decision**

21. The Panel orders pursuant to section 5.110(6)(b)(ii) and section 5.110(6)(b)(iii) and section 5.110(6)(c) of the Act that, in relation to the Minor Breach of regulation 18(1)(b) of the Regulations, Cr McCullough:
- a. make a public apology in terms of the attached Order; and
  - b. undertake training in terms of the attached Order.

### **Signing**

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Emma Power (Presiding Member)

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Peter Rogers (Member)

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Suleila Felton (Deputy Member)



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## ORDER

Delivered 13 April 2023

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### DEFAMATION CAUTION

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### THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Cate McCullough, a councillor for the City of Swan:
  - i. **publicly apologise** as specified in paragraph 3; OR
  - ii. failing compliance with paragraph 3 within the specified timeframe, then paragraph 4 shall apply;
2. Councillor Cate McCullough, a councillor for the City of Swan, **undertake training** as specified in paragraph 5 below.

### Public Apology

3. On the ordinary council meeting first occurring after the expiration of **28 days** from the date of service of this Order on her, Councillor McCullough shall:
  - i. attend the relevant ordinary council meeting;
  - ii. ask the 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 Division 4 and Regulation 18 of the *Local Government (Model Code of Conduct) Regulations 2021* when made certain comments in respect to Shalom House at the Ordinary Council Meeting of 5 October 2022.
- ii. The Panel found that I breached regulation 18(1)(b) of the said Regulations as my conduct was inappropriate and deserving of a penalty and, further, my comments were derogatory.
- iii. I accept that I should not have made the relevant comments.



iv. I now apologise to the board and supporters of Shalom House, my fellow Councillors and the public.”

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

#### **PUBLIC APOLOGY BY COUNCILLOR CATE MCCULLOUGH**

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Division 4 and Regulation 18 of the Local Government (Model Code of Conduct) Regulations 2021 when made certain comments in respect to Shalom House at the Ordinary Council Meeting of 5 October 2022.

The Panel found that I breached regulation 18(1)(b) of the said Regulations as my conduct was inappropriate and deserving of a penalty and, further, my comments were derogatory.

I accept that I should not have made the relevant comments.

I now apologise to the board and supporters of Shalom House, my fellow Councillors and the public.

#### **Training**

5. Within 4 months of the date of this Order, Councillor Cate McCullough, a councillor for the City of Swan, shall undertake:
- the training course for Elected Members “*Dealing with Conflict*” provided by WA Local Government Association (WALGA) for a period of no less than 2 days (15 hours), attending either in person or via e-learning (if available); or
  - a training course with substantially similar learning outcomes provided by an alternative registered training organisation for a period of not less than 15 hours.



### **Appeal**

6. In the event that, prior to the date for compliance with the above Orders, Councillor McCullough:
  - a. 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
  - b. notifies the Complaints Officer of the City of such appeal in writing,THEN:
  - c. compliance with such Orders may be delayed until the State Administrative Tribunal has made a finding in respect to the decision; and
  - d. 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."*