

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

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

Note that the Tribunal is prohibited from giving another entity information that is part of a Public Interest Disclosure unless required or permitted under another Act; or including in this summary the name of the person who made the complaint or information that could reasonably be expected to result in identification of the person: S150AS(5)(a) and (b).

## 1. Complaint:

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| <b>CCT Reference</b>      | F20/3926   |
| <b>Subject Councillor</b> | The Respondent/ Councillor<br>As the allegation is not sustained the name of the Councillor is withheld pursuant to section 150DY(3) of the Local Government Act (the Act) |
| <b>Council</b>            | Redland City Council (the Council)   |

## 2. Decision (s150AQ):

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| <b>Date:</b>       | 23 March 2022   |
| <b>Decision:</b>   | The Tribunal has determined, on the balance of probabilities, that the allegation of misconduct as defined by section 150L(1)(b)(i) of the Local Government Act 2009 has <b>not been sustained</b> .  |
| <b>Allegation:</b> | The Allegation provided :<br>“ that on 11 September 2019 , (the)Councillor ,the Mayor of Redland City Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the <i>Local Government Act 2009</i> , in that her conduct involved a breach of the trust placed in her as a councillor, either knowingly or recklessly, in that it was inconsistent with the local government principles 4(2)(a) ‘transparent and effective processes and decision-making in the public interest’ and or 4(2)(e) ” ethical and legal behavior of councillors and local government employees’, in that (the)Councillor did not inform |

the meeting about her personal interests in the matter as required by section 175E(2) of the Act.

**Particulars of the alleged misconduct which could amount to misconduct provided to the Tribunal by the Applicant are as follows:**

- a) On 11 September 2019 a General Council Meeting was held. One of the matters on the agenda was Item 14.3-MCU19/0017, Material Change of Use (Health Care Service)-58-68 Delancey Street, Ormiston. The agenda item related to the consideration of an application seeking a development permit for material change of use.
- b) The owner of the property was listed as Cleveland Rural Pty Ltd as Trustee. The applicant for development permit was Mr Stephen Lambourne care of Bennett and Frances (Mr Phillip Pozzi).
- c) The matter was not an ordinary business matter.
- d) (the) Councillor attended the general Council meeting and was the Chairperson.
- e) Under item 14.3 a Council Officer recommended:
  - i. That Council resolves to issue a development permit for the Material Change of Use for Health Care Services on land described as Lot 1 on RP213631 situated at 58-68 Delancey Street Ormiston, subject to conditions listed in the Attachment 8 of the report presented at the meeting.
- f) Council unanimously resolved to carry the motion.
- g) (the) Councillor failed to inform the meeting of a personal interest in the matter, namely that<sup>1</sup>:
  - i. She had received a donation from SS Signs and Vehicle Wraps Pty Ltd<sup>2</sup> valued at \$1500.00 during her 2012 electoral campaign; and
  - ii. That the Director<sup>3</sup> of SS Signs and Vehicle Wraps Pty Ltd<sup>4</sup> was [<sup>5</sup>owned by S&S Lambourne Investments Pty Ltd and Mr Stephen Lambourne was a Director] who was also:
    - A Director of Cleveland Rural Pty Ltd, the owner of the property in item 14.3; and

<sup>1</sup> The Tribunal identified errors contained in Particular g i. & ii. By section 213(f) of the Act the Tribunal may-“disregard any defect, error, omission or insufficiency in a document...”

<sup>2</sup> SS Signs& Vehicle Wraps is **incorrectly** identified in Particular g i & ii to be a proprietary company with a Director. ASIC Historical Business Names Extract 4 February 2020 confirms the entity is a business with the Business name Holder, since 8 January 2010, to be S & S Lambourne Investments Pty Ltd.

<sup>3</sup> Ibid- this is not a proprietary company the Business Name Holder is S & S Lambourne Investments Pty Ltd.

<sup>4</sup> ibid

<sup>5</sup> Tribunal amended incorrect details [] pursuant to section 213(f) of the Act.

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|                        | <ul style="list-style-type: none"> <li>• The applicant in item 14.3.</li> </ul> <p>h) (the) Councillor’s personal interests in the matter did not arise merely because of the circumstances specified in section 175D(2)(a) of the Act.</p>  |
| <p><b>Reasons:</b></p> | <p><b>Background.</b></p> <ol style="list-style-type: none"> <li>1. The parties generally agreed on the factual details. The Respondent Councillor accepted that she participated in the Council meeting on 11 September 2019 and did not declare a personal interest as alleged by the Assessor(Particular g i).</li> <li>2. An application for a material change of use to commercial land was considered at the meeting by the Redland City Council held on 11 September 2019. The application was listed as agenda item 14.3 and the Applicant was Mr S Lambourne on behalf of Cleveland Rural Pty Ltd, the owner of the subject property.</li> <li>3. The Councillor was the Chairperson of the meeting and at the time of the Council meeting was serving in her second term as Mayor of the Council and was an experienced councillor having been first elected to the Council in March 2004.</li> <li>4. Approximately 14 days after the Council meeting a complaint was received by the Independent Assessor that alleged the Councillor had failed to declare a personal interest at the meeting in relation to an application for a permit for a Material Change of Use (MCU) to land(Agenda Item 14.3). The MCU application was discussed by the Council and approved unanimously on 11 September 2019.</li> <li>5. By Section 175E(2) of the <i>Local Government Act 2009</i> (the Act) councillors are required to manage a conflict of interest in a <i>‘transparent and accountable way’</i>. Councillors when participating in a Council meeting <i>‘must inform the meeting of the interest’</i> including the details of any relevant personal interest that may or does give rise to a <i>conflict of interest or a perceived conflict of interest</i>.</li> <li>6. The conflict was alleged to be an ‘in-kind donation’(the donation), for the provision of signs, valued at \$1500.00 and made to the Councillor prior to the 2012 Council elections. The donation was received from a business known as SS Signs &amp; Vehicle Wraps. The details of the donation were recorded in an update to the Councillors Register of Interests dated 30 January 2012.This document was provided to the Chief Executive Officer of the Council to be included in the Councillor’s Register of Interests.</li> <li>7. It was acknowledged by the Respondent Councillor that the donation represents a personal interest and could lead to a Council decision being adopted that is not impartial. The Respondent acknowledged in her evidence that all such interests and donations</li> </ol> |

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|  | <p>are required to be declared at relevant meetings pursuant to section 175E(2) of the Act.</p> <p>8. The Councillor submitted by Statutory Declaration, that prior to the meeting held on 11 September 2019 she did assess her Register of Interests to identify donations and gifts listed that may conflict with agenda items under discussion.</p> <p>9. The Councillor also submitted by this evidence that the Register of Interests of all Redland City councillors is publicly available on the website and is uploaded by Council officers.</p> <p>10. The Councillor notified the Independent Assessor, on 5 May 2020, in her response to the allegation that an error had been confirmed by the CEO and that some details had been omitted from her Register of Interests by a Council Officer responsible for uploading these documents to the website. The Respondent advised in this correspondence that prior to the meeting on 11 September 2019 she assessed her Register of Interests for personal interests and for potential conflicts of interests. The Respondent stated that:</p> <p style="padding-left: 40px;"><i>“...the Register of Interests that I referred to, the one uploaded by Council Officers to Council’s website was not a complete copy of my register due to omitting all forms prior to May 2012. This error meant that the applicant of the MCU, Mr Stephen Lambourne was also the operator of SS Signs, was not included on the register when I checked it. Despite SS Signs providing in kind support to me in January 2012...”</i><sup>6</sup></p> <p>11. The Councillor submitted that she applies a detailed 5 stage process to assess her personal interests and potential conflicts and she confirmed that the business of SS Signs and Vehicle Wraps was one of the donors that had been omitted from her Register of Interests without her knowledge by a process adopted by a Council officer.</p> <p>12. The evidence confirmed that when the Respondent attended the meeting on 11 September 2019, she did not recall the details of the ‘in-kind’ donation made to her in January 2012 or that she had made a previous declaration regarding this donation during 2015. It was noted that a period in excess of seven years had elapsed since the donation was originally made and the details recorded in her register of interests.</p> <p>13. The Tribunal was satisfied that these details were deleted by a Council Officer without the Respondents knowledge and as a consequence she did not declare the donation or the interest at the Council meeting. The Tribunal also accepted the Councillors submission that she was not aware that her Register of Interests had</p> |
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<sup>6</sup> Correspondence to the Assessor from the Councillor, 5 May 2020 at page [3].

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|  | <p>been altered and that the record that she relied upon was inaccurate when she participated in the Council meeting in September 2019.</p> <p>14. Submissions and evidence provided to the Tribunal confirmed the Councillor was not aware of the error that she had made until she was notified of the alleged conduct by the Assessor on 27 September 2019. This notification brought to the Councillors attention that the publicly available Register of Interests on the Council website was incomplete and that details had been omitted from her Register of interests.</p> <p>15. The Councillor sought an explanation from the CEO, who in turn sought an explanation from the relevant Council officer responsible for uploading the Register of Interests for all the councillors to the website. The CEO'S written response, received by the Respondent on 8 October 2020, confirmed that the records prior to March 2012 had been omitted from the electronic website Register of Interests.</p> <p>16. In such circumstances the Tribunal must be satisfied that all available evidence and circumstances substantiate that the alleged conduct "involved a breach of the trust placed in the Councillor, either knowingly or recklessly", and that the allegation of misconduct is made out.</p> <p>17. In determining the allegation the standard of proof applied by the Tribunal is on the balance of probabilities.<sup>7</sup></p> <p><b>Applicable legislation</b></p> <p>18. The Applicant alleges misconduct under section 150L(1)(b)(i) of the Act. Those provisions in part are:<br/> s150L(1)(b)(i)-<i>The conduct of a Councillor is misconduct if the conduct-... (b) is or involves- (i) a breach of the trust placed in the Councillor , either knowingly or recklessly; ...</i></p> <p>19. The Councillor accepts that she did not declare a conflict of interest at the Council meeting as required by section 175E(2) of the Act. That provision provides that if a matter is to be discussed at a meeting -<br/> <b>Section 175E(2)</b> <i>...the councillor must inform the meeting about the councillor's personal interests in the matter, including... particulars about the interests- "(b) ...if they arise because of the councillor's relationship with, or receipt of a gift from another person..."</i></p> |
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<sup>7</sup> Section 150AN(2) of the Act.

20. The Councillor confirmed the receipt of a donation in early 2012 from the business described as SS Signs & Vehicle Wraps. It is not disputed by the Councillor that this donation constituted a personal interest that could give rise to a conflict of interest that *might* lead to a decision that is contrary to the public interest” (s175D(1)(a)&(b)).

21. Section 175E(2) places a prohibition on councillors participating in meetings when they hold a real conflict of interest or a perceived conflict of interest unless the other councillors who have been informed of the conflict decide that the councillor may remain and participate(s175E (3-6)).

***Breach of Trust and Local Government principles underpin the Act– Section 4(1) & (2).***

22. The allegation as pleaded is that the Respondent breached the trust placed in her as a Councillor and Mayor. It is alleged that the failure to declare a conflict of interest at the Council meeting is a contravention of section 175E(2)of the Act and this contravention is also inconsistent with the Local Government principles section 4(2)(a) and/or section 4(2)(e).

23. The sections relied upon by the Assessor to establish that the conduct is a breach of the trust and thereby misconduct are -

**-s4(2)( a) ‘transparent and effective processes and decision –making in the public interest; ‘ and**

**...-s4(2)( e) ‘ ethical and legal behavior of councillor and local government employees.**

24. The Tribunal formed the view that the preliminary provisions of the *Local Government principles*, including section 4(1)(a) and 4(1)(b)(i)&(ii) of the Act are relevant and provide context to the applicability of the section 4(2)principles and to the circumstances of the alleged conduct.

These preliminary provisions provide in part as follows:

**Section 4(1)(b)(ii) provides-**

“(b) any action that is taken under this Act to be taken in a way that-

(ii) Provides results that are consistent with the local government principles, **in so far as the results are within the control of the person who is taking the action.**”

[Underlining and emphasis added]

***Findings on a conflict of interests.***

25. The Respondent accepted that the donation received in January 2012 constituted a personal interest and this was previously recorded in her Register of Interests. The Tribunal also noted that, despite the circumstances that led to crucial details being omitted from the Respondents Register of Interests, that a reasonable and fair minded observer might perceive impartiality by the participation of the Respondent in the decision-making process that took place on 11 September 2019.<sup>8</sup>
26. Accordingly the Tribunal found the Respondent had a conflict of interest when she participated in the Council decision-making process regarding the application for a MCU made by the Director of Cleveland Rural Pty Ltd, Mr Stephen Lambourne.
27. The Tribunal was satisfied that the donation represented a personal interest and that the Councillor did contravene section 175E(2) of the Act when she participated in the MCU discussions.

***Breach of Trust***

28. The Assessor alleged that the Respondents conduct being a contravention of section 175E(2) is “so intrinsically linked to the local government principles that it must equate to a breach of the trust”.<sup>9</sup>
29. The Tribunal placed limited weight on this submission and does not accept that a finding of a perceived or real conflict of interests will automatically lead to a finding of misconduct.
30. The question to be considered is whether the conduct, that was found to be a breach of section 175E(2) of the Act, is inconsistent with the Local Government principles (s4(1)&(2)) and sufficient to amount to a breach of trust and therefore misconduct as defined by section 150L(1)(b)(i) of the Act.
31. The nature of the conduct and the circumstances in which the Respondent’s conduct occurred is relevant to assessing whether misconduct is established.<sup>10</sup> The Tribunal accepts that not every breach of a provision of the Act will lead to a finding of misconduct, having regard to the circumstances and all relevant considerations.
32. The submissions and evidence of the Respondent outlined the context and the circumstances of the conduct. The Tribunal accepted the conduct arose as a consequence of the Respondent relying on the electronic version of her Register of Interests published on the Council website. The Tribunal also considered of significance the

<sup>8</sup> Ebner v Official Trustee in Bankruptcy(2000)205 CLR 337.

<sup>9</sup> Assessor’s submissions 30 November 20221 at[62,63]

<sup>10</sup> Deputy Commissioner Stewart v Dark[2012]QCA[18,33]

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|  | <p>actions taken by a Council Officer that deleted sections of the Respondent’s Register of Interests without her knowledge. The sections deleted included donations made prior to March 2012 and included the donation made by SS Signs and Vehicle Wraps.</p> <p>33. The Register of Interests was relied upon by the Respondent as an accurate public record to assess all possible conflicts of interests. This record placed on the website and being incomplete, contributed in a substantial way to the Respondent forming the view that she did not have a conflict of interest when she attended the Council meeting. Consequently she contravened section 175E of the Act.</p> <p>34. The Tribunal found that a reasonable inference can be made that the purpose for the Respondent in assessing her Register of Interests prior to the Council meeting was to ensure compliance with the local government principles of transparency, accountability and ethical and legal behavior contained within the Act,<sup>11</sup> and the Tribunal draws that inference.</p> <p>35. However due to the above actions being taken by a Council Officer the Tribunal found that such circumstances were not within the knowledge and therefore not within the control of the Respondent “taking the action”<sup>12</sup>(that is when she participated in the Council discussions regarding Agenda Item 14.3)).</p> <p>36. The Assessor submitted and the Tribunal accepts that conduct that is inconsistent with the local government principles may amount to a breach of trust.<sup>13</sup> However this general proposition must be considered in the context of Section 4(1)(b)(ii) of the Act ...that any action taken under this Act to be taken in a way –</p> <p><i>“ that provides results that are consistent with the local government principles, <b><u>in so far as the results are within the control of the person who is taking the action.</u></b>”</i></p> <p>[emphasis and underlining added]</p> <p>37. The Tribunal applied the provisions of section 4(1)(b)(ii) above to the circumstances and evidence that led to the Respondent’s failure to declare a conflict of interest. The Tribunal noted this section of the Act was not included in the allegation or the Particulars provided by the Assessor, however the Tribunal considers it is not precluded from taking all relevant principles and provisions of the Act into account. All of the principles apply because the legislature by section 4(1)(a) of the Act specifically requires a person performing a responsibility</p> |
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<sup>11</sup> Section 4(2)(a)&( e) of the Act.

<sup>12</sup> Section 4(1)(b)(ii) of the Act.

<sup>13</sup> Assessors submissions 30 November 2021 at[61].



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|  | <p>under the Act “<i>to do so in accordance with the local government principles</i>”.</p> <p>38. The Tribunal considered the above circumstances and explanations for the alleged conduct and all relevant provisions of the Act and formed the view that the Respondent did not ‘<i>knowingly or recklessly</i>’ act in a way that was inconsistent with the <i>local government principles</i>.</p> <p>39. The alleged conduct was found to have arisen from the failure to declare a conflict of interest at the Council meeting. The Tribunal considered the conduct occurred as a direct result of the deletion of part of the Respondent’s Register of Interests by a Council Officer. Those actions fell within the provisions of section 4(1)(b)(ii) of the Act and were not “within the control of the person..” (the Respondent), nor had the omission of parts of the register been brought to the attention or knowledge of the Respondent prior to or when she attended the Council meeting.</p> <p>40. Accordingly and pursuant to the meaning and application of section 4(1)(b)(ii) of the Act the alleged conduct of the Respondent was found to be not within her control and was consequently not held to be inconsistent with the Local Government principles, section 4(2)(a) and/or section 4(2)(e) as alleged.</p> <p>41. Consequently the Tribunal found the Respondent did not breach the trust placed in her as a councillor either “knowingly or recklessly” ( s150L(1)(b)(i)).</p> <p>42. The Tribunal has determined on the balance of probabilities, that this allegation <b>has not been sustained</b>.</p> |
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### 3. Orders and/or recommendations (s150AR - disciplinary action):

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| <b>Date of orders:</b>                 | Not applicable.   |
| <b>Order/s and/or recommendations:</b> | The Councillor was not found to have engaged in misconduct and accordingly Orders and recommendations are not applicable. |