

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.	F21/4693
Subject Councillor	Former Councillor Yen Loban (the Councillor)
Council	Torres Shire Council (the Council)

2. Decision (s150AQ):

Date:	7 September 2023
Decision:	<p>Allegation One</p> <p>The Tribunal has determined, on the balance of probabilities, that the allegation that on 19 September 2017, Councillor Yen Loban, the Deputy Mayor and a Councillor of Torres Shire Council, engaged in misconduct pursuant to 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 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 he failed to deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act was not sustained and that therefore the councillor has not engaged in misconduct.</p> <p>Particulars</p> <p>Particulars of the alleged misconduct are as follows:</p> <p>a. On 19 September 2017, during a closed session of a Council Ordinary Meeting (the meeting), Council considered Item 3 'Request for Quote</p>

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	<p>06/17 Safe Landing Facility Detailed Design Prince of Wales Island' (the matter).</p> <p>b. The following resolution was moved at the meeting in relation to the matter:</p> <p>i. 'That Council notes, under the Local Buy preferred supplier arrangement, the Request for Quote No. 06/17 for the Safe Landing Facility Detailed Design, Prince of Wales Island is awarded to PDR SMEC Engineers.'</p> <p>c. The matter was not an ordinary business matter.</p> <p>d. Councillor Loban attended the meeting.</p> <p>e. Councillor Loban had a real or perceived conflict of interest in the matter in that:</p> <p>i. Councillor Loban operated marine transport services through Loban Marine Pty Ltd (Loban Marine) to and from Prince of Wales Island;</p> <p>ii. Councillor Loban was the sole director and shareholder of Loban Marine;</p> <p>iii. Loban Marine had received the following payments for providing marine charter services:</p> <p>A. between 1 July 2008 and 30 June 2019, Loban Marine received \$1,874,371.99 from the Department of Transport Main Roads as a School Transport Operator;</p> <p>B. between January 2013 and February 2020, Loban Marine received \$68,242.58 (from which \$24,239 for marine charter services involved the Prince of Wales Island) from the Torres Strait Regional Authority; and</p> <p>C. between October 2016 and December 2019, Loban Marine received \$12,394 from Council.</p> <p>iv. Councillor Loban was the only person who lived on the Prince of Wales Island and operated a marine services business;</p> <p>v. Loban Marine received overflow work from McDonalds Charter Boats and Torres Strait Tours (Rebel) which operated within the Thursday Island area including the Prince of Wales Island.</p> <p>f. Councillor Loban's conflict of interest in the matter did not arise merely because of the circumstances specified in section 173(3) of the Act.</p> <p>g. Councillor Loban did not inform the meeting of his personal interest in the matter and in so doing failed to deal with the real conflict of</p>
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interest or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act.

Allegation Two

The Tribunal has determined, on the balance of probabilities, that the allegation that on 20 March 2018, Councillor Yen Loban, the Deputy Mayor and a councillor of Torres Shire Council, engaged in misconduct pursuant to section 176(3)(b)(ii) of the *Local Government Act 2009*, in that his conduct involved a breach of the trust placed in the councillor 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 he failed to deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act **was not sustained and that therefore the councillor has not engaged in misconduct.**

Particulars

Particulars of the alleged misconduct are as follows:

- a. On 20 March 2018, during a closed session of a Council Ordinary Meeting (the meeting), Council considered an item 'Prince of Wales Island Safe Landing Facility – Draft Design' (the matter).
- b. The following resolution was moved at the meeting in relation to the matter:
 - i. 'That Council gives approval to Preston Law to issue a s24KA Notice using the plan and cultural heritage consultation notice nominating the refuse facility as the dredge spoil disposal area'.
- c. The matter was not an ordinary business matter.
- d. Councillor Loban attended the meeting.
- e. Councillor Loban had a real or perceived conflict of interest in the matter in that:
 - i. Councillor Loban operated marine transport services through Loban Marine Pty Ltd (Loban Marine) in the Prince of Wales Island;
 - ii. Councillor Loban was the sole director and shareholder of Loban Marine;
 - iii. Loban Marine had received the following payments for providing marine charter services:
 - A. between 1 July 2008 and 30 June 2019, Loban Marine Pty Ltd received \$1,874,371.99 from the Department of Transport Main Roads as a School Transport Operator;

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- B. between January 2013 and February 2020, Loban Marine Pty Ltd received \$68,242.58 (from which \$24,239 for marine charter services involved the Prince of Wales Island) from the Torres Strait Regional Authority; and
- C. between October 2016 and December 2019, Loban Marine Pty Ltd received \$12,394 from the Council.
- iv. Councillor Loban was the only person who lived on the Prince of Wales Island and operated a marine services business.
- v. Loban Marine received overflow work from McDonalds Charter Boats and Torres Strait Tours (Rebel) which operated within the Thursday Island area including the Prince of Wales Island.
- f. Councillor Loban's conflict of interest in the matter did not arise merely because of the circumstances specified in section 173(3) of the Act.
- g. Councillor Loban did not inform the meeting of his personal interest in the matter and in so doing failed to 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.

Allegation Three

The Tribunal has determined, on the balance of probabilities, that the allegation that on 19 March 2019, Councillor Yen Loban, the Deputy Mayor and a councillor of Torres Shire Council, engaged in misconduct pursuant to section 150L(1)(b)(i) of the *Local Government Act 2009*, in that his conduct involved a breach of the trust placed in the 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 Councillor Loban did not inform the meeting about his personal interest in the matter as required by section 175E(2) **was not sustained and that therefore the councillor has not engaged in misconduct.**

Particulars

Particulars of the alleged misconduct are as follows:

- a. On 19 March 2019, during a closed session of a Council Ordinary Meeting (the meeting), Council considered an item 'Prince of Wales Island – Marine Safe Landing Facility – Native Title' (the matter).
- b. The following resolution was moved at the meeting in relation to the matter:

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	<ul style="list-style-type: none">i. 'That Council (1) notes the native title objections to the s.24KA of the Native Title Act (Commonwealth) 1993 Future Act notice dated 23 April 2018 Future Act notice dated 23 April 2018 in relation to the Proposed Marine Safe Landing Facility by the Applicant to the Kaurareg No.2 Native Title Claim dated 28 May 2018 and by the Kaurareg Native Title Aboriginal Corporation dated 29 May 2018; (2) notes that Council has considered the content of the objections by the Applicant to the Kaurareg No.2 Native Title Claim dated 28 May 2018 and by the Kaurareg Native Title Aboriginal Corporation dated 29 May 2018 in detail; (3) acknowledges the Native Title rights of the applicant to the Kaurareg No. 2 Native Title claim in relation to the Stage 1 area of the Proposed Marine Safe Landing Facility and that the application of the non-extinguishment principle to the proposed project, and (4) resolves to continue with Stage 1 of the Proposed Marine Safe Landing Facility'.c. The matter was not an ordinary business matter.d. Councillor Loban attended and chaired the meeting.e. Councillor Loban had a real or perceived conflict of interest in the matter in that:<ul style="list-style-type: none">i. Councillor Loban operated marine transport services through Loban Marine Pty Ltd (Loban Marine) in the Prince of Wales Island;ii. Councillor Loban was the sole director and shareholder of Loban Marine;iii. Loban Marine had received the following payments for providing marine charter services:<ul style="list-style-type: none">A. between 1 July 2008 and 30 June 2019, Loban Marine Pty Ltd received \$1,874,371.99 from the Department of Transport Main Roads as a School Transport Operator;B. between January 2013 and February 2020, Loban Marine Pty Ltd received \$68,242.58 (from which \$24,239 for marine charter services involved the Prince of Wales Island) from the Torres Strait Regional Authority; andC. between October 2016 and December 2019, Loban Marine Pty Ltd received \$12,394 from the Council.iv. Councillor Loban was the only person who lived on the Prince of Wales Island and operated a marine services business.v. Loban Marine received overflow work from McDonalds Charter Boats and Torres Strait Tours (Rebel) which operated within the Thursday Island area including the Prince of Wales Island.
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- f. Councillor Loban did not inform the meeting of his conflict of interest in the matter.
- g. Councillor Loban's conflict of interest in the matter did not arise merely because of the circumstances specified in sections 175D(2) or (3) of the Act.

Allegation Four

The Tribunal has determined, on the balance of probabilities, that the allegation that on 19 March 2019, Councillor Yen Loban, the Deputy Mayor and a councillor of Torres Shire Council, engaged in misconduct pursuant to section 150L(1)(b)(i) of the *Local Government Act 2009*, in that his conduct involved a breach of the trust placed in the 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 Councillor Loban did not inform the meeting about his personal interest in the matter as required by section 175E(2) **was not sustained and that therefore the councillor has not engaged in misconduct.**

Particulars

Particulars of the alleged misconduct are as follows:

- a. On 19 March 2019, during a closed session of a Council Ordinary Meeting (the meeting), Council considered an item 'Prince of Wales Island – Marine Safe Landing Facility – Cultural Heritage' (the matter).
- b. The following resolution was moved at the meeting in relation to the matter:
 - i. 'That Council (1) endorse the Deed of Settle; and (2) resolve that the Deed of Settlement be presented to each of the members of the Applicant for consideration, and such consideration to be received within seven (7) days of presentation'.
- c. The matter was not an ordinary business matter.
- d. Councillor Loban attended and chaired the meeting.
- e. Councillor Loban had a real or perceived conflict of interest in the matter in that:
 - i. Councillor Loban operated marine transport services through Loban Marine Pty Ltd (Loban Marine) in the Prince of Wales Island;
 - ii. Councillor Loban was the sole director and shareholder of Loban Marine;

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	<ul style="list-style-type: none">iii. Loban Marine had received the following payments for providing marine charter services:<ul style="list-style-type: none">A. between 1 July 2008 and 30 June 2019, Loban Marine Pty Ltd received \$1,874,371.99 from the Department of Transport Main Roads as a School Transport Operator;B. between January 2013 and February 2020, Loban Marine Pty Ltd received \$68,242.58 (from which \$24,239 for marine charter services involved the Prince of Wales Island) from the Torres Strait Regional Authority; andC. between October 2016 and December 2019, Loban Marine Pty Ltd received \$12,394 from the Council.iv. Councillor Loban was the only person who lived on the Prince of Wales Island and operated a marine services business.v. Loban Marine received overflow work from McDonalds Charter Boats and Torres Strait Tours (Rebel) which operated within the Thursday Island area including the Prince of Wales Island.f. Councillor Loban did not inform the meeting of his conflict of interest in the matter.g. Councillor Loban’s conflict of interest in the matter did not arise merely because of the circumstances specified in sections 175D(2) or (3) of the Act. <p>Allegation Five</p> <p>The Tribunal has determined, on the balance of probabilities, that the allegation that on 17 April 2019, Councillor Yen Loban, the Deputy Mayor and a councillor of Torres Shire Council, engaged in misconduct pursuant to section 150L(1)(b)(i) of the <i>Local Government Act</i> 2009, in that his conduct involved a breach of the trust placed in the 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 Councillor Loban did not inform the meeting about his personal interest in the matter as required by section 175E(2) was not sustained and that therefore the councillor has not engaged in misconduct.</p> <p>Particulars</p> <p>Particulars of the alleged misconduct are as follows:</p>
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	<p>a. On 17 April 2019, during an in committee session of a Council Ordinary Meeting (the meeting), Council considered an item 'Prince of Wales Island – Safe Marine Landing Facility' (the matter).</p> <p>b. The following resolution was moved at the meeting in relation to the matter:</p> <p style="padding-left: 40px;">i. 'That Council resolve, in its assessment of the impact of the development (as advertised) and notified to reduce the scale of the approval to part of the notified area, as recommended in the Planning Report, and approve the development application, in part, as detailed in the Planning Report'.</p> <p>c. The matter was not an ordinary business matter.</p> <p>d. Councillor Loban attended the meeting.</p> <p>e. Councillor Loban had a real or perceived conflict of interest in the matter in that:</p> <p style="padding-left: 40px;">i. Councillor Loban operated marine transport services through Loban Marine Pty Ltd (Loban Marine) in the Prince of Wales Island;</p> <p style="padding-left: 40px;">ii. Councillor Loban was the sole director and shareholder of Loban Marine;</p> <p style="padding-left: 40px;">iii. Loban Marine had received the following payments for providing marine charter services:</p> <p style="padding-left: 80px;">A. between 1 July 2008 and 30 June 2019, Loban Marine Pty Ltd received \$1,874,371.99 from the Department of Transport Main Roads as a School Transport Operator;</p> <p style="padding-left: 80px;">B. between January 2013 and February 2020, Loban Marine Pty Ltd received \$68,242.58 (from which \$24,239 for marine charter services involved the Prince of Wales Island) from the Torres Strait Regional Authority; and</p> <p style="padding-left: 80px;">C. between October 2016 and December 2019, Loban Marine Pty Ltd received \$12,394 from the Council.</p> <p style="padding-left: 40px;">iv. Councillor Loban was the only person who lived on the Prince of Wales Island and operated a marine services business.</p> <p style="padding-left: 40px;">v. Loban Marine received overflow work from McDonalds Charter Boats and Torres Strait Tours (Rebel) which operated within the Thursday Island area including the Prince of Wales Island.</p> <p>f. Councillor Loban did not inform the meeting of his conflict of interest in the matter.</p> <p>g. Councillor Loban's conflict of interest in the matter did not arise merely because of the circumstances specified in sections 175D(2) or (3) of the Act.</p>
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Allegation Six

The Tribunal has determined, on the balance of probabilities, that the allegation that on 10 December 2019, Councillor Yen Loban, the Deputy Mayor and a councillor of Torres Shire Council, engaged in misconduct pursuant to section 150L(1)(b)(i) of the *Local Government Act 2009*, in that his conduct involved a breach of the trust placed in the 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 Councillor Loban did not inform the meeting about his personal interest in the matter as required by section 175E(2) **was not sustained and that therefore the councillor has not engaged in misconduct.**

Particulars

Particulars of the alleged misconduct are as follows:

- a. On 10 December 2019, during an in-committee session of a Council Ordinary Meeting (the meeting), Council considered the item 'Prince of Wales Island – Road Works and Marine Safe Landing Facility' (the matter).
- b. The following resolution was moved at the meeting in relation to the matter:
 - i. "That Council (1) notes the proposed Cultural Heritage Management Agreement from the Kaurareg Native Title Aboriginal Corporation.
(2) authorises Chief Executive Officer to negotiate any amendments to the proposed Cultural Heritage Management Agreement.
(3) resolves to delegate the authority to execute the Cultural Heritage Management Agreement in relation to the proposed roadworks on Prince of Wales Island to the Chief Executive Officer."
- c. The matter was not an ordinary business matter.
- d. Councillor Loban attended and chaired the meeting.
- e. Councillor Loban had a real or perceived conflict of interest in the matter in that:
 - i. Councillor Loban operated marine transport services through Loban Marine Pty Ltd (Loban Marine) in the Prince of Wales Island;
 - ii. Councillor Loban was the sole director and shareholder of Loban Marine;

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- iii. Loban Marine had received the following payments for providing marine charter services:
 - A. between 1 July 2008 and 30 June 2019, Loban Marine Pty Ltd received \$1,874,371.99 from the Department of Transport Main Roads as a School Transport Operator;
 - B. between January 2013 and February 2020, Loban Marine Pty Ltd received \$68,242.58 (from which \$24,239 for marine charter services involved the Prince of Wales Island) from the Torres Strait Regional Authority; and
 - C. between October 2016 and December 2019, Loban Marine Pty Ltd received \$12,394 from the Council.
- iv. Councillor Loban was the only person who lived on the Prince of Wales Island and operated a marine services business.
- v. Loban Marine received overflow work from McDonalds Charter Boats and Torres Strait Tours (Rebel) which operated within the Thursday Island area including the Prince of Wales Island.
- f. Councillor Loban did not inform the meeting of his conflict of interest in the matter.
- g. Councillor Loban's conflict of interest in the matter did not arise merely because of the circumstances specified in sections 175D(2) or (3) of the Act.

Allegation Seven

The Tribunal has determined, on the balance of probabilities, that the allegation that on 10 December 2019, Councillor Yen Loban, the Deputy Mayor and a councillor of Torres Shire Council, engaged in misconduct pursuant to section 150L(1)(b)(i) of the *Local Government Act 2009*, in that his conduct involved a breach of the trust placed in the 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 Councillor Loban did not inform the meeting about his personal interest in the matter as required by section 175E(2) **was not sustained and that therefore the councillor has not engaged in misconduct.**

Particulars

Particulars of the alleged misconduct are as follows:

- a. On 10 December 2019, during an in-committee session of a Council Ordinary Meeting (the meeting), Council considered the item

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	<p>'Roadworks POW and Marine Safe Landing Facility – Application under the <i>Aboriginal and Torres Strait Islander Heritage Protection (Cth) Act 1984</i>' (the matter).</p> <p>b. The following resolution was moved at the meeting in relation to the matter:</p> <p>i. "That Council (1) notes the appointment by the Minister for the Environment of an anthropologist under s.10 of the <i>Aboriginal and Torres Strait Islander Heritage Protection (Cth) Act 1984</i> to report on the application made by Milton Savage and Ms Enid Tom, on behalf of the Kaurareg People, in relation to a specified area known as 'Apparrlu (Waubinin Mabauzi Lag and Waubinin Malu)' on Prince of Wales Island.</p> <p>(2) authorises Chief Executive Officer to make a representation on behalf of Council to the Minister's Appointee and engage appropriate experts to assist in the preparation of the representation."</p> <p>c. The matter was not an ordinary business matter.</p> <p>d. Councillor Loban attended and chaired the meeting.</p> <p>e. Councillor Loban had a real or perceived conflict of interest in the matter in that:</p> <p>i. Councillor Loban operated marine transport services through Loban Marine Pty Ltd (Loban Marine) in the Prince of Wales Island;</p> <p>ii. Councillor Loban was the sole director and shareholder of Loban Marine;</p> <p>iii. Loban Marine had received the following payments for providing marine charter services:</p> <p>A. between 1 July 2008 and 30 June 2019, Loban Marine Pty Ltd received \$1,874,371.99 from the Department of Transport Main Roads as a School Transport Operator;</p> <p>B. between January 2013 and February 2020, Loban Marine Pty Ltd received \$68,242.58 (from which \$24,239 for marine charter services involved the Prince of Wales Island) from the Torres Strait Regional Authority; and</p> <p>C. between October 2016 and December 2019, Loban Marine Pty Ltd received \$12,394 from the Council.</p> <p>iv. Councillor Loban was the only person who lived on the Prince of Wales Island and operated a marine services business.</p>
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	<p>v. Loban Marine received overflow work from McDonalds Charter Boats and Torres Strait Tours (Rebel) which operated within the Thursday Island area including the Prince of Wales Island.</p> <p>f. Councillor Loban did not inform the meeting of his conflict of interest in the matter.</p> <p>Councillor Loban’s conflict of interest in the matter did not arise merely because of the circumstances specified in sections 175D(2) or (3) of the Act.</p>
<p>Reasons:</p>	<p>Background</p> <ol style="list-style-type: none"> 1. The parties agreed on the factual details. The Councillor accepted that he participated in the Council meeting subject to all allegations and did not declare a real or perceived conflict of interest on those occasions. 2. The allegations against the Councillor (in overall terms) were that he had been involved in Council decisions relating to the Prince of Wales Safe Landing Facility (POWSLF) when he had an undeclared conflict of interest or material personal interest in the POWSLF. 3. It was not in dispute that the Councillor was the sole director and shareholder of Loban Marine Pty Ltd which has operated a marine service business to and from Prince of Wales Island for 30 years. 4. Whilst there was some ambiguity as to whether building the POWSLF might provide the Councillor with a financial benefit, it was not disputed that building the POWSLF could result in a financial detriment to the Councillor. <p>Legislation</p> <ol style="list-style-type: none"> 5. For allegations One and Two, the Applicant alleged misconduct under section 176(3)(b)(ii) of the Act (as it then was) as a “breach of trust” by virtue of an alleged failure by the Councillor to comply with the local government principles in section 4(2)(a) and (e) of the Act by failing to manage conflicts of interest in accordance with section 173 of the Act. 6. The conflict of interest provision which applied subject to allegations One and Two was as follows: <p>173 Councillor’s conflict of interest at a meeting</p>

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- (1) This section applies if-
- (a) A matter is to be discussed at a meeting of a local government or any of its committees; and
 - (b) The matter is not an ordinary business matter; and
 - (c) A councillor at the meeting –
 - (i) Has a conflict of interest in the matter (a real conflict of interest); or
 - (ii) Could reasonably be taken to have a conflict of interest in the matter (a perceived conflict of interest).

- (2) A conflict of interest is a conflict between –
- (a) a councillor's personal interests; and
 - (b) the public interest

That might lead to a decision that is contrary to the public interest.

- (3) However, a councillor does not have a conflict of interest in a matter –

- (a) Merely because of –
 - (i) An engagement with a community group, sporting club or similar organization undertaken by the community in his or her capacity as a councillor; or
 - (ii) Membership of a political party; or
 - (iii) Membership of a community group, sporting club or similar organisation if the councillor is not an office holder for the group, club or organisation; or
 - (iv) The councillor's religious beliefs; or
 - (v) The councillor having been a student of a particular school or the councillor's involvement with a school as a parent or a student at the school; or
 - (vi) If the councillor has not greater personal interest in the matter than that of any other person in the local government area.

- (4) The councillor must deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way.

- (5) Without limiting subsection (4), the councillor must inform the meeting of-

- (a) The councillor's personal interests in the matter; and
- (b) If the councillor participates in the meeting in relation to the matter, how the councillor intends to deal with the real or perceived conflict of interest.

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7. For allegations Three to Seven the definition of misconduct which applied was as follows:

150L What is *misconduct*

8. The Conduct of a councillor is ***misconduct*** if the conduct-

...

(b) is or involves -

(i) a breach of the trust placed in the councillor, either knowingly or recklessly;

9. Section 175E was the provision in force at the time of the alleged conduct for allegations Three to Seven and addresses a councillor's conflict of interest at a meeting. That section provides:

175E Councillor's conflict of interest at a meeting

(1) This section applies if –

(a) a matter is to be discussed at a meeting of the local government or any of its committees; and

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

(c) a councillor at the meeting –

(i) has a conflict of interest in the matter (a ***real conflict of interest***); or

(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, including the following particulars about the interests –

(a) the nature of the interests;

(b) if the councillor's personal interests arise because of the councillor's relationship with, or receipt of a gift from, another person –

(i) the name of the other person; and

(ii) the nature of the relationship or value and date of receipt of the gift; and

(iii) the nature of the other persons interest in the matter.

Maximum penalty – 100 penalty units or 1 year's imprisonment.

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10. The term 'conflict of interest' was defined in section 175D (1) of the Act as:

175D Meaning of conflict of interest

(1) A **conflict of interest** is a conflict that –

(a) is 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.

11. Section 175D (2) outlined exemptions to the conflict of interest provisions and stated:

(2) However, a councillor does not have a conflict of interest in a matter –

(a) merely because of –

(i) an engagement with a community group, sporting club or similar organisation undertaken by the councillor in the councillor's capacity as a councillor; or

(ii) membership of a political party; or

(iii) membership of a community group, sporting club or similar organisation if the councillor is not an office holder for the group, club or organisation; or

(iv) the councillor's religious beliefs; or

(v) the councillor having been a student of a particular school or the councillor's involvement with a school as a parent of a student at the school; or

(b) if the councillor has no greater personal interest in the matter than that of other persons in the local government area.

Local Government Principles

12. At the time of all seven allegations, the relevant local government principles were consistent and set out in section 4 of the Act as follows:

4 Local Government principles underpin this Act

(1) To ensure the system of local government is accountable, effective, efficient and sustainable, parliament requires –

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(a) Anyone who is performing a responsibility under this Act to do so in accordance with any local government principles; and

(b) Any action that is taken under this Act to be taken in a way that –

(i) Is consistent with the local government principles; and

(ii) Provides results that are consistent with the local government principles in as a far as the results are within the control of the person who is taking the action.

(2) The local government principles are –

(a) transparent and effective principles, and decision-making in the public interest; and

...

(b) ethical and legal behaviour of councillor ...

Conflict of Interest

13. The Councillor had previously declared a conflict of interest or material personal interest in relation to matters concerning the POWSLF as follows:

- a) At an Ordinary Meeting of Council on 13 December 2016.
- b) At an Ordinary Meeting of Council on 24 January 2017.
- c) At an Ordinary Meeting of Council on 29 January 2019.
- d) At an Ordinary Meeting of Council on 19 February 2019.

14. When determining a conflict of interest, the Tribunal considered the relevant test was whether a reasonable and fair-minded observer might perceive the Councillor, given his affiliation with the Prince of Wales Island and his Marine Charter boat business servicing that Island, might not bring an impartial mind to any decision around Council planning and construction of a POWSLF, and therefore might make a decision contrary to the public interest.

15. The Tribunal interpreted the term ‘public interest’ in broad terms. The preferred approach by the Tribunal when assessing the public interest considerations is to have regard and make reference to other relevant principles and sections of the Act that provide meaning to the concept.

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	<p>16. The Tribunal accepted that the conflict of interest provisions in section 173 and in section 175E were not limited to matters of ‘decision making’. The provisions can apply to council discussion on relevant matters as ‘discussion/s’ can be, or be perceived to be, influential on any future decision-making process.</p> <p>17. On the evidence before it, the Tribunal was satisfied on the balance of probabilities that the Councillor had a unique interest in the POWSLF not shared with other members of the public, namely he was the only existing owner operator of a commercial marine transport business based on the Prince of Wales Island.</p> <p>18. The Tribunal accepted the Councillor may have gained a benefit, or as provided in evidence by the Councillor himself, suffered a detrimental financial loss, arising from any decision to proceed with the landing facility. Either outcome enlivening a potential conflict of interest for the Councillor. The Tribunal also accepted that the Councillor might reasonably be perceived to have a particular interest in the design of the facility given the nature of his current operation or any potential future plans for that operation.</p> <p>19. Consequently, the Tribunal was satisfied on the balance of probabilities that the Councillor had at least a perceived conflict of interest involving Council decisions to discuss, plan and/or build the POWSLF.</p> <p>20. The Tribunal did not consider that any exceptions to that conflict of interest applied.</p> <p>21. Having regard to the purpose and the principles contained in section 4 and 12 of the Act, the Tribunal determined that the public interest is in matters being dealt with in an accountable and transparent way.</p> <p>22. The issue is often one of perception and the Tribunal considered the Councillor should have exercised an abundance of caution regarding any Council matters involving the POWSLF and continued to declare an interest.</p> <p>Breach of trust</p> <p>23. The term ‘breach of trust’ is not defined in the Act.</p>
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	<p>24. The Tribunal has frequently applied the reasoning in <i>Flori v Winter & Ors</i> [2019] QCA 281, when considering if a Councillor’s conduct amounts to a breach of the trust, noting the test can involve whether or not the conduct has the potential to undermine public confidence in the integrity of the person, in the role they are occupying.</p> <p>25. The Tribunal considers that not every breach of a provision of the Act will necessarily amount to misconduct. It is necessary to have regard to the seriousness of the individual circumstances and any exculpatory considerations.</p> <p>26. Conflict of interest provisions under the Act are a fundamental mechanism of accountability and transparency. They do ensure public confidence is maintained in the processes and outcomes of local government decision-making.</p> <p>27. Failure to comply with the conflict of interest provisions is regarded by the Tribunal as serious. So too is a finding of misconduct against a Councillor, particularly one with no disciplinary history. The Tribunal must balance the seriousness of the allegations made, with the gravity of the consequences flowing from any particular finding of a breach of trust, to determine whether the issue has been proven to the reasonable satisfaction of the tribunal.</p> <p>28. In recognising the seriousness of the individual circumstances of this matter, the Tribunal had regard to:</p> <ul style="list-style-type: none">a) The Councillor’s conduct as a whole during all council matters involving the POWSLF.b) That the Councillor was publicly outspoken in his long running support for the POWSLF.c) The Councillor had previously and properly declared a conflict of interest on occasions when the Councillor considered the project had not been settled and discussions and decisions of the Council could have affected whether the project proceeded.d) That regardless of the correctness of the advice, on 3 November 2017 the Councillor was informed by the CEO that not only had a complaint been made about him not declaring a conflict of interest in relation to a matter relating to the POWSLF, but that:
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	<ul style="list-style-type: none"> i) External legal advice supported the view the Councillor did not have a personal interest; and ii) The CEO also determined that the complaint lacked substance. <p>e) That notwithstanding (d) above, on 29 January 2019 the Councillor again declared a conflict of interest in relation to a matter relating to POWSLF as the Councillor considered the decision at that Council meeting to be significant (on that occasion the Council did determine the Councillor had a personal interest).</p> <p>f) On 19 February 2019 the Councillor again declared a conflict of interest however on this occasion the other Councillors, informed of the earlier decision of the CEO, determined that the Councillor did not have a real or perceived conflict of interest.</p> <p>g) That the Councillor is not a lawyer and serves on the Council in a part-time capacity.</p> <p>29. The Tribunal accepted the Councillor’s submission that this was not a case where the Councillor has sought to hide his interests in Loban Marine. The Tribunal also accepted that the Councillor’s affiliation with the Prince of Wales Island, and support of the POWSLF in general, could be expected to be well known to the other councillors and likely to the community at large.</p> <p>30. The Tribunal accepted that the Councillor was under an honest belief he did not have to declare a conflict of interest at the relevant meetings subject to these allegations. The Tribunal accepts:</p> <ul style="list-style-type: none"> a) The Councillor believed he only stood to suffer a financial detriment if the POWSLF proceeded, yet was publicly outspoken about his support for the POWSLF for the greater good of his community. b) The Councillor sought to deal with the matter of his interest in Loban Marine in an open and transparent way. c) The Councillor was led by the CEO to believe that he did not have to declare any further like conflicts of interest in POWSLF. <p>31. The Tribunal has determined that whilst the Councillor ‘could have done better’, his conduct under these circumstances was such that his failure to declare the relevant conflicts of interest has not satisfied the Tribunal beyond the balance of probabilities that he has breached the trust placed in him as a councillor.</p>
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	32. Considering all of the evidence specific to these circumstances, the Tribunal has determined on the balance of probabilities that Allegations One through to Seven have not been sustained.
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	Not applicable.
Orders and/or recommendations:	The Councillor was not found to have engaged in misconduct and accordingly Orders and recommendations are not applicable.