

Councillor Conduct Tribunal: Councillor misconduct complaint – Summary of decision and reasons for department’s website

Local Government Act 2009: Sections 150AS(2)(c)

1. Complaint:

CCT Reference	F19/6514
Subject Councillor	Councillor Greg Barnes (the councillor)
Council	Bundaberg Regional Council (the council)

2. Decision (s150AQ):

Date:	19 February 2020
Hearing:	<p>10.10am 26 November 2019 at Level 19, 239 George street, Brisbane. The matter was heard and determined on the documents, pursuant to s150AP(2) of the <i>Local Government Act 2009</i> (the Act), as it was considered appropriate in all of the circumstances by the Tribunal and agreed by the parties.</p> <p>The Tribunal directed that the final hearing be held in privateⁱ.</p>
Allegation:	<p>It is alleged that on 21 January 2019, Councillor Barnes, a councillor of Bundaberg Regional Council, engaged in misconduct as defined in section 150L(1)(c)(iv) of the Act, in that the conduct contravened section 171(3), as it involved the release of information that the councillor knew, or should have reasonably known, was information confidential to the local government.</p> <p>Particulars:</p> <p>(a) On 1 April 2017, the Council called for tenders for the detailed design and documentation of the Kalkie and Gregory River Water Treatment Plan upgrades.</p>

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	<p>(b) On 28 June 2018, the Council allocated \$8 million funding to the upgrade to the Kalkie Water Treatment Plant.</p> <p>(c) This information was made public via a media release.</p> <p>(d) The tender process closed on 4 December 2018.</p> <p>(e) The tender was not awarded as each of the tenders were in excess of the budgeted amount.</p> <p>(f) On 11 December 2018, a confidential briefing was provided to Councillors following a Council meeting. The presentation was to secure endorsement of a strategy to retender the project in the new year.</p> <p>(g) On 21 January 2019, Councillor Barnes was advised by the General manager of Infrastructure Services that the budget for the project could be in the order of \$12 million but was not yet known.</p> <p>(h) Later the same day, Councillor Barnes relevant posted the following comment on Facebook in response to a Bargara resident who was concerned about the quality of water in Bargara:</p> <p>(i) ...Council has allocated some \$12M to install a Powder Activated Carbon Device at the Kalkie Plant to greatly improve the situation which will be funded over the current (18/19) and next (19/20) years. Hopefully work will be completed by early 2020.</p> <p>(i) Councillor Barnes knew, or should have reasonably known, that the revised budget amount for the upgrade to the Kalkie Water Treatment Plant was information confidential to the local government.</p>
Decision:	The Tribunal has determined, on the balance of probabilities, that the allegation that, on 21 January 2019, Councillor Barnes, as a councillor of Bundaberg Regional Council, engaged in misconduct as defined in section 150L(c)(iv) of the Act, in that the conduct contravened section 171(3), as it involved the release of information that the councillor knew, or should have reasonably known, was information confidential to the local government, has been sustained.

3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	19 February 2020
Orders and/or recommendations:	<p>The Tribunal orders:</p> <ul style="list-style-type: none"> • pursuant to section 150AR(1)(b)(i) of the Act, the respondent must make a public admission that he has engaged in misconduct, within 90 days of the date that a

	<p>copy of this decision and orders is given to him by the Registrar; and</p> <ul style="list-style-type: none"> • pursuant to section 150AR(1)(b)(iii) the respondent attend training or counselling to address the councillor’s conduct at the expense of the Councillor within 90 days from the date of receipt of this order. <p>The CEO is to report to the Independent Assessor at the end of the 90 days, to confirm that such training or counselling has been undertaken.</p>
<p>Reasons:</p>	<p>Section 171(3) of the act states: 171 e of information by councillors (3) A councillor must not release information that the councillor knows, or should reasonably know, is information that is confidential to the local government.</p> <p>The brief of evidence contains a flyer entitled “Seasonal variation in the taste of water” which relates to council investing \$7 million to upgrade the Kalkie Water Treatment Plant.</p> <p>A tender process was put out for the Kalkie Water Treatment Plant upgrade, however tenders submitted exceeded the budget allocation and a further procurement process was to be organised. The respondent states that there was an informal briefing on 11 December 2018 about this, which he did not attend.¹⁵</p> <p>Annexure SR-2 to the affidavit of Stuart Randle affirmed on 24 October 2019 is a statement which relates to allegation four.</p> <p>Mr Randle states that the briefing on 11 December 2018 was held behind closed doors and in the absence of the public. He has no recollection as to whether the respondent attended the briefing.</p> <p>Mr Randle states that on 21 January 2019, the respondent phoned him in relation to the Kalkie Water Treatment Plant, as he wanted to respond to a Facebook enquiry from a Bargara resident who was concerned about the quality of drinking water. Mr Randle told the respondent, amongst other things, that the total cost of the upgrade could be in the order of \$12 million and subject to the outcome of re-tendering.</p> <p>The respondent contests that he was made aware that there was a need for the process to be re-tendered.¹⁶</p> <p>The respondent subsequently responded to the Facebook post, including information that “Council has allocated some \$12M to install a Powder Activated Carbon Device at the Kalkie Plant”.</p>

	<p>The brief of evidence contains a document entitled “Doing Business on behalf of Council a Procurement Manual for Staff of Bundaberg Regional Council (GM-7-001). Part 3.4 of the manual relates to confidentiality and disclosure of information. It states that most procurement transactions are confidential and should be treated as “Commercial-in-Confidence”.</p> <p>The Tribunal accepts the evidence of Mr Randle, that the information about the re-tender was not otherwise known or available to the public. The Tribunal finds that the information would have been commercial-in-confidence in the circumstances of the project being re-tendered.</p> <p>Given that the information was to be considered as Commercial-in-Confidence, together with the respondent’s lengthy term in Council, he should have reasonably known that the revised budget amount for the upgrade was confidential information. Accordingly, the Tribunal finds that allegation four is sustained.</p>
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¹ S298 of the *Local Government Regulation 2012* requires that a hearing must be held in public unless the decision-maker directs the hearing is to be held in private.