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## Local Government Standards Panel

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Complaint Number	SP 2020-054
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Ms Pauline O'Connor</b>
<b>Respondent</b>	<b>Mayor Keri Shannon</b>
<b>Local Government</b>	<b>Town of Cambridge</b>
Regulation	Regulations 6, 7 of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mr Michael Connolly (Presiding Member) Ms Elanor Rowe (Deputy Member) Ms Deborah Hopper (Deputy Member)
Heard	21 August 2020 Determined on the documents
Outcome	One breach of Regulation 6(2)(a)

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### FINDING AND REASONS FOR FINDING

Published **2 October 2020**  
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#### DEFAMATION CAUTION

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



## Summary of the Panel's decision

1. The Local Government Standards Panel ("the Panel") found that Mayor Keri Shannon ("Mayor Shannon"), a council member for the Town of Cambridge ("the Town") committed one breach under the *Local Government Act 1995* (WA) ("the Act") and Regulation 6(2)(a) of the *Local Government (Rules of Conduct) Regulations 2007* ("the Regulations") when she submitted a "*Disclosure of Interest Form*" that contained details of a confidential item discussed at the Council Meeting held on 25 February 2020. The Panel found that Mayor Shannon did not commit a breach of Regulation 7(1)(b) in relation to the same conduct.

## Jurisdiction and procedural fairness

2. The Act makes provision for the circumstances in which a council member commits a minor breach.<sup>1</sup>
3. On 23 June 2020 the Department of Local Government, Sport and Cultural Industries ("the Department") received a Complaint of Minor Breach Form dated 10 June 2020 ("Complaint"). The Complaint was signed by Ms Pauline O'Connor ("Complainant"), and contained one allegation of a breach of Regulation 6 and one allegation of a breach of Regulation 7(1)(b) by Mayor Shannon in relation to the same conduct when she allegedly submitted a "*Disclosure of Interest Form*" that contained details of a confidential item discussed at the Council Meeting held on 25 February 2020.
4. On 24 June 2020, the Department advised Mayor Shannon of the Complaint and invited her to respond. The Department sent Mayor Shannon a copy of the original Complaint and all the supporting documents provided by the Complainant.
5. Under the Act the Panel is required to consider a complaint of a minor breach and make a finding as to whether the alleged breach occurred.<sup>2</sup> On 21 August 2020 the Panel convened to consider the Complaint.
6. The Panel:
  - (a) accepted the Department's advice, based on information from the Western Australian Electoral Commission, that Mayor Shannon was a council member at the time of the alleged breaches, having been elected on 19 October 2019, and was still a council member when the Panel met on 21 August 2020;
  - (b) was satisfied the Complaint had been made within six months after the alleged breaches are said to have occurred<sup>3</sup>;
  - (c) was satisfied the Complaint had been dealt with in accordance with the administrative requirements in the Act for dealing with complaints of minor breaches<sup>4</sup>; and

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<sup>1</sup> Section 5.105 of the Act.

<sup>2</sup> Section 5.110(2)(a) of the Act.

<sup>3</sup> Section 5.107(4) of the Act

<sup>4</sup> Sections 5.107, 5.108, 5.109 of the Act.



- (d) was satisfied that the Department had provided procedural fairness to Mayor Shannon.
7. If a council member has previously committed two or more minor breaches, the Panel may send the complaint to the Chief Executive Officer of the department assisting the relevant Minister at the time instead of considering the Complaint itself.<sup>5</sup> Mayor Shannon has previously been found to have committed one minor breach. Therefore, the Panel decided to not send the Complaint to the Chief Executive Officer of the Department.
8. Based on the information referred to in paragraphs 2 to 7 above, the Panel found it had jurisdiction to determine whether Mayor Shannon had breached Regulation 6 and Regulation 7(1)(b) in connection with the Complaint.

### Panel's role

9. The Panel is not an investigative body. It determines complaints of minor breaches solely upon the evidence presented to it.
10. Any finding, that a council member has committed a minor breach, must be based on evidence from which it may be concluded that it is more likely than not that the breach occurred than that it did not occur (the required standard of proof).<sup>6</sup>
11. In order to find the allegation, proposition or conduct has been established, and where direct proof is not available, the Panel must be satisfied from the evidence that it is more probable than not that it has occurred. The Panel cannot make a finding that the alleged fact, proposition or conduct occurred if the evidence merely supports two or more conflicting but equally possible inferences.<sup>7</sup>
12. For a finding that a council member has breached a particular regulation, the Panel must be satisfied that every element of the particular regulation has been established to the required standard of proof.

### Regulation 6

13. Regulation 6 provides:

#### ***"6. Use of information***

- (1) *In this regulation –*

***closed meeting*** means a council or committee meeting, or a part of a council or committee meeting, that is closed to members of the public under s5.23(2) of the Act;

***confidential document*** means a document marked by the CEO to clearly show that the information in the document is not to be disclosed;

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<sup>5</sup> Sections 5.110(2)(b), 5.111(1) of the Act.

<sup>6</sup> Section 5.106 of the Act.

<sup>7</sup> *Bradshaw v McEwens Pty Ltd* (1951) 217 ALR 1, paragraph 5.

**non-confidential document** means a document that is not a confidential document.

(2) A person who is a council member must not disclose –

- (a) information that the council member derived from a confidential document;
- (b) information that the council member acquired at a closed meeting other than information derived from a non-confidential document.

(3) Subregulation (2) does not prevent a person who is a council member from disclosing information –

- (a) at a closed meeting; or
- (b) to the extent specified by council and subject to such other conditions as the council determines; or
- (c) that is already in the public domain; or
- (d) to an officer of the Department; or
- (e) to the Minister; or
- (f) to a legal practitioner for the purpose of obtaining legal advice; or
- (g) if the disclosure is required or permitted by law.”

#### Elements of regulation 6(2)(a)

14. Regulation 6(2)(a) provides that a person who is a council member must not disclose information that the council member derived from a confidential document.

15. In light of regulation 6(3), the essential issues or elements which need to be satisfied in order for a contravention of regulation 6(2)(a) to have occurred are that it is more likely than it is not that:

- a) a council member disclosed information<sup>8</sup>; and
- b) the disclosed information was information the disclosing council member derived from a document that was marked by his or her local government’s CEO, or at the CEO’s direction, to clearly show that the information in the document was not to be disclosed; and
- c) the disclosed information was not already in the public domain (ie it was not generally available to all persons<sup>9</sup>) at the time of the disclosure by the disclosing council member, and the disclosure did not occur in any of the ways identified in regulation 6(3).

<sup>8</sup> The word ‘information’ is given its ordinary meaning, which is knowledge or facts communicated about a particular subject, event etc; Shorter Oxford English Dictionary (6<sup>th</sup> edition). It is not limited to ‘advice’, legal, strategic or otherwise; *Corr and Local Government Standards Panel* [2012] WASAT 14 at para [50].

<sup>9</sup> Mazza and Local Government Standards Panel [2009] WASAT 165 at paragraphs [82] – [85]

### Elements of regulation 6(2)(b)

16. Regulation 6(2)(b) provides that a person who is a council member must not disclose information they acquired at a closed meeting other than information derived from a non-confidential document.
17. Generally, the essential elements which need to be satisfied in order for a contravention of regulation 6(2)(b) to have occurred are that it is more likely than it is not that:
- a. a council member disclosed information; and
  - b. the disclosed information was information the disclosing council member acquired at a council or committee meeting, or a part of a council or committee meeting, that was closed to members of the public under section 5.23(2) of the Act; and
  - c. the disclosing council member did not derive the disclosed information from a non-confidential document; and
  - d. the disclosed information was not information already in the public domain at the time of the disclosure by the disclosing council member, and the disclosure did not occur in any of the ways identified in regulation 6(3).
18. “Disclose” is defined as “*make (secret or new information) known*”<sup>10</sup>.

### **Regulation 7(1)(b)**

19. Regulation 7(1)(b) provides:

#### ***“7. 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 –*

*.....*

- b. to cause detriment to the local government or any other person.*

- (2) Subregulation (1) does not apply to conduct that contravenes section 5.93 of the Act or The Criminal Code section 83.”*

20. The Panel decided that the alleged conduct is not conduct that contravenes section 5.93 of the Act or section 83 of *The Criminal Code*.

### Elements of Regulation 7(1)(b)

21. In order to find a breach of Regulation 7(1)(b), the Panel must be satisfied to the required standard of proof that:

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<sup>10</sup> Oxford English Dictionary online edition



- (a) the person, the subject of the Complaint, engaged in the alleged conduct (first element);
- (b) the person, the subject of the Complaint, was a council member both at the time of the conduct and the time when the Panel makes its determination (second element);
- (c) by engaging in the conduct, the person, the subject of the complaint, made use of his or her office as a council member (in the sense that he or she acted in their capacity as a council member, rather than in some other capacity) (third element);
- (d) when viewed objectively, such use was an improper use of the person's office as a council member in that it:
  - (i) involved a breach of the standards of conduct that would be expected of a person in the position of a council member, by reasonable persons with knowledge of the duties, power and authority of the council member and the circumstances of the case; and
  - (ii) was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty;(fourth element);
- (e) the person engaged in the conduct in the belief that detriment would be suffered by the local government or any other person (fifth element).

*Fourth element - meaning of "to make improper use of....office"*

22. The Macquarie dictionary definition of "*improper*" is "*not in accordance with propriety of behaviour, manners, etc; unsuitable or inappropriate for the purpose or occasion; abnormal or irregular.*"<sup>11</sup> The Shorter Oxford dictionary definition is "*irregular, wrong; unsuitable, inappropriate; unbecoming, unseemly.*"<sup>12</sup>

23. Whether there is impropriety is to be assessed objectively: would a reasonable person with knowledge of the duties, powers and authority of a council member, and all the circumstances of the particular case, form the view that the council member had breached the standards of conduct expected of a council member?<sup>13</sup> "*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.*"<sup>14</sup>

24. Under the Act Panel members must have regard to the general interests of local government in Western Australia.<sup>15</sup> It is in the interests of local government that

<sup>11</sup> Macquarie Dictionary, Revised Third Edition.

<sup>12</sup> Shorter Oxford English Dictionary, Sixth Edition.

<sup>13</sup> *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraph 27, referring to *R v Byrnes* (1995) 183 CLR 501.

<sup>14</sup> *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 9, referring to *Robbins v Harness Racing Board* [1984] VR 641.

<sup>15</sup> Section 5.122(3) of the Act, Schedule 5.1 of the Act, clause 8(6).

council members are, and are seen to be, professional and respectful in their dealings with fellow council members, local government employees and members of the public.

25. Regulation 3 sets out general principles to guide council members' behaviour, although contravention of any of these does not amount to a minor breach.<sup>16</sup> Regulation 3 provides, among other things, that council members should act with reasonable care, diligence and integrity and treat others with respect and fairness.
26. The meaning of "*improper*" must be considered in the context of relevant legislation, such as the Act and the Regulations, and other rules and standards that apply to a council member's role and conduct, such as the local government's Code of Conduct, and the circumstances and context of the case.<sup>17</sup> All these provisions form part of the backdrop to the Regulations and give context to a complaint but the alleged conduct must also be judged in the particular circumstances.
27. Conduct can be improper even though the council member's judgment is that it isn't improper. A council member's use of his or her office can be improper even though the council member is intending to benefit the local government, the council or the ratepayers and residents.<sup>18</sup>

Fifth element - meaning of "*to cause detriment to the local government or any other person*"

*Detriment*

28. "*Detriment*" means loss, damage or injury.<sup>19</sup> It includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage. A person can suffer detriment through others thinking less favourably of them.<sup>20</sup>
29. For regulation 7(1)(b) to be satisfied it is not necessary to show that the local government or the person concerned actually suffered detriment.<sup>21</sup> However it is not enough to show that the local government or the person concerned suffered detriment, or could have suffered detriment. The Panel must find that it is more likely than not that the council member believed that his or her actions would cause detriment and intended to cause detriment.<sup>22</sup>
30. "*To cause detriment*" has been interpreted as meaning "*in order to*" or "*for the purpose of*" causing detriment, or "*with the will to*" cause detriment.<sup>23</sup> There can be a finding of intent if, after considering all the evidence, the only reasonable inference is that the council member intended to cause detriment.

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<sup>16</sup> Regulation 3.

<sup>17</sup> *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 10.

<sup>18</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59, paragraph 64, referring to *Treby* 2010.

<sup>19</sup> Macquarie Dictionary Revised Third Edition, 2001.

<sup>20</sup> *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraphs 31, 32.

<sup>21</sup> *Treby* 2010, paragraph 96, referring to *Chew v The Queen* 1992 CLR 626 (*Chew* 2010).

<sup>22</sup> *Re and Local Government Standards Panel* [2014] WASAT 111, paragraph 51, referring to *Australian Securities and Investments Commission v Australian Property Custodian Holdings Ltd* [2013] FCA 1342.

<sup>23</sup> *Chew* 2010.



## Substance of the Complaint

31. At the Council meeting held on 25 February 2020 ("Council Meeting"), *"Item 13.5 – Superannuation Matter – Further Report"* ("Item 13.5") was discussed. It was a confidential report concerning one of the Town's former employees ("Former Employee") and the item was considered behind closed doors.
32. Mayor Shannon declared an impartiality interest in Item 13.5 and excused herself from the Council Meeting at the time Item 13.5 was discussed. There was no recorded explanation as to why she left the Council Meeting.
33. The description of Item 13.5 in the Council agenda and minutes was stated only as *"Superannuation Matter – Further Report"*. The agenda and minutes did not identify the matter as relating to any particular employee nor did they mention any current or former employee. From the description and content of the agenda and minutes, that particular information could not have been known.
34. The Town maintains a *"Public Register of Financial, Proximity and Impartiality Interests Disclosed by Council Members and Staff at Council/Committee Meetings"* ("Public Register") which is available publicly on the Town's website. A disclosure was made by Mayor Shannon on the Public Register of an impartiality interest in Item 13.5 (which was a confidential matter).
35. When Mayor Shannon made the disclosure, she included a statement ("Statement") that subsequently appeared on the Public Register following the Council Meeting. In the Statement, Mayor Shannon:
  - a. identified (by naming) the Former Employee;
  - b. revealed that there was a dispute between the Former Employee and the Town;
  - c. revealed what the dispute related to; and
  - d. referred to legal advice that had been obtained,(together "the Confidential Information")
36. The Public Register was amended sometime after 17 March 2020, and subsequently read:

*"Mayor Keri Shannon Council Impartiality 13.5 – Superannuation Matter Adversarial/Relationship with former employee."*
37. The Council minutes stated that the report was Confidential in accordance with Section 5.23(2) of the Act for the following reasons:

*"a. a matter affecting an employee or employees;*

.....



- d. *legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting.”*

38. It is concerning that Mayor Shannon released Confidential Information about the Former Employee to the public and in doing so she breached Section 5.23 of the Act. All employees have a right of confidentiality surrounding their employment. In addition, Mayor Shannon also disclosed confidential legal advice in relation to Item 13.5.
39. It was noted in the minutes that the Council voted unanimously for the matter to be confidential and discussed behind closed doors.

#### First Allegation – alleged breach of Regulation 6

40. The disclosure of the Confidential Information on the Public Register by Mayor Shannon was a breach of Regulation 6(2).

#### Second Allegation – alleged breach of Regulation 7(1)(b)

41. In releasing the Confidential Information (that was highly sensitive), Mayor Shannon made improper use of her office to cause detriment to the Former Employee in contravention of Regulation 7(1)(b).
42. Mayor Shannon was “*indiscriminate*” with her disclosure. Given the nature of her Statement, the release of the confidential and private information could cause significant potential harm to the Former Employee’s reputation thereby causing him a detriment.

#### **Mayor Shannon’ Response**

43. The Council Meeting was already behind closed doors when Council moved to Item 13.5 on the agenda. Mayor Shannon made an adverse impartiality declaration and then left the chamber.
44. The Town’s Public Register has the following headings displayed at the top of the webpage:
- Meeting Date
  - Name of Relevant Person Declaring an Interest
  - Meeting at which Interest was declared
  - Type of Interest
  - Item Relating to Interest
  - Nature of Interest.
45. Mayor Shannon completed and lodged a Disclosure of Interest Form (“Disclosure Form”) with the Chief Executive Officer of the Town (“CEO”). She expected that when she completed the details under the various titles on the Disclosure Form, they would be recorded on the Public Register under the following corresponding titles:
- Nature of Interest – “Impartiality interest”
  - Type of Interest – “Impartiality interest”

- Extent of Interest – “Adversarial/Relationship”

46. Mayor Shannon did not prepare the Public Register - it was prepared by one of the Town’s staff members. It appears that the staff member incorrectly transcribed the information (including the Statement) that was recorded on the Disclosure Form so that it appeared on the Public Register. Mayor Shannon included the additional description when she made the Statement with the intention that it would be provided to the closed part of the Council Meeting only - it was not intended to form part of the Public Register. The information contained in the Statement was true and its disclosure to the confidential meeting was not intended to cause advantage or disadvantage to anyone.
47. Therefore, Mayor Shannon submitted, there was no disclosure of confidential information by her in her role as a council member and the confidential information was disclosed because of an administrative error. The error was corrected when a councillor read the Public Register and brought the matter to the CEO’s attention.

### **Panel’s Consideration**

#### First Allegation – Regulation 6(2)(a)

48. The Complainant did not specify whether Mayor Shannon had allegedly breached Regulation 6(2)(a) or 6(2)(b). The allegation made, is that when Mayor Shannon submitted the Disclosure Form, she disclosed Confidential Information from Item 13.5 which was a confidential report that related to the Former Employee and which was discussed at the closed part of the Council Meeting. Consequently, the Panel finds that the allegation is clearly a breach of Regulation 6(2)(a).
49. It is not in dispute that the Statement included Confidential Information or that it was not already in the public domain. Mayor Shannon clearly acknowledged that in her Response. Therefore, the second and third elements of Regulation 6(2)(a) are satisfied.
50. However, Mayor Shannon disputed the allegation that it was she, herself, that had disclosed the Confidential Information (first element). She submitted that the information was disclosed by a staff member of the Town and was due to an administrative error.
51. The Statement (that included the Confidential Information) was published on the Public Register, which is available to the public via the Town’s website. By its very nature, it is a public document that contains information relating to any financial, proximity or impartiality interest held by council members in their official capacity.
52. Mayor Shannon completed the Disclosure Form and included the Statement, which was a short, typed paragraph containing the Confidential Information and which clearly related to the interest she was declaring. The Panel finds that in doing so, she acted to declare her interest, including the Confidential Information, on the Public Register.
53. The details that were included in the Disclosure Form clearly corresponded with the information that is displayed on the Public Register, and any additional Statement would clearly form part of the disclosure by the council member. Therefore, the Panel finds that the first element of Regulation 6(2)(a) is satisfied.



54. The Panel finds that the essential elements of Regulation 6(2)(a) have been satisfied.

### **Findings**

55. Accordingly, for the above reasons, the Panel finds that Mayor Shannon did breach Regulation 6(2)(a) in relation to the First Allegation.

#### Second Allegation – Regulation 7(1)(b)

##### *First, second and third elements*

56. The Panel finds that Mayor Shannon engaged in the conduct which is the subject of the Second Allegation, and that she was a council member and was acting as a council member at all relevant times. The first, second and third elements of Regulation 7(1)(b) are established.

##### *Whether Mayor Shannon acted improperly (fourth element)*

57. Based on the evidence before it, the Panel is satisfied that the fourth element has been established in relation to the Second Allegation and finds that Mayor Shannon did act improperly. The Panel makes this finding because it is satisfied to the required standard of proof that a reasonable person would consider that Mayor Shannon did not meet the standards of conduct expected of a council member when she disclosed the Confidential Information on the Public Register:

- a. The Panel has already found that Mayor Shannon disclosed Confidential Information from a confidential document in contravention of Regulation 6(2)(a).
- b. Council members play an important community leadership role and it is their duty to ensure that confidential information is treated as such, so as not to harm, prejudice and compromise the interests of local government, Council or any other party. The maintenance of confidentiality by council members is a serious obligation and a high level of integrity is required to ensure public confidence remains regarding the proper access and use of confidential information.
- c. Mayor Shannon is the chief elected council member of the Town council and that position has special significance in local government. The Panel finds that on this occasion, Mayor Shannon did not use the requisite care when dealing with the Confidential Information.
- d. Furthermore, Mayor Shannon submitted that the Statement she made on the Disclosure Form was meant for the closed part of the Council Meeting only. However, regardless, the Statement itself not only revealed Confidential Information, but it also came across as both biased and subjective on the part of Mayor Shannon and it was somewhat unprofessional for her to include it.

58. Based on the evidence before it, the Panel finds that Mayor Shannon's actions were wrongful and inappropriate and that she breached the standards expected of



a council member when she disclosed the Confidential Information on the Public Register.

*Whether Mayor Shannon intended to cause detriment to the local government or any other person.*

59. The Panel is not satisfied that Mayor Shannon intended to cause the Former Employee detriment when she disclosed the Confidential Information on the Public Register:

- a. Mayor Shannon submitted that when she completed the Disclosure Form she expected the details as completed on the form, would be recorded on the Public Register under the corresponding titles. She added that, it was through an administrative error that the Confidential Information was disclosed on the Register.
- b. The Panel finds that it should have been quite clear to council members that when then completed the Disclosure Form, any information included therein (including supplementary statements) would be included on the Public Register; the stated purpose of the Public Register was to disclose such information/interests of council members to the public. However, for a finding that a council member has breached a particular regulation, the Panel must be satisfied that every element of a particular regulation has been established to the required standard of proof. In relation to the fifth element, the Panel must find that it is more likely than not that Mayor Shannon believed that her actions would cause detriment, and intended to cause detriment, to the Former Employee.
- c. While Mayor Shannon's actions were wholly inappropriate, the Complainant has provided insufficient evidence on which it is possible to base a finding that Mayor Shannon intended to cause detriment to the Former Employee.

60. Based on the evidence before it, the Panel is not satisfied that the fifth element has been established.

## Findings

61. Accordingly, for the reasons above, the Panel finds that Mayor Shannon did not breach Regulation 7(1)(b) in relation to the Second Allegation.



A handwritten signature in blue ink, appearing to read 'M Connolly'.

Michael Connolly (Presiding Member)

A handwritten signature in black ink, appearing to read 'E Rowe'.

Elanor Rowe (Deputy Member)

A handwritten signature in blue ink, appearing to read 'D Hopper'.

Deborah Hopper (Deputy Member)



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## Local Government Standards Panel

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Complaint Number	SP 2020-054
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Ms Pauline O'Connor</b>
<b>Respondent</b>	<b>Mayor Keri Shannon</b>
Local Government	<b>Town of Cambridge</b>
Regulation	Regulation 6(2)(a) of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mr Michael Connolly (Presiding Member) Councillor Peter Rogers (Member) Ms Elanor Rowe (Deputy Member)
Heard	21 August 2020 Determined on the documents
Penalty Considered	14 December 2020
Outcome	No sanction

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## DECISION AND REASONS FOR DECISION

Delivered 25 January 2021

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### DEFAMATION CAUTION

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



## Introduction

1. At its meeting on 21 August 2020, the Panel found that Mayor Keri Shannon ("Mayor Shannon"), a council member for the Town of Cambridge ("the Town"), committed one minor breach under the Local Government Act 1995 (WA) ("the Act") and regulation 6(2)(a) of the *Local Government (Rules of Conduct) Regulations 2007* (WA) ("the Regulations") when she submitted a "Disclosure of Interest Form" that contained details of a confidential item discussed at the Council Meeting held on 25 February 2020 ("Minor Breach").
2. On 2 October 2020, the Panel published its Finding and Reasons for Finding ("Findings") that Mayor Shannon had breached Regulation 6(2)(a). The Panel reviewed all the evidence presented to it and made the following observations:
  - "51. *The Statement (that included the Confidential Information) was published on the Public Register, which is available to the public via the Town's website. By its very nature, it is a public document that contains information relating to any financial, proximity or impartiality interest held by elected members in their official capacity.*
  52. *Mayor Shannon completed the Disclosure Form and included the Statement, which was a short, typed paragraph containing the Confidential Information and which clearly related to the interest she was declaring. The Panel finds that in doing so, she acted to declare her interest, including the Confidential Information, on the Public Register.*
  53. *The details that were included in the Disclosure Form clearly corresponded with the information that is displayed on the Public Register, and any additional Statement would clearly form part of the disclosure by the elected member."*

## Jurisdiction and Law

3. The Panel convened on 14 December 2020, to consider how it should deal with the Minor Breach. The Panel accepted the advice of the Department of Local Government, Sport and Cultural Industries ("the Department") that on this date there was no available information to indicate that Mayor Shannon had ceased to be, or was disqualified from being, a councillor.

## Possible Sanctions

4. Section 5.110(6) of the Act provides that the Panel is to deal with a minor breach by:
  - (a) *ordering that no sanction be imposed; or*
  - (b) *ordering that —*
    - (i) *the person against whom the complaint was made be publicly censured as specified in the order;*  
*or*
    - (ii) *the person against whom the complaint was made apologise publicly as specified in the order;*  
*or*



- (iii) *the person against whom the complaint was made undertake training as specified in the order;*
    - or
    - (iv) *the person against whom the complaint was made pay to the local government specified in the order an amount equal to the amount 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).*

5. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach. Under section 5.110(6)(a), the Panel may order that no sanction be imposed, not to reverse the finding of a breach, but to indicate that in all the circumstances the relevant councillor should not be penalised further.
6. Sub-section 5.110(6)(b)(iv) (in respect to a monetary sanction) was introduced in 2019 to allow the Panel to require a councillor to personally bear the cost of dealing with a complaint, which in other circumstances, would be paid by the local government concerned. This ensures the cost of a breach is borne by the councillor individually, and not simply passed onto the local government and therefore, ultimately, rate payers.

### **Mayor Shannon's Submissions**

7. If the Panel finds that a councillor has committed a minor breach, it must give the councillor an opportunity to make submissions to the Panel about how it should deal with the breach under section 5.110(6).<sup>1</sup>
8. By a letter dated 2 October 2020, Mayor Shannon was:
  - i. notified of the Panel's Finding of the Minor Breach;
  - ii. provided with a copy of the Panel's Findings; and
  - iii. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the Act.
9. On 5 November 2020, the Department received correspondence from Mayor Shannon in which she stated once again that she had not committed a breach and that the Panel had erred in its Finding. She also submitted that no further sanction should be imposed:
  - a. She was unaware that the Public Register or Disclosure of Interest Form were publicly available. She was not advised of that, during her elected member induction or at any training that she had completed. She also did not know that the written statement that she had made on the form would be included in the Public Register.
  - b. Most other elected members at the Town (as well as the Town's Chief Executive Officer) were also not aware of the public nature of the forms

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

and the need to word disclosure statements carefully to ensure that confidentiality was maintained.

- c. There was no disclaimer on the Town's Disclosure of Interest Form advising that the information would be publicly available.
- d. It would be unfair to penalise her for an error that was "*inadvertent and common*".
- e. The Town has now sent out advice and changed its practises in relation to how members make declarations of interests in matters.

### Panel's Consideration

10. The purpose of the imposition of a sanction under the Act is generally for the protection of the public and the maintenance of standards of council members. Furthermore, it reflects the disapproval of a contravention of the Regulations, dissuades councillors from other local governments from engaging in similar conduct and facilitates the maintenance of appropriate standards of behaviour by councillors. Guidance on the factors which the Panel may consider in determining the appropriate penalty to impose, include, but are not limited to:

- 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. the likelihood or not of the councillor committing further breaches of the Act;
- g. the councillor's personal circumstances at the time of the conduct, and at the time of imposing the sanction;
- h. the 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.

11. Mayor Shannon had previously been found to have had committed one minor breach.

12. The Panel found that Mayor Shannon breached Regulation 6(2)(a) when she submitted a Disclosure of Interest Form that contained details of a confidential item discussed at the Council Meeting held on 25 February 2020.

13. In her response to how the matter should be dealt with, Mayor Shannon made lengthy submissions in relation to her continued position, that she had not committed the Minor



Breach. In this respect, the Panel noted that Section 5.110(6) is about penalty and when considering what sanction to impose, it does not have the power to review any finding of a breach.

14. However, Mayor Shannon also explained that changes have subsequently been made at the City regarding the disclosure of Financial, Proximity or Impartiality Interests by members. Members have now been advised that they need to take care not to include information of a confidential nature on the Disclosure of Interest Forms, because all the information they put down will be included in the Public Register and available for public viewing.
15. The standards of behaviour expected of elected members are of a generally higher standard than that of a member of the public, due to their prominent positions in the community. The maintenance of confidentiality is also an issue of utmost importance. However, there appears to have been genuine (and widespread) misunderstanding at the City, with regard to the disclosure of interest process and what information appeared on the Public Register. In these circumstances, the Panel finds that pursuant to section 5.110(6)(a), it is fair and reasonable that Mayor Shannon should not be penalised further. Therefore, no sanction is to be imposed against her.

#### **Panel's Decision**

16. Having regard to the Findings, the matters set out herein, and the general interests of local government in Western Australia, the Panel's decision on how the Minor Breach is to be dealt with under s5.110(6)(a) of the Act, is that no sanction is to be imposed against Mayor Shannon.

Mick Connolly (Presiding Member)

Elanor Rowe (Deputy Member)

Peter Rogers (Member)



## 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."