

Councillor Conduct Tribunal: Summary of Decision and Reasons for Department's website

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

1. Application details:

Reference No.	F20/4138
Subject Councillor	Former Councillor Warren Devlin (the Councillor)
Council	Etheridge Shire Council (the Council)

2. Decision (s150AQ):

Date:	16 November 2022
Decision:	<p>The Tribunal received three allegations of alleged misconduct. The decisions concerning these allegations and particulars of the conduct are :</p> <p>Allegation One:</p> <ol style="list-style-type: none"> 1. The Tribunal has determined, on the balance of probabilities, that the allegation that on 2 November 2016, Councillor Warren Devlin, the Mayor and a councillor of Etheridge Shire Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i>, in that his conduct involved a breach of the trust placed in the councillor, in that it was inconsistent with the local government principles in section 4(2)(a) 'transparent and effective processes, and decision making in the public interest' and section 4(2)(e) 'ethical and legal behaviour of councillors and local government employees', has been sustained.
Allegation particulars:	<p>The Particulars of the conduct are:</p> <ol style="list-style-type: none"> a. On 2 November 2016, a special Council meeting was held. Under agenda item GMCCS1, Council considered whether to accept the plant hire tenders listed in Table Three (3) titled, "<i>Preferred Suppliers of Wet Hire of Plant and Equipment</i>", as the panel of providers for the supply of plant and equipment from 1 December

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	<p>2016 to 30 June 2018 with an option to extend the period a further twelve months by council resolution.</p> <ul style="list-style-type: none">b. Bolwarra Enterprises Pty Ltd submitted tenders considered as part of agenda item GMCCS1.c. The matter was not an ordinary business matter.d. Councillor Devlin attended the special Council meeting.e. At the time of the meeting, Councillor Devlin had a personal interest in the matter based on:<ul style="list-style-type: none">i. His business dealings with Ian Kidner and the Kidner family in general, which commenced in the late 1980s.ii. Ian Kidner is the Director of Bolwarra Enterprises Pty Ltd. As at the 26 October 2016, Councillor Devlin took over a long-term. pastoral lease of Routh Station. Both prior to, and following, the purchase of this leasehold, Bolwarra Enterprises was engaged in extracting quarry materials from Routh Quarry on Routh Station and selling them to third parties, including to Council.iv. As at the date of the Council meeting on 2 November 2016, an agreement between Bolwarra and Councillor Devlin for Bolwarra to make voluntary royalty payments for materials extracted was either being negotiated or was reasonably contemplated.f. Councillor Devlin’s personal interest in the matter did not arise merely because of the circumstances specified in section 173(3) of the Act.g. Councillor Devlin did not inform the meeting of his personal interest in the matter and in so doing did not deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act, as in force at the time.h. Councillor Devlin’s personal interest in the matter could be deemed as being a real conflict of interest or perceived conflict of interest.i. Following consideration of this agenda item a resolution of Council to accept the Register of Preferred Suppliers including Bolwarra as a Preferred Supplier for Council was carried unanimously.
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Decision:	<p>Allegation Two:</p> <p>2. The Tribunal has determined, on the balance of probabilities, that the allegation that on 21 June 2017, Councillor Warren Devlin, the Mayor and a councillor of Etheridge Shire Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i>, in that his conduct involved a breach of the trust placed in the councillor, in that it was inconsistent with the local government principles in section 4(2)(a) ‘transparent and effective processes, and decision making in the public interest’ and section 4(2)(a) ‘ethical and legal behaviour of councillors and local government employees’, has been sustained.</p>
Allegation Particulars:	<p>Particulars of the conduct:</p> <ol style="list-style-type: none"> a. On 21 June 2017, a general Council meeting was held. Under agenda item GMES1, Council considered whether to approve the “Preferred Supplier Registers for Wet and Dry Hire of Plant and Equipment” established from the assessment of tenders. b. Bolwarra submitted tenders considered as part of agenda item GMES1. c. Council unanimously resolved to approve the Preferred Supplier Registers, which included Bolwarra. d. The matter was not an ordinary business matter. e. Councillor Devlin attended the general Council meeting. f. At the time of the meeting, Councillor Devlin had a personal interest in the matter based on: <ol style="list-style-type: none"> i. His business dealings with Ian Kidner and the Kidner family in general, which commenced in the late 1980s. ii. Ian Kidner is the Director of Bolwarra Enterprises Pty Ltd. iii. As at the 26 October 2016, Councillor Devlin took over a long-term pastoral lease of Routh Station. Both prior to, and following, the purchase of this leasehold, Bolwarra was engaged in extracting quarry materials from Routh Quarry on Routh Station and selling them to third parties, including to Council. iv. In late 2016, Bolwarra and Councillor Devlin entered into an agreement for the voluntary payment of royalties by Bolwarra to Councillor Devlin. v. As at the date of this meeting, Councillor Devlin had received a total of \$996.15 in voluntary royalty payments from Bolwarra. g. Councillor Devlin’s personal interest in the matter did not arise merely

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	<p>because of the circumstances specified in section 173(3) of the Act.</p> <ul style="list-style-type: none"> h. At the general Council meeting on 21 June 2017, Councillor Devlin did not deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way. i. Councillor Devlin’s personal interest in the matter could be deemed as being a real conflict of interest or perceived conflict of interest.
<p>Decision:</p>	<p>Allegation Three:</p> <p>3. The Tribunal has determined, on the balance of probabilities, that the allegation that between 1 July 2017 and 5 November 2019, Councillor Warren Devlin, the Mayor and a councillor of Etheridge Shire Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i>, in that his conduct involved a breach of the trust placed in him as a Councillor, in that it was inconsistent with local government principle 4(2)(e) of the Act being ‘ethical and legal behaviour of councillors and local government employees’, has been sustained.</p> <p>Particulars of the conduct provided to the Tribunal by the Applicant:</p> <ul style="list-style-type: none"> a. At the local government election on 19 March 2016, Councillor Devlin was elected as Mayor of Etheridge Shire Council. b. Since October 2016, Councillor Devlin has had an agreement with Bolwarra for him to be paid voluntary royalties for road base, rock, maintenance gravel, crusher dust, aggregates/screenings and premix extracted from Routh Quarry and sold to third parties. Councillor Devlin has a long-term pastoral lease over Routh Quarry, which is operated by Bolwarra. c. The voluntary royalties were paid to Councillor Devlin on a monthly basis commencing on 31 October 2016. d. On 31 May 2017, Councillor Devlin received a voluntary royalty of \$813.60 from Bolwarra. e. As the voluntary royalty payment was a source of income of over \$500 a year, the particulars were required to be recorded in the councillor’s register of interest, pursuant to section 171B of the Act. f. Councillor Devlin did not inform the CEO of the particulars of his interest, namely the voluntary royalty payments from Bolwarra, via an approved Form 2, within 30 days after the interest arose. g. Councillor Devlin received subsequent voluntary royalty payments of \$500 or more a year from Bolwarra in 2018 and 2019.

	<p>h. On 5 November 2019, Councillor Devlin informed the CEO of the particulars of his interest, namely the voluntary royalty payments from Bolwarra.</p> <p>i. The alleged conduct could amount to misconduct on the basis that councillors have a legal obligation under section 171B(2) of the Act to inform the CEO of the particulars of their interests or changes to their interests within 30 days of the interest arising or the change happening. As a consequence of the alleged misconduct, Councillor Devlin’s Register of interests, as maintained by the CEO, was inaccurate for the period from 1 July 2017 to 4 November 2019.</p> <p>j. Section 291 of the Regulation sets out the particulars required to be contained in a Register of interests. Councillor Devlin failed to comply with section 171B of the Act, in that he did not inform the CEO of the particulars of the voluntary royalty payments as required by item 16, Other sources of income more than \$500 a year of schedule 5 of the Regulation.</p>
<p>Reasons for the Decisions:</p>	<p>Background:</p> <ol style="list-style-type: none"> 1. At the date of the alleged conduct, the Councillor was an experienced Councillor and the Mayor of the Council. The Councillor held the position of the Mayor between 2008 to 2012 and between 2016 to 2020. 2. The evidence established that the Councillor had participated in relevant Councillor training facilitated by the Local Government Association of Queensland, King & Company Solicitors as well as training facilitated by the former Department of Local Government, Racing and Multicultural Affairs. 3. In October 2016 the Councillor acquired a long term pastoral lease. The property the subject of the lease agreement is known as Routh station and contained a quarry, known as Routh Quarry. Bolwarra Enterprises Pty Ltd (Bolwarra) was granted permission to extract quarry materials from part of Routh Quarry. 4. At the time of the conduct described in the above three allegations and particulars Bolwarra providing a payment to the Councillor by way of “voluntary royalty payments” for the extraction of material and products from the Quarry that Bolwarra sold to third parties including the Council. 5. Councillors are required by section 173(4) of the <i>Local Government Act 2009</i> (in force at the time of the conduct) when

attending Council meetings to declare real or perceived conflicts of interest 'in a transparent and accountable way.'

6. Allegations One and Two refer to conduct that occurred by the Councillor on 2 November 2016 and 21 June 2017 respectively. It was found that the Councillor attended a special general Council meeting on 2 November 2016 where Council resolved to accept "Preferred suppliers of Wet Hire and Plant Equipment". The preferred suppliers included Bolwarra and the evidence established that the Councillor failed to declare a personal interest and a conflict of interest at this meeting. The Councillor was found to hold an interest in relation to the Council agenda item that concerned his lease over Routh Station and his interest in Routh Quarry and the royalties he received from Bolwarra for use of the quarry.
7. Allegation Two refers to similar conduct that occurred on 21 June 2017 when the Councillor attended a general Council meeting and participated in the discussion and vote regarding agenda item GMES1, concerning the assessment of tenders and approval of the Council Preferred Supplier Registers for Wet and Dry Hire of Plant and Equipment". Bolwarra had submitted a tender as part of this agenda item. The Councillor at this date held the lease on Routh Station and Bolwarra was engaged in extracting material from the Routh Quarry and in return paid voluntary royalties to the Councillor. It was found the Councillor failed to declare his dealings with Bolwarra and consequently failed deal with a conflict of interest in "transparent and accountable way" in contravention of the provisions of the Act.
8. The Councillor accepted that he had a personal interest in the matters the subject of Allegations One and Two, which could be deemed as a real or perceived conflict of interest. The Councillor also accepted that his failure to declare his personal interest at the relevant meetings could amount to misconduct. However, the Councillor emphasised that he did not deliberately conceal his interest in Bolwarra, rather the Councillor mistakenly believed that he did not have an interest in the matters.
9. The Tribunal was satisfied that the Councillor's conduct as provided by allegations One and Two(above) constituted misconduct arising from the contravention of section 173(4) and section 4(2) of the *Local Government Act 2009*.
10. *The Councillors conduct was found to represent a failure to deal with a real or perceived conflict of interest in a transparent and*

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accountable way. The conduct was also found to have breached the trust placed in the councillor by Local Government principles section 4(2)(a) and 4(2)(e) requiring that anyone performing a responsibility under this Act to do so in accordance with-

...

S4(2)(a) transparent and effective processes, and decision-making in the public interest; and-

S(4)(2)(e) ethical and legal behaviour of councillors and local government employees.

Allegation Three

11. The conduct in relation to Allegation Three took place between 1 July 2017 to 5 November 2019. *The Local Government Act 2009*, by section 171B(2) requires Councillors to inform the CEO in the approved form of the particulars of an interest or a change to an interest that had to be recorded in their register of interests *'within 30 days after the interest arises or the change happens.'*
12. The Councillor was alleged to have engaged in misconduct arising from a contravention of section 171B(2) of the Act. This conduct was considered to breach the trust placed in the Councillor as it was inconsistent with the local government principles in section 4(2) of the *Local Government Act 2009* being *"ethical and legal behaviour by councillors"*.
13. The Councillor received voluntary royalty repayments from Bolwarra from 31 October 2016 and throughout 2017, 2018 and 2019, he made numerous amendments to his register of interests. However he failed to include the particulars of the voluntary payments from Bolwarra.
14. On 5 November 2019, the Councillor signed and submitted an approved Form 2 Register of interests, in which he informed the CEO of the particulars of *"Bolwarra Enterprises voluntary royalty payments"* in Item 16, *Other sources of income more than \$500 a year.*
15. The evidence provided to the Tribunal confirmed the Councillor accepted he had failed to record the income he received from Bolwarra by way of royalties of more than \$500 in his Register of Interests. It was also acknowledged that this failure to record a financial interest was in contravention of section 171B of the *Local Government Act 2009.*
16. The Councillor emphasised in his evidence that his conduct was not intentional or a deliberate attempt to conceal the receipt of

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	<p>the royalties from Bolwarra. The Councillor assumed that any voluntary payments made to him by Bolwarra would be negligible. He stated he did not monitor the payments made, nor was he personally aware of the amount of the payments going into his account.</p> <p>17. The Tribunal was satisfied that the evidence and conduct provided by the particulars of allegation Three established the Councillor contravened section 171B(2) of the <i>Local Government Act 2009</i> by failing to accurately update his Register of Interests to reflect the royalty payments received from Bolwarra.</p>
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	12 November 2022
Orders and/or recommendations:	<p>Pursuant to Section 150AR(1) of the Act, the Tribunal orders that former Councillor Warren Devlin, within 90 days of the day that he is issued with this decision and reasons:</p> <ol style="list-style-type: none"> 1. With respect to Allegation One: <ol style="list-style-type: none"> a. pursuant to section 150AR(1)(b)(i) of the Act, the Respondent make a public admission that he has engaged in misconduct; b. pursuant to section 150AR(1)(b)(iv) of the Act, the Respondent must pay to the local government the amount of \$250.00; 2. With respect to Allegation Two: <ol style="list-style-type: none"> a. pursuant to section 150AR(1)(b)(i) of the Act, the Respondent make a public admission that he has engaged in misconduct; b. pursuant to section 150AR(1)(b)(iv) of the Act, the Respondent must pay to the local government the amount of \$250.00; 3. With respect to Allegation Three: <ol style="list-style-type: none"> a. pursuant to section 150AR(1)(b)(i) of the Act, the Respondent make a public admission that he has engaged in misconduct; b. pursuant to section 150AR(1)(b)(iv) of the Act, the Respondent must pay to the local government the amount of \$500.00.
Reasons:	<ol style="list-style-type: none"> 1. As the Councillor is not currently elected the Tribunal must make orders that are applicable to former councillors pursuant to section 150AR(5) of the Act.

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	<ul style="list-style-type: none">2. The Tribunal acknowledged the Respondent had no prior disciplinary findings of misconduct. 3. The Tribunal considered and accepted the following mitigating circumstances:<ul style="list-style-type: none">a. The Respondent cooperated with the investigation and made timely admissions. b. That the misconduct was not a deliberate attempt to conceal his conflict of interest. c. That the alleged offending occurred quite some time ago; and d. The Respondent did record his interest in the register of interests but after the required time limit of 30 days. 4. The Respondent's conduct was considered serious and arose from a failure to effectively manage interests which touch upon Council decisions. The conduct has the potential to cast a pall of impropriety and bias over Council decision making those same decisions. Accordingly the Tribunal made the necessary and appropriate sanctions. 5. The Tribunal considered it important for the integrity of the local government system that the Respondent make a public admission regarding his conduct, by which the Respondent's situation should be instructive for other Councillors who might be placed in a similar position in the future. 6. The Tribunal considered it appropriate to make an order for partial reimbursement of costs to the local government arising from the Councillor's misconduct.
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