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## Local Government Standards Panel

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Complaint Number	SP 54 of 2017 [DLGSC 20170176]
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Ms Rhonda Hardy</b>
<b>Respondent</b>	<b>Councillor Tracy Destree</b>
Local Government	<b>City of Kalamunda</b>
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Ms M Strauss (Presiding Member) Mr M Beecroft (Member) Councillor P Kelly (Member)
Heard	15 February 2018 Determined on the documents
Outcome	Breach of regulation 7(1)(b)

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### FINDING AND REASONS FOR FINDING

Published 27 February 2017

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#### DEFAMATION CAUTION

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## Summary of the Panel's finding

1. Under the provisions of the *Local Government Act 1995* (WA) (the Act) the Panel found that Councillor Tracy Destree, a Councillor for the City of Kalamunda (the City), breached regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations) by making adverse comments about Shire officers' involvement in a disclosure of interest issue that arose at an ordinary council meeting on 27 June 2016 (the OCM), which comments were published in the Reporter local newspaper on 26 September 2017.

## Jurisdiction

2. The Act provides for the circumstances in which a council member commits a minor breach.<sup>1</sup>
3. On 20 October 2017 the Panel received a Complaint of Minor Breach Form dated 20 October 2017 signed by Ms Rhonda Hardy, the City's Chief Executive Officer, alleging Cr Destree breached regulation 7 of the Regulations by making comments to the Reporter local newspaper (the Comments) which the Reporter attributed to Cr Destree in its article published on 26 September 2017 (the Complaint).
4. Ms Hardy provided a detailed Complaint Form and a copy of the article published on 26 September 2017 (the Article).
5. On 27 November 2017 the Department of Local Government, Sport and Cultural Industries (the Department) sent Cr Destree a copy of the Complaint Form and the Article, inviting her to respond to the Complaint.
6. 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 breach occurred.
7. The Panel convened on 15 February 2018 to consider the Complaint. The Panel:
  - accepted the advice of the Department that, based on information published on the Western Australian Electoral Commission's website, Cr Destree was first elected as a Shire Councillor on 17 October 2015, was a councillor at the time of the alleged breach and was a councillor when the Panel met on 15 February 2018;
  - was satisfied the Complaint was made within two years after the alleged breach occurred<sup>2</sup> and that the Shire's Complaints Officer had dealt with the Complaint in accordance with the administrative requirements in the Act for dealing with complaints of a minor breach<sup>3</sup>;
  - noted that Cr Destree responded to the Complaint in a letter from her solicitors, Hammond Legal, dated 21 December 2017, with a number of attachments (the Response);
  - was satisfied the Department had provided procedural fairness to Cr Destree; and

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

<sup>2</sup> Section 5.107(4) of the Act

<sup>3</sup> Sections 5.107, 5.108, 5.109 of the Act.



- found it had jurisdiction to consider the Complaint.

### The Panel's role

8. The Panel is not an investigative body.<sup>4</sup> It makes decisions about complaints of minor breaches solely upon the evidence presented to it and, when relevant, information published on a local government's website, such as agendas for and minutes of council meetings and codes of conduct. For the Panel to find that a councillor committed a minor breach it must be satisfied on the evidence before it that it is more likely than not that the alleged breach occurred.<sup>5</sup> This is commonly referred to as "the required standard" or "the required standard of proof".
9. The Panel cannot rely on an alleged fact unless it is satisfied that it is more likely than not that the alleged fact is true.<sup>6</sup> The Panel cannot merely choose between two or more conflicting but equally possible versions of events.<sup>7</sup> To accept one of the competing versions of events it must be satisfied that one is more likely to be the correct version.
10. For a finding that a councillor has breached a particular regulation the Panel must be satisfied to the required standard that every element of that regulation has been established.
11. Where the complainant submits the Panel should come to a particular conclusion, such as that the evidence establishes an element of the regulation, the Panel must be satisfied, after weighing up all the evidence and applying the relevant legal principles, that its conclusion is the one best supported by the evidence.<sup>8</sup>

### The Complaint

12. Ms Hardy does not specify whether she alleges a breach of regulation 7(1)(a) or 7(1)(b) or both. Based on the Complaint Form the Panel treated the Complaint as an allegation of a breach of regulation 7(1)(b).
13. 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.*”
  14. Regulation 7(2) does not exclude the operation of regulation 7(1)(a) because the alleged conduct is not conduct that could contravene the parts of the Act and *The Criminal Code* referred to in regulation 7(2).

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<sup>4</sup> *Re and Local Government Standards Panel* [2015] WASAC 51, paragraph 24.

<sup>5</sup> Section 5.106 of the Act.

<sup>6</sup> The effect of section 5.106 of the Act.

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

<sup>8</sup> The effect of section 5.106 of the Act.



15. The gist of the Complaint is that in her Comments Cr Destree blamed Ms Hardy and the City's Manager Governance (Mr DF) for causing a Departmental investigation into whether Cr Destree breached the Act by participating in Council's consideration of a planning matter in which she had an interest.
16. Ms Hardy says that before the OCM the City wrote to Councillors (in the City's Letter) providing information taken from guidelines published on the website of the Department responsible for administering the Act, then known as the Department of Local Government and Communities, about councillors' legal obligation to disclose financial interests.
17. Ms Hardy submits that councillors are responsible for making their own decisions about whether to disclose an interest and whether to leave the room when Council deliberates and votes on any relevant item.
18. Ms Hardy included in her Complaint Form an extract from the Department's *Local Government Operational Guidelines for Disclosure of Financial Interests at Meetings* (the Guidelines) and what she says was the text of the City's Letter.
19. In relation to the Article Ms Hardy asserts:
  - The Article includes quotes and statements attributed to Cr Destree. Although the author of the Article (the Author) created the headline, "Councillor blames bad advice", not Cr Destree, the headline is consistent with the Comments. Cr Destree made the Comments criticising Ms Hardy to "defray blame onto the City" for her failure to leave the room.
  - It was "unfair and improper" to make public comments attributing blame to the City while the Department was investigating the matter.
  - Councillors should act collegially with the administration in order to govern effectively.
  - It was improper to make a number of public statements, such as: "the CEO remains largely silent"; the City did not meet "its own responsibilities and actions"; and the City gave Councillors "inadequate advice".
  - The Article highlights a derogation of Cr Destree's own responsibility for making her own decisions about disclosures.
  - Cr Destree criticised her and Mr DF for not saying the contents of the City's Letter were an extract from the Department's guidelines when the City's Letter did say that.
  - Cr Destree breached the Councillors' Code of Conduct by not treating Ms Hardy and Mr DF fairly and with respect; and by not refraining from criticising employees in a way that may adversely affect their reputations.
  - Cr Destree intended to cause detriment to Ms Hardy, Mr DF and the City.



## The Response

20. Cr Destree does not dispute the background information provided by Ms Hardy in the Complaint Form but denies she breached either regulation 7 or the Shire's Code of Conduct.

21. Cr Destree provided copies of the following documents:

- A covering letter from John Hammond Legal dated 21 December 2017 (the JH Letter).
- An Elected Members' Response Form denying she committed the alleged breach.
- Two statements from Cr Destree, being Annexures A and B to the JH Letter.
- A letter from the Department's Director Local Government Regulation and Support to Cr Destree dated 30 September 2017 headed "Failure to disclose financial interest" (the Department's Letter).
- An article published in the Midland Reporter local newspaper on 28 August 2017 headed "Kalamunda mayor Andrew Waddell in zoning vote probe".
- An article published in the Echo Kalamunda News local newspaper on 16 September 2017 headed "State Government probes Kalamunda planning".

22. Ms Destree's Response is, in summary:

- She spoke to the Author in her capacity as a Councillor.
- The Article accurately reflects what she told the Author, except for the headline "Councillor blames bad advice", which she did not choose. She did not use the words "bad advice". She told the Author she was "disappointed with the City's advice".
- She only spoke to the Author to explain her position, particularly in view of the Departmental investigation. She denies seeking to gain an advantage by speaking to the Author or that she intended to cause detriment to Ms Hardy, Mr DF or the City.
- "The City's CEO remains largely silent" is not an express or implied criticism of Ms Hardy. "Not standing up and declaring its own responsibilities" is not a criticism of Ms Hardy.
- Her Comments were neither "discourteous nor insensitive" towards any person. She did not lay blame on Ms Hardy or Mr DF or "place any expectation on Ms Hardy to personally take responsibility in relation to the declaration of interest".
- The City's advice (in the City's Letter) was that she had an interest in common to a significant number of electors or ratepayers. She accepted this advice and "declared" a direct financial interest in common at the OCM (a "common interest"). She accepted this advice because the City told her it was based on the Department's interpretation of the Act.



- It was the City's advice (in the City's Letter) that caused the Department to investigate her. She acted appropriately by relying on the City's advice which "accepted that (her) interest was an interest in common".
  - She did not believe the Article would have impacted on the Department's investigation.
  - The meeting with the City's lawyer was held on 2 June 2017. She only received notice the day before and was unable to attend because of an obligation to attend to a serious matter (which she described in her Response). She asked to attend by telephone but this was not arranged.
  - She was justified in speaking to the Author because the matter was already in the public domain; her role as a Councillor was being publicly questioned in the Midland Reporter and Echo, both of which named her as the subject of an investigation; the matter had been raised in Parliament before the Article was published; and the public was entitled to know why she acted in the way she did at the OCM in relation to the proposed scheme amendment.
23. Cr Destree does not dispute most of the background information in the Complaint Form. By implication, from her Response, Cr Destree does not accept Ms Hardy's following assertions:
- At the meeting with the City's lawyer the lawyer advised the City and Councillors not to make any public statements because the Department was investigating the matter.
  - It was up to Cr Destree to consider the matters set out in guidelines to make her own decision about whether her interest met the criteria for a common interest.
24. Cr Destree does not say anything in her Response about why she actually disclosed an interest (see the reference below to the minutes of the OCM) or if she considered whether she had a duty to leave the room.

### **Panel's consideration**

25. The Panel does not need to decide whether the City gave Cr Destree correct advice about declaring or disclosing a financial interest or participating in discussion about the Item and voting. The questions for the Panel are whether Cr Destree improperly used her office within the meaning of that term in regulation 7(1)(b) by making any of the Comments and if so whether she intended to cause detriment to the City or any person.
26. Even if the City's advice to Councillors before the OCM about disclosures of interest under the Act was incorrect or incomplete, and Cr Destree relied on that advice when deciding to participate and vote, it does not necessarily follow that Cr Destree was justified in making the Comments. The Panel must consider the tone, content, meaning and effect of the Comments.
27. It is necessary to consider the Complaint in its context.



28. The Panel has no reason to doubt that the published minutes of the OCM (the Minutes) accurately record the City officer's report to Council and proceedings at the OCM.

29. The following background information is taken from the Minutes, the Department's website and the Act and is not in dispute:

- At the time of the OCM the *Local Government Operational Guidelines for Disclosure of Financial Interests at Meetings* (the Guidelines) were published on the Department's website. These same Guidelines, identified on the front page as "Number 20 – July 2011" are still on the Department's website.
- Item 10.3.3 was headed "Local Planning Scheme Amendment – Dual Density Coding". It concerned a proposed amendment to a local planning scheme which would allow Council to implement dual-coding of residential property. Applying two Residential Design Codes to a lot, for example R20 and R30, would allow the City to increase housing density to meet its future housing needs. Council would be able to consider applications to build under the higher R-Code on a dual-coded lot.
- Councillors who owned dual-coded land or land affected by dual-coding in their area could stand to gain or lose financially by the implementation of dual-coding.
- The Guidelines refer to two aspects of a councillor's duty relevant to this Complaint: whether in the particular circumstances they have a duty to disclose a financial interest in relation to a particular agenda item; and whether they are entitled to participate in the discussion about the item and vote.
- The starting point is that a councillor must disclose a financial interest<sup>9</sup> unless an exemption applies<sup>10</sup>. If a councillor has an interest that must be disclosed he or she must disclose the interest and leave the room while Council considers the matter because he or she is prohibited from participating.<sup>11</sup> If their financial interest is exempt the councillor need not disclose and can participate in discussion and vote.
- In some situations a councillor who has a financial interest which is "an interest common to a significant number of electors or ratepayers" need not disclose their interest and can participate in debate and voting.<sup>12</sup>
- The "common interest" exemption from the duty to disclose does not apply when, for example, the value of a councillor's land may be affected by a change to the planning scheme or zoning for that particular land.<sup>13</sup>
- The effect of section 5.63(3) of the Act is that a councillor may be required to disclose an interest and withdraw from participating in the meeting even if their interest meets the criteria for an interest common to a significant number of electors or ratepayers.

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<sup>9</sup> Section 5.65 of the Act.

<sup>10</sup> Section 5.63 of the Act.

<sup>11</sup> Section 5.67 of the Act.

<sup>12</sup> Section 5.63(1)(a), 5.65.

<sup>13</sup> Section 5.63(3)(a), (b).



- At the OCM, immediately before Item 10.3.3 was discussed, Cr Waddell (the then Shire President, now the Mayor), Cr Destree and three other Councillors “declared a direct financial interest, in common”.
- The Minutes do not record any Councillors’ comments or any discussion about the nature of the “declared” interests; whether the interests were exempt from the Act’s disclosure requirements; or whether, having “declared” their interests, the Councillors were entitled to participate in discussions about the Item or vote on any motions.

### Findings of fact

30. On the available evidence the Panel is satisfied to the required standard that:

- In the lead up to the OCM the Mayor sought advice from Mr DF about disclosure of financial interests.
- The City’s Letter to Councillors written before the OCM, included information quoted from the Guidelines and/or the Department’s *Financial Interest Handbook* (the Handbook). The text of the City’s Letter is quoted in the Complaint Form.
- At the OCM, at the Mayor’s request, Mr DF read out the City’s Letter. (The Minutes do not record that Mr DF read any such letter out but Cr Destree does not dispute this assertion.)
- Despite “declaring” they had a “direct financial interest, in common” Cr Destree and the other four Councillors did not explain the nature of their interest or say whether the Act actually required them to disclose their interests. Council did not discuss whether the Councillors were permitted to stay in the room for Item 10.3.3.
- At the OCM Cr Destree and the four other Councillors were present when Item 10.3.3 was discussed and they voted.
- In May 2017 the Department wrote to Cr Destree and the other four councillors who had “declared” a common interest in Item 10.3.3. The Department asked why they had participated in discussions about Item 10.3.3 and voted. The Department effectively said they may have breached the Act because, even if they had a common interest, the Act may have required them to disclose their interest and leave the room.
- After the Councillors received the May 2017 letter Ms Hardy convened a meeting of Councillors and the City’s lawyer, at which the lawyer highlighted issues with the Guidelines about when it might be appropriate to use an interest in common declaration.
- Cr Destree did not attend the meeting with the City’s lawyer.
- The Departmental investigation was still on foot when the Article was published.
- Having completed its investigation in November 2017 the Department’s view was that Cr Destree’s interest had not been exempt from disclosure.



- These paragraphs in the Guidelines make it clear that councillors are responsible for making their own decisions about disclosures and participating in debates (*italics inserted by the Panel for emphasis*):

“1. Introduction ...

The guidelines should be read in conjunction with the relevant provisions of the Act. *The onus is on elected members*, local government employees and other relevant persons to determine whether they are affected by the financial interest provisions in relation to a matter under consideration by the council ...”

“15. What should I consider before deciding to disclose?

*The decision on whether to disclose an interest is yours and yours alone. Nobody can direct you to disclose or disclose for you ...”*

16. Are there any exempt interests?

“... some interests are exempt from the disclosure requirements to allow participation by all members. As stated earlier, *the decision of whether to disclose is yours and yours alone*. The exemptions are there to assist you to participate more fully in the decision making process by making use of the exemptions. However, before doing so give consideration to whether they apply in your circumstances.

“16.9. General comment on exempt interests

*It must be stressed again that the decision to disclose an interest is yours and yours alone. Only you will know all the facts relevant to your situation and accordingly you must decide whether you have an interest in a matter and, if so, what the nature and extent of that interest is. You will also need to decide whether any of the exemptions allowed by the Act apply.”*

#### First element – whether Cr Destree was a councillor when she spoke to the Author

31. Clearly this element is established.

#### Second element - whether Cr Destree used her office as a councillor when she spoke to the Author

32. Cr Destree admits she spoke to the Author in her capacity as a councillor. This element is established.

#### Third element – whether Cr Destree made improper use of her office as a councillor

33. The 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>14</sup>

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<sup>14</sup> Macquarie Dictionary, Revised Third Edition.



34. The meaning of “improper” must be considered in the context of relevant legislation, such as the Act and the Regulations, other rules and standards that apply to a councillor’s role and conduct, such as the local government’s Code of Conduct, and the circumstances and context of the case.<sup>15</sup>
35. Whether there is impropriety is to be assessed objectively: would a reasonable person with knowledge of the duties, powers and authority of a councillor, and all the circumstances of the particular case, form the view that the councillor had breached the standards of conduct expected of a councillor?<sup>16</sup>
36. “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>17</sup>
37. Under the Act Panel members must have regard to the general interests of local government in Western Australia.<sup>18</sup> It is in the interests of local government that the community knows councillors are complying with their legal obligations, duly created policies and their Code of Conduct. Councillors must respect, and be seen to respect, the local government’s employees, its processes and the work of the employees. Councillors have a duty to be faithful to the proper workings of the local government and their Council.<sup>19</sup>
38. Regulation 3 of the Regulations sets out general principles to guide councillors’ behaviour, although contravention of any of any of these does not amount to a minor breach.<sup>20</sup> Regulation 3 provides, among other things, that councillors should act with reasonable care, diligence, honesty and integrity; avoid damage to the reputation of the local government; and treat others with respect and fairness.
39. Conduct can be improper even though the councillor’s judgment is that it isn’t improper. A councillor’s use of his or her office can be improper even though the councillor is intending to benefit the local government, the council or the ratepayers and residents.<sup>21</sup>
40. The City’s Letter included:

“Councillors who own land or land adjacent to land to be rezoned under the dual density coding proposal have a Financial Interest, however given the number of residents/ratepayers affected by the proposal, it is considered that the Interest would be one ‘In Common’.

This is based on the information provided in the Financial Interest Handbook published by (the Department) and the relevant extract is below ...”

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<sup>15</sup> *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 10, referring to *Treby and Local Government Standards Panel* [2010] WASAT 81 (*Treby* 2010).

<sup>16</sup> *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraph 27, referring to *R v Byrnes* (1995) 183 CLR 501.

<sup>17</sup> *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 9, referring to *Robbins v Harness Racing Board* [1984] VR 641.

<sup>18</sup> Section 5.122(3) of the Act, Schedule 5.1 of the Act, clause 8(6).

<sup>19</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59 paragraph 64(5), *Treby and Local Government Standards Panel* [2009] WASAT 224 paragraph 19.

<sup>20</sup> Regulation 13.

<sup>21</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59, paragraph 64(4), referring to *Treby* 2010.



41. The City's Letter then presented information from the Handbook (it is not clear exactly which parts are taken directly from the Handbook) about how a Councillor is to assess whether they have an interest in common:
- /“If the nature and extent of your interest is no more or less than that affecting a significant number of electors or ratepayers ...  
...  
If you wish to use this exemption you would need to establish:” (then four criteria are listed).
42. The City's Letter is consistent with the principle that individual councillors must take responsibility for their own disclosures and decisions about whether to participate when relevant items are discussed. Cr Destree would have known or should have known that she was responsible for assessing her particular circumstances and making her own decisions about disclosure and participation.
43. Applying the principles for assessing impropriety the Panel is satisfied to the required standard that Cr Destree made improper use of her office by making three statements quoted in the Article which criticise and blame Ms Hardy and the administration as a whole for Cr Destree being under investigation. These Statements are:
- “A Councillor is calling on the City of Kalamunda to accept responsibility for its role in an alleged breach of (the Act) under review by the Department” (Statement 1);
  - Referring to the “protracted assessment by the Department”, “... in defence of my own actions as a Councillor ... and through the whole process the City's CEO remains largely silent. I am disappointed the City has not stood up and declared its own responsibilities and actions in this matter.” (Statement 2)
  - “It appears there has been a significant error, but that error is inadequate advice the City provided to all councillors at the (OCM), not the actions of councillors named.” (Statement 3)
44. The Panel rejects Cr Destree's claim that Statement 2 is not a criticism of Ms Hardy or the administration.
45. Cr Destree's assertion that her Comments could not be seen as “discourteous (or) insensitive towards any person” is untenable.
46. The Panel finds that a fourth Statement (Statement 4), “At no time did the CEO or governance manager state the advice was an extract of the Department's Handbook and not from the Local Government Act” is not true. The City's Letter expressly stated the information was taken from the Handbook. The Panel finds that Cr Destree acted improperly by making Statement 4, which unfairly maligns Ms Hardy and Mr DF.
47. Cr Destree submits she was only being investigated by the Department because she relied on the City's advice. There is no evidence that the City advised Cr Destree to disclose or not disclose any interest, or to participate or not participate in discussions and voting. There is no evidence that the City investigated Cr Destree's personal circumstances (and it was not the City's role to do so). The City's Letter did not make any reference to Cr Destree's circumstances.



48. The articles in the Midland Reporter and Echo attribute comments to the Mayor. The attributed comments are measured and objective. Cr Destree's Statements in the Article are not. She accused Ms Hardy, Mr DF and the administration of not meeting their responsibilities and clearly implied they were incompetent. She could have explained her views and her position objectively.
49. A reasonable person knowing all the circumstances would consider Cr Destree was blaming Ms Hardy, Mr DF and the administration as a whole for her being investigated by the Department.
50. It was improper for Cr Destree to blame the administration for her predicament when it was her responsibility to take steps to decide whether to disclose an interest and whether to stay in the room for the debate and voting.
51. Councillors must have, and be seen to have, a professional working relationship with their Chief Executive Officer and other City staff. It is not appropriate to air grievances about the administration in public. Cr Destree acted unprofessionally by criticising Ms Hardy and the administration in the media.
52. Cr Destree did not meet the standards of conduct expected of a councillor. Her breach of these standards was sufficiently serious to warrant a penalty. This element is established.

Fourth element – whether Cr Destree intended to cause detriment to the local government or any other person

53. "Detriment" means loss, damage or injury.<sup>22</sup> It includes financial and non-financial loss and adverse treatment, such as humiliation, denigration, intimidation, harassment, discrimination and disadvantage. A person or organisation can suffer detriment through others thinking less favourably of them/it.<sup>23</sup>
54. 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>24</sup> And 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 the councillor believed that his or her actions would cause detriment and took the action to cause detriment.<sup>25</sup>
55. "To cause detriment" means "in order to" or "for the purpose of" causing detriment, or "with the will to" cause detriment.<sup>26</sup> There can be a finding of intent if, after considering all the evidence, the only reasonable inference is that the councillor intended to cause detriment.<sup>27</sup>

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<sup>22</sup> Macquarie Dictionary Revised Third Edition, 2001.

<sup>23</sup> *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraphs 31, 32.

<sup>24</sup> *Treby* 2010, paragraph 96, referring to *Chew v The Queen* 1992 CLR 626 (*Chew* 2010).

<sup>25</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>26</sup> *Chew* 2010.

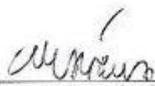
<sup>27</sup> *Treby* 2010.



56. The Statements were likely to seriously offend Ms Hardy and Mr DF and cause members of the community to think less favourably of them and the administration as a whole. Cr Destree used the Article to deflect the adverse attention she was getting by blaming others for the result of her own decisions and actions. The Panel is satisfied to the required standard that Cr Destree set out to convince the community that she had done nothing wrong and that Ms Hardy, Mr DF and the administration were incompetent.
57. The Panel is satisfied to the required standard that Cr Destree intended to damage Ms Hardy, Mr DF and the administration as a whole. This element is established.

### **Panel's finding**

58. The Panel finds that Cr Destree breached regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007* and therefore committed one minor breach.

  
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Merranie Strauss (Member)

  
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Paul Kelly (Member)

  
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Mark Beecroft (Deputy Member)

Date of Reasons – 27 February 2018