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## Local Government Standards Panel

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Complaint Number	SP 2019-047
Legislation	<i>Local Government Act 1995</i>
<b>Complainant</b>	<b>Councillor Josephine McAllister</b>
<b>Respondent</b>	<b>Councillor Rod Bradley</b>
<b>Local Government</b>	<b>Town of Cambridge</b>
Regulation	Regulation 4, 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 Rebecca Aubrey (Deputy Member)
Heard	16 December 2019 Determined on the documents
Outcome	One breach of Regulation 4(2) One breach of Regulation 7(1)(b)

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### AMENDED FINDING AND REASONS FOR FINDING

Re-Published 3 March 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 Councillor Rod Bradley ("Cr Bradley"), a councillor for the Town of Cambridge ("the Town"):
  - a. did commit a breach under the *Local Government Act 1995* (WA) ("the Act") and regulation 4(2) of the *Local Government (Rules of Conduct) Regulations 2007* ("the Regulations") when he made comments about a fellow councillor at the Council Meeting on 18 December 2018 ("Council Meeting"); and
  - b. did commit a breach under the Act and Regulation 7(1)(b) in relation to the same conduct as outlined above.

## 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 21 May 2019 the Department of Local Government, Sport and Cultural Industries ("the Department") received a Complaint of Minor Breach Form dated 14 May 2019 ("Complaint"). The Complaint was signed by Councillor Josephine McAllister ("Complainant"), and contained one allegation of a breach of Regulation 4(2) by Cr Bradley when he made comments about the Complainant during debate at the Council Meeting that were offensive and objectionable. The second allegation was that Cr Bradley also breached Regulation 7(1)(b) in relation to the same conduct.
4. On 31 May 2019, the Department advised Cr Bradley of the Complaint and invited him to respond. The Department sent Cr Bradley 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 16 December 2019 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 Cr Bradley was a councillor at the time of the alleged breach, having been elected on 17 October 2015, and was still a Councillor when the Panel met on 16 December 2019;
  - (b) was satisfied the Complaint had been made within six months after the alleged breach is 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 Cr Bradley.
7. 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 assisting the relevant Minister at the time instead of considering the Complaint itself.<sup>5</sup> Cr Bradley has previously been found to have committed three minor breaches, and the Complaint was referred to the Director General to consider whether to make an allegation to the State Administrative Tribunal ("SAT"). However, the previous breaches were determined in 2010 and given their historical nature, it was the Director General's view that if an allegation was made to SAT that Cr Bradley committed an additional breach, the SAT would not consider any further penalties for Cr Bradley than those already available to the Panel. Therefore, the Complaint was returned to the Panel for consideration.
8. Based on the information referred to in paragraphs 2 to 7 above, the Panel found it had jurisdiction to determine whether Cr Bradley had breached Regulation 4(2) and Regulation 7(1)(b) in connection with the First and Second Allegations.

#### **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 councillor 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 councillor 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 4**

13. Regulation 4 provides:

##### ***"4. Contravention of certain local laws***

- (1) *In this regulation –*

***local law as to conduct*** means a local law relating to conduct of people at council or committee meetings.

<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.



- (2) *The contravention of a local law as to conduct is a minor breach for the purposes of section 5.105(1)(b) of the Act.”*

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

14. Regulation 7 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.”*

15. 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)**

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

- (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 councillor, 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 councillor, by reasonable persons with knowledge of the duties, power and authority of the councillor 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”*

17. 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>8</sup> The Shorter Oxford dictionary definition is “*irregular, wrong; unsuitable, inappropriate; unbecoming, unseemly.*”<sup>9</sup>
18. 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>10</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>11</sup>
19. Under the Act Panel members must have regard to the general interests of local government in Western Australia.<sup>12</sup> It is in the interests of local government that councillors are, and are seen to be, professional and respectful in their dealings with fellow councillors, local government employees and members of the public.
20. Regulation 3 sets out general principles to guide councillors’ behaviour, although contravention of any of these does not amount to a minor breach.<sup>13</sup> Regulation 3 provides, among other things, that councillors should act with reasonable care, diligence and integrity and treat others with respect and fairness.
21. 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 councillor’s role and conduct, such as the local government’s Code of Conduct, and the circumstances and context of the case.<sup>14</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.
22. 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>15</sup>

<sup>8</sup> Macquarie Dictionary, Revised Third Edition.

<sup>9</sup> Shorter Oxford English Dictionary, Sixth Edition.

<sup>10</sup> *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraph 27, referring to *R v Byrnes* (1995) 183 CLR 501.

<sup>11</sup> *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 9, referring to *Robbins v Harness Racing Board* [1984] VR 641.

<sup>12</sup> Section 5.122(3) of the Act, Schedule 5.1 of the Act, clause 8(6).

<sup>13</sup> Regulation 3.

<sup>14</sup> *Hipkins and Local Government Standards Panel* [2014] WASAT 48, paragraph 10.

<sup>15</sup> *Yates and Local Government Standards Panel* [2012] WASAT 59, paragraph 64, referring to *Treby* 2010.

Fifth element - meaning of “to cause detriment to the local government or any other person”

*Detriment*

23. “*Detriment*” means loss, damage or injury.<sup>16</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>17</sup>
24. 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>18</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 councillor believed that his or her actions would cause detriment and intended to cause detriment.<sup>19</sup>
25. “*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>20</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>21</sup>

**Substance of the Complaint**

26. During debate at the Council Meeting, Cr Bradley made use of his office and position as an elected member entitled to speak at Council meetings, to make comments about the Complainant that were misleading and incorrect. The comments (“Comments”) were namely that:
- a. the Complainant had acted in collusion and had conspired with persons who were “*enemies of the Town*” for the purposes of Council business; and
  - b. the Complainant was a “*liar*”, had lied to Council and was a “*stupid bitch*”.
27. Following the initial offensive and objectionable Comments, the Presiding Member requested Cr Bradley withdraw the remarks. Cr Bradley did initially withdraw them, however, he then continued to denigrate the Complainant. After further objectionable and offensive comments by Cr Bradley, and a further request from the Presiding Member, Cr Bradley stated that he was “so sorry” in a manner that conveyed no remorse or contrition and was considered by some in the Chamber, including the Complainant, to be sarcastic. He then added that he was “*dying in agony*” as a result of his Comments.
28. Following the conclusion of the Council Meeting, Cr Bradley rose from his chair, directed his comments to the Complainant and stated words to the effect that “*now*

<sup>16</sup> Macquarie Dictionary Revised Third Edition, 2001.

<sup>17</sup> *Ryan and Local Government Standards Panel* [2009] WASAT 154, paragraphs 31, 32.

<sup>18</sup> *Treby* 2010, paragraph 96, referring to *Chew v The Queen* 1992 CLR 626 (*Chew* 2010).

<sup>19</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>20</sup> *Chew* 2010.

<sup>21</sup> *Treby* 2010.





*that the recording is off, we can all say what we really think and that is that Cr McAllister is a bitch!"*

29. The day after the Council Meeting, on 19 December 2019, Cr Bradley sent the Complainant an SMS message ("SMS") in relation to the Council Meeting. The same message was also sent by email by Cr Bradley to the Complainant later the same day:

**Cr Jo McAllister**

**From:** Cr Rod Bradley  
**Sent:** Wednesday, 19 December 2018 11:13 AM  
**To:** Cr Jo McAllister  
**Subject:** Apology

Dear Jo,

I am writing to apologise for my outburst last night. I should not have said those hurtful things which were wrong and must have caused you enormous distress.

I will try to be more restrained in future and maintain control over my emotions so that I do not cause such pain to you or our fellow Councillors.

I do hope that you can find a way to forgive me so that in future our relationship can progress in a normal way.

Rod Bradley

30. On 12 January 2019, purportedly as a result of a request of Mayor Keri Shannon, Cr Bradley sent an email to all elected members ("Email") as follows:

**Cr Jo McAllister**

**From:** Cr Rod Bradley  
**Sent:** Saturday, 12 January 2019 7:03 AM  
**To:** Councillors and Mayor  
**Subject:** Apology for remarks at Council Meeting

Mayor Shannon has asked me to write to you regarding comments I made, directed at Cr. McAllister, at our last council meeting.

I was wrong to use the aggressive and misogynistic phrase, I regret so doing, and, I am truly sorry. I withdrew the remarks immediately and also apologised to her the following day.

I will refrain from using similar remarks in future.

In mitigation, I do need to explain that the meeting was at 11pm, behind closed doors, and, I was frustrated by the leak of my email to the Post which asked the Wembley ward councillors to put aside their differences and attend the Christmas gathering of elected members. This did not excuse the outburst but it gives context to my frustrations and disappointment at the content of Cr McAllister's motion. She was accusing me and others of getting secret advice from CEO Giorgi and complaining that Wembley Ward Councillors were being kept in the dark. These were pointless, unfounded accusations reflecting adversely upon us all.

Cr. Rod Bradley

31. In the Email Cr Bradley stated:

*"I withdrew the remarks immediately..."*

However, Cr Bradley did not withdraw the Comments at any time during, or after, the debate, and he continued to make further similar objectionable and offensive remarks regarding the Complainant after the Council Meeting had concluded.

32. In summary, Cr Bradley:

- i. made Comments about the Complainant at the Council Meeting that were “*offensive and objectionable*” in breach of clause 13.3(2) of the Town’s Standing Orders Local Law and therefore Regulation 4(2) (“First Allegation”); and
- ii. those same Comments were intended to denigrate and cause humiliation to the Complainant, and cause others in the chamber to think less of her, in breach of Regulation 7(1)(b) (“Second Allegation”).

### **Cr Bradley’s Response**

33. In his Response, Cr Bradley refers to his popularity as a councillor and states:

- a. the incident occurred five months before the Complaint was filed;
- b. the meeting was “*behind closed doors*” and “*at the end of a very long meeting*”;
- c. the allegation in relation to Regulation 7(1)(b) is “*untruthful*”;
- d. the remarks were withdrawn at the time;
- e. he apologised to the Complainant and his fellow Councillors; and
- f. the matter is closed.

### **Panel’s Consideration**

#### **First Allegation – breach of Regulation 4**

34. Under the Act a local government can make “*local laws*”, including laws that are necessary or convenient to enable the local government to perform its functions.<sup>22</sup>

35. Under the Act and Regulation 4, a council member who contravenes a “*local law as to conduct*” commits a minor breach.<sup>23</sup> A “*local law as to conduct*” includes a local law about the conduct of councillors at meetings.<sup>24</sup> The Complainant refers to the Town’s Standing Orders Local Law 2007 (“Standing Orders”) that are considered a local law as to conduct and therefore fall within the scope of Regulation 4.

36. Part 13 of the *Standing Orders* relates to “*Preserving Order*” and Order 13.3(2) (“SO 13.3(2)”) states:

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<sup>22</sup> Section 3.51 of the Act.

<sup>23</sup> Section 5.105(1)(b), regulation 4 of the Regulations.

<sup>24</sup> Regulation 4(1) of the Regulations.





*“No Member of the Council or a Committee is to use offensive or objectionable expressions in reference to any Member, employee of the Council, or any other person.”*

The Panel finds that a contravention of SO 13.3(2) would be a minor breach under the Act and Regulation 4(2).

37. In order to find that Cr Bradley committed a breach under Regulation 4(2) the Panel must be satisfied that it is more likely than not that he:

- used offensive expressions; or
- used objectionable expressions;

when referring to the Complainant at a Council or Committee Meeting.

38. In relation to the First Allegation, the Panel finds that Cr Bradley:

- a. was clearly a member of the Council at the time of the alleged conduct; and
- b. referred to the Complainant during the debate at the Council Meeting that took place behind closed doors.

39. The question therefore is whether the expressions used by Cr Bradley in relation to the Complainant were “*offensive*” or “*objectionable*” or both.

Were the words of the type referred to in SO 13.3(2)?

40. The Macquarie dictionary defines:

*“offensive” as “causing offence or displeasure; irritating; highly annoying; repugnant to the moral sense, good taste, or the like”; and*

*“objectionable” as “able or liable to be objected to; unpleasant; offensive”.*

41. The Panel is satisfied to the required standard of proof that the expressions Cr Bradley used in relation to the Complainant during the Council Meeting, were both offensive and objectionable:

- a. Cr Bradley clearly targeted the Complainant and referred to her in a deeply disrespectful manner during the closed part of the Council Meeting, using such terms as “*liar*” and “*stupid bitch*” to describe the Complainant.
- b. By using the language that he did, which included gender specific insults, Cr Bradley conducted himself in a way that would certainly cause offence to a reasonable person. The language used by Cr Bradley was not merely displeasing or annoying; rather it was intimidating and aggressive and would be considered offensive in any context.
- c. The Comments were made in front of other elected members and City staff during debate. There are guidelines for elected members to follow when participating in council and committee meetings as well as specific rules of debate, such as treating others with respect and fairness. It was simply

deplorable for Cr Bradley to flagrantly breach those rules and use such demeaning and derogatory expressions as he did about a fellow councillor in the circumstances.

- d. The Comments, when considered individually, were each serious enough to cause protest; however, the fact that there was a series of abusive remarks directed at the Complainant, both during the debate and continuing until after it had concluded, underlines the objectionable nature of Cr Bradley's Comments.

42. Based on the evidence, the Panel finds it can be concluded that Cr Bradley's Comments about the Complainant were both highly offensive and objectionable.

### **Panel's Finding**

43. The Panel finds that Cr Bradley did breach SO 13.3(2) of the Standing Orders and therefore did commit a minor breach under Regulation 4(2).

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

44. The Panel finds that Cr Bradley engaged in the conduct which is the subject of the Second Allegation and that he was a councillor and was acting as a councillor at all relevant times.

45. The first, second and third elements of Regulation 7(1)(b) are established.

### ***Whether Cr Bradley acted improperly (fourth element)***

46. 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 Cr Bradley 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 Cr Bradley did not meet the standards of conduct expected of a councillor when he made Comments about the Complainant at the Council Meeting:

- a. By attending the Council Meeting as an elected member, Cr Bradley was there to represent the interests of electors, ratepayers and residents of the Town and participate properly in the decision-making process at council. A local government's council is a team and the nature of councillor debate is that opinions are aired and matters are intelligently discussed with a view to coming to an agreement with all people involved. Council members may, during debate, appropriately criticise the views of their fellow councillors on a matter; however, Councillors are expected at all times to maintain high standards of conduct, to act with integrity, treat all persons with respect, exercise reasonable care and lead by example.
- b. When respect is lost at a council meeting, respect for the whole local government is diminished. Debate and argument should not lead to conflict, bullying or aggression.
- c. Cr Bradley's conduct towards the Complainant at the Council Meeting was highly offensive and included name-calling and insulting the Complainant on several occasions in front of their fellow councillors as well as City staff.

Cr Bradley completely undermined the principles of appropriate conduct at a meeting, causing serious harm not only to the Complainant, but also Council.

- d. Furthermore, the Complainant has the right to feel safe, valued and respected at her work place. Again, the Comments made by Cr Bradley undermined and threatened this basic principle.

47. The Panel has considered what councillors can say and how they must act whilst performing their role and carrying out their duties as elected members, and finds that Cr Bradley's behaviour was so wrongful and inappropriate in the circumstances that it calls for the imposition of a penalty.

*Whether Cr Bradley intended to cause detriment to the local government or any other person.*

48. The Panel is satisfied to the required standard of proof that Cr Bradley intended to cause detriment to the Complainant and Council when he spoke at the Council Meeting:

- a. The Panel notes that the Council Meeting had moved behind closed doors when Cr Bradley made the Comments. That, however, does not make Cr Bradley's conduct any less improper or mean that he did not intend to cause detriment, as several other members of Council present during the debate would have witnessed what occurred.
- b. Cr Bradley's language was highly inappropriate and he repeatedly referred to the Complainant in a rude and disrespectful manner.
- c. It appears from the evidence that the day following the Council Meeting, Cr Bradley accepted that he should not have acted as he did, apologising for his behaviour and expressing remorse. In his SMS message sent to the Complainant he stated:

*"I am writing to apologise for my outburst last night. I should not have said those hurtful things which were wrong and must have caused you enormous distress".*

However, he goes on to state in the SMS that he will *"try to be more restrained in future"*. That statement indicates to the Panel that Cr Bradley did not accept the seriousness of his conduct and again, this raises doubts as to his intention, as he failed to give any firm assurance to the Complainant that he would not behave in a similar manner again.

- d. Almost one month after the Council Meeting, Cr Bradley sent the Email to the Complainant and their fellow elected members stating he was wrong to act as he did; however, as he stated in the Email, Cr Bradley was directed to send that correspondence by Mayor Shannon, and did not do so of his own volition.
- e. In the Email, Cr Bradley outlined mitigating factors for his behaviour, and again accused the Complainant of acting inappropriately:

*"This did not excuse the outburst but it gives context to my frustration and disappointment at the content of Cr McAllister's motion.....She was accusing me*



*and others of getting secret advice from CEO Giorgi and complaining that Wembley Ward Councillors were being kept in the dark. These were pointless, unfounded accusations reflecting adversely upon us all."*

Despite having time to consider the matter and his accountability as an elected member, Cr Bradley attempted to explain and justify his behaviour, which undermined the sincerity of his apology to both the Complainant and Council.

49. Based on the evidence before it, the Panel finds that the only reasonable inference is that Cr Bradley intended to cause detriment to the Complainant and Council by making the Comments.

### **Findings**

50. Accordingly, for the above reasons, the Panel finds that Cr Bradley did breach Regulation 7(1)(b) in relation to the Second Allegation.

Mick Connolly (Presiding Member)

Elanor Rowe (Deputy Member)

Rebecca Aubrey (Deputy Member)



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## Local Government Standards Panel

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Complaint Number	SP 2019-047
Legislation	<i>Local Government Act 1995 (WA)</i>
<b>Complainant</b>	<b>Councillor Josephine McAllister</b>
<b>Respondent</b>	<b>Councillor Rod Bradley</b>
Local Government	<b>Town of Cambridge</b>
Regulation	Regulation 4(2) Regulation 7(1)(b) of the <i>Local Government (Rules of Conduct) Regulations 2007 (WA)</i>
Panel Members for Penalty Consideration	Mr Michael Connolly (Presiding Member) Mrs Emma Power (Member) Ms Rebecca Aubrey (Deputy Member)
Heard	16 December 2019 Determined on the documents
Penalty Considered	12 March 2020
Outcome	Public Censure and Public Apology

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## DECISION AND REASONS FOR DECISION

Delivered 24 March 2020

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### DEFAMATION CAUTION

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## Introduction

1. At its meeting on 16 December 2019, the Panel found that Councillor Rod Bradley, councillor for the Town of Cambridge (**“the Town”**), committed 2 minor breaches under the Local Government Act 1995 (WA) (**“the Act”**) and the *Local Government (Rules of Conduct) Regulations 2007* (WA) (**“the Regulations”**) being:
  - a. regulation 4(2) of the Regulations; and
  - b. regulation 7(1)(b) of the Regulations.when he made comments about then Councillor Ms Josephine McAllister at the Council Meeting on 18 December 2018 (together **“the Minor Breaches”**).

## Jurisdiction and Law

2. The Panel convened on 12 March 2020 to consider how it should deal with the Minor Breach.
3. 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 Cr Bradley had ceased to be, or was disqualified from being, a councillor.
4. 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>
5. By a letter dated 19 February 2020, Cr Bradley was:
  - a. notified of the Panel’s finding of the Minor Breaches;
  - b. provided with a copy of the Panel’s Finding and Reasons for Finding; and
  - c. offered an opportunity to make submissions as to how the Minor Breach should be dealt with under section 5.110(6) of the *Act*.

## Possible Sanctions

6. Section 5.110(6) of the *Local Government Act 1995* (WA) (**“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;*

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



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).*

### **Councillor Bradley's Submissions**

7. By an email dated 9 March 2020, the Department received a response from Cr Bradley with the following comments and arguments as summarised by the Panel:
  - a. Cr Bradley is remorseful for the embarrassment and distress he has caused. He is disappointed that his apologies given freely at previous times have been dismissed.
  - b. Since his election to Council in 2003 Cr Bradley has achieved many things for the local community;
  - c. Mrs McAllister was elected in October 2017 and resigned in 23 July 2019.
  - d. Cr Bradley was frustrated by Mrs McAllister's conduct in various council meetings and particularly her interruptions.
  - e. Mrs McAllister had been making repeated claims about Mayor Shannon and the CEO which Cr Bradley asserts are untrue;
  - f. It was at the end of a long day and Cr Bradley had some difficulties with his family's health which contributed to the pressure on him.
  - g. Cr Bradley lost control and flared. He is disappointed with himself that it happened.
  - h. Cr Bradley has never behaved in this way before and this is completely out of character.
  - i. In mitigation it was a closed meeting with only elected members and the CEO present. There were no staff or public present.
  - j. As far as penalty is concerned, as this incident is not known to the public, any public apology or announcement will only add to the embarrassment that has been suffered by Mrs McAllister therefore some alternative may be appropriate.
  - k. The Panel may consider an appropriate training course and a private apology to the Complainant in terms ordered by the Panel.
  - l. Cr McAllister is sorry for what he did.

### **Panel's Consideration**

8. Section 5.110(6) is about penalty. The Panel does not have the power to review any finding of a breach.
9. The Panel may order under section 5.110(6)(a), that no sanction be imposed, not to reverse the Panel's finding of a breach, but to indicate that in all the circumstances the relevant councillor should not be penalised further.

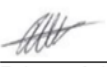


10. The Panel notes that Cr Bradley accepts that he has breached the Regulations and is remorseful for his actions.
11. In this case the conduct of Cr Bradley was objectionable and offensive and was clearly not in keeping with the standard of behaviour that reasonable persons expect of elected members.
12. The standards of behaviour expected of councillors are of a generally higher standard than a member of the public due to their public position.
13. Due to the nature and seriousness of the Minor Breaches and the fact that Cr Bradley has been an elected member for quite some time, the Panel does not feel that training is a suitable penalty. Cr Bradley was aware upon making the comments that the same were inappropriate.
14. In these circumstances, the Panel considers that the appropriate sanctions are that Cr Bradley be publicly censured and make a public apology.
15. A censure is a public statement of disapprobation of a councillor's conduct. The Panel considers this to be an appropriate penalty as it will send a message to the community and other councillors that Cr Bradley's conduct was unacceptable and deserving of a serious penalty.
16. Making a public apology is also a significant sanction, being a personal admission by the individual of wrongdoing. It is a suitable and appropriate penalty when a councillor's conduct:
  - a. adversely affects particular individuals<sup>2</sup>; and/or
  - b. does not meet the standards other councillors seek to uphold.
17. In the relevant circumstances, the Panel considers that making a public apology and being publicly censured is an adequate sanction and that it is not necessary to order that Cr Bradley recoup to the Town the costs of the Department incurred in accordance with Schedule 5.1 clause 9 with respect to the Complaint.

### Panel's decision

18. The Panel orders pursuant to section 5.110(6)(b)(i) and section 5.110(6)(b)(ii) and section 5.110(6)(c) of the Act that, in relation to the Minor Breach of regulation 4(2) of the Regulations 7(1)(b) of the Regulations, Cr Bradley:
  - a. make a public apology in terms of the attached Order; and
  - b. be publicly censured in terms of the attached Order.

  
Mick Connolly (Presiding Member)

  
Rebecca Aubrey (Deputy Member)

  
Emma Power (Member)

<sup>2</sup> *Treby and Local Government Standards Panel* [2010] WASAT 81 [127] (Pritchard J).



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## ORDER

Delivered 24 March 2020

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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

### THE LOCAL GOVERNMENT STANDARDS PANEL ORDERS THAT:

1. Councillor Rod Bradley, a councillor for the Town of Cambridge **publicly apologise**, as specified in paragraph 3, or failing compliance with paragraph 3, then paragraph 4 below.
2. Councillor Rod Bradley, a councillor for the Town of Cambridge, be **censured** as specified in paragraph 5 below.

### Public Apology

3. On the ordinary council meeting first occurring after the expiration of **28 days** from the date of service of this Order on him, Councillor Bradley shall:
  - a. attend the relevant ordinary council meeting;
  - b. ask the presiding person for his or her permission to address the meeting to make a public apology to the public;
  - c. make the apology immediately after Public Question Time or during the Announcements part of the meeting, or at any other time when the meeting is open to the public, as the presiding person thinks fit; and
  - d. address the Council and public as follows, without saying any introductory words before the address, and without making any comments or statement after the address:

"I advise this meeting that:

- i. A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened *the Local Government (Rules of Conduct) Regulations 2007 (WA)* when, at the Council Meeting held 18 December 2018 I made certain objectional and offensive comments regarding then Councillor Josephine McAllister.
- i. The Panel found that I breached regulation 4(2) and regulation 7(1)(b) of the said Regulations as my conduct was wrongful, inappropriate and deserving of a penalty and, further, my comments were likely to cause detriment to Josephine McAllister.
- ii. I accept that I should not have made the objectionable and offensive comments.



iii. I now apologise to Ms Josephine McAllister, my fellow Councillors and the public.”

4. If Councillor Bradley fails to, or is unable to, comply with the requirements of paragraph 3 above then, within the next **28 days** following the ordinary council meeting referred to in paragraph 3 above, THEN:
- a. Councillor Bradley shall cause the following notice of public apology to be published in no less than 10 point print, as a one-column or two-column display advertisement in the first 10 pages of the “Western Suburbs Weekly” community newspaper; AND
  - b. the Chief Executive Officer shall arrange for the notice of public apology to be published:
    - i. under “Public Notices” on the website of the Town of Cambridge in no less than 10 point font size; and
    - ii. be published in every Town of Cambridge public newsletter (whether in electronic or print copy) (if any) in no less than 10 point font size.

**PUBLIC APOLOGY BY COUNCILLOR ROD BRADLEY**

A complaint was made to the Local Government Standards Panel, in which it was alleged that I contravened the Local Government (Rules of Conduct) Regulations 2007 (WA) when, at the Council Meeting held 18 December 2018 I made certain objectional and offensive comments regarding then Councillor Josephine McAllister.

The Panel found that I breached regulation 4(2) and regulation 7(1)(b) of the said Regulations as my conduct was wrongful, inappropriate and deserving of a penalty and, further, my comments were likely to cause detriment to Josephine McAllister.

I accept that I should not have made the objectionable and offensive comments.

I now apologise to Ms Josephine McAllister, my fellow Councillors and the public.

**Public Censure**

5. Within the period of 29 days to 43 days from the day following the date of service of this Order on Councillor Bradley, the Chief Executive Officer of the Town of Cambridge shall arrange for the following Notice of Public Censure to be published, in no less than 10 point print or font:
- a. as a one-column or a two-column display advertisement in the first 15 pages of “The West Australian” newspaper;
  - b. as a one-column or a two-column display advertisement in the first 10 pages of “Western Suburbs Weekly” community newspaper;
  - c. under “Public Notices” on the website of the Town of Cambridge; and



- d. be published in every Town of Cambridge public newsletter (whether in electronic or print copy) (if any) in no less than 10 point font size.



### **NOTICE OF PUBLIC CENSURE**

The Local Government Standards Panel has found that Councillor Rod Bradley, a Councillor of the Town of Cambridge, breached regulation 4(2) and regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007 (WA)* when, at the Council Meeting held 18 December 2018, he made certain objectional and offensive comments regarding then Councillor Josephine McAllister.

Councillor Bradley's conduct was wrongful and inappropriate and deserving of a penalty and, further, his comments were likely to cause detriment to Ms Josephine McAllister.

The Panel censures Councillor Bradley for the breaches of regulation 4(2) and regulation 7(1)(b) of the *Local Government (Rules of Conduct) Regulations 2007 (WA)*.

**LOCAL GOVERNMENT  
STANDARDS PANEL**



## 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."