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## Local Government Standards Panel

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Complaint Number	SP 60 of 2017 [DLGSC 20170205]
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Councillor Patrick Hall</b>
<b>Respondent</b>	<b>Mayor Paul Ng</b>
Local Government	<b>City of Canning</b>
Regulation	Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007</i>
Panel Members	Mrs S Siekierka (Presiding Member) Ms M Strauss (Member) Councillor P Kelly (Member)
Heard	8 March 2018 Determined on the documents
Outcome	One breach of regulation 7(1)(b)

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### FINDING AND REASONS FOR FINDING

Published **3 July 2018**

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#### DEFAMATION CAUTION

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## Summary of the Panel's decision

1. Under the provisions of the *Local Government Act 1995* (WA) (the Act) the Panel found that Councillor Paul Ng, the Mayor of the City of Canning (the City), breached regulation 7(1)(b) of the Act and the *Local Government (Rules of Conduct) Regulations 2007* (the Regulations) on 5 October 2017 and 6 October 2017 when he telephoned and sent emails to a local newspaper journalist concerning a local government election flyer published by another City Councillor, Councillor Patrick Hall.
2. The Panel found that the Mayor did not breach regulation 7(1)(b) when he sent an email to Cr Hall on 6 October 2017 titled "Your CONDUCT!"

## Jurisdiction

3. The Act provides for the circumstances in which a council member commits a minor breach.<sup>1</sup>
4. On 7 December 2017 the Panel received a Complaint of Minor Breach Form dated 6 December 2017 signed by Cr Hall with copies of the following documents:
  - Cr Hall's letter to the City's Chief Executive Officer (the CEO) dated 15 October 2017 headed "Official complaint of serious misconduct" (Letter 1).
  - Eleven emails passing between Cr Hall and Mr TH, a journalist with Examiner Newspapers, between 5 October 2017 and 11 October 2017 attached to Letter 1.
  - Cr Hall's letter to the Panel dated 8 December 2017 headed "Complaint of Misconduct against City of Canning Mayor Paul Ng" (Letter 2).
  - A report from Peyton Consulting to the City of Canning titled "Referral to Standards Panel Re Complaint CAN012017 Confidential Report" dated November 2017, with 38 attachments (the Report).
5. On 3 January 2018 the Department of Local Government, Sport and Cultural Industries (the Department) sent the Mayor copies of the Complaint Form and the documents listed in paragraph 4 above, inviting him to respond to this 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. However, if a councillor has previously committed two or more minor breaches, the Panel may send the complaint to the Chief Executive Officer of the Department instead of considering the complaint itself.<sup>2</sup>
7. The Panel convened on 8 March 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, the Mayor was a councillor at the time of the alleged breaches and was still a councillor when the Panel met on 8 March 2018;

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

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



- was satisfied the complaint was made within two years after the alleged breaches occurred<sup>3</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>4</sup>;
  - did not consider sending the complaint to the Chief Executive Officer of the Department because the Mayor had not previously committed any minor breaches;
  - noted that the Mayor responded to the complaint on 12 February 2018 in a detailed Elected Member's Response Form, and in an email from his solicitors on 13 February 2018<sup>5</sup> (the Response);
  - was satisfied the Department had provided procedural fairness to the Mayor;
- and
- found it had jurisdiction to consider the complaint.

### **Panel's role**

8. The Panel is not an investigative body.<sup>6</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>7</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>8</sup> The Panel cannot merely choose between two or more conflicting but equally possible versions of events.<sup>9</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>10</sup>

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

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

<sup>5</sup> On 13 February 2018 the solicitors, Civic Legal, merely sent attachments for the Elected Member's Response Form.

<sup>6</sup> *Re and Local Government Standards Panel* [2015] WASAC 51, paragraph 24.

<sup>7</sup> Section 5.106 of the Act.

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

<sup>9</sup> *Bradshaw v McEwens Pty Ltd* (1951) 217 ALR 1, paragraph 5.

<sup>10</sup> The effect of section 5.106 of the Act.



## Regulation 7(1)(b)

12. Cr Hall does not specify whether he alleges a breach of regulation 7(1)(a), 7(1)(b) or both. Based on the Complaint Form and the other documents submitted by Cr Hall the Panel considered the complaint as one alleging the Mayor committed two breaches 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.”*

## The Report

14. Page 4 of the Report advises:

“The purpose of this assessment process is to identify whether there is a reasonable basis to suspect a breach of the City’s Code of Conduct, Standing Orders or (the Regulations) has been committed by (Cr Hall). Any conclusions reached, or recommendations made in this report are intended to assist the City of Canning to decide how to appropriately deal with this complaint.”

15. The Panel has considered the documents attached to the Report. The Panel has not considered or relied upon any discussion, findings or conclusions in the Report.

16. The relevant documents attached to the Report are:

- The City’s Code of Conduct (the Code).
- The City’s Policy EM 01, “Complaints Against Elected Members and the Chief Executive Officer” (Policy EM01).
- An article published in the Canning Examiner local newspaper on 18 October 2017 titled “Funding Row Erupts”, which is reproduced in Letter 1 ([Article 1](#)).
- An article published in the Canning Examiner local newspaper on 18 October 2017 titled “Feathers Fly Over Netball Funding”, which is reproduced in Letter 1 ([Article 2](#)).
- A news article published online by the Canning Examiner on 19 October 2017 titled “Flyer Row Erupts”, which is reproduced in Letter 1 ([Article 3](#)).
- An email from the Mayor to Cr Hall sent on 6 October 2017 with the subject title “Your CONDUCT!” ([the Your Conduct Email](#)).



- Facebook messages posted by Cr Hall and others on 20 September 2017 attached to the Your Conduct Email.
- Six emails passing between the Mayor and Mr TH from 4.10pm on 5 October 2017 to 10.16am on 6 October 2017.

### **Allegation 1 – the Your Conduct Email**

17. In Letter 1 and Letter 2 Cr Hall alleges the Mayor breached regulation 7(1)(b) on 6 October 2017 when he sent the Your Conduct Email to Cr Hall.

18. The Your Conduct Email is addressed to Cr Hall alone. In summary, the Mayor says:

- A number of City Councillors had complained to the Mayor about Cr Hall's Facebook posts and behaviour towards other Councillors at Council meetings.
- Cr Hall used the Facebook posts to gain publicity in the lead up to the forthcoming local government election by insinuating the CEO was improperly being given benefits. This insinuation damaged other Councillors, the CEO and the City as a whole.
- Two members of the community posted comments on Cr Hall's Facebook page suggesting the CEO and City Councillors had behaved corruptly. Cr Hall did not challenge these posts, which "suggested to audiences that (he) either (endorsed) these views" or found them "advantageous to (his) standing". Cr Hall caused further detriment by not challenging the posts or defending the City, the other Councillors or the CEO.
- Cr Hall falsely attributed a statement to the Mayor and further criticised the City's governance when he responded to another community member's comment on his Facebook page.
- Cr Hall may have breached the Regulations and the City's Code of Conduct by posting comments on Facebook and failing to respond to the community members' posts identified by the Mayor.

19. In the Your Conduct Email the Mayor did not provide Cr Hall with any particulars of his alleged offending behaviour at Council meetings.

20. Cr Hall alleges the Mayor breached Part 3, paragraph 9 of the Code, which provides:

*"We will deal with complaints, wherever appropriate, at a local level by following the process outlined in (Policy EM01)."*

21. Cr Hall also alleges the Mayor breached clause 3(3) of Policy EM01, which provides:

*"Complaints about the conduct of elected members must be submitted in writing to the CEO".*

22. Cr Hall asserts that he was not given the opportunity to respond to the Mayor's assertions in the Your Conduct Email or defend his reputation because the Mayor bypassed the complaints process established by the Code and Policy EM01.



## Response to Allegation 1

23. The Mayor denies he breached regulation 7(1)(b). In his Elected Member's Response Form the Mayor's submits that the Your Conduct Email was to warn Cr Hall about his conduct; he did not intend to cause detriment to Cr Hall; he intended to ensure only truthful statements were made during the election process; and he acted in accordance with his public duty to preserve the integrity of the election process.

### Panel's consideration of Allegation 1

24. Regulation 7(2) does not exclude the operation of regulation 7(1)(b) 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).

#### First and second elements – whether the Mayor was a councillor, and whether he used his office as a councillor, when sending the Your Conduct Email

25. Clearly these two elements are established.

#### Third element – whether the Mayor made improper use of his office as a councillor

26. 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>11</sup>

27. 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>12</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>13</sup> Councillors have a duty to be faithful to the proper workings of the local government and their council.<sup>14</sup>

28. 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 councillors are, and are seen to be, professional and to act consistently with authorised decisions of Council and the administration. Councillors must also respect, and be seen to respect, the local government's processes and the roles of its officers and their lawful decisions.

29. 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>16</sup> Regulation 3 provides, among other things, that councillors should act with

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

<sup>12</sup> *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraph 27, referring to *R v Byrnes* (1995) 183 CLR 501.

<sup>13</sup> *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 9, referring to *Robbins v Harness Racing Board* [1984] VR 641.

<sup>14</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>15</sup> Section 5.122(3) of the Act, Schedule 5.1 of the Act, clause 8(6).

<sup>16</sup> Regulation 13.



reasonable care and diligence, act with honesty and integrity and treat others with respect and fairness.

30. 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>17</sup>

31. 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>18</sup>

32. In some situations it is acceptable for a mayor, as the leader of the council, to advise a councillor that he or she finds the councillor’s conduct to be unacceptable, or to ask the councillor to change their behaviour.

33. The local government election was due to be held on 21 October 2017. It was reasonable for the Mayor to be especially concerned about potentially inappropriate comments made in the public arena during the lead up to the election.

34. Paragraph 4 in one of Cr Hall’s posts attached to the Your Conduct Email is headed “Review of the CEO’s Salary & KPIs”. In paragraph 4 Cr Hall criticised a Council decision about the CEO’s salary package and implied the CEO had received benefits that were not justified.

35. The Panel has applied the tests for impropriety referred to in paragraphs 26 to 32 above. Having considered the content of the Your Conduct Email; paragraph 4 of the Facebook post referred to in paragraph 34 above; the leadership role of the Mayor; the Mayor’s heightened vigilance about public comments in the lead-up to the election; and the fact that the Mayor only sent the Your Conduct Email to Cr Hall, the Panel:

- (a) finds that the Mayor was not obliged in this case to submit his complaints about Cr Hall to the CEO under Policy EM01<sup>19</sup>; and
- (b) is not satisfied to the required standard that a reasonable member of the community would consider, in all the circumstances, the Mayor breached the standards of conduct expected of a mayor.

36. The Panel finds that the Mayor did not make improper use of his office when sending the Your Conduct Email. As this element is not established it is not necessary to consider whether the Mayor intended to cause detriment.

37. The Panel finds that the Mayor did not breach regulation 7(1)(b) when he sent the Your Conduct Email to Cr Hall.

## **Allegation 2 - providing information to Mr TH of the Examiner**

38. In Letter 1 and Letter 2 Cr Hall alleges the Mayor breached regulation 7(1)(b) when telephoning and sending emails to Mr TH in October 2017 about his (Cr Hall’s) involvement

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<sup>17</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>18</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59, paragraph 64(4), referring to *Treby* 2010.

<sup>19</sup> Clause 3(3) of Policy EM01 only requires a referral to the CEO if such a referral is “appropriate”.



in funding issues concerning the Willetton Basketball Association (WBA) and the Rossmoyne Netball Club (RNC), which communications resulted in the publication of Articles 1, 2 and 3. Cr Hall asserts that Articles 1, 2 and 3 contain false information, provided by the Mayor, which damaged his reputation and threatened his election prospects.

39. Regulation 7(2) does not exclude the operation of regulation 7(1)(b) 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).

### **Background to Allegation 2**

40. The Panel has no reason to doubt the accuracy of the published minutes of the ordinary council meetings on 20 June 2016 (the June 2016 OCM), 13 December 2016 (the December 2016 OCM) and 15 August 2017 (the August 2017 OCM).

#### June 2016 OCM

41. The City considered an application for funding under a specified Federal Government programme to expand and improve the WBA's facilities (the Motion). The Motion also proposed that if that application were successful the Council would contribute an equal amount to the project, up to a maximum of \$2.25 million. Another Councillor sought to amend the motion. After discussion, noted in the minutes, the Mayor moved an amended motion (the Amended Motion).

42. Cr Hall sought to defer consideration of the Amended Motion to the next ordinary council meeting "due to the number of changes to date, the need for clarity in relation to financial modelling, uncertainty surrounding State and Federal funding, and the fact that a number of councillors had received an inappropriate text message in relation to the matter."<sup>20</sup>

43. Cr Hall voted against the Amended Motion. The Amended Motion was carried.

#### December 2016 OCM

44. Council discussed a Notice of Motion (the New Motion) concerning the WBA project, which involved reconsidering the Amended Motion carried at the June 2016 OCM.

45. The officer's report for the New Motion advised Council<sup>21</sup>:

- the WBA's aspiration had been to obtain \$5 million through the specified Federal Government programme and \$2.2 million from each of the State Government and the City;
- as a result of changes to the specific Federal programme the WBA did not now qualify for a grant under that particular Federal programme; and

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<sup>20</sup> Minutes of June 2016 OCM, page 10.

<sup>21</sup> Minutes of December 2016 OCM, page 103.



- the WBA was continuing to speak with the Federal and State Governments “in the hope that funding will become available for its Project”.

46. Cr Hall moved that debate on the New Motion be deferred until February 2017. The minutes record that Cr Hall commented on his proposal to defer but do not include the substance of his comments. The motion to defer was lost. Council then considered the New Motion, resolving to endorse the WBA’s attempts to achieve Federal and/or State Government funding and provide up to \$2.2 million for the project. The New Motion was carried.

#### August 2017 OCM

47. Cr Hall moved a motion that the City allocate approximately \$60,000 to the RNC to part fund the development of a toilet and storage facility. The motion was carried unanimously. Council also voted to approve RNC’s application to the State Government for additional funds to complete the project.

#### Cr Hall’s Flyer

48. Cr Hall’s Flyer, copied into Article 1 states, in relation to the WBA and RNC:

*“In less than 2 years I have ...*

- *Supported the expansion of Willetton Basketball Stadium and Council’s funding commitment to this important community project*
- *...*
- *Secured much needed funding for (RNC) to enable them to establish their own club facility”*

#### Emails involving Cr Hall, the Mayor and Mr TH

49. On 5 October 2017 (4.51pm) the Mayor emailed documents to Mr TH with the subject title “Untruthful Advertising”.

50. On 5 October 2017 (5.03pm) Mr TH asked Cr Hall to comment on allegations that he had twice voted against the WBA project, and that it was the Mayor, the local Member of Parliament (the MP) and the former RNC president who had “determined” the funding “long ago”.

51. On 6 October 2017 (10.12am) the Mayor sent Mr TH an extract from the minutes of the June 2016 OCM, saying:

*“I would prefer that you mention, I was interviewed on the matter. As Mayor I am deeply (concerned) about the honesty, truthfulness and integrity of the campaign materials dished out. Especially so, from sitting member, Cr Patrick Hall. Something to that line. You know better than me. I am only an amateur in the media.”*

52. On 10 October 2017 (11.29am) Mr TH advised Cr Hall, “Regarding the flyer allegations, the Mayor provided comments”.

53. On 10 October 2017 (4.10pm and 5.00 pm) Mr TH advised Cr Hall that he and the Mayor “chatted over the phone for a bit about it”. Mr TH said, “(The Mayor) called me



directly to discuss it. He said he'd been contacted by members of the public beforehand regarding the flyers".

#### Article 1, "Funding Row Erupts"

54. Mr TH reported, in summary:

- The Mayor says the Flyer makes untrue claims.
- The Mayor says Cr Hall did not support the WBA project – he twice voted against it – his claim about supporting the WBA is "totally dishonest, not truthful".
- Cr Hall's response is that he supports Council contributing funds for the project but in his opinion the \$2.2 million funding was "rushed through", he had wanted more "due diligence", and asked for the matter to be deferred so Council could be provided with more detail.
- Cr Hall says "On principle I could not in good conscience support the process".

#### Article 2, Feathers Fly Over Netball Funding"

55. Mr TH reported, in summary:

- The Mayor says Cr Hall had been intentionally misleading in his Flyer by suggesting he had assisted with securing the \$60,000.
- The Mayor says he, the then local MP and the President of the RNC had reached an agreement in private in 2016, without Mr Hall.
- Cr Hall's response is that the RNC had approached him and another Councillor because the RNC thought previous discussions with the City had not resulted in the level of support required.
- The RNC President says: Cr Hall and the other Councillor "undoubtedly helped" secure the funding; the MP had pledged to fund a "good portion" of its building but had not been returned to Government; and there was no agreement between the Mayor and the MP to support the project.

#### Article 3, "Flyer Row Erupts"

56. Cr Hall has not provided the text of this Article but describes it as "an equally comprehensive online story".

#### Cr Hall's assertions

57. Cr Hall asserts:

- The Mayor initiated the contact with Mr TH.
- The Mayor timed his approach to Mr TH to coincide with the week ballot papers were delivered, being the most critical time in the election process.



- The publication of the Articles was delayed for one week only because of space restrictions. They were published in the final week of voting and would have been even more damaging if published the week before.
- The Mayor used his special status as Mayor to discredit him in the lead up to the election. Article 1 made the front page and Article 2 the second page because of the Mayor's special status.
- Any reasonable person would know that the adverse media attention in the two weeks before the election would influence electors, damage Cr Hall's reputation and damage the reputation and image of the City.
- The Mayor approached Mr TH with the intention of damaging Cr Hall's reputation and his prospects of succeeding in the election.
- The Mayor breached Part 3 of the City's Code of Conduct because he did not act ethically or with integrity (clause 3.1); he attempted to exert improper influence (clause 3.2); he made allegations in the media that were not in the interests of the community (clause 3.6); he did not act professionally (clause 3.8); and did not deal with the complaint or complaints by community members in accordance with Policy EM01 regarding Complaints Against Elected Members (clause 3.9).
- It is untrue that funding for the RNC had already been determined by the MP, the Mayor and the President of the RNC. There was a brief meeting between these parties in January 2017 but no funding was secured and no agreement was struck. The Mayor has not contacted the RNC since then, nor sought to advance or assist its funding application since then.

## **Response to Allegation 2**

58. The Mayor admits he telephoned Mr TH on or around 5 October 2017 to discuss the Flyer and sent the emails referred to in paragraphs 49 and 51 above. The Mayor does not dispute he made the comments attributed to him in Articles 1 and 2.

59. The Mayor denies he breached regulation 7(1)(b). He says: he intended only to prevent misconceptions and ensure only truthful statements were published during the election process; he abided by his duty to speak up against misleading or deceptive material circulated during the election campaign; he and the then Deputy Mayor had warned Cr Hall about his conduct in emails on 4 and 6 October 2017; he did not intend to discredit Cr Hall; Cr Hall did not suffer any detriment as he was re-elected; and his actions helped correct misleading or deceptive statements made in public.

60. The Mayor asserts that he only gave Mr TH information available on the City's website, such as the minutes of the relevant Council meetings, so the Articles could have been published without him having contacted Mr TH. The Mayor says he only contacted Mr TH to "inform him of certain facts which were contrary to previous statements made publicly by Cr Hall in his election flyer and during his election campaign".

## **Panel's consideration of Allegation 2**

First and second elements – whether the Mayor was a councillor, and whether he used his office as a councillor, when contacting Mr RL and Mr TH on 5 and 6 October 2017



61. Clearly these two elements are established.

Third element – whether the Mayor made improper use of his office as a councillor

62. Paragraphs 26 to 31 above outline the principles that apply when considering improper use of office.

63. The Panel is satisfied to the required standard that the Mayor made improper use of his office. This is based on the following findings:

- (a) The Mayor made the comments attributed to him in Articles 1 and 2.
- (b) The Mayor initiated contact with Mr TH by telephone and email within 16 days before the election, making adverse comments about the truth of Cr Hall's public statements. The Mayor wanted Mr TH to publish his comments and knew Mr TH was likely to publish them before the election.
- (c) The Mayor wanted to hide the fact that he had initiated contact with Mr TH. He wanted readers to think that Mr TH or the Examiner had approached him for an interview (email 6 October 2017, 10.12am).
- (d) The Mayor's assertion in Article 1 that Cr Hall had been dishonest and untruthful about his support for WBA's projects misrepresented Cr Hall's views and actions. At the June 2016 OCM Cr Hall was not opposed to Council contributing funds for the upgrade of WBA's facilities. When this motion was amended he simply wanted debate to be deferred until Council had more information about, among other things, State and Federal funding options and processes.
- (e) Cr Hall's concerns at the June 2016 OCM turned out to be somewhat justified because at the December 2017 OCM Council had to reconsider its position due to changes in government funding options and processes. At the December 2016 OCM Cr Hall voted against the Council's new motion to, in the light of government funding uncertainties, continue to support WBA's project.
- (f) In Article 2 the Mayor said Cr Hall was intentionally misleading the community by saying in his Flyer he had assisted in securing \$60,000 for the RNC project. The Mayor again misrepresented the situation. At the August 2017 OCM Cr Hall had moved the motion that Council contribute \$60,000 to the RNC's project. Cr Hall had "undoubtedly helped" secure funding (the RNC President's comment reported in Article 2) and had been working with the RNC for some time to get funding (as reflected in the RNC President's emails attached to the Report).
- (g) The Mayor did not accurately report the nature and outcome of his discussions with the MP to Mr TH. The Panel prefers Cr Hall's version (paragraph 57 above) and the RNC President's statement (reported in Article 2) that funding had not been secured during earlier discussions between the RNC President, the Mayor and the MP. There had been a meeting between these parties in January 2017 but this did not lead to any State Government funding. The Mayor had no power to promise funding. Only Council could allocate City funds, which it did by carrying Cr Hall's motion at the August 2017 OCM.
- (h) The Mayor breached the standards of conduct expected of a councillor by initiating contact with Mr TH during the election period; misrepresenting Cr Hall's involvement



in the WBC and RNC projects; and telling Mr TH that Cr Hall made false statements and was dishonest, knowing that his comments would be published.

Fourth element – whether the Mayor made improper use of his office to cause detriment to the local government or any other person

64. “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>

65. 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>

66. “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>

67. Based on the findings referred to in paragraph 63 above the only reasonable conclusion is that the Mayor intended to cast Cr Hall as a dishonest and untrustworthy person, at a time when the community would be focussed on candidates’ credibility.

68. The Panel is satisfied to the required standard that the Mayor intended to cause detriment to Cr Hall. This element is established.

69. The Mayor breached regulation 7(1)(b).

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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.



### Panel's finding

70. The Panel finds that the Mayor breached regulations 7(1)(b) when telephoning Mr TH and sending him emails on 5 October 2017 and 6 October 2017 criticising Cr Hall and his Flyer. The Mayor did not breach regulation 7(1)(b) when sending the Your Conduct Email on 6 October 2017. Therefore, the Mayor committed one minor breach.

Sheryl Siekierka (Presiding Member)

Paul Kelly (Member)

Merranie Strauss (Member)

Date of Reasons for Decision 3 July 2018