

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.	F21/2597
Subject Councillor	Councillor Vic Pennisi (the Councillor)
Council	Southern Downs Regional Council

2. Decision (s150AQ):

Date:	16 January 2023
Decision:	<p>The Tribunal has determined, on the balance of probabilities, that the allegation that on 26 June 2019, Cr Pennisi engaged in misconduct as defined in section 150L(1)(b)(i) of the <i>Local Government Act 2009</i> (Qld) ("the Act"), in that his conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly, in that his conduct 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', in that Cr Pennisi did not inform the meeting of his personal interest as required by section 175E(2) of the Act was not sustained and that therefore the councillor has not engaged in misconduct.</p> <p>The particulars of the alleged conduct which could amount to misconduct are as follows:</p> <ol style="list-style-type: none">a. On 26 June 2019, a general Council meeting was held. Under agenda item 12.2, Council considered whether to receive the attached Water Contingency Plan.

Councillor Conduct Tribunal

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	<ul style="list-style-type: none"> b. The Water Contingency Plan is a document that records Council’s short, medium, and long-term goals for water security in the local government region. The plan included the following item under the heading “Stanthorpe” and sub-heading “Long term”: “Support the establishment of Emu Swamp Dam as an irrigation project”. c. The matter was not an ordinary business matter. d. Councillor Pennisi attended the general Council meeting. e. Councillor Pennisi had a personal interest in the matter in that: <ul style="list-style-type: none"> i. He had been involved in the Emu Swamp Dam project since the mid-1990s; ii. At the time of the meeting, he held the position of Chairperson of the Stanthorpe Community Reference Panel (SCRP) and had prior involvement in the Panel, both as member and office bearer; iii. At the time of the meeting, he held the position of Director of Granite Belt Water Ltd; and iv. At the time of the meeting, he held the position of Director of Emu Swamp Dam Pty Ltd. f. Councillor Pennisi’s personal interest in the matter did not arise merely because of the circumstances specified in sub-sections 175D(2) or 175D(3) of the Act. g. Councillor Pennisi’s personal interest in the matter could be deemed as being a real conflict of interest or perceived conflict of interest on the basis of: <ul style="list-style-type: none"> i. His historical involvement in the Emu Swamp Dam project and his position as Chairperson of the Stanthorpe Community Reference Panel, an organisation that advocates for the Emu Swamp Dam; and ii. His directorships of Granite Belt Water Ltd and Emu Swamp Dam Pty Ltd, which gave rise to fiduciary duties towards those entities that may conflict with his duties as a councillor.
<p>Reasons:</p>	<ul style="list-style-type: none"> 1. For the obligation of disclosure to arise in respect of a Councillor’s personal interests in a matter being considered by Council, Cr Pennisi must have either had a conflict of interest in the matter (a real conflict of interest) or reasonably be taken to have a conflict of interest in the matter (a perceived conflict of interest). 2. In this case Cr Pennisi had several duties imposed on him:

	<ul style="list-style-type: none"> a. Because of his appointment as a director of ESD and Granite Belt Water Ltd, several non-delegable and fiduciary duties to those companies; b. Because of his election as Chairman of the SCRP, fiduciary duties to the SCRP as a member of the management committee; c. Because of his election as a Councillor, statutory duties to the local government and the public. <p>3. Given the nature of these duties, it is plainly obvious that Cr Pennisi has several personal interests in water issues in the local government area.</p> <p>4. The public interest is, and always has been, in local governments and Councillors exercising their powers and responsibilities in a manner that is transparent, ethical, lawful and accountable.</p> <p>5. Having considered that it is the public’s interest in high quality leadership and ethical decision making, the next step is to determine whether Cr Pennisi’s personal interests could have led to, but did not necessarily result in, a decision contrary to that articulated public interest.</p> <p>6. On that basis, the Tribunal must find that Cr Pennisi had a real conflict of interest, as:</p> <ul style="list-style-type: none"> a. Cr Pennisi held directorships of two companies, as well as chairmanship of a third, with interests in the water issues of the local government area; b. Because of those directorships and chairmanship, Cr Pennisi would have had duties to those entities to exercise those entities powers and functions in good faith and with the due diligence of any other director of his position and experience, and in the interests of those entities; c. Whilst there may be cases where the interests of all four entities – the local government, SCRP, and the two companies – would align, it is obvious that there will (perhaps more often) be cases where the interests of such disparate groups will not align. <p>7. The final determination is whether this failure to declare a conflict of interest amounted to a breach of trust.</p> <p>8. Taken collectively, the evidence supports an inference that Cr Pennisi held an <i>“entirely flawed but genuinely held belief that he had acted properly”</i> in the circumstances of the meeting on 26 June 2019, the consequence of which is that Cr Pennisi cannot be said to have acted recklessly.</p> <p>9. However, the Tribunal wishes to make one final comment regarding Cr Pennisi’s conduct in this matter. Although the Tribunal did not consider that Cr Pennisi acted recklessly, it nonetheless found that he failed to</p>
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Councillor Conduct Tribunal

	<p>properly assess and deal with a real conflict of interest in relation to his personal involvements with corporate entities and community associations.</p> <p>10. Councillors should not be discouraged from holding these offices or positions; indeed, Councillors are often elected as representatives of the communities they represent, and the officeholdings in such entities is a sure way of ensuring appropriate consultation and involvement in local government. However – and the Tribunal cannot sound this call loud enough – this does not excuse Councillors from failing to properly disclose these appointments in Council meetings where matters are being discussed which might present a possible conflict of interest.</p> <p>11. The Tribunal has repeatedly called on Councillors to take a more cautious approach to their conflicts of interest assessments and disclose such matters during a meeting, such that the other Councillors present may decide whether a conflict exists (rather than the Councillor in question). The Tribunal believes that Cr Pennisi, along with other Councillors who might find themselves in similar circumstances, would benefit from adopting such a cautious approach in their dealings with actual and perceived conflicts of interest.</p>
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	16 January 2023
Order/s and/or recommendations:	Having found that the councillor did not engage in misconduct, no orders are necessary.
Reasons	N/A