LOCAL GOVERNMENT STANDARDS PANEL

Established under section 5.122 of the *Local Government Act 1995* (WA)

Complaint Number	SP 50 of 2015 [DLG 20150258]
Legislation	*Local Government Act 1995*
Complainant	**Councillor Roger Le-Maître**
Subject of complaint	**Councillor Fred Spindler**
Local Government	**Shire of Cue**
Regulation	Regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007*
Panel Members	Mr B Jolly (Presiding Member) Councillor P Kelly (Member) Ms M Strauss (Member)
Sanction Decision	Public censure (Determined on the documents)
Date of Sanction Decision	22 November 2016

SANCTION DECISION AND REASONS FOR DECISION

Published 07 December 2016

Finding of Minor Breach – regulation 7(1)(b)

1. On 2 August 2016, the Local Government Standards Panel (the Panel) found that Councillor Fred Spindler, a council member for the Shire of Cue (the Shire), committed a minor breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007.*

2. The Panel found that Cr Spindler breached regulation 7(1)(b) by making statements that were later published on the front page of the newspaper circulating in the Shire, the Midwest Times. The statements concerned a Council decision on 17 February 2015 to approve a budget variation allowing $15,000 to be spent on a "water feature" for the house of the then chief executive officer (CEO).

3. At a councillors' forum on 25 August 2015 the complainant in this matter, Councillor Roger Le-Maitre, the Shire President at the time, advised Cr Spindler and other councillors that the "water feature" approved on 17 February 2015 was to be a spa. Just after ABC News reported on the issue on 5 October 2015 the Midwest Times reported that "Cr Spindler … who voted in favour of the water feature said (he was) irate about the decision, and suggested (he was) deceived by the wording in the appendix", being the appendix to the agenda for the 17 February 2015 meeting.

4. On 30 August 2016 the Panel published its Reasons for finding that Cr Spindler breached regulation 7(1)(b), (the Reasons) by telling the Midwest Times that he was irate about the decision, and had that he had been deceived by the wording in the appendix. The Panel found that Cr Spindler intended to cause detriment to the CEO, other Shire officers and the local government.

Possible sanctions

5. Under section 5.110(6) of the *Local Government Act 1995* (WA) (the Act) the Panel may:

> *(a) dismiss the complaint;*
>
> *(b) order that the councillor —*
>
> > *(i) be publicly censured as specified in the order;*
> >
> > *(ii) apologise publicly as specified in the order; or*
> >
> > *(iii) undertake training as specified in the order;*
> >
> > *or*
>
> *(c) order 2 or more of the sanctions described in paragraph (b).*

Councillor's submission

6. If the Panel finds that a councillor has committed a minor breach, the Panel must give the councillor an opportunity to make submissions to the Panel about how the breach should be dealt with.[1]

[1] Section 5.110(5) of the Act.

7. By letter dated 30 August 2016, the Department notified Cr Spindler of the Panel's finding, sent him a copy of the Reasons and invited him to make a written submission about how the Panel should deal with the breach.

8. On 6 October 2016, a Department officer telephoned Cr Spindler to ask whether he intended to provide a written submission on how the Panel should deal with the breach.

9. The Department officer made this file note of the conversation:

> "Called Cr Fred Spindler 1140 hrs on 6 October 2016.
>
> Asked if he intended to respond to the Findings of the Local Government Standards Panel that he received by registered post on 8 September 2016.
>
> The Panel found Cr Spindler committed a minor breach with respect to SP 50 of 2015. The Panel's findings were communicated to him in that correspondence package.
>
> Cr Spindler reiterated his position that, in his view, the former Shire of Cue CEO misled the Council over the spa bath/ bird bath issue.
>
> Whilst Cr Spindler seemed confused over the overall process in dealing with the minor breach complaint, he referred to the content of the letter in which he was advised that the Panel will deal with the breach by either sanctioning a public apology, a public censure, training or dismissing the complaint. Cr Spindler referred to the potential sanctions twice during the conversation demonstrating his knowledge of the correspondence.
>
> I stated that whether he responds or not is a matter for him, however the Panel needs to know if he actually intended to respond.
>
> Whilst he erroneously referred to the prospect of prosecution or fines, a view that I corrected, he referred to another elected member having to make an apology over the matter and stated he wanted letters sent to the CEO and Shire President over the Panel's findings. I advised this would not occur because 1) the matter is not finalised yet and 2) the Shire President is not a party to the complaint.
>
> Whilst at first he said he wanted to consult with the Shire President before making a response, I questioned him as to the value this would provide to him given that he was being asked for a submission on a sanction. He then changed his mind and stated that he would not provide a response and that "this" (being his statement over the phone) was his response and would not be publically apologising over the matter; considered the matter to be 'double jeopardy' and not appropriate; and that as he was 77 years old had had enough and would not be contesting the next local government election."

10. Cr Spindler did not provide a written response.

Panel's consideration

11. The complaint against Cr Spindler was initiated with complaints against two other Shire councillors arising out of the same alleged circumstances. Cr Roger Le-Maître alleged that the three councillors breached regulation 7(1)(b) by making statements attributed to all three in an article on the front page of the Midwest Times.

12. When the Panel considered the other complaints at its meeting on 21 December 2015 Cr Spindler was no longer a Shire councillor. The Panel determined that it did not have jurisdiction to consider the complaints against Cr Spindler unless and until he was re-elected as local government councillor.

14. At its meeting on 2 August 2016 the Panel considered the complaint against Cr Spindler as he had been re-elected as a Shire councillor on 8 April 2016.

15. The Department has advised the Panel that there is no available information to indicate that Cr Spindler is no longer a member of Council.

16. In its Reasons the Panel said:

> "30. In his Response to the Complaint Cr Spindler didn't deny that he told the Midwest Times he was irate about the Council's decision to approve the revised budget, or that he told the Midwest Times that had been deceived by the wording in Appendix 8. In his Response Cr Spindler said he still felt councillors were deceived by Cr Le-Maitre and the CEO.
>
> …
>
> 44. Cr Le-Maitre held the senior position of Shire President. After receiving notice in the email dated 21 August that Cr Spindler thought the spa was extravagant, a luxury and a "costly pleasure", Cr Le-Maitre told Cr Spindler (in his email dated 22 August) that he, Cr (Spindler), was obliged to support the Council's decision to approve the spending.
>
> 45. Cr Spindler did not apparently take any notice of Cr Le-Maitre's advice that it was inappropriate to complain about the $15,000 allowance. Cr Spindler knew or should have known that he could only seek to change the decision by taking it back to the Council for a revocation or amendment. However, Cr Spindler did not do this and challenged the decision and the decision-making process over one month later in the media.
>
> 46. When telling the Midwest Times that he was irate and had been deceived, Cr Spindler used his position of councillor contrary to his duty (under the Act and the Shire's Code of Conduct) to be faithful to Council decisions. A reasonable person reading the Article would be likely to think poorly of the CEO, Shire officers and the local government as a whole. The Panel finds that Cr Spindler used his office to cast doubt on the integrity of the CEO and the other Shire officers, and did not act in the interests of the local government, thereby using his office improperly.
>
> **…**
>
> 51. A councillor can express disappointment in the media about a decision, but Cr Spindler went well beyond that – he breached his fiduciary duty to the Council and the local government by reflecting adversely on the character and actions of Shire officers.[2]

[2] *Treby and Local Government Standards Panel* [2010] WASAT 81, paragraph 56.

52. Cr Spindler spoke to the Midwest Times more than seven months after the OCM. There can be no doubt that he had time to carefully consider whether he should seek to revoke or change the decision through the proper channels.

53. The Panel finds that Cr Spindler made a deliberate choice to speak to the media and to use the words attributed to him.

54. It was clear from the information available to the Panel that Cr Le-Maitre was in favour of improving the CEO's accommodation to attract applicants for the position and to encourage any CEO that might be appointed to stay in the job. It was more likely than not that any reasonable person reading the article could doubt the integrity and professionalism of Cr Le-Maitre, the CEO, Shire staff and perhaps other councillors who voted for the $15,000 allowance.

55. The Panel is satisfied that by telling the Midwest Times that he was irate and that he had been deceived, Cr Spindler intended to cause detriment to the CEO and other Shire officers by implying they lacked integrity. The Panel is also satisfied that Cr Spindler intended to cause detriment to the local government by casting a shadow over its ability to run proper decision-making processes and to make decisions that are good for the community."

17. The Panel has no reason to doubt that the Department officer's notes accurately reflect the content of the telephone conversation on 6 October 2016 and that Cr Spindler wanted the Panel to treat his comments in that telephone call as his only comments on sanction.

18. In considering the appropriate sanction the Panel notes that:

- Cr Spindler has not committed any previous minor breaches;
- Cr Spindler spoke to the Midwest Times more than seven months after the Council's water feature/spa decision, and one month after Cr Le-Maitre's warning that he had plenty of time to consider the circumstances and what he might say in public, if anything;
- on 6 October 2016 Spindler reiterated his view that the chief executive officer had misled the Council; and
- on 6 October 2016 Cr Spindler said he would not be publicly apologising over the matter.

19. The Panel concludes that Cr Spindler does not acknowledge or respect the Panel's finding that he breached regulation 7(1)(b).

20. It is not appropriate to dismiss the breach. This would condone Cr Spindler's conduct and trivialise the breach.

21. Neither is it appropriate to order that Cr Spindler undergo training, as Cr Spindler does not accept he has done anything wrong and would be unlikely to fully engage in training or seek to learn more about the standards of conduct expected of councillors.

22. Cr Spindler has said he will not apologise, so the Panel's view is that even if Cr Spindler complied with a public apology order, the apology would not be sincere.

23. The Panel considers the only appropriate sanction is that Cr Spindler be publicly censured.

Panel's decision

24. The Panel's decision on how the minor breach is to be dealt with under section 5.110(6) is that Cr Spindler be publicly censured under section 5.110(6)(b)(i), as set out in Attachment A hereto.

Brad Jolly (Presiding Member)

Paul Kelly (Member)

Merranie Strauss (Member)

Date of Reasons – 07 December 2016

Attachment A

LOCAL GOVERNMENT STANDARDS PANEL

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SANCTION ORDER

Published 07 December 2016

THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Mr Fred Spindler, Councillor of the Shire of Cue, be censured as specified in paragraph 2 below.

2. Within the period of 29 days to 43 days from the day following the date of service of this Order on Cr Fred Spindler, the Chief Executive Officer of the Shire of Cue arrange for the following Notice of Public Censure to be published, in no less than 10 point print:

   (a) as a one-column or a two-column display advertisement in the first 15 pages of "The West Australian" newspaper; and

   (b) as a one-column or a two-column display advertisement in the first 15 pages of the " Midwest Times" newspaper.

NOTICE OF PUBLIC CENSURE

The Local Government Standards Panel (the Panel) has found that Councillor Fred Spindler committed a breach of regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* by making statements that were published in the Midwest Times newspaper on or about 5 October 2015, concerning a Council decision about a budget item at an ordinary council meeting on 17 February 2015, intending to cause detriment to the chief executive officer, other Shire officers and the Shire.

The Panel censures Councillor Spindler for the breach of regulation 7(1)(b).

LOCAL GOVERNMENT

STANDARDS PANEL