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## Local Government Standards Panel

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Complaint Number	20230235
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Mr Kelton Hincks</b>
<b>Respondent</b>	<b>Councillor Xavier Carr</b>
Local Government	<b>Town of Cambridge</b>
Regulation	Regulation 18 of the <i>Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members	Mrs Emma Power (Presiding Member) Ms Suleila Felton (Member) Cr Peter Rogers (Member)
Heard	15 June 2023 Determined on the documents
Finding	2 x Breaches - Regulation 18

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### FINDING AND REASONS FOR FINDING

Delivered 10 July 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.

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## Summary of the Panel's decision

1. On 15 June 2023, the Panel found that Councillor Xavier Carr a councillor of the Town of Cambridge (**"the Town"**):
  - a. 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 he made Facebook comments referring to a decision by Council in respect to gambling in the Town;
  - b. did commit a minor breach pursuant to the Act and Division 4 and Regulation 18 of the Regulations when he published a letter in the local Post Newspaper in respect to the conduct of a recent Council Meeting by Mayor Shannon; and
  - c. did not commit a minor breach pursuant to the Act and Division 4 and Regulation 18 of the Regulations when he made a comment on Facebook in respect to a post made by Minister John Carey,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>.

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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



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 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 11 April 2023 the Panel received a complaint from Mr Kelton Hincks acting as complaints officer of the Town ("**the Complaints Officer**"). The same enclosed a Complaint of Minor Breach Form dated 11 April 2023.
14. In the complaint form, the Complainant alleges that Cr Carr has breached regulation 18 of the Regulations when he:
  - a. made Facebook comments referring to a decision by Council in respect to gambling in the Town ("**Allegation 1**");
  - b. published a letter in the local Post Newspaper in respect to the conduct of a recent Council Meeting by Mayor Shannon ("**Allegation 2**"); and
  - c. made a comment on Facebook in respect to a post made by Minister John Carey ("**Allegation 3**"),as referred to in paragraph 17 below (together "**the Complaint**").
15. The Panel convened on 15 June 2023 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 Carr was:
    - i. elected to the Council of the Town in October 2021 for a term expiring in October 2025; and
    - ii. a Councillor when the Panel met on 15 June 2023;
  - b. was satisfied the Complaint was made within six months after the alleged breach occurred<sup>6</sup>;
  - c. was satisfied that the Town'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 to Cr Carr; and

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

<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

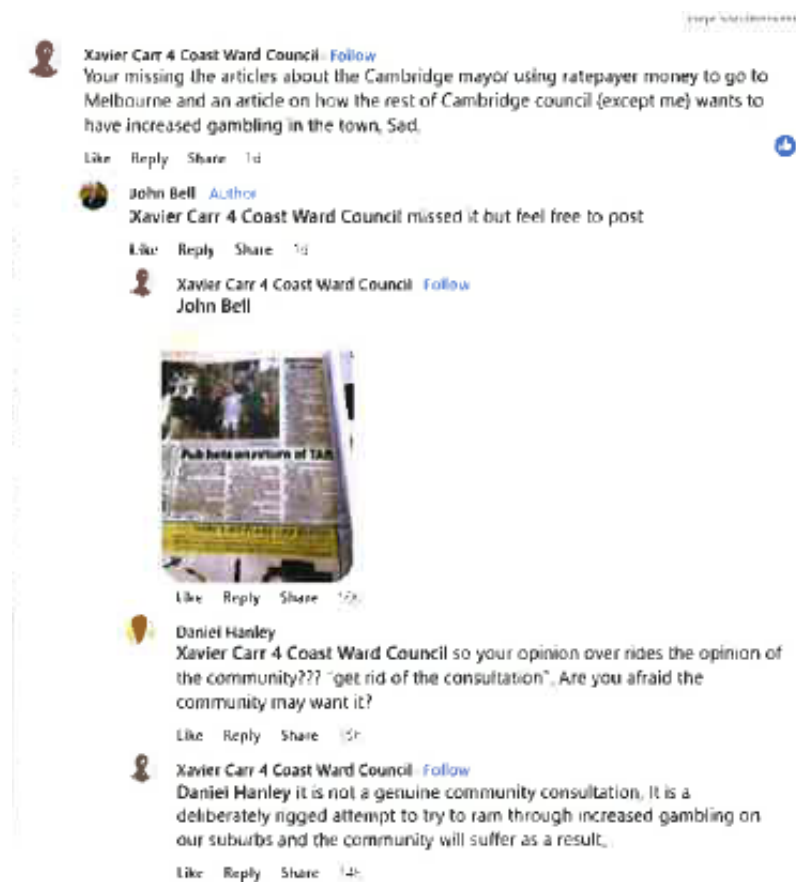
- e. found it had jurisdiction to consider the Complaint.

### The Specifics of the Complaint

17. The Complainant provided the following comments and arguments in respect to the Complaint as summarised by the Panel:

#### Allegation 1

- a. Cr Xavier Carr posted information on social media (Facebook) in relation to recent decisions of Council as follows:



#### ("the Facebook Posts")

- b. The information was factually incorrect, and he was attempting to discredit the Mayor and Council, in breach of Regulation 18.
- c. The Complainant requested Cr Carr remove the Facebook Posts and highlighted the relevant sections of the Code of Conduct for Elected Members and the reasons his Facebook Posts were in breach of the Code.
- d. Cr Carr responded by stating he changed the comments slightly by removing the word 'sad'. He did not remove the Facebook Posts as requested.
- e. As per the Town's Code of Conduct, the Complaint presented a report to Council in March 2023 on Cr Carr's behaviour. Council resolved that the breach did occur and Cr Carr is required to undertake training in relation to his obligations as a



councillor and the Town's media policy within a month of receiving a letter from the A/CEO.

### Allegation 2

- f. On 31/3/2023, the Complainant read a letter to the Post Newspaper from Cr Carr as follows:

## **Question mark over question time**

The Cambridge council meeting on Tuesday descended into farce when mayor Keri Shannon shut down public question time.

The reason she gave was that time was short and the council had to move to other items on the agenda.

But in the past, the mayor has allowed residents to ask multiple questions that run well over the allotted time.

One might assume that she did not like the questions that were being asked, and moved to avoid answering any more difficult questions, many of which would have related to the proposal to conduct an in-person council election instead of a full mail-out of postal ballots to all

eligible voters.

At the next council meeting I intend to move a motion calling for the time residents can ask questions to be increased from three minutes to five, and the number of questions that they can ask also increased from three to five.

I hope other councillors support my motion which I think would be a modest yet necessary reform.

After all, the least we can do as councillors is listen to the questions and concerns of the community we are meant to represent.

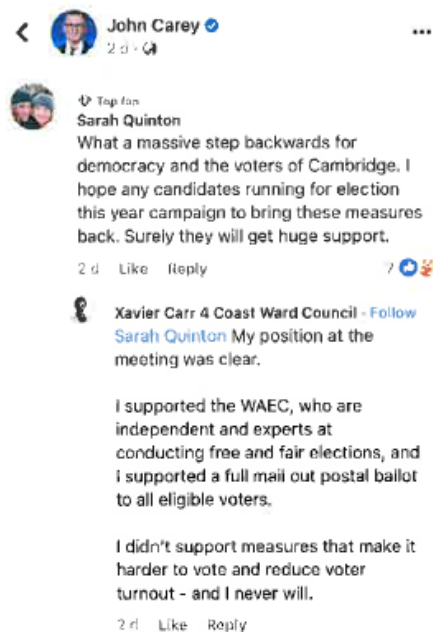
Xavier Carr  
Chipping Road, City Beach  
councillor, City of Cambridge

### **(“the Post Letter”)**

- g. The Complainant informed Cr Carr that this was another breach, and it would be reported. Cr Carr did not respond to this email.

### Allegation 3

- h. Cr Carr continues to post comments on social media on his personal views following the decisions of the council, in breach of Regulation 18.
- i. Note following comment made on (7/4/2023):



(“the Election Comment”).

### The Respondent’s Response

18. Despite being given an opportunity by the Department, Cr Carr did not provide a response to the Complaint.

### Regulation 18

19. 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.”*

20. To make a finding of a minor breach of regulation 18 of the Regulations the Panel must be satisfied to the required standard that:
- Cr Carr was an elected member or a candidate at the time of the alleged breach and the time of the determination;
  - Cr Carr made use of his office as a Council member or candidate of the Town;



- c. when viewed objectively, such use was an improper use of Cr Carr'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 Carr engaged in the conduct in the belief that detriment would be suffered by another person.
21. As the Complainant has not alleged any advantage was intended to be gained, the Panel has only considered regulation 18(1)(b) in this case.
  22. 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.
  23. 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.
  24. 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.
  25. 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 or her purpose or intention in exercising the power will be important factors in determining whether the power has been abused<sup>8</sup>.
  26. "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.
  27. It is not necessary to find whether any detriment was actually suffered<sup>9</sup>, but an intent to cause such detriment must be established.

### **Code of Conduct**

28. The Town has a *Code of Conduct for Council Members, Committee Members and Candidates* adopted 27 April 2021 ("**the Code of Conduct**") which governs the conduct of elected members.
29. A breach of the Code of Conduct may indicate that an elected member has acted improperly in breach of Regulation 18.
30. The relevant provisions of the Code of Conduct Code are as follows:  
**" 4. Personal integrity**

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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].

<sup>9</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59 at [72]



- (1) *A council member, committee member or candidate should —*
- (a) *act with reasonable care and diligence; and*
  - (b) *act with honesty and integrity; and*
  - (c) *act lawfully; and*
  - (d) *identify and appropriately manage any conflict of interest; and*
  - (e) *avoid damage to the reputation of the local government.*
- ...”

**“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.”*

**“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.”*

**PANEL’S CONSIDERATION**

**Regulation 18(1)(b) - Allegation 1**

**Cr Carr was an Elected Member or a Candidate at the relevant times**

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

32. This element is met.

**Cr Carr made use of his office as Council Member of the Town**

33. The relevant conduct concerns Facebook Posts made in early March 2023.

34. Due to the fact that:





- a. the Facebook Posts were made using Cr Carr’s councillor Facebook account “*Xavier Carr 4 Coast Ward Council*”;
- b. the Facebook Posts were commenting on an article which concerned the Town and rate payers; and
- c. Cr Carr was purporting to communicate with and guide the community in the local municipality,

the Panel finds that it is more likely than not that Cr Carr was acting in his capacity as an elected member and made use of his office as a council member when undertaking the conduct.

35. This element is met.

Cr Carr’s use was improper

36. In this case Cr Carr’s comments were referring to a decision by Council which related to the issue of gambling.
37. The Panel notes that the Post was previously reported to Council, which, on the 28 March 2023 found the same to be a breach of:
  - a. The Town of Cambridge Code of Conduct for Council Members, Committee Members and Candidates; and
  - b. Policy No: 57 - Media Communications.
38. The Panel considers that the Facebook Posts:
  - a. expressly accuse the Mayor of the Town of improperly using ratepayer money;
  - b. expressly accuse the remainder of Council of wanting increased gambling in the Town;
  - c. negative reflects on a prior decision of Council and states that any community consultation is “rigged”.
39. The Panel further finds that the Facebook Posts were in breach of the following clauses of the Code of Conduct:
  - a. Clause 4(1)(e) to “*avoid damage to the reputation of the local government*”:
    - i. The accusations of dishonesty and improper dealing by the Mayor and the whole Council were highly likely to damage the reputation of the local government.
  - b. Clause 5(1)(a) to “*treat others with respect, courtesy and fairness*”:
    - i. The tone and accusations in the Facebook Posts are clearly not respectful or courteous.
    - ii. The public accusations wrongdoing without any basis was not a fair approach to those Councillors.
  - c. Clause 9(d) to “*not disparage the character of another council member .... in connection with the performance of their official duties*”:
    - i. The Facebook Posts disparage the character of the Mayor as being untrustworthy and dishonest.



- d. Clause 9(e) – to “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.”
  - i. The Facebook Posts impute that the community consultation process was to be undertaken in a dishonest or unethical manner.
40. Given the above, the Panel finds that it is more likely than not that the Facebook Posts were improper as:
  - a. the conduct was in breach of the Code of Conduct;
  - 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.
41. This element is met.

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

42. In this context and circumstances of the Facebook Post, the Panel finds that a reasonable person would consider that the purpose of the Facebook Post was to:
  - a. make the public believe that the Mayor had engaged in improper conduct;
  - b. disparage the motives of Council in making a decision regarding the relevant gambling matter;
  - c. make the public think less of the Mayor and Council by making the above accusations; and
  - d. call into question the motives of the Council and Town employees in undertaking community consultation.
43. The Panel therefore finds it was more likely than not that the predominate purpose of the Facebook Post was to cause a detriment to the Mayor of the Town, the other Councillors of the Town, the Town employees involved in undertaking the community consultation, and the Town in general.
44. This element is met.

Conclusion

45. Given the above, the elements required to find a breach of regulation 18(1)(b) of the Regulations have been met.

**Regulation 18(1)(b) - Allegation 2**

Cr Carr was an Elected Member or a Candidate at the relevant times

46. Cr Carr was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
47. This element is met.

Cr Carr made use of his office as Council Member of the Town

48. The relevant conduct concerns a public letter to the Post Newspaper by Cr Carr.



49. Due to the fact that:
- a. the Post Letter and comments as signed off as “Xavier Carr, Chipping Road, City Beach, Councillor City of Cambridge”;
  - b. the Post Letter was commenting a meeting of the Council of the Town; and
  - c. Cr Carr was purporting to communicate with and guide the community in the local municipality,

the Panel finds that it is more likely than not that Cr Carr was acting in his capacity as an elected member and made use of his office as a council member when undertaking the conduct.

50. This element is met.

Cr Carr’s use was improper

51. In the Post Letter Cr Carr was commenting on occurrences during the March Ordinary Council Meeting of the Town.
52. In particular, Cr Carr:
- a. referred to the meeting as a “farce” due to the actions of Mayor Keri Shannon; and
  - b. strongly implied that the reason Mayor Shannon did not accept public questions was due to the fact she did not personally like the questions being asked.
53. The Panel finds that the Post Letter was in breach of the following clauses of the Code of Conduct:
- a. Clause 9(b) - *to “deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government:*
    - i. The comments in the Post Letter are not undertaken in a positive and appropriate manner.
    - ii. The Media Policy of the Town (Council Policy 57) provides the following provision in section 7.7 “*Not reflect adversely on the character or actions of another Elected Member or employee*”.
      - A. The Post Letter is in breach of the Media Policy as it reflects adversely on the actions of the Mayor as presiding member at the relevant meeting.
  - b. Clause 9(d) to *“not disparage the character of another council member .... in connection with the performance of their official duties”:*
    - i. The Post Letter implies that the Mayor acted in an improper manner by not taking certain public questions.
  - c. Clause 9(e) – *to “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.”*
    - i. The Post Letter imputes that the Mayor did not accept public questions for a personal and underhanded reason.
54. The Panel makes the further comment that a public letter to the local Newspaper is not the preferable manner in which to make comment negatively reflecting on the manner in which the Presiding Member conducts any council meeting.



55. This part of the Post Letter cannot be characterised as Cr Carr exercising his obligations under the Act to either:
- provide leadership and guidance to the community in the district; or
  - facilitate communication between the community and the council.
56. Given the above, the Panel finds that it is more likely than not that the comments in Post Letter relating to the conduct of the recent Council meeting by Mayor Shannon were improper as:
- the conduct was in breach of the Code of Conduct;
  - 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
  - the conduct is deserving of a penalty.
57. This element is met.

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

58. In this context and circumstances of the Post, the Panel finds that a reasonable person would consider that the purpose of the Post Letter was to disparage and call into question the motives of the Mayor in limiting public question time and to therefore make the public think less of her as Presiding Member.
59. The Panel therefore finds it was more likely than not that the predominate purpose of the making the comments as to the conduct of the recent Town meeting in the Post Letter was to cause a detriment to the Mayor Shannon
60. This element is met.

Conclusion

61. Given the above, the elements required to find a breach of regulation 18(1)(b) of the Regulations have been met.

**Regulation 18(1)(b) - Allegation 3**

Cr Carr was an Elected Member or a Candidate at the relevant times

62. Cr Carr was an elected member at the time of the alleged breach and at the date the Panel considered the Complaint.
63. This element is met.

Cr Carr made use of his office as Council Member of the Town

64. The relevant conduct concerns a comment made by Cr Carr as set out in paragraph 17.i regarding the conduct of elections by the Town.
65. Due to the fact that:
- The Election Comment was made using Cr Carr's councillor Facebook account "*Xavier Carr 4 Coast Ward Council*";
  - the Election Comment was regarding a matter related to the Town and Cr Carr's position as elected member; and



- c. Cr Carr was purporting to communicate with and guide the community in the local municipality,

the Panel finds that it is more likely than not that Cr Wright was acting in his capacity as an elected member and made use of his office as a council member when undertaking the conduct.

66. This element is met.

Cr Carr's use was improper

67. In this case Cr Carr was commenting on a decision made by Council in respect to the election process being used in the Town and, in particular, his support of the appointment of Western Australian Electoral Commission and mail out ballots.
68. Despite the fact the Council had voted to remove ballot paper mail outs, the Panel does not characterise the Election Comment as going so far as to be an adverse reflection on the decision of Council.
69. Rather, this is a statement of Cr Carr's position in respect to the matter - which was serious and controversial enough for the Minister of Local Government to comment publicly on the same.
70. There is nothing improper in this kind of mere statement of position where there is no further negative comment made as to the past Council decision.
71. Given the above, the Panel finds that it is more likely than not that the Election Comment was not improper as:
- the conduct was not 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
  - the conduct is not deserving of a penalty.

72. This element is not met.

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

73. The Panel finds that it is more likely than not that, in the context that Cr Carr was commenting on a Post initially made by Minister John Carey regarding the matter, Cr Carr wished to make his position as to the matter clear, but there was no intent to disparage or disadvantage:
- any other members of Council who voted in a different manner; or
  - the Town in general,
- in making the relevant comment.
74. Any negative reaction to the matter by the public can reasonably be seen as a response to the Council's decision, not to Cr Carr's particular comments.
75. The Panel therefore finds to the required standard that Cr Carr did not intend to cause a detriment any party.
76. This element is not met.

Conclusion

77. Given the above, the elements required to find a breach of regulation 18(1)(b) of the Regulations have not been met.



### **Panel's Findings**

78. In respect to Allegation 1 - Cr Carr did commit a breach of Regulation 18(1)(b) of the Regulations and therefore did commit a minor breach.
79. In respect to Allegation 2 - Cr Carr did commit a breach of Regulation 18(1)(b) of the Regulations and therefore did commit a minor breach.
80. In respect to Allegation 3 - Cr Carr did not commit a breach of Regulation 18(1)(b) of the Regulations and therefore did not commit a minor breach.

### **Signing**

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Emma Power (Presiding Member)

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

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Peter Rogers (Member)

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

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Suleila Felton (Deputy Member)



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## Local Government Standards Panel

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Complaint Number	20230235
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Mr. Kelton Hincks (Acting CEO)</b>
<b>Respondent</b>	<b>Councillor Xavier Carr</b>
Local Government	<b>Town of Cambridge</b>
Regulation	<i>Regulation 18 of the Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members for Penalty Consideration	Ms Emma Power (Presiding Member) Ms Suleila Felton (Member) Cr Renee McLennan (Member)
Heard	15 June 2023 Determined on the documents
Penalty Considered	29 August 2023
Outcome	Public Apology

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### DECISION AND REASONS FOR DECISION

29 September 2023

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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 15 June 2023, the Panel found that Councillor Xavier Carr, a councillor for the Town of Cambridge (**“the Town”**), committed a minor breach under the *Local Government Act 1995 (WA)* (**“the Act”**) and regulation 18 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* (**“the Regulations”**) when he:
  - a. made Facebook comments referring to a decision by Council in respect to gambling the Town; and
  - b. published a letter in the local Post News in respect to the conduct of a Council Meeting by Mayor Shannon,(together **“the Minor Breaches”**).

## Jurisdiction and Law

2. The Panel convened on 29 August 2023 to consider how it should deal with the Minor Breaches.
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 Carr 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 10 July 2023, Cr Carr 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 Breaches 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;*

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





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 Carr's Submissions**

7. Despite being given an opportunity to respond, Cr Carr did not provide a response to the Department.

### **Panel's Consideration**

8. Section 5.110(6) is solely 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 seriousness<sup>2</sup>.
11. In this case as Cr Carr did not provide any response to either the initial Complaint or the Findings of the Panel, the Panel has no evidence that Cr Carr has shown any insight or remorse as to his conduct.
12. In this case, the Panel considers as the conduct was public in nature a public apology is the appropriate sanction.

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



13. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing<sup>3</sup>. It is a suitable and appropriate penalty when a councillor's conduct:
  - a. adversely affects particular individuals<sup>4</sup>; and/or
  - b. does not meet the standards other councillors seek to uphold.
14. In the relevant circumstances, the Panel considers that making a public apology is an adequate sanction and that it is not necessary to make an order in accordance with Schedule 5.1 clause 9 of the Act that Cr Carr recoup to the Town the costs of the Department incurred with respect to the Complaint.

#### **Panel's decision**

15. The Panel orders pursuant to section 5.110(6)(b)(ii) of the Act that, in relation to the two Minor Breaches of regulation 18 of the Regulations, Cr Carr make a public apology in terms of the attached Order.

#### **Signing**

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Emma Power (Presiding Member)

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Suleila Felton (Deputy Member)

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Renee McClennan (Deputy Member)

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

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



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## ORDER

29 September 2023

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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

### THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Xavier Carr, a councillor for the Town of Cambridge **publicly apologise** as specified in paragraph 3; OR
2. Failing compliance with paragraph 3 within the specified timeframe, then paragraph 4 shall apply.

#### **Public Apology**

3. On the ordinary council meeting of the Town of Cambridge first occurring after the expiration of **28 days** from the date of service of this Order on him, Cr Carr 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 18 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* when I:
  - a. made Facebook comments imputing that a decision by Council was made in a dishonest or unethical manner to increase gambling in the Town; and
  - b. published a letter in the local Post News imputing Mayor Shannon had presided over a Council Meeting in an improper manner.
- ii. The Panel found that I breached Regulation 18 by my conduct as I acted improperly and sought to disparage the Council and Mayor Shannon.
- iii. I acknowledge that I should have not engaged in the relevant conduct and I now apologise to Mayor Shannon and my fellow councillors."



4. If Cr Carr 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 Cambridge shall arrange for the notice of public apology to be published:
  - a. on the Facebook Page of the Town of Cambridge shall in no less than 10 point font size; and
  - b. in an appropriate place on the website of the Town of Cambridge shall in no less than 10 point font size; and
  - c. in the next occurring issue of any Town of Cambridge shall public newsletter (if any) whether in electronic or print copy) in no less than 10 point font size.

**PUBLIC APOLOGY BY COUNCILLOR XAVIER CARR**

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened Regulation 18 of Division 4 of the *Local Government (Model Code of Conduct) Regulations 2021* when I:

- made Facebook comments imputing that a decision by Council was made in a dishonest or unethical manner to increase gambling in the Town; and
- published a letter in the local Post News imputing Mayor Shannon had presided over a Council Meeting in an improper manner.

The Panel found that I breached Regulation 18 by my conduct as I acted improperly and sought to disparage the Council and Mayor Shannon.

I acknowledge that I should have not engaged in the relevant conduct and I now apologise to Mayor Shannon and my fellow councillors

**Appeal**

5. In the event that, prior to the date for compliance with the above Orders, Cr Carr:
  - 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 Town of Cambridge of such appeal in writing,  
THEN:
    - c. compliance with the above 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."*