

# Councillor Conduct Tribunal: 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. Application details:

<b>Reference No.</b>	F21/3126
<b>Subject Councillor</b>	Councillor Helen Blackburn (the former councillor)
<b>Council</b>	Bundaberg Regional Council

## 2. Decision (s150AQ):

<b>Date:</b>	22 August 2023
<b>Decision:</b>	<p><b>Misconduct Allegation</b></p> <p>The Tribunal determined, on the balance of probabilities, the allegation that between 12 February 2020 and 17 February 2020, Councillor Blackburn, a former councillor of the Bundaberg Regional Council, engaged in misconduct pursuant to section 150L(1)(b)(i) of the Local Government Act 2009(Qld) ('the Act'), in that her conduct involved a breach of the trust placed in her as a councillor, either knowingly or recklessly, in that her conduct was inconsistent with the local government principles in section 4(2)(e) 'ethical and legal behaviour' of councillors and local government employees' <b>has not been sustained.</b></p> <p><b>Particulars of the alleged misconduct are as follows:</b></p> <p>a) On or about 12 February 2020, Councillor Blackburn sent an email to a member of the public, Karen Kelly, which included the following statement:</p> <p>i. "Councillors have not been involved in decision making</p>

regarding the decommissioning of Anzac Pool, however have been led to believe that it may occur this year”.

b) On 16 February 2020, Councillor Blackburn made the following comments on Facebook, in response to a post on the Bundaberg Remember When Facebook page from a member of the public, John McKenzie, in relation to the closure of ANZAC pool:

i. “Councillors have not been consulted about this. It’s another reason why I’m running for Mayor. We have just refurbished Isis memorial pool and it’s now indoor/outdoor. This could have been done with ANZAC pool. To have no back up plan and no funds to build another pool makes this a ridiculous decision”;

ii. “I’m saying the decision wasn’t councillors and I’m led to believe that the staff have a plan for this to occur. That’s why I’m running for Mayor. Too many decisions are being made without consultation with the Community it the councillors [sic]”;

iii. “Staff made the decision and the CEO and current mayor as far as I understand. There was no ability for discussion on this”; and

iv. “Staff decided that community consultation wasn’t required. I don’t agree and I don’t agree with removing it. But councillors weren’t consulted”.

c) On 16 February 2020, Councillor Blackburn issued a media release, which stated as follows:

i. “As Sport and Recreation Portfolio holder its disturbing to be made aware that decisions have been made for the ANZAC Pool to be demolished. Community members have informed me that the lease for the ANZAC Pool is being terminated and that the pool is scheduled for demolition in April of this year.

The decision is not one that has been a collaboration of Councillors and that is absolutely alarming. Some community consultation has been done relating to the ANZAC park precinct, however there’s been no consultation with other Councillors and that’s no way to operate a local government.

This is a typical example of why I’m running for Mayor, there’s no consultation and there’s no transparency, with too many delegations to a CEO who doesn’t keep Council

informed. We need a leader of the team who will listen to the community, ensure discussion with stakeholders, including the Regional Council team and interested groups, and put forward a considered plan.

The approach of maintaining “it’s an operational matter” without taking into account the 10 other elected officials in the region is dangerous for democracy and community confidence and needs to stop.

ENDS

Available for interview at 1.30pm Monday 17th February at ANZAC Park, more information call 0439 492 339”

- d) On 17 February 2020, Councillor Blackburn held a media conference in her capacity of holding the Sport and Recreation Portfolio, as referred to in her media release on 16 February 2020.
- e) On 18 February 2020, the media reported on Councillor Blackburn’s comments in relation to ANZAC pool, including a News Mail article “Council addresses pool speculation” which included the following comments of Councillor Blackburn:
  - i. “mayoral candidate Helen Blackburn called a media conference in front of the pool to say that the community needed to be consulted about a closure”;
  - ii. “The social media concerns reached Cr Blackburn, who said the community needed to be consulted when it came to projects such as Anzac Pool”;
  - iii. “Cr Blackburn is the council’s sports and recreational spokeswoman, but she said it was locals who told her the pool was being demolished”;
  - iv. “The council is here to serve the community, and not to dictate to the community”;
  - v. “It’s about the community and doing what it wants”.
- f) Councillor Blackburn’s email to a member of the public, Facebook comments and media comments in relation to ANZAC pool were inconsistent with ethical legal behaviour of councillors, as a result of the following:
  - i. On 8 April 2019, Councillor Blackburn attended a Council Consultation Meeting where Item Number 4 “Design of the Riverside Water Recreation Park (Anzac Pool/Park)” was

	<p>discussed;</p> <ul style="list-style-type: none"> <li>ii. On 2 August 2019, Councillor Blackburn was sent the agenda for a Council Consultation Meeting on 5 August 2019 where Item Number 3 “Anzac Pool Park – Final Design Update was to be discussed;</li> <li>iii. On 22 November 2019, at the Urban Development Institute Australia forum, the Bundaberg Aquatic Centre Options Assessment, Master Plan and Concept Design (Bundaberg Aquatic Centre Master Plan) was shared publicly;</li> <li>iv. On 25 November 2019, Councillor Blackburn attended a Council Consultation Meeting where Item Number 7 “Regional Aquatic Facility Update” was discussed; and</li> <li>v. On 12 December 2019, Councillor Blackburn attended a Council Consultation Meeting where Item Number 2 “Submission of Building Better Regions Fund grant application for a new aquatic centre” was discussed.</li> </ul>
<p><b>Background and Reasons:</b></p>	<ol style="list-style-type: none"> <li>1. The Independent Assessor (the Applicant) alleged a breach of trust and misconduct as the conduct of the former councillor (the Respondent) was ‘inconsistent’ with the Local Government principle, that requires <i>‘ethical and legal behaviour of councillors, local government employees, and councillor advisors’</i> by section 4(2)(e) of the Act.</li> <li>2. The alleged conduct comprised a number of public comments and statements made by the Respondent that she believed decisions about the future of the local community pool had been made by Council staff and the CEO and not by the councillors. The comments expressed frustration and concern about the consultation and discussion process with respect to the re-development of the ANZAC Pool Park site.</li> <li>3. Local community members had expressed their concerns on social media and by email with respect to the continued operations of the local pool, and seeking clarification, information, and reassurance with respect to the continuation of the ANZAC Pool or information regarding proposals for its replacement. <b>Respondent’s comments and statements</b> (Particulars a-f)</li> <li>4. The details of the comments and conduct by the Respondent are provided in the Particulars of the allegation (page 1-3</li> </ol>

above). These comments and statements were made between 12-17 February 2020: by posts to the 'Bundaberg Remember When' Facebook page in response to opinions concerning the future for the local ANZAC Pool; by email to a member of the public; by a media release and via a media conference.

5. The re-development planning process appears to the Tribunal to have a lengthy history. Evidence submitted to the Tribunal confirmed that from at least early 2013 Council officers had commissioned the preparation of the 'Bundaberg Regional Aquatic Feasibility Investigations Report.'
6. The focus of the comments and statements made by the Respondent regarding the re-development of the ANZAC Pool focused on the consultation and decision-making process initiated by Council officers and senior Council officers.
7. The Applicant alleged the comments made by the Respondent were *"demonstrably false and/or misleading" given the information that the Respondent had been briefed on and had an opportunity to engage with.*
8. The Respondent objected to the misconduct allegation and denied her actions were 'false and misleading' or 'a breach of trust placed in the councillor.' However the Respondent admitted to making the comments and statements and to her attendance at four Council Consultation meetings during 2019 where an agenda item included the proposed development of the ANZAC Pool Park.
9. The Respondent by her comments raised concerns that the consultation by Council officers with councillors and with the local community members failed to provide an adequate information exchange and progress updates sufficient to permit community and councillor feedback, questions or discussion regarding the direction of the planning process.
10. The Respondent submitted 'a proper consideration of the words used in each of her comments and statements', including terms such as "collaboration," "consultation," and "decision-making", is relevant to the concerns raised by community members and provides context to the alleged conduct.

**Comments and Evidence**

**Decision -making**

Particular a)i “ *Councillors have not been involved in **decision - making** regarding the decommissioning of ANZAC Pool, however have been led to believe that it may occur this year*”

11. The Tribunal reviewed the comments contained in the above Particular and the evidence provided. The Respondent confirmed by submissions this statement reflects her reasonable belief and knowledge at 12 February 2020 that the councillors of the Bundaberg Council had not made or voted on any decision regarding the demolition of the pool or the termination of the lease.
12. Affidavit evidence submitted by the Applicant and provided by the CEO of the Bundaberg Council confirmed by email on 16 March 2021 to the Applicant that “***following a search of Council records “no decision” had been considered or adopted*** [by the councillors] *resolving to close or decommission the ANZAC Pool.* Accordingly the Tribunal found that Particular a)i could not be established on the evidence, and the Respondent’s email to a member of the public that stated ‘ **councillors had not been involved in decision making** regarding the decommissioning of the ANZAC Pool’ was not false or misleading when made on 12 February 2020.
13. This evidence is also relevant to similar comments included in Particulars b)ii, b)iii and c) and the Tribunal found that on the balance of probabilities comments relating to Particular b)ii & iii are not false or misleading.

**Two-way exchange of information**

**Particular’ c) -16 February 2023**

The Respondent issued a media release that included the statement “*decisions have been made for the ANZAC pool to be demolished. **Community members have informed me that the lease for the pool is being terminated** and that the pool is scheduled for demolition in April this year”...the decision is not one that has been a collaboration of councillors and that is alarming...*

14. The Applicant alleged this statement to be “false and misleading” on the basis that the Respondent attended the Consultation meeting conducted on 12 December 2019. Agenda item 7, referred to the Bundaberg Aquatic Centre

Concept Master Plan Presentation. Attached to this agenda item was a 'background note' prepared by two senior Council officers. This Note confirmed a grant application had been submitted for State Government funding for the proposed development of ANZAC Park. The Note included the statement: *"...notice has been given to the operator of ANZAC Pool that it will be closed from the end of April 2020."*

15. The Respondent had no recollection of this background note being discussed at the meeting or of any information provided or consultation in relation to Agenda item 7. The Applicant submitted the minutes do not contain any record of any concerns being raised by the Respondent or any other councillor in relation to the notice (to the pool operator) that the pool is to close. The Tribunal considered this to be unusual given the community concerns stated on social media regarding the continued existence of the local pool and its future status.

16. The Tribunal also noted the contents of a Bundaberg Council media statement contained in the Applicant's Brief of evidence and sent to news-mail.com.au on 23 January 2020 that reads: *... "Before any closure of Anzac Pool or redevelopment of the site occurs, Council will need to confirm the location and funding strategy for a replacement pool. Council has to plan now given the likely scope of any redevelopment..."*

The media statement was attributed to the same Council officer that drafted the Background Note attached to the agenda papers of the previous meeting held on 12 December 2019 that recorded **the pool lease had been terminated.**

17. This evidence was provided to the Tribunal by the Applicant, and was considered to be in some respects inconsistent and conflicting and appeared to demonstrate that actions and decisions taken by the Council were not at all times transparent.

18. The media release of 23 January 2020, that the pool was remaining open, at least temporarily pending planning, presented evidence that was inconsistent with the Background Note included in the documents for agenda item 7 at the 12 December 2020 Consultation meeting that confirmed 'the closure Notice had been provided to the pool operator in 2019,

that the lease is terminated from 30 April 2020.'

19. The Tribunal found this conflicting information released by the Council Officers on 23 January 2023 and 12 December 2019 supports the accuracy of some of the statements and comments made by the Respondent including that ...  
"decisions were being made by Council Officers and not councillors".

**Tribunal Findings**

20. The Act only requires the Applicant to prove on the balance of probabilities that the evidence confirmed the Respondent's conduct as alleged did take place.
21. The Tribunal reached the view that the evidence did not establish the statements and comments made by the Respondent were "misleading and false" or a breach of the trust by the councillor either "knowingly or recklessly" as alleged.
22. However the Tribunal noted that fundamental semantic differences existed between the parties regarding the application and interpretation of words such as "consultation"( defined as deliberation), and "discussion" considered by the Respondent to involve a "two-way" conversation,( defined to be 'exchange of information - a debate) in relation to the details of updated planning proposals and updates regarding the progress of a replacement pool.
23. The Tribunal is satisfied from the evidence provided and on the balance of probabilities the conduct **was consistent** with the local government principles 4(2)(e) requiring "*ethical and legal behavior of councillors, local government employees and councillor advisors.*"
24. Accordingly the Tribunal found the Respondent did not engage in misconduct by section 150L(1)(b)(i) of the Act and the allegation is not sustained.



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

<b>Date of orders:</b>	N/A
<b>Order/s and/or recommendations:</b>	As the allegation was not sustained orders and recommendations were not applicable.
<b>Reasons:</b>	N/A