



Local Government Standards Panel

Complaint Number	20240523
Legislation	<i>Local Government Act 1995 (WA)</i>
Complainant	Mr Kelton Hincks
Respondent	Councillor Gavin Foley
Local Government	Town of Cambridge
Regulation	Regulation 20 <i>Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members for Penalty Consideration	Ms Emma Power (Presiding Member) Mr Ethan Redshaw (Member) Cr Peter Rogers (Member)
Heard	10 February 2025 Determined on the documents
Penalty Considered	9 July 2025
Outcome	Apology and Training

DECISION AND REASONS FOR DECISION

Delivered 22 September 2025

DEFAMATION CAUTION

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Introduction

1. At its meeting on 10 February 2025, the Panel found that Councillor Gavin Foley, a councillor for the Town of Cambridge (“**the Town**”), committed a breach under the *Local Government Act 1995* (WA) (“**the Act**”) and regulation 20 the *Local Government (Model Code of Conduct) Regulations 2021* (“**the Regulations**”) when he approached and spoke to various employees of the Town during several different incidents (“**the Minor Breach**”).

Jurisdiction and Law

2. The Panel convened on 9 July 2025 to consider how it should deal with the Minor Breach.
3. The Panel accepted the advice of the Department of Local Government, Industry Regulation and Safety (“**the Department**”) that on this date there was no available information to indicate that Cr Foley 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 17 June 2025, Cr Foley 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;*
or
 - (iii) *the person against whom the complaint was made undertake training as specified in the order;*

¹ *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 Foley's Submissions

7. By an email dated 18 June 2025 the Department received a response from Cr Foley.
8. Cr Foley provided the following comments as summarised by the Panel:
 - a. Cr Foley does not recall being given the right of reply to all the items that are mentioned in the Panel's document and in fact thought that there were only 2 formal complainers.
 - b. Nevertheless, it is a known fact that when a human being is witnessed transgressing that the first instinct is to deny all and then go on the attack.
 - c. Cr Foley is to be punished by the transgressors for pointing out the error of their ways. Most of the allegations do contain a modicum of truth but spun to suit the complainer.
 - d. Cr Foley has far more pressing matters on his mind, and he is done with the fiasco that is "Local Government" in the next few months. Cr Foley doesn't see how the Panel can escape putting some type of penalty on him and seeing as he has nothing to apologise for it might be less embarrassing all around to just issue a public censure which he won't fight.
 - e. Please keep in mind that all Cr Foley's actions are driven by his environmental sensitivities and that he declares that he is intelligent and switched on enough not to draw the political correctness devil on to himself.
 - f. Most of what has been levelled against Cr Foley are down right untruths as a punishment for pointing out that the employees were abusing council equipment etc. Not one of the complainers produced a witness but Cr Foley submitted a full video of the interaction between himself and the worker abusing the Towns vehicle in the park.

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, 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.²
12. In this case the Panel notes that Cr Foley clearly does not comprehend the nature of the Minor Breach finding against him.
 13. Irrespective of Cr Foley's environmental beliefs, it is not part of Cr Foley's role as a local councillor (and in fact it is specifically prohibited) to give any direction to any employee of the Shire.
 14. If Cr Foley has environmental concerns, he should raise this as an item before Council for consideration, not approach individual Town employees. Even if any Town employee was not abiding by an established Town policy, it is a solely administrative role to manage and direct staff in that regard.
 15. Further, Cr Foley's actions not only constituted a direction to a Shire employee but could reasonably be considered a threat, in one case of a possible physical alteration and, in another case, of adverse consequences to that employee.
 16. The Panel further found that Cr Foley's conduct was aggressive and demanding in nature and resulted in several complaints by various staff members.
 17. Councillor should at all times be mindful of their relationship with local government employees and ensure they follow the Code of Conduct in such interactions.
 18. The Panel also finds Cr Foley's response as to the Complaint and findings to be dismissive and an attempt to trivialise and excuse his conduct.
 19. In this case, as the conduct took place in public towards various employees, the Panel considers that one appropriate sanction is that Cr Foley makes a public apology.
 20. Making a public apology is a significant sanction, being a personal admission by the individual of wrongdoing.³ It is a suitable and appropriate penalty when a councillor's conduct:

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

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



- a. adversely affects particular individuals⁴; and/or
 - b. does not meet the standards other councillors seek to uphold.
21. The Panel further deems that it is prudent that, as Cr Foley has not indicated to the Panel that is he aware of why his conduct was found to be a minor breach, nor shown that he is regretful, that Cr Foley should undertake training.
 22. The Panel considers this will assist Cr Foley to learn and adopt appropriate communication strategies in challenging situations in his role as a community leader and representative of the Council.
 23. 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.
 24. The Panel does not make a further order in accordance with Schedule 5.1 clause 9 of the Act that Cr Foley recoup to the Town the costs of the Department incurred with respect to the Complaint.

Panel's decision

25. The Panel orders pursuant to section 5.110(6)(b)(ii), section 5.110(6)(b)(iii) and section 5.110(6)(c) of the Act that, in relation to the Minor Breach of regulation 20 of the Regulations, Cr Foley:
 - a. make a public apology in accordance with the attached Orders; and
 - b. undertake the training specified in the attached Orders.

Signing

Emma Power (Presiding Member)

Ethan Redshaw (Deputy Member)

Peter Rogers (Member)

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



ORDER

Delivered 22 September 2025

DEFAMATION CAUTION

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THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Gavin Foley, a councillor for the Town of Cambridge:
 - a. **publicly apologise** as specified in paragraph 2 OR failing compliance with paragraph 2 within the specified timeframe, that paragraph 3 shall apply; and
 - b. undertake **training** as specified in paragraph 4.

Public Apology

2. 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 Councillor Gavin Foley 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* when approached several Town employees, gave them directions and engaged in threatening behaviour.
- ii. The Panel found that I breached Regulation 20 and that my conduct was unnecessarily aggressive and demanding in nature.
- i. I acknowledge that I should not have approached any Town employee, given any direction or behaved in a manner considered threatening



and that my conduct fell short of that expected from a local council.

- ii. I now apologise to each Town employee that I approached, the Town administration, my fellow councillors and the public.”

3. If Councillor Gavin Foley fails to, or is unable to, comply with the requirements of paragraph 2 above in the required time frame THEN, within the next **28 days** following the ordinary council meeting referred to in paragraph 2 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 GAVIN FOLEY

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* when approached several Town employees, gave them directions and engaged in threatening behaviour.

The Panel found that I breached Regulation 20 and that my conduct was unnecessarily aggressive and demanding in nature.

I acknowledge that I should not have approached any Town employee, given any direction or behaved in a manner considered threatening and that my conduct fell short of that expected from a local council.

I now apologise to each Town employee that I approached, the Town administration, my fellow councillors and the public.

Training

4. Within 4 months of the date of this Order, Councillor Gavin Foley, a councillor for the Town of Cambridge, shall undertake:
 - a. the training course for Elected Members “*Dealing with Conflict*” provided by WA Local Government Association (WALGA) for a period of no less than 14 hours, attending either in person or via e-learning (if available); or
 - b. a training course with substantially similar learning outcomes provided by an alternative registered training organisation for a period of not less than 14 hours.



Appeal

5. In the event that, prior to the date for compliance with the above Orders, Councillor Gavin Foley:
 - a. commences an appeal of 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 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.”*



Local Government Standards Panel

Complaint Number	20240523
Legislation	<i>Local Government Act 1995</i>
Complainant	Mr Kelton Hincks
Respondent	Councillor Gavin Foley
Local Government	Town of Cambridge
Regulation	Regulation 20(2) <i>Local Government (Model Code of Conduct) Regulations 2021</i>
Panel Members	Ms Emma Power (Presiding Member) Mr Ethan Redshaw (Member) Cr Peter Rogers (Member)
Heard	10 February 2025 Determined on the documents
Finding	3 x Breach Regulation 20(2)

FINDING AND REASONS FOR FINDING

Delivered 17 June 2025

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 10 February 2025, the Panel found that Councillor Gavin Foley, a councillor of the Town of Cambridge ("**the Town**"):
 - a. did not 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**") when he spoke to an employee of the Town attending a traffic incident on 15 November 2024;
 - b. did commit a minor breach pursuant to the Act and regulation 20 of the Regulations when he approached and spoke to a ranger of the Town on 11 November 2024; and
 - c. did not commit a minor breach pursuant to the Act and regulation 20 of the Regulations when he called customer service of the Town in respect to a verge tree and parking on the verge on 11 November 2024; and
 - d. did not commit a minor breach pursuant to the Act and regulation 20 of the Regulations when he took photographs of a Town employee on 22 October 2024,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:

¹ Section 5.106 of the Act.



- 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
 - 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 22 November 2024 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 19 November 2024.
14. In the Complaint of Minor Breach Form the Complainant has alleged that Cr Foley has breached Regulation 20 of the Regulations when he:
 - a. spoke to an employee of the Town attending a traffic incident on 15 November 2024 ("**Allegation 1**");
 - b. approached and spoke to a ranger of the Town on 11 November 2024 ("**Allegation 2**");
 - c. called customer service of the Town in respect to a verge tree and parking on the verge on 11 November 2024 ("**Allegation 3**"); and
 - d. took photographs of a Town employee on 22 October 2024 ("**Allegation 4**"), as further set out in paragraph 17 (together "**the Complaint**").
15. The Panel convened on 10 February 2025 to consider the Complaint.
16. The Panel:

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

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.



- 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 Foley was:
 - i. elected to the Council of the Town in October 2023 for a term expiring in October 2025;
 - ii. a Councillor at the time of the alleged breach; and
 - iii. a Councillor when the Panel met on 10 February 2025;
- b. was satisfied the Complaint was made within six months after the alleged breach occurred⁶;
- 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 breach⁷;
- d. was satisfied the Department had provided procedural fairness to Cr Foley; 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. The Complainant provided an employee’s note regarding Allegation 1 as follows:
 - i. *At approximately 10.15am on the morning of Friday 15 November 2024, I was in attendance at a major traffic accident assisting under the direction of WA Police.*
 - ii. *Our role was to utilise our vehicle with flashing roof lights, hazard lights and headlights to close sections of the road allowing emergency services to attend to a major accident at the intersection of Grantham Street and Selby Street, Wembley.*
 - iii. *During the operation Cr Foley approached me in the intersection and pointed at me whilst saying, “Those vehicles can be turned off, why can’t mine?”. Cr Foley was referring to 2 maintenance vehicles that were in attendance to disconnect power and restore the intersection traffic control lights.*
 - iv. *These vehicles were non operational and did not have running equipment that would require the vehicle to be running to keep the battery charged. I ignored Cr Foleys comments and continued with the role I was directed to undertake by the WA Police.*

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

⁷ Section 5.107 and 5.109 of the Act.



- v. *When Cr Foley departed the Police Officer who I was working closely with asked me, "Who does he think he is walking into the intersection like that?". I never gave the officer any details of the person who was Cr Foley.*
 - vi. *As you are aware this is the second negative and harassing interaction I have been exposed to by Cr Foley in the space of a week.*
 - vii. *I am appalled that a person in such a position has the audacity to interrupt and disrupt my role in a major incident, where life preservation and safety was of the highest order to harass me about an agenda that he wishes to continue with.*
- b. The Complainant provided an employee's note regarding Allegation 2 as follows:
- i. *I am writing to lodge a formal complaint regarding the conduct of Town Councillor, Mr Gavin Foley.*
 - ii. *On Monday 11 November 2024 at 10.40am, I had just completed a patrol of Woolwich Park and surrounding areas in preparation for the Remembrance Day Service that was scheduled to be held at the Leederville Town Hall Memorial, at 11am.*
 - iii. *I returned to my Rangers vehicle, which was parked legally on the Northern side of Cambridge Street adjacent to Woolwich Park West Leederville, and turned the engine on.*
 - iv. *Whilst still parked, I proceeded to update my run sheet with the recent patrol details. I was distracted by an elderly male who was sat on a pushbike on the footpath alongside my passenger window. The male was shaking his head and appeared annoyed or displeased.*
 - v. *I chose to ignore the male and continued updating my run sheet and check emails for any additional tasks. The male then tapped on my passenger window requesting I lower the window. I complied with his request and asked, "How I could be of assistance"? The male pointed at me and said. "Turn off MY engine"! I asked the male to repeat what he was requesting of me, the male repeated, "Turn MY engine off".*
 - vi. *I asked the male to identify himself, to which he replied, "I am a multiple rate payer of this town and that is my vehicle so switch it off"! I chose to not further engage in such behaviour and thanked the male for his time and raised my window to a closed position.*
 - vii. *I continued to go about my business whilst the male moved around my vehicle taking pictures of myself and the Ranger vehicle. The male returned to the passenger window and again tapped on the window, and gestured to lower the window again.*
 - viii. *I lowered the window a safe amount and asked the male, "How can I be of assistance now"? The male pointed at me and announced himself as Councillor Foley and verbalised "I am now in some trouble"!*



- ix. *I raised my window again and the male moved off on his push bike. I attended the Remembrance Day Service held at the Town Memorial with no further interaction with said male.*
- c. The Complainant provided an employee's note regarding Allegation 3 as follows:
 - i. *A bit earlier today, Customer Service out the front, put a call straight through to me and it was Cr Gavin Foley.*
 - ii. *He called regarding a Construction Site at redacted, but neither of the two issues he raised are Compliance concerns.*
 - iii. *Cr Foley would like the following two issues followed up –*
 - A. *Verge Tree (not being looked after / looks dead); and*
 - B. *Builder/contractors are parking on the footpath.*
 - iv. *Please forward his concerns onto Governance for his complaints to go through an EMR and be followed up through the correct channels.*
 - v. *The only "construction" the property has approvals for a few years old – please see below .*
 - vi. *Image supplied but not reproduced here as it contains personal details.*
- d. The Complainant provided an employee's note regarding Allegation 4 as follows:
 - i. *After my lunch break, I went up to do some work in the rose gardens, pulling up next to the garden upon stopping my vehicle I looked up to see a man (who I recognized to be Councillor Foley) was there holding his phone directly at me.*
 - ii. *I then got out and asked him if everything was ok, he ignored me and walked off.*
 - iii. *I felt uncomfortable as I felt like he was taking photos or filming me.*
- 18. The Complainant also provided a list of further incidents involving Cr Foley not being the subject of the Complaint.

The Respondent's Response

- 19. By an email dated 18 December 2024, Cr Foley provided a response to the Complaint.
- 20. Cr Foley denies that he had made any minor breach.
- 21. Cr Foley provided the following comments and arguments regarding the Complaint as summarised by the Panel:
 - a. The Complainant was seen numerous times breaking the law and transgressing the inept training that he would/should have received as an employee of the Town. It is in his best interests to embellish the truth in his favour. There is a modicum of truth in his statement but it is far from what actually happened.



- b. Cr Foley does not accept that he committed the alleged conduct as detailed in the Complaint and proof positive should be required for the Complainant's case to be made in his favour.

REGULATION 20

22. 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.”*

23. To make a finding of a minor breach of regulation 20(2)(a) of the Regulations the Panel must be satisfied that it is more likely than not that:

- a. Cr Foley was a councillor at the time of the alleged breach;



- b. Cr Foley gave or tried, or made an effort, to give a direction, order or command to another person to do or not to do something in the other person's capacity as a local government employee;
 - c. the direction, order or command was to a local government employee as defined in regulation 20(1) of the Regulations; and
 - d. the direction, order or command was not part of anything that the councillor did as part of the deliberations at a council or committee meeting.
24. To make a finding of a minor breach of regulation 20(2)(b) of the Regulations the Panel must be satisfied that it is more likely than not that:
- a. Cr Foley was a councillor at the time of the alleged breach;
 - b. Cr Foley tried or made an effort to affect, sway or produce an effect on the conduct of a local government employee in their capacity as a local government employee; and
 - c. Cr Foley's effort to affect, sway or produce an effect was carried out by means of either:
 - i. a threat by Cr Foley; or
 - ii. a promise of reward by Cr Foley.
25. For the purposes of Regulation 20(2)(b):
- a. a threat by a Councillor is a declaration of an intention to inflict punishment, pain or loss on, or to take any action detrimental or unpleasant to, the employee (or on someone, or to something, that the employee cares about) in retaliation for, or conditionally upon, some action or course;
 - b. a promise of a reward is a promise or undertaking by the Councillor to give the employee something having a value, or to do or not do something where the act or omission concerned has some value or advantage for or to the employee; and
 - c. a threat or a promise of reward may be made expressly or by implication.
26. To make a finding of a minor breach of regulation 20(2)(c) of the Regulations the Panel must be satisfied that it is more likely than not that:
- a. Cr Foley was a councillor or a candidate at the time of the alleged breach;
 - b. Cr Foley acted in an abusive or threatening manner; and
 - c. the conduct was towards a local government employee as defined in regulation 20(1) of the Regulations.
27. In respect to whether conduct is "*abusive or threatening*" the definitions of "abusive" and "threatening" are respectively as follows:
- "Abusive:**
- 1. *a. using harsh, insulting language*
b: harsh and insulting



c: using or involving physical violence or emotional cruelty

2. *characterized by wrong or improper use or action⁸*

“Threatening

1. *expressing or suggesting a threat of harm, danger, etc.*
2. *indicating or suggesting the approach of possible trouble or danger⁹*

PANEL’S CONSIDERATION

ALLEGATION 1 - Regulation 20(2)(a)

28. The Panel considers that Allegation 1 relates to giving a Town employee a direction, order or command and therefore has considered Regulation 20(2)(a) in this case.

Cr Foley was a Councillor at the relevant times

29. Cr Foley was a councillor at the time of the conduct and at the time the Panel considered the matter.
30. This element is met.

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

31. The Complainant alleges that Cr Foley gave a direction to a Town employee by asking him repeatedly to turn off a Town maintenance vehicle when he was attending a traffic incident.
32. The Panel has reviewed the relevant employee note and does not characterise Cr Foley’s interaction or comments as providing a direction to a Town employee as it was not a demand or requirement, but was more in the nature of a complaint.
33. This is not to say that Cr Foley’s actions were appropriate.
34. He should certainly not have approached the Town employee whilst he was undertaking his role in a potentially dangerous situation.
35. Further, if Cr Foley has an issue with any policy as to the use of Town maintenance vehicles in the field, this is a matter that Cr Foley may bring up before Council.
36. Even if the employee was not complying with a policy of the Town, is not the role of any elected member to monitor employees for compliance or enforce compliance.

⁸ “Abusive.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/abusive>. Accessed 7 May. 2021.

⁹ “Threatening.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/threatening>. Accessed 7 May. 2021.



Cr Foley should not be harassing Town employees who are merely trying to undertake their job.

37. As such, Allegation 1 would be more appropriate to be made under Regulation 18 or 19 as it appears to involve Cr Foley improperly interfering in, and involving himself in, administrative issues.

38. This element is not met.

The direction, order or command was made towards a Local Government Employee

39. The comments were made to a Town employee who is a Government Employee as defined in Regulation 20(1).

40. This element is met.

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

41. As the Panel has found that no “direction, order or command” was made. It is not necessary to further consider this element.

Conclusion

42. The elements required to find a breach of regulation 20(2)(a) of the Regulations have not been met.

ALLEGATION 2 - Regulation 20(2)(a), Regulation 20(2)(b), Regulation 20(2)(b)(c)

43. The Panel considers that Allegation 2 relates to each of Regulation 20(2)(a), Regulation 20(2)(b) and Regulation 20(2)(b)(c).

Allegation 2 - Regulation 20(2)(a)

Cr Foley was a Councillor at the relevant times

44. Cr Foley was a councillor at the time of the conduct and at the time the Panel considered the matter.

45. This element is met.

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

46. The Complainant alleges that Cr Foley gave a direction to “*Turn off MY engine*” a number of times using slightly different wording each time.

47. The Panel characterises Cr Foley’s interaction as providing a direction to a Town employee.

48. This element is met.

The direction, order or command was made towards a Local Government Employee



49. The comments were made to a Town employee who is a Government Employee as defined in Regulation 20(1).

50. This element is met.

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

51. In this case it is clear that Cr Foley independently approached the employee and that the interaction was not in any manner related to part of deliberations at a Council or Committee meeting, but was rather an issue being independently pursued by Cr Foley.

52. This element is met.

Conclusion

53. The elements required to find a breach of regulation 20(2)(a) of the Regulations have been met.

Allegation 2 - Regulation 20(2)(b)

Capacity of Cr Foley as Councillor or a Candidate

54. Cr Foley was a councillor at the time of the conduct and at the time the Panel considered the matter.

55. This element is met.

Cr Foley made an effort to affect, sway or produce an effect on the conduct of a local government employee in their capacity as a local government employee

56. As found above, it was clear that Cr Foley was attempting to give a direction to the relevant employee [being a Government Employee as defined in Regulation 20(1)] to turn off the engine of his ranger vehicle.

57. The Panel is satisfied that the comments were made by Cr Foley with the intent to persuade the employee that he should turn off the vehicle engine.

58. Given the above, the Panel finds that Cr Foley did make an effort to affect, sway or produce an effect on the conduct of a local government employee.

59. This element is met.

The effort was made by means of a promise of reward or by way of a threat

60. There is no allegation of any promise of a reward in this case.

61. The Complainant alleges that Cr Foley stated that he was "*now in some trouble*" after identifying himself as a local councillor of the Town.

62. The Panel can only reasonably characterise this action as a threat being that (as the employee had not complied with, or indicated he would not comply with, Cr Foley's demands) Cr Foley intended to use his position as a local councillor to make some kind of trouble for the employee in respect to his employment with the Town.



63. This element is met.

Conclusion

64. The elements required to find a breach of regulation 20(2)(b) of the Regulations have been met.

Allegation 2 – Regulation 20(2)(c)

Capacity of Cr Foley as Councillor

65. Cr Foley was a councillor at the time of the conduct and at the time the Panel considered the matter.

66. This element is met.

Cr Foley acted in an abusive or threatening manner

67. In this case Cr Foley:

- a. approached a Town employee while sitting in his vehicle and knocked on his window;
- b. pointed his finger at the employee;
- c. took multiple pictures of the employee and their vehicle;
- d. made demands of the employee; and
- e. threatened the employee with adverse consequences due to the employee's failure to comply with his demand.

68. The Panel considers to the required standard, in the absence of Cr Foley providing an alternative explanation, that the employee's statement of events is accurate.

69. The Panel characterises such conduct to be reasonably considered threatening to the employee as:

- a. the employee did not know Cr Foley in his capacity as a local councillor;
- b. the physical actions of Cr Foley (i.e. pointing and knocking on the window multiple time) could reasonably be considered aggressive by an objective person;
- c. employees undertaking work in public must necessarily be aware of their safety where members of the public, who they do not know, may approach them in a confrontational or belligerent manner; and
- d. the conduct of such parties may be unpredictable and it is reasonable for employees of local governments to feel threatened in those kinds of circumstances.

70. Cr Foley was not politely approaching the employee to raise a legitimate concern or ask a question. The approach was unnecessarily aggressive and demanding in nature.



71. The wording of the employee note also clearly indicates that the employee was somewhat worried for his safety in the situation.
72. In this case the Panel has not been provided any evidence that would characterise the conduct as abusive.
73. The Panel therefore finds that it is more likely than not that Cr Foley acted in a threatening manner.
74. This element is met.

The conduct was towards a local government employee

75. The interaction was with a Town employee who is a Government Employee as defined in Regulation 20(1).
76. This element is met.

Conclusion

77. The elements required to find a breach of regulation 20(2)(c) of the Regulations have been met.

ALLEGATION 3 - Regulation 20(2)(a)

78. The Panel considers that Allegation 3 relates to giving a Town employee a direction, order or command and therefore has considered Regulation 20(2)(a) in this case.

Cr Foley was a Councillor at the relevant times

79. Cr Foley was a councillor at the time of the conduct and at the time the Panel considered the matter.
80. This element is met.

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

81. The Complainant alleges that Cr Foley gave a direction to a Town employee by when he rang customer service, was put through to a compliance officer, and made a complaint regarding a verge tree and parking of builders/contractors on a footpath.
82. The relevant employee note states that:
 - a. the matter was not a compliance matter; and
 - b. requests that the same be forwarded to Governance for follow up through the correct channels.
83. The Panel cannot establish from the evidence provided:
 - a. whether Cr Foley asked to be directed to compliance;
 - b. exactly what was said by Cr Foley; or



- c. what task Cr Foley actually requested the relevant employee do or whether any particular outcome was requested.
84. There is no assertion that Cr Foley asked for any particular action to be undertaken by the employee who took the call, but rather was making a complaint about matters within the Town's power to address (i.e. verge issues).
85. Whether Cr Foley is a local councillor or not, as a ratepayer he is entitled to bring such issues to the notice of the Town and ask they be dealt with via the correct procedure. That is the appropriate manner for a resident to raise an issue with the Town.
86. It is not unreasonable to expect, or request that, that if a party contacts (or is directed to) the incorrect department of the Town, that their request/complaint be internally passed on to the correct department.
87. The Panel finds to the required standard that Cr Foley's interaction was not providing a direction to a Town employee.
88. This element is not met.

The direction, order or command was made towards a Local Government Employee

89. The comments were made to a Town employee who is a Government Employee as defined in Regulation 20(1).
90. This element is met.

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

91. As the Panel has found that no "direction, order or command" was made. It is not necessary to further consider this element.

Conclusion

92. The elements required to find a breach of regulation 20(2)(a) of the Regulations have not been met.

ALLEGATION 4 - Regulation 20(2)

93. In respect to Allegation 4, it is unclear which sub-regulation the Complainant considers the allegation should properly fall under.
94. The allegation is that Cr Foley took photos of video of the relevant employee.
95. However, there is no allegation of:
 - a. any direction occurring;
 - b. any attempt to influence a government employee by Cr Foley; or
 - c. any abusive or threatening conduct by Cr Foley;
96. As such, the Panel finds to the required standard that the elements of a minor breach under Regulation 20(2) cannot be met.



97. If the matter is something the Town considers would subject it to a claim as to creating a hostile work environment, that is an internal matter for the Town, not a minor breach matter for the Panel to decide.

Conclusion

98. The elements required to find a breach of regulation 20(2) of the Regulations have not been met.



PANEL'S FINDINGS

99. With respect to Allegation 1, Cr Foley did not commit a breach of Regulation 20(2)(a) of the Regulations and therefore did not commit a minor breach.
100. With respect to Allegation 2:
- a. Cr Foley did commit a breach of Regulation 20(2)(a) of the Regulations and therefore did commit a minor breach;
 - b. Cr Foley did commit a breach of Regulation 20(2)(b) of the Regulations and therefore did commit a minor breach; and
 - c. Cr Foley did commit a breach of Regulation 20(2)(c) of the Regulations and therefore did commit a minor breach.
101. With respect to Allegation 3 Cr Foley did not commit a breach of Regulation 20(2)(a) of the Regulations and therefore did not commit a minor breach.
102. With respect to Allegation 4 Cr Foley did not commit a breach of Regulation 20(2)(a) of the Regulations and therefore did not commit a minor breach.

Signing

Ethan Redshaw (Deputy Member)

Emma Power (Member)

Peter Rogers (Member)