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**JURISDICTION** : STATE ADMINISTRATIVE TRIBUNAL

**ACT** : LOCAL GOVERNMENT ACT 1995 (WA)

**CITATION** : KING and LOCAL GOVERNMENT STANDARDS  
PANEL [2018] WASAT 42

**MEMBER** : DEPUTY PRESIDENT, JUDGE SHARP

**HEARD** : 31 JANUARY 2018

**DELIVERED** : 7 JUNE 2018

**FILE NO/S** : DR 186 of 2017

**BETWEEN** : TRACEY KING  
Applicant

AND

LOCAL GOVERNMENT STANDARDS PANEL  
Respondent

ATTORNEY GENERAL FOR WESTERN  
AUSTRALIA  
Intervenor

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*Catchwords:*

Local government - Rules of conduct - Minor breaches - Standards of behaviour expected of a council - Improper use of office - Whether intended to cause detriment - Appropriate sanction for minor breach of *Local Government Act 1995* (WA) - Breach of reg 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) - Public apology

*Legislation:*

*Local Government (Rules of Conduct) Regulations 2007 (WA), reg 7(1),  
reg 7(1)(b)*

*Local Government Act 1995 (WA), s 5.103, s 5.104, s 5.105(1), s 5.106, s 5.110,  
s 5.110(6), s 5.110(6)(b), s 5.125*

*Result:*

Decision of the Local Government Standards Panel varied as to penalty but otherwise affirmed

*Category:* B

**Representation:**

*Counsel:*

Applicant : Mr J Burton  
Respondent : Mr W Fitt  
Intervenor : Mr W Fitt

*Solicitors:*

Applicant : Spyker Legal  
Respondent : State Solicitor's Office  
Intervenor : State Solicitor's Office

**Case(s) referred to in decision(s):**

Hipkins and Local Government Standards Panel [2014] WASAT 48  
Treby and Local Government Standards Panel (2010) 73 SR (WA) 66;  
[2010] WASAT 81

**REASONS FOR DECISION OF THE TRIBUNAL:**

***Introduction***

1 Ms Tracey King (**applicant**) was until October 2017 a member of the Council of the Town of Cambridge (**Town**). On 11 April 2017 the Local Government Standards Panel (**respondent**) found that the applicant had committed two minor breaches under the *Local Government Act 1995* (WA) (**LG Act**) by breaching reg 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) (**Regulations**). The respondent's findings relate to remarks made in a letter that the applicant, signing as a 'Cambridge councillor', wrote to the Subiaco Post concerning the Town's Mayor, Keri Shannon, and Councillor Andres Timmermanis.

2 The respondent on 11 August 2017 ordered under s 5.110(6)(b) of the LG Act that the applicant make a public apology at a meeting of the Council.

3 The applicant seeks a review by the Tribunal under s 5.125 of the LG Act of both the respondent's finding that the minor breaches of the LG Act had occurred and the penalty which the respondent imposed.

4 At the hearing before the Tribunal on 31 January 2018, the applicant was represented by Mr J Burton of Spyker Legal. The respondent was represented by Mr W Fitt of the State Solicitor's Office. The intervenor was the Attorney General of Western Australia (**intervenor**), for whom Mr Fitt also appeared.

5 The respondent did not take an active role in the proceedings, for reasons which the respondent gave and which were accepted by the Tribunal. The Tribunal was assisted by the intervention of the intervenor who acted as a contradictor in the proceeding.

6 Counsel for the intervenor called Mayor Shannon who gave written testimony (**Exhibit 1**). This witness was cross-examined by counsel for the applicant. The applicant also filed a witness statement (**Exhibit 2**) and she was cross-examined by counsel for the intervenor.

7 The applicant tendered a photocopy of a press release entitled 'Cambridge CEO censure falls flat' (**Exhibit 3**) and an article 'King pinged over letter to POST' (**Exhibit 5**). Her section 24 bundle of documents is Exhibit 4 (**Exhibit 4**).

8 Exhibit 7 is the respondent's bundle of documents (**Exhibit 7**),  
excluding the audio recording referred to later in these reasons.  
However, the respondent also tendered separately a document which  
forms part of Exhibit 7. Specifically, the respondent tendered a copy of  
the letter written by the applicant to the editor of the Subiaco Post  
newspaper (**Letter**) which was marked as Exhibit 6.

9 The parties also jointly filed a transcript of an audio recording of  
part of what Councillor Timmermanis said at an ordinary Council  
meeting held on 23 August 2016 (**Exhibit 8**).

***Relevant Facts***

10 The following facts are agreed between the parties. They are  
uncontroversial and the Tribunal makes these findings of fact.

11 The applicant was elected a council member of the Town on  
17 October 2009 and remained an elected member of the Town until  
October 2017. The applicant attended an ordinary meeting of the Town  
Council on 23 August 2016 (**Council meeting**).

12 The Council meeting was presided over by Mayor Shannon.  
Councillor Timmermanis also attended the Council meeting.

13 At the Council meeting Councillor Timmermanis moved a  
motion (agenda item 12.2) in the terms set out in the minutes of the  
Council meeting (Exhibit 7 pages 22-23), with respect to  
commemorative plaques. The debate on the motion was audio  
recorded.

14 Exhibit 8, the transcript of the partial audio recording from the  
Council meeting, reads as follows, and, although it is not apparent from  
the transcript, it is not disputed that some of what Councillor  
Timmermanis said was delivered at the Council meeting as a 'rap':

Thank you Madam Mayor. Look, back when Mark Wahlberg was  
Marky Mark, now this is how a discussion about plaques would start.  
You would get a bunch of councillors that think they are smart. And a  
mayor and a CEO trying to make their mark, and then with them all in  
they would start looking for a wall or maybe then, maybe a park, and  
my prediction is they would make the call, for this special plaque to be  
on a lobby or a community hall. Which is not a sound process, Your  
Worship, for commemorating our significant public facilities, and as  
noted in the report we have no policy. There's a reference to a past  
practice, but as we saw in November I believe you know past practice

can also be modified on an ad hoc basis as well, without having a policy to refer to.

So, just endeavouring to clarify that, and I've got quite a traditionalist view of these things, I know in the modern world with kids getting participation certificates for showing up and smiling nicely that there is this sort of everyone wins a prize mentality. Which has infected public life and I stand here very proudly that I think one of my first acts as a Councillor was to declare that under no circumstances should my name ever appear on a plaque in the facility of the Town of Cambridge 'cause I wasn't elected here to get my name on plaques. There is other reasons and I wanted to share the warm feeling I get every time I walk past one of those facilities where my name is not on the plaque, and I just look at that and I go, 'people will not be looking at me, my name there going, gee he must have you know have thought he was pretty cool to want his name there when really he didn't have a whole heap to do with the process'.

So I thought it very appropriate to really just narrow it down to the people that matter. I know you as the current Mayor you'd probably be embarrassed about having your name there, you're not someone who seeks that kind of recognition, but your role is important and I think rightly recognised on those. As are the other identities that I've developed and I've specifically selected them because they're likely to be involved in any major facility warranting a plaque. Clearly there's some funding organisations that will specify you know recognition through their contributions so I think it's appropriate that they're there, as of course any private benefactor who makes a significant contribution who wishes to be recognised. Many are quite happy to be anonymous in the background. The name, date of opening, perhaps the architect or builder who has had a creative role in finalising those things, but really, everyone else they've just performed a job that they get paid for. They're not essential to that particular thing being created and you know I think it just really tightens that up and just gets the significant information on there that people do like to look at and I do like to go to sites and look at the plaques and that's what I look for and really see a collection of names on there, at best it's a curiosity.

So I think it's just a policy to tighten that up, give some clear direction so we don't have to have these unseemly discussions about who's in and who isn't, who likes who and who isn't, because they are important and you know I - we've got a lot of plaques around the town. There's some on a tree down at Perry Lakes and you know I thought that interesting because if you grow up in Western Australia it's pretty clear which names should be at the base of trees in our public areas and generally they're people who've served the country and died, just not people who have just been around in some other role for a little while. So I think it's to enhance the status of the plaque, make them more important things that go on buildings because there needs to be a particular status attached to the people on them and really those that are just

functionaries in the process don't really require particular recognition. It's just the community leaders and other significant people in the actual creation and resourcing of that building. So with that I'd ask people to support it so we have a policy.

15 The motion was lost. At the Council meeting, the applicant raised a point of order concerning Councillor Timmermanis' statement. Mayor Shannon made a ruling that Councillor Timmermanis' conduct at the meeting did not breach the *Standing Orders Local Law 2007* adopted by the Town (Exhibit 7, pages 58-84).

16 After the Council meeting, and prior to 3 September 2016, the applicant sent the Letter to the Subiaco Post newspaper. It was subsequently published on 3 September 2016, under the headline 'No rap at Cambridge, thanks'.

17 The text of the Letter is as follows:

The conduct of recently elected councillor Andres Timmermanis and mayor Keri Shannon at this week's full Cambridge council meeting was, in my opinion, yet another demonstration of inept diplomacy and lack of respect.

Councillors and the administrative staff cringed during the meeting as Mr Timmermanis presented a feeble attempt at a rap song to debate his motion on commemorative plaques.

Then he proceeded to make a mockery of the council's standing orders as he continued with adverse reflections of current and past councillors.

It's about time Ms Shannon stepped up and showed her community that she can capably chair meetings, address poor behaviour in the chamber and build a positive relationship with the council and the administration.

Tracey King  
Cambridge councillor  
Gregory Street, Wembley

18 On 20 October 2016, the Chief Executive Officer of the Town, Mr Jason Buckley, sent a complaint from Mayor Shannon to the respondent, alleging that the applicant had committed a breach of reg 7(1) of the Regulations.

19 The applicant submits that the following further facts are also relevant to the proceeding:

- 1) On 16 May 2016, the applicant wrote to the Department of Local Government and Communities (**Department**) setting out concerns regarding the conduct of the Mayor and her relationship with the CEO of the Council (Exhibit 4, applicant's bundle, pages 2-3).
- 2) The applicant contends that the Council meeting lasted more than 5 hours. It commenced at 6.02pm and concluded at 11.07pm. During the debate regarding commemorative plaques, which lasted 26 minutes, Councillor Rod Bradley spoke for approximately 5 minutes on items unrelated to the debate without being called to order.
- 3) Previous council meetings, presided over by the Mayor, regularly lasted upwards of 4 or 5 hours in length (Exhibit 4, applicant's bundle, page 1).
- 4) At a council meeting the following week, on 30 August 2016, and following a motion regarding a rezoning amendment, Councillor Timmermanis stated 'this debate has had more twists and turns than a game of Twister at a swinger's party'.

20            These facts are not disputed by the respondent and are consistent with the evidence before the Tribunal. Accordingly, the Tribunal also makes these further findings of fact.

***The issues***

21            The parties agree that the issues to be determined by the Tribunal are as follows:

- First, whether the applicant was a council member at all material times.
- Second, whether the applicant sent the Letter to the Subiaco Post on 3 September 2016 under the headline 'No rap at Cambridge, thanks'.
- Third, if the second issue is answered in the affirmative, whether the sending of the Letter by the applicant constituted an improper use of her office as a council member.

- Fourth, if the third issue is answered in the affirmative, whether the sending of the Letter was intended to cause detriment to Mayor Shannon or to Councillor Timmermanis.
- Fifth, if the fourth issue is answered in the affirmative, how the applicant's breach of reg 7(1) of the Regulations should be dealt with under s 5.110(6) of the LG Act.

The Tribunal agrees with the parties that these are the issues to be determined.

***The relevant statutory provisions***

22 Section 5.103 of the LG Act provides as follows:

**5.103. Codes of conduct**

- (1) Every local government is to prepare or adopt a code of conduct to be observed by council members, committee members and employees.
- (2) deleted
- (3) Regulations may prescribe codes of conduct or the content of, and matters in relation to, codes of conduct and any code of conduct or provision of a code of conduct applying to a local government under subsection (1) is of effect only to the extent to which it is not inconsistent with regulations.

23 Section 5.104 of the LG Act enables regulations to be made prescribing rules of conduct for council members:

**Other regulations about conduct of council members**

- (1) Regulations may prescribe rules, to be known as the rules of conduct for council members, that council members are required to observe.

24 Section 5.105(1) of the LG Act provides:

**Breaches by council members**

- (1) A council member commits a minor breach if he or she contravenes -
  - (a) a rule of conduct under section 5.104(1); or
  - (b) a local law under this Act, contravention of which the regulations specify to be a minor breach.

25 Section 5.106 of the LG Act outlines that the standard of proof in relation to findings of a breach is that it is more likely that the breach occurred than it did not occur.

26 Section 5.110 of the LG Act provides that the Standards Panel may deal with a minor breach in the following manner:

**Dealing with complaint of minor breach**

(1) The member of the primary standards panel who receives a complaint from a complaints officer under section 5.107(3)(c), 5.108(2)(c) or 5.109(1)(c) is to -

- (a) allocate that complaint to a standards panel; and
- (b) send the complaint and anything received from the complaints officer to the member of that standards panel who is appointed under Schedule 5.1 clause 2(a).

(2) After receiving a complaint allocated to it under subsection (1), a standards panel is required to -

- (a) make a finding as to whether the breach alleged in the complaint occurred; or
- (b) send the complaint to the Departmental CEO under section 5.111.

...

(6) The breach is to be dealt with by -

- (a) dismissing the complaint; or
- (b) ordering that -
  - (i) the person against whom the complaint was made be publicly censured as specified in the order; or
  - (ii) the person against whom the complaint was made apologise publicly as specified in the order; or
  - (iii) the person against whom the complaint was made undertake training as specified in the order;

or

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

27 Regulation 7(1) of the Regulations provides:

**Securing personal advantage or disadvantaging others**

- (1) A person who is a council member must not make improper use of the person's office as a council member -
  - (a) to gain directly or indirectly an advantage for the person or any other person; or
  - (b) to cause detriment to the local government or any other person.

28 Clause 1.1 of the Town of Cambridge Code of Conduct for Council Members, Committee Members and Staff (**Code of Conduct**) relevantly provides that a role of a Council Member is to provide leadership and guidance to the community in the district.

29 Clause 4 of the Code of Conduct provides as follows:

4. CONDUCT OF COUNCIL MEMBERS, COMMITTEE MEMBERS AND STAFF

Personal Behaviour

- (a) Council Members, Committee Members and staff will:-
  - (i) act, and be seen to act, properly and in accordance with the requirements of the law and the terms of this Code;
  - (ii) perform their duties impartially and in the best interests of the Local Government uninfluenced by fear or favour;
  - (iii) act in good faith (i.e. honestly, for the proper purpose, and without exceeding their powers) in the interests of the Local Government and the community;
  - (iv) make no allegations which are improper or derogatory (unless true and in the public interest) and refrain from any form of conduct, in the performance of their official or professional duties, which may cause any reasonable person unwarranted offence or embarrassment; and
  - (v) always act in accordance with their obligation of fidelity to the Local Government.

- (b) Council Members, Committee Members and staff are not to reflect adversely upon the character or actions of another Member or officer nor use offensive or objectionable language or expressions in reference to any Member, employee of the Council or any other person.
- (c) Council Members will represent and promote the interests of the Local Government, while recognising their special duty to their own constituents.

***Issues not in contention***

30           The applicant does not dispute that she was a member of Council when the Letter was published in the Subiaco Post in September 2016, nor does she dispute that she wrote the Letter with the intent of it being published. Accordingly, the Tribunal answers the first and second issues in the affirmative.

31           The issues still to be resolved are as follows:

- 1) whether the submission of the Letter constitutes an improper use of the applicant's office as a council member;
- 2) if so, whether the letter was intended by the applicant to cause detriment to Mayor Shannon or Councillor Timmermanis; and
- 3) if the applicant did breach reg 7(1) of the Regulations, the penalty to be imposed under s 5.110(6) of the LG Act.

***The principles to be applied***

32           The meaning of the phrases 'improper use of the person's office as a council member' and 'to cause detriment to ... any ... person' as they appear in reg 7(1) of the Regulation has been previously considered by this Tribunal in ***Treby and Local Government Standards Panel*** (2010) 73 SR (WA) 66; [2010] WASAT 81 (***Treby***). The conclusions drawn in ***Treby*** are set out below.

33           These conclusions continue to reflect the Tribunal's interpretation of the meaning of the expression 'improper use of a person's office as a council member' and the word 'detriment'.

## Improper use

34 In *Treby*, Pritchard DCJ (as her Honour then was) referred to the *Shorter Oxford English Dictionary* meaning of 'improper' and noted that it includes 'unsuitable' and 'inappropriate'. Her Honour then went on, at [29]-[33], to summarise what the case law in the context of similar provisions to reg 7(1) of the Regulations suggested as to the meaning of 'improper'. She drew the following conclusions in relation to the meaning and application of the term 'improper use of the person's office' within the context of reg 7(1) (citations omitted):

- 29 First, impropriety consists in a breach of the standards of conduct that would be expected of a person in the position of the [councillor] by reasonable persons with knowledge of the duties, powers and authority of his position as a councillor and the circumstances of the case.
- 30 Secondly, 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.
- 31 Thirdly, impropriety may arise in a number of ways. It may consist of an abuse of power, that is, if a councillor uses his or her position in a way that is inconsistent with the discharge of the duties arising from that office or employment. Alternatively, impropriety will arise from the doing of an act which a councillor knows or ought to know that he has no authority to do.
- 32 Fourthly, in the case of impropriety arising from an abuse of power, a councillor's alleged knowledge or means of knowledge of the circumstances in which the power is exercised and his purpose or intention in exercising the power will be important factors in determining whether the power has been abused.
- 33 Fifthly, a councillor's use of his or her office can be improper even though it is for the purpose or with the intention of benefiting the Council.

## To cause detriment to any person

35 In *Treby*, her Honour discussed the meaning of the word 'detriment' under reg 7(1)(b) of the Regulations. It was concluded that the word 'detriment' should be given its ordinary and natural meaning; *Treby* at [103]. Her Honour noted the ordinary and natural meaning of 'detriment' is loss or damage done or caused to, or sustained by, any person or thing; *Treby* at [94].

36 In *Treby* at [96] her Honour then went on to say (citations omitted):

A contravention of reg 7(1)(b) does not depend on actual detriment being suffered by a person. However, it must be established that the councillor believed that the intended result of his or her conduct would be that the other person would suffer detriment.

***The parties' submissions***

37 The applicant contends (ts 53, 31 January 2018) that the test in *Treby* of improper use is 'expanded' in *Hipkins and Local Government Standards Panel* [2014] WASAT 48 (*Hipkins*) and:

... that for behaviour to be improper it must be such that a right thinking person would regard the conduct as so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty...

38 Counsel for the applicant stresses the significance of the context of the alleged improper use of office, including internal issues within the Council and the relationship of the CEO with the Council, and argues that the comments in the Letter are allegations which are true and in the public interest as they shed light on these issues (ts 54, 31 January 2018).

39 In particular, it is the applicant's evidence that since the election of Mayor Shannon, the applicant observed a decline in 'governance standards and collegiality of the Council' (Exhibit 2 para 14) which led her to submit the Letter to the Subiaco Post. Counsel for the applicant asserted during the hearing that in some circumstances, it is acceptable to write such a letter (ts 14, 31 January 2018).

40 The applicant stated that she called two points of order following the council meetings on 23 and 30 August 2016, and she wrote to the Department of Local Government, but did not observe a change in the functioning of the Council.

41 The applicant also states that her intention in sending the Letter was to cause the Letter to be published and therefore to inform ratepayers about the conduct of their elected member at open council meetings. The applicant said that she found the conduct of Councillor Timmermanis offensive and embarrassing, and during cross-examination she reflected on what she perceived to be Mayor Shannon's inability to sanction him for that conduct (ts 40, 31 January 2018).

42 Counsel for the applicant submitted that the applicant, through the publication of the Letter, was in fact providing leadership and guidance to the community as provided by cl 1.1(b) of the Code of Conduct, because she was bringing attention to the improper use and improper manner of debate at council meetings.

43 The intervener submitted that the applicant's conduct was improper because, by writing and submitting the Letter, the applicant breached the Code of Conduct, specifically cl 4.1(a)(iv) and cl 4.1(b). In sending the Letter, the applicant made improper use of her office as a council member as her remarks were derogatory and such as to cause a reasonable person unwarranted offence or embarrassment.

44 The intervener relied upon the test set out in *Treby* at [29], where it is said that impropriety is 'a breach of the standards of conduct that would be expected of a person in the position of the [councillor] by reasonable persons with knowledge of the duties, powers and authority of his position as a councillor and the circumstances of the case' (ts 48, 31 January 2018).

45 Counsel for the intervener submitted that the Letter 'contains ... the following imputations' about Mayor Shannon and about Councillor Timmermanis:

- 1) Mayor Shannon and Councillor Timmermanis had, at a recent council meeting and on other occasions, demonstrated 'inept diplomacy' and a 'lack of respect' impliedly for the council or its members;
- 2) at a recent meeting Councillor Timmermanis engaged in adverse reflections, 'on current and past councillors' amounting to a 'mockery of the council's standing orders' and that the Mayor allowed this to take place;
- 3) Mayor Shannon had so far shown herself unable to 'capably chair meetings and address poor behaviour in the chamber'; and
- 4) Mayor Shannon did not have a positive relationship with the council or the administration.

(ts 48, 31 January 2018)

*Disposition*

**Improper use**

46 To the extent that *Hipkins* is authority for the proposition that what is improper will depend on the context of the conduct in question, then I agree. However, I do not intend to take anything more from *Hipkins* and I rely on *Treby* for the meaning of the expression 'improper use of a person's office as a council member'.

47 However, while context is relevant, when the context in question amounts to a clear breach of the Code of Conduct, the context is of little assistance to the applicant.

48 Further, while the applicant submits that at [56] in *Treby*:

... regulation 7 of the regulations does not prohibit a council member from discussing council business, to question and, in some cases no doubt, to criticise the actions of others which impact on matters relevant to the affairs of a local government and the community it serves[.]

the Tribunal draws attention to the remainder of this paragraph in *Treby*, where her Honour Judge Pritchard, as she then was, quoted at [56]-[57]:

...

In dealing with the finding made by the Panel of a breach of cl 11.9 of the Standing Orders in *Treby*, Senior Member Parry observed (at [19]):

A councillor is able to meaningfully participate in the good government of the persons in the district and to duly, faithfully, honestly and with integrity fulfil the duties of the office for the people in the district according to his or her best judgment and ability, without reflecting adversely upon the character or actions of, or imputing any motive to, another member or an officer of the local government. Indeed, good government requires courtesy amongst those elected to govern.

The sentiment behind that observation is equally apt to reg 7(1)(b).

49 The Tribunal agrees with the intervenor that the Letter expresses a clear opinion by the applicant that:

- 1) both Mayor Shannon and Councillor Timmermanis at a Council meeting had demonstrated 'inept diplomacy' and a 'lack of respect' for the Council and its members;

- 2) that at the same meeting, Councillor Timmermanis expressed adverse reflections on current and past councillors and made a 'mockery' of the standing orders;
- 3) that Mayor Shannon allowed the conduct on the part of Councillor Timmermanis to take place;
- 4) that Mayor Shannon was not, 'so far' able to 'capably chair meetings and address poor behaviour in the chamber'; and
- 5) that Mayor Shannon did not have a positive relationship with the Council or its administrative officers.

50 In my view, the remarks contained within the Letter are offensive and unsuitable to be communicated by a councillor to the broader public. They call into question the character of Mayor Shannon and Councillor Timmermanis. The Tribunal accepts the applicant's claim that she was concerned about the behaviour of Councillor Timmermanis, the conduct of Mayor Shannon and the decline in standards at the Council. The Tribunal also recognises the applicant's desire to keep residents informed about local issues regarding the Council. However, any concerns which the applicant had could have been expressed through a more appropriate forum, as it was not in the public interest for the applicant to make these comments through the community newspaper. It would have been more appropriate for her to lodge a formal complaint against Mayor Shannon or Councillor Timmermanis (ts 36, 31 January 2018).

51 The Tribunal concludes that the conduct of the applicant fell below the standard of conduct to be expected of a councillor as set out in cl 4 of the Town's Code of Conduct. The fact that the applicant considers that the views that she expressed in the Letter are true does not excuse her from her obligations under cl 4 of the Code of Conduct, nor the applicant's view that her comments were made in the public interest. The Code of Conduct clearly provides that councillors should refrain from any form of conduct in the performance of their official or professional duties which may cause any reasonable person unwarranted offence or embarrassment (Code of Conduct cl 4(a)(iv)). The Code of Conduct also provides that council members are not to

reflect adversely upon the character or actions of another member of Council (Code of Conduct cl 4(b)).

**Did the applicant intend to cause detriment to either or both Mayor Shannon and Councillor Timmermanis?**

52 The applicant's evidence is that the Letter was drafted so that members of the public could be informed about the conduct of elected members at council meetings (ts 55, 31 January 2018) through a replay of events.

53 The applicant knew, or should have known, that by naming Councillor Timmermanis and Mayor Shannon and by making the remarks that she did about them, the public perception of them would be lowered.

54 The Tribunal therefore concludes that it is more likely than not that the applicant believed that the intended result of sending out the Letter would be that both Mayor Shannon and Councillor Timmermanis would suffer detriment.

55 In particular, it is Mayor Shannon's evidence that the public perception of her was altered following the publication of the Letter and she felt that her integrity and ability as mayor was questioned (ts 7-8, 31 January 2018). I accept this evidence.

***Conclusion***

56 The Tribunal is satisfied that the evidence in this case supports the conclusion that it is more likely than not that the applicant committed two breaches of reg 7(1)(b) of the Regulations by:

- 1) making improper use of the applicant's office as a Council member to cause detriment to Mayor Shannon; and
- 2) making improper use of the applicant's office as a council member to cause detriment to Councillor Timmermanis.

57 Those breaches each constitute a minor breach under s 5.105(1) of the LG Act.

58 The Tribunal therefore affirms the decision of the Standards Panel of 11 April 2017 in relation to the finding of two minor breaches.

59           While the Tribunal agrees with the decision of the respondent dated 11 August 2017 that an apology is the most appropriate penalty, I do not consider that this should be given at an ordinary Council meeting. The applicant is no longer a councillor of the Town and in those circumstances it is my view that the apology should be in the same terms as that ordered by the respondent but in writing, and published to a local newspaper.

**Orders**

60           For the reasons set out above, the Tribunal orders that:

1.       The decision of the Local Government Standards Panel made on 11 April 2017, that the applicant committed two minor breaches of *Local Government Act 1995* (WA) by twice contravening reg 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (WA), is affirmed.
  
2.       The Orders of the Local Government Standards Panel made on 11 August 2017, in relation to the sanction to be imposed on the applicant for the two minor breaches she committed, are affirmed, except that the public apology must be published as a two-column display advertisement as soon as practicable but no later than 27 July 2018 in the Subiaco Post newspaper.

I certify that the preceding paragraph(s) comprise the reasons for decision of the State Administrative Tribunal.

MP  
ASSOCIATE TO JUDGE SHARP

7 JUNE 2018