

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	F20/2923
Subject Councillor	Mayor Gregory Campbell (the Respondent Councillor)
Council	Cloncurry Shire Council (the Council)

2. Decision (s150AQ):

Date:	21 October 2021
Decision:	<p>The Tribunal has determined, on the balance of probabilities, that the allegation that on 9 August 2019 the Councillor and Mayor of the Cloncurry Shire Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the <i>Local Government Act 2009</i>, in that his conduct involved a breach of the trust placed in the councillor, <i>either knowingly or recklessly</i>, in that the conduct was inconsistent with local government principles 4(2)(a) ‘<i>transparent and effective processes and decision-making in the public interest</i>’ and section 4(2)(e) being ‘<i>ethical and legal behavior of councillors and local government employees</i>’, has been sustained.</p> <p>Particulars of the allegation:</p> <ul style="list-style-type: none"> a) On 9 August 2019, a Special Meeting was held. One of the matters on the agenda was Item 5.2 – 2019 Flood Damage Road Restoration Tender Report, in which the Council considered whether to award a number of road restoration contracts to certain companies including contract (T2019-RW5N) to KJW Contracting with an estimated value of \$1,046,133.25 (excl GST). b) The matter was not an ordinary business matter.

	<p>c) Councillor Campbell attended the Special Meeting and was the Chairperson.</p> <p>d) Councillor Campbell had a personal interest in the matter that:</p> <ul style="list-style-type: none"> i. He is a partner in the partnership of Cairo Pastoral Company; ii. Cairo Pastoral Company was engaged by KJW Contracting on 5,6 and 7 November 2015 and on 5 December 2015; iii. KJW Contracting has supplied crusher dust to various properties owned by Councillor Campbell’s family in exchange for in-kind payment; and iv. KJW Contracting ¹invoiced Cairo Pastoral Company in July 2019 for the value of \$3,383.00. <p>e) Councillor Campbell’s personal interest in the matter did not arise merely because of the circumstances specified in section 173(3)175D(2) &(3)².</p> <p>f) Councillor Campbell’s personal interest in the matter gave rise to a real conflict of interest or perceived conflict of interest due to the relationship between Cairo Pastoral Company-which he is a partner of –and KJW Contracting.</p> <p>g) Councillor Campbell did not inform the meeting of his personal interest in the matter.</p>
<p>Reasons:</p>	<p>Background.</p> <ol style="list-style-type: none"> 1. The Cloncurry Shire Council at its Special meeting on 9 August 2019 (the Council meeting), listed an agenda item for decision to allocate a tender for road works to be undertaken for the Council by KJW Contracting. The estimated value of the tender was \$1,046,155.259 (excl GST) and the successful tender was awarded to KJW Contracting(KJW). The Respondent knew KJW to the extent that he had previous and recent business interactions on various occasions through the business partnership (CPC) with KJW between 2015 to July 2019. 2. The Respondent is an experienced Councillor and Mayor and was the Chairperson of this Council meeting. 3. Section 175E of the <i>Local Government Act 2009</i> (the Act) requires councillors when participating in Council meetings to inform the meeting of 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>. In this case the conflict was between the interest of the

¹Submissions from the Applicant and the Respondent and evidence from KJW Contracting, confirmed Particular d.iv contained a drafting error . The Tribunal amended this error pursuant to section 213(1)(b) &(2)(d)&(f) of the Act.

² Particular 1 e. was amended by the Tribunal following submissions from the Applicant [17.09.21] regarding an incorrect reference to section 173(3) of the Act. The Respondent was notified of this error and made no objection to the amendment.

Councillor as reflected by the business dealings between the Councillors business (CPC) with KJW Contracting and the public interest with regard to the award by the Council a tender to KJW to undertake road works.

4. The Respondent Councillor did not declare his dealings with KJW at the Council meeting and disputed that he engaged in misconduct arising from his previous business arrangements with KJW.
5. In such circumstances the Tribunal must be satisfied that the evidence supports the allegation made by the Independent Assessor.

Meaning of Conflict of interest:

Section 175D of the *Local Government Act* provides that a conflict of interest is :

(1) (a) a conflict between –

(i) a councillor’s personal interests; and

(ii) the public interest; and

*(b) **might** lead to a decision that is contrary to the public interest.*

[emphasis & underlining added]

Declaration of the conflict of interest at Council meetings

Section 175E of the Act requires if- a matter is to be discussed at a meeting and -

(1)(b) the matter is not an ordinary business matter; and

(1) (c) a councillor at a meeting –

*...(ii) could reasonably be taken to have a conflict of interest in the matter
(a perceived conflict of interest)*

*(2) The councillor **must** inform the meeting about the councillor’s personal interests in the matter...*

[emphasis added]

Agenda item 5.2.2019 [T2019-RW5N], Flood Damage Road Restoration Tender Report – Council discussions and the decision to allocate this tender.

6. The question in issue is whether the Respondent Councillor had a personal interest that he was required to declare at the Council meeting when he participated in the Council discussions and decision regarding the tender process.
7. The test applied by the Tribunal to the facts and circumstances of this matter is whether ‘a *reasonable and fair –minded observer might*

perceive that the Councillor may not bring an impartial mind to the decision and might make a decision contrary to the public interest .³

Consideration of the evidence

8. The evidence established that the Council awarded Tenders to six (6) contractors at the meeting. The tenders were of varying values with the tender made to KJW being the second highest in value at an amount of \$1,046,133.24 (excl GT).

The Councillor's Personal Interest.

9. *Dealings between KJW Contracting and the Respondent's partnership (CPC)- 2015*

- i. The Respondent operated a beef cattle business as a partnership, known as Cairo Pastoral Corporation (CPC). The Register of Interests of the Councillor recorded this partnership interest.
- ii. The Councillor as a partner of CPC was entitled to share in the benefits and privileges accruing in the partnership.⁴
- iii. The Councillor submitted in evidence that CPC also undertook other minor works during times of drought. The Councillor accepted that CPC had previously undertaken a limited number of commercial dealings with KJW. The works conducted in 2015 included for example, labour hire to KJW, the supply of a bob cat with operator and dust suppression at various locations. Invoices were rendered for these works.
- iv. Other works involving the supply of crusher dust by KJW to the Councillors residence and to the properties of other family members had occurred on at least three occasions . The remuneration for the supply of the crusher dust on these occasions was rendered by way of in-kind payments.

10. *Dealings between KJW and Respondent's partnership (CPC) - July 2019.*

- i. During July 2019 the Councillor, through his business (CPC) entered into an arrangement with a regular customer (Toll) and with KJW whereby the Respondent agreed " to run" an invoice through the books of CPC for works undertaken by KJW.

³ *Ebner v Official Trustee in Bankruptcy*(2000)2015 CLR 337.

⁴ Partnership Act (Qld)

- ii. However, the evidence established that the Councillors business (CPC), had no connection or involvement with these works.
- iii. The Respondent submitted that this arrangement was put into place “as a favour” and at the request of Toll to prevent “delay”.
- iv. The invoice in effect was issued by KJW to CPC for work that had been undertaken by KJW on behalf of Toll.
- v. The evidence confirmed that this invoice made no reference to Toll but referred to the works being performed by KJW on behalf of CPC for a total cost of \$3,383.00. The purpose of these works was “to grade station roads to remove washouts caused by flooding”.
- vi. The Tribunal was satisfied that such work was not undertaken for or on behalf of CPC and that the validity and justification for the preparation of this invoice is questionable.
- vii. The Tribunal formed the view that this invoice on its face appeared to be a false account and was unrelated to expenditure or work undertaken by KJW on behalf of CPC. The arrangement between KJW and Toll and the reasons for the involvement of CPC in this questionable process were unclear.
- viii. However, of relevance to this matter is that this arrangement demonstrates that the Respondent Councillor had an ‘interest’ in relation to his dealings with KJW that was relevant to the Council agenda item 5.2.2019 under discussion at the meeting to award a tender to KJW.
- ix. The Tribunal determined that the above business interactions and dealings, despite some having occurred as early as 2015 were not too remote from the Council discussions that took place on 9 August 2019.
- x. Even if the earlier interactions between CPC and KJW had slipped from the Respondent’s mind, the recent and unusual invoicing arrangement that took place in early July 2019 should have refreshed the Councillor’s memory regarding the previous business dealings and interests in relation to KJW.

Findings

11. The Tribunal formed the view that the Respondent (as a partner of CPC) held a personal interest arising from the previous dealings with KJW that could raise the perception of a conflict of interest, and that

this interest *might* lead to a decision that is not impartial and is thus contrary to the public interest.

CONFLICT TO BE DECLARED AT MEETING

12. The Tribunal formed the view that the interest was required to have been declared at the Council meeting on 9 August 2019 as:
- i. The interest was relevant to the discussions and vote to be taken in relation to agenda item 5.2.2019; and
 - ii. The interest could raise a perception (by a reasonable lay observer) that a conflict may exist between the Respondent's personal interest and the public interest as the Councillor may not be able to bring an impartial mind to the discussions and this might lead to a decision that is in conflict with the public interest; and
 - iii. The circumstances and evidence establish that the Councillor was required to inform the meeting about the councillor's interests relating to KJW and the Agenda item regarding the award of a tender by the Council to KJW pursuant to the requirements of the Act.

Breach of trust and misconduct

13. The issue to determine is whether the above conduct represents a breach of trust and satisfies the requirements of the misconduct provision (section 150L)
14. The concept of trust in a councillor is viewed broadly, in relation to the trust that the community has in the position of councillor. Councillors are entrusted by the community with the power to make policy and decisions in many areas affecting the life, lifestyle and well-being of members of the local community. Councillors have great discretion and are entrusted to use their powers appropriately in the public interest⁵.
15. The conduct of the Councillor was found to be inconsistent with the conflict of interest requirements of the Act and the Local Government principles requiring –
- S 4(2)(a) “ transparent and effective processes, and decision making in the public interest”; and
 - S 4(2)(e) “ethical and legal behavior of councillors.”
16. The Tribunal determined that the circumstances permit a reasonable and real inference that the Councillor was not impartial when he participated in the decision making process at the Council meeting and failed to declare his personal interest and dealings with KJW.

⁵ Independent Assessor v Gleeson CCT F19/6508

	17. The Tribunal is satisfied on the balance of probabilities that in the context of the local government Act and by section 150L(1)(b)(i) of the Act the conduct constituted a ‘reckless’ breach of the trust placed in the councillor’. ⁶
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	21 October 2021
Order/s and/or recommendations:	<p>Having found that the Councillor engaged in misconduct, the Tribunal orders that Councillor Gregory Campbell, Mayor of the Council:</p> <ol style="list-style-type: none"> 1. Make an admission of misconduct during a Council meeting within 60 days from receipt of a copy of this report and decision from the Registrar of the Tribunal (S150AR(1)(b)(i)); 2. Attend training to address the councillor’s conduct (at the Councillor’s expense), where such training must include a proper assessment and determination of conflicts of interest(s150AR(1)(b)(iii)); 3. Pay to the local government an amount of \$500.00 within 90 days from the date of receipt of this order (s150AR(10)(b)(iv)).
Reasons:	<p>The conflict of interest provisions are premised on legislative requirements for transparency and accountability by all Queensland councillors.</p> <p>The Tribunal’s jurisdiction is primarily protective although it can extend to considerations of deterrence and be compensatory⁷.</p> <p>In considering an appropriate order, the Tribunal noted in particular the following:</p> <ul style="list-style-type: none"> • The Respondent had received relevant integrity training regarding the conflict of interest provisions • He has no previous disciplinary history or findings of misconduct • He is an experienced councillor having served as a Deputy Mayor and Mayor • He co-operated at all times with the investigation process undertaken by the Independent Assessor.

⁶ Section 150L(1)(b)(i) Local Government Act 2009.

⁷ *Office of Local Government v Campbell*[2016]NSWCATOD 8 at [14(2)]

The Tribunal also considered the submissions received from the Respondents legal representatives and the legal representatives on behalf of the Independent Assessor.

In exercising its discretion to determine appropriate orders and sanctions, consideration was given to the community expectations and the high value placed on transparency in local government decision making. The Tribunal noted the Applicant's submission that:

'the maintenance of public confidence in the system of local government requires the Tribunal to set clear expectations for councillors and to ensure councillors are held to account when their conduct falls below established standards and results in a breach of trust'.⁸

The conduct and circumstances that led to a finding of misconduct in this matter, particularly in relation to the July invoice received from KJW , is considered by the Tribunal to be serious and is at the higher end of the disciplinary scale.

The Tribunal considered the failure to observe the provisions of the Act regarding the requirement to *'inform'* the meeting of relevant interests and dealings with KJW was unacceptable conduct by an experienced Councillor and Mayor. The sanction and orders reflect these concerns regarding the above conduct.

⁸ Applicant's submission 17 September 2021 at [103]