

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:

Reference No.	F20/8290
Subject Councillor	Councillor Frank Wilkie (the Councillor)
Council	Noosa Shire Council (the Council)

2. Decision (s150AQ):

Date:	16 September 2022
Decision:	The Tribunal has determined, on the balance of probabilities, that the allegation that on 12 June 2018, the Respondent, engaged in misconduct as defined in section 176(3)(b)(ii) of the Act, in that his conduct involved a breach of trust placed in him as a councillor, in that it was inconsistent with local government principles in section 4(2)(a) of the Act "Transparent and effective processes, and decision-making in the public interest" and or section 4(2)(e) of the Act "ethical and legal behaviour of councillors and local government employees", in that the Respondent did not inform the meeting about his personal interest in the matter as required by section 175E(2) of the Act, has been sustained.

	<p>The Tribunal has determined, on the balance of probabilities, that the allegation that on 21 June 2018, the Respondent, engaged in misconduct as defined in section 176(3)(b)(ii) of the Act, in that his conduct involved a breach of trust placed in him as a councillor, in that it was inconsistent with local government principles in section 4(2)(a) of the Act “Transparent and effective processes, and decision-making in the public interest” and or section 4(2)(e) of the Act “ethical and legal behaviour of councillors and local government employees”, in that the Respondent did not inform the meeting about his personal interest in the matter as required by section 175E(2) of the Act, has been sustained.</p>
<p>Reasons:</p>	<p>The particulars of Allegation One was as follows:</p> <ul style="list-style-type: none"> i. On 12 June 2018, a Service and Organisational Committee meeting was held. Item 2 of the agenda was 2018-19 Community Grants Program Funding – Community Project Grants (Round One) – Programs. ii. The agenda item related to the consideration of community project grants, including a Peregrin Beach Community Association Inc. (‘PBCAI’) grant application for \$2000. iii. The PBCAI was listed on the agenda report as the applicant for the Pocket Park Project grant. iv. Councillor Wilkie attended the Services and Organisation Committee meeting. v. The matter was not an ordinary business matter. vi. Item 2 of the agenda recorded that the Committee recommended the Council note the report by the Community Development Manager to the Services and Organisation Committee Meeting dated 12 June 2018 and approve the 2018/2019 Round One Community Project Grants – Programs, as provided in Attachment 1 to the report. vii. Attachment 1 2018/2019 Round One Community Project Grants – PROGRAM/PROJECT to the report included the PBCAI as an applicant for the community grant of \$2000. viii. Councillor Wilkie failed to inform the meeting of his personal interest, namely that: ix. Councillor Wilkie’s father, Frank Wilkie Snr, was President of PBCAI from 8 June 2003 until his passing in May 2017; x. Councillor Wilkie was a general member of the PBCAI from 2014 to July 2017;

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- xi. Councillor Wilkie had a long-term personal association with Mr Cotterell; and
- xii. On 12 February 2016, Councillor Wilkie received \$200 electoral donation from Mr Cotterell who at the time of the donation was Vice President of the PBCAI.
- xiii. Councillor Wilkie’s personal interest in the matter did not arise merely because of the circumstance specified in section 175(2)(a)(iii) of the Act.

The particulars of Allegation Two was as follows:

- I. On 21 June 2018, an Ordinary Council meeting was held. Item 6 on the agenda was consideration of reports and recommendations contained in minutes of the Services and Organisation Committee recommendations.
- II. The Services and Organisation Committee Report recommended that Council note the report by the Community Development Manager to the Services & Organisation Committee Meeting dated 12 June 2018 and approve the 2018/2019 Round One Community Project Grants – Programs, as provided in Attachment 1 to the report.
- III. Attachment 1 2018/2019 Round One Community Project Grants – PROGRAM/PROJECT included a community grant of \$2000 to PBCAI.
- IV. Councillor Wilkie attended the Ordinary Council meeting and was present during the consideration of adoption of the Services and Organisation Committee recommendation.
- V. The matter was not an ordinary business matter.
- VI. Councillor Wilkie failed to inform the meeting of his personal interest, namely that:
 - xiv. Councillor Wilkie’s father, Frank Wilkie Snr, was President of PBCAI from 8 June 2003 until his passing in May 2017;
 - xv. Councillor Wilkie was a general member of the PBCAI from 2014 to July 2017;
 - xvi. Councillor Wilkie had a long-term personal association with Mr Cotterell; and
 - xvii. On 12 February 2016, Councillor Wilkie received \$200 electoral donation from Mr Cotterell who at the time of the donation was Vice President of the PBCAI.
 - I. Councillor Wilkie’s personal interest in the matter did not arise merely because of the circumstance specified in section 175(2)(a)(iii) of the Act.

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	<ol style="list-style-type: none">2. The two allegations had a high degree of similarity, in that in each instance it was alleged that the Respondent failed to declare the same interest in PBCAI. The difference between the two allegations was the first allegation involved the consideration of a recommendation at a committee level and the second allegation involved the subsequent ordinary meeting of Council where that recommendation was considered.3. It was not in dispute that the Respondent did not declare a real or perceived conflict of interest at either meeting.4. The matter under consideration at both the Services and Organisation Committee meeting on 12 June 2018 and the ordinary Council meeting of Council on 21 June 2018 involved considerations that could result in PBCAI securing \$2,000 in funding (in that the Council would provide the funding if the 'Stage 3 BBRF – Infrastructure Projects Stream funding submission did not result in the funding).5. When determining a conflict of interest, the relevant test was whether a reasonable and fair-minded observer might perceive the Respondent, given his past long-standing familial involvement, his past direct involvement, his current indirect involvement and his past/present relationship with PCBAI office holders might not bring an impartial mind to any decision around Council funding for PBCAI, and therefore might make a decision contrary to the public interest.6. On the evidence before the Tribunal, the Tribunal accepted:<ol style="list-style-type: none">I. The Respondent was a member of PBCAI from 2014 until around July 2017.II. The Respondent's father was the President of PBCAI from 8 June 2003 until his passing on 12 May 2017.III. At the time of the Respondent's Father's passing, the Vice President of PBCAI was Mr Barry Cotterell. Mr Cotterell subsequently became the President and remained the President at the time of the Respondent's alleged misconduct.7. The Respondent's relationship with Mr Cotterell further involved:
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	<ul style="list-style-type: none"> I. A donation from Mr Cotterell (and his wife) to the value of \$200 on 12 February 2016 when Mr Cotterell was still the Vice President of PBCAI; and II. Mr Cotterell (and his wife) handed out 'how to vote' cards in support of the Respondent during the Respondent's 2016 electoral campaign. <p>8. The Tribunal also had regard (via submissions from Respondent) that:</p> <ul style="list-style-type: none"> I. There was an obvious public nature of the benefit delivered by the project (proposed creation of a ring of 10 sandstone blocks in a small public space adjacent to the Peregian Community Kindergarten). II. The Respondent, nor any associate of his, nor the grant applicant, gained any personal or material interest. III. Neither the Respondent, nor any PBCAI executive member were said to have any children or grandchildren at the kindergarten that may have benefited from the project. IV. PBCAI was a not-for-profit community group run by volunteers. V. The project was recommended for approval by staff and unanimously approved by all councillors. VI. The PBCAI was not to be the recipient of the project grant money, rather it would go to an independent contractor to do the work. VII. The funding was not eventually granted (the council created the proposed ring of stones as part of the planned upgrade to the Rufous Street Precinct, without the PBCAI needing to engage an independent contractor). VIII. The \$200 campaign donation from Mr Cotterell was less than the amount required to be recorded on the councillors Declarable Register of Interests (\$500 or more) and the Tribunal accepts was a genuine oversight. IX. The Respondent's father, who was a former president of PBCAI, had been deceased more than one year before the matter came before the council.
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	<p>X. The complaint against the Respondent was alleged to be politically motivated.</p> <p>XI. In the four years since the project was completed no impartial person had questioned the project’s public benefit or the process that approved it.</p> <p>XII. The Respondent had demonstrated previous instances of making conflict of interest declarations on matters where individuals could gain a potential personal/material benefit.</p> <p>9. The evidence before the Tribunal indicated the Respondent ceased being a member of PBCAI in July 2017 to avoid any possible conflict in his position as a Councillor. However, notwithstanding the Respondent ceasing his membership of PBCAI, the Respondent continued to receive PBCAI minutes, attend some meetings, and provide members with reports on relevant Council updates.</p> <p>10. In addition, the Respondent, in a document titled “Peregian Update” on Council activities for the 2017-2018 year, stated:</p> <p style="text-align: center;"><i>On issues dear to this group, I have always aimed, and will continue to, advocate within council and provide the information and contacts necessary to help further the PBCA’s aims and objectives.</i></p> <p>11. The Tribunal found that a reasonable and fair-minded observer might perceive the Respondent’s continued involvement and stated advocacy for the PBCAI might not bring an impartial mind to any decision around Council funding for PBCAI and might make a decision contrary to the public interest. The issue is one of perception and the Tribunal considered the Respondent should have exercised an abundance of caution regarding Council matters involving PBCAI.</p> <p>12. Not every breach of a provision of the Act will be considered serious enough to amount to misconduct, having regard to the circumstances and any exculpatory considerations.</p> <p>13. The Tribunal recognised that the conflict of interest provisions are fundamental to the transparency of local government decision-making and acknowledges contraventions of this nature do have the potential to undermine public confidence in the integrity of elected representatives.</p>
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	<p>14. The Respondent is an experienced councillor who has received training on his obligations around conflicts of interests and has demonstrated his awareness of his obligations by his previous declaration regarding PBCAI in 2014. Although the Tribunal accepts the Respondent believed he did not have a conflict of interest if he ceased his PBCAI membership, the Tribunal was satisfied there was a perceived conflict of interest that had the potential to undermine public confidence in the integrity of elected representatives. The Tribunal was satisfied the Respondent’s conduct breached the trust placed in him as a Councillor.</p>
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1. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	2 November 2022
Orders and/or recommendations:	<p>Having found that the Councillor engaged in misconduct, pursuant to section 150AR(1) of the Act, the Tribunal orders that within 60 days of the day that he is issued with this decision and reasons:</p> <p>With respect to Allegation One:</p> <ul style="list-style-type: none"> • pursuant to section 150AR(1)(b)(i) of the Act, the Respondent must make an admission that he engaged in misconduct during a General Meeting of Council at a time when the meeting is open to members of the public; • pursuant to section 150AR(b)(iii) of the Act, the Respondent is to arrange training, to be completed by the Respondent within 12 months of this decision at the Respondent’s expense, where such training is to consist of identifying real or perceived conflicts of interest <p>With respect to Allegation Two:</p> <ul style="list-style-type: none"> • pursuant to section 150AR(1)(b)(i) of the Act, the Respondent must make an admission that he engaged in misconduct during a General Meeting of Council at a time when the meeting is open to members of the public

Reasons:	<ol style="list-style-type: none">1. The purpose of disciplinary proceedings and orders are to be protective rather than punitive. However, there is a need to maintain high standards of conduct by councillors – ensuring public confidence in the system of local government.2. The Tribunal acknowledges the Respondent co-operated with the investigation and found his conduct related to a misunderstanding of when a conflict of interest can arise. He had no prior history of misconduct and the offending occurred more than four years ago. However, the Tribunal considers it is important for the integrity of the local government system that the Respondent make a public admission regarding his conduct. Although the Tribunal considers the Respondent is unlikely to repeat the conduct, it is appropriate to make an order for the Respondent to undergo further training around conflict of interest factors.3. Given the accepted high degree of similarity of each allegation, (in that the relevant interest in each instance was the same), the Tribunal considers it necessary to order training for only one allegation, which will be the first allegation in time.
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