

Councillor Conduct Tribunal: Councillor misconduct complaint – 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. Complaint:

CCT Reference	F20/4282
Subject Councillor	Councillor Lance Hewlett (the councillor) Note that the name of the councillor may be included on the register if the Tribunal decided the councillor engaged in misconduct. Where misconduct by the councillor has not been sustained the councillor needs to agree to their name being included (s150DY(3)). ¹
Council	Redland City Council

2. Decision (s150AQ):

Date:	12 May 2022
Decision (Allegation One):	The Tribunal has determined, on the balance of probabilities, that the allegation that between 21 March 2017 and 14 May 2017, Councillor Lance Hewlett engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i> (the Act), in that his conduct involved a breach of the trust placed in him as a councillor, in that it was inconsistent with the local government principle 4(2)(e) of the Act being ‘ethical and legal behaviour of councillors and local government employees’ in that Councillor Hewlett failed to comply with section 171B(2) of the Act, is sustained .

¹ This notice should be delayed until 7 days after the date of the Tribunal letter advising the councillor of the decision and reasons in relation to the complaint, to enable the councillor time to indicate if they would like their name included in the publication or not.

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Particulars of the alleged conduct which could amount to misconduct are as follows:

- a. As a returning Councillor for Division 4, Councillor Hewlett chose to roll over his register of interests dated 29 April 2014 for the Electoral Term of 2016-2020;
- b. Between 20 February 2017 and 12 June 2017, a related party to Councillor Hewlett was the Account owner for a "Bank Account". This account received numerous small donations (~\$500 or less) from persons in the local community, including persons who had dealings with Council;
- c. As at 21 March 2017 to 14 May 2017, being 30 days after the last deposit in the bank account, neither the account details or the deposits appeared in Councillor Hewlett's Register of Interests or the Register of his related parties;
- d. On 23 February 2017 and 15 May 2017 Councillor Hewlett signed and submitted an approved Form 2 but did not inform the CEO of the amounts deposited into bank account, for which his related party was a signatory;
- e. On 12 June 2017, the "Bank Account" was closed and the balance was transferred to the "Second Bank Account";
- f. The alleged conduct could amount to misconduct on the basis that councillors and a person who is related to the councillor have a legal obligation under section 171B 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;
- g. The details of the deposits made the Bank Account should have been recorded in Item 17 of Councillor Hewlett's Register of Interests;
- h. The details of the Second Bank Account should have been recorded in Item 11 in Councillor Hewlett's Register of Interests for his related party;
- i. The alleged conduct could amount to misconduct on the basis that it did not comply with local government principles in section 4(2)(e) of the Act being "ethical and legal behaviour of councillors and local government employees";
- j. Local business and developers making deposits to fundraising activities associated with an elected representative could be perceived as an opportunity for the businesses/developers to secure favourable consideration of relevant matters coming before Council;
- k. The receipt of gifts and/or sponsorship made via deposits from businesses to the Bank Account or Second Bank Account could raise a conflict of interest between the Councillor's duty under the Act to make a decision in the public interest and his personal interest.

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Decision (Allegation Two):

The Tribunal has determined, on the balance of probabilities, that the allegation that between 19 May 2017 and 13 February 2018, Councillor Lance Hewlett, a Councillor of Redland City Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the *Local Government Act 2009* (the Act), in that his conduct involved a breach of the trust placed in him as a councillor, in that it was inconsistent with the local government principle 4(2)(e) of the Act being 'ethical and legal behaviour of councillors and local government employees' in that Councillor Hewlett failed to comply with section 171B(2) of the Act is **sustained**.

Particulars of the alleged conduct which could amount to misconduct are as follows:

- a. As a returning Councillor for Division 4, Councillor Hewlett chose to roll over his register of interests dated 29 April 2014 for their Electoral Term of 2016-2020;
- b. Between 20 February 2017 and 12 June 2017, Councillor Hewlett's related party was the account holder of a "Bank Account". The account received a number of deposits;
- c. On 12 June 2017, the "Bank Account" was closed and the balance transferred to the "Second Bank Account", of which Councillor Hewlett's related party was first signatory;
- d. Between 18 April 2017 and 13 February 2018, the second Bank Account received small donations of between \$500 and \$2000 from persons in the local community, including persons who had dealings with Council;
- e. As at 19 May 2017 to 13 February 2018, neither the account details for the Bank Account or the deposits were updated in Councillor Hewlett's Register of Interest or the Register of his related party;
- f. On 14 February 2018, Councillor Hewlett signed and submitted an approved Form 2 disclosing the existence of the Second Bank Account;
- g. The alleged conduct could amount to misconduct on the basis that councillors and a person who is related to the councillor have a legal obligation under section 171B 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;
- h. The details of the deposits made to the Bank Account should have been recorded in Item 17 of Councillor Hewlett's Register of Interests;
- i. The details of the Second Bank Account should have been recorded in Item 11 in Councillor Hewlett's Register of Interests for his related party;
- j. The alleged conduct could amount to misconduct on the basis that it did not comply with local government principles in section

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	<p>4(2)(e)of the Act being “ethical and legal behaviour of councillors and local government employees”;</p> <ul style="list-style-type: none"> k. Local business and developers making deposits to fundraising activities associated with an elected representative could be perceived as an opportunity for the businesses/developers to secure favourable consideration of relevant matters coming before Council; l. The receipt of gifts and/or sponsorship made via deposits from businesses to the Bank Account for which his related party was the only signatory could raise a conflict of interest between the Councillor’s duty under the Act to make a decision in the public interest and his personal interest.
<p>Decision (Allegation Three):</p>	<p>The Tribunal has determined, on the balance of probabilities, that the allegation that on 10 May 2017, Councillor Lance Hewlett, a Councillor of Redland City Council, engaged in misconduct as defined by section 176(3)(b)(ii) of the <i>Local Government Act 2009</i> (the Act), in that his conduct involved a breach of 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’, in that Councillor Lance Hewlett did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act, has been sustained.</p> <p>Particulars of the alleged conduct which could amount to misconduct are as follows:</p> <ul style="list-style-type: none"> a. On 10 May 2017, a General Meeting was held. One of the matters on agenda was Item 11.2.3 – ROL006091 & ROL006094 Shoreline Stage 1A – C; b. The matter related to the consideration of two applications seeking Development Permits for Reconfiguring a Lot over three stages at 218-236, 238-258 & 275-385 Serpentine Creek Road, Redland Bay; c. The matter was not an ordinary business matter; d. Councillor Hewlett attended the General Meeting; e. Item 11.2.3 – listed three options for consideration namely: <ul style="list-style-type: none"> i. Adopt the officers recommendation to grant a development permit for Stage 1c subject to the conditions and grant Preliminary Approval for Stages 1a and 1b subject to conditions; ii. Resolve to approve the applications, without conditions or subject to different or amended conditions; or

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	<ul style="list-style-type: none"> iii. Resolve to refuse the applications; f. Council made the following resolution: <ul style="list-style-type: none"> i. That Council resolves that a Preliminary Approval be issued for Shoreline Stages 1a (reconfiguring a lot for 2 into 87) and 1b (reconfiguring a lot for 1 into 52 lots) and a Development Permit Approval be issued for Shoreline Stage 1c (reconfiguring a lot for 1 into 205 lots) on land described as Lot 11 on SP268704 and situated at 275 – 385 Serpentine Creek Road, Redland Bay, subject to the following conditions; g. Councillor Hewlett voted on the matter and the resolution was passed unanimously; h. Councillor Hewlett failed to inform the meeting of the following interest: <ul style="list-style-type: none"> i. On 27 February 2017, Shoreline deposited \$500 into a Bank Account held by a related party to Councillor Hewlett, for fundraising associated with the Redlands Community Breakfast; i. Councillor Hewlett’s personal interest in the matter did not arise merely because of the circumstances specified in section 173(3)(a) of the Act.
<p>Decision (Allegation Four):</p>	<p>The Tribunal has determined, on the balance of probabilities, that the allegation that on 4 December 2019, Councillor Lance Hewlett, a Councillor of Redland City Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the <i>Local Government Act 2009</i> (the Act), in that his conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly, in that it was inconsistent with the local government principles 4(2)(a), ‘transparent and effective processes and decision-making in the public interest’ and or 4(2)(e), ‘ethical and legal behaviour of councillors and local government employees’, in that Councillor Lance Hewlett did not inform the meeting about his personal interests in the matter as required by section 175E(2) of the Act, has been sustained.</p> <p>Particulars of the alleged conduct which could amount to misconduct are as follows:</p> <ul style="list-style-type: none"> a. On 4 December 2019, a General Meeting was held. One of the matters on agenda was Item 14.4 – RAL19/0061 – 275 – 495 Serpentine Creek Road, Redland Bay; b. The matter related to the consideration of a request for reconfiguring a lot for one (1) into 130 residential lots and a material change of use for a park; c. The matter was not an ordinary business matter; d. Councillor Hewlett attended the General Meeting; e. Item 14.1 – listed three options for consideration namely:

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	<ul style="list-style-type: none"> i. That Council resolves to issue a development permit for reconfiguring a lot for one (1) into 130 residential lots, one (1) open space lot, one (1) balance lot, new road; and material change of use for park subject to conditions outlined in Attachment 9; ii. That Council resolves to approve the application without conditions or subject to amended conditions; or iii. That Council resolves to refuse the application; <p>f. Council made the following resolution:</p> <ul style="list-style-type: none"> i. That Council resolves to issue a development permit for reconfiguring a lot for one (1) into 130 residential lots, one (1) open space lot, one (1) balance lot, new road; and material change of use for park subject to conditions outlined in Attachment 9; <p>g. Councillor Hewlett voted on the matter and the resolution was passed;</p> <p>h. Councillor Hewlett failed to inform the meeting of the following interest:</p> <ul style="list-style-type: none"> i. On 27 February 2017, Shoreline deposited \$500 into a Bank Account held by a related party to Councillor Hewlett, for fundraising associated with the Redlands Community Breakfast; ii. On 29 March 2018, Shoreline deposited \$500 into a Bank Account held by a related party to Councillor Hewlett, for fundraising associated with the Redlands Community Breakfast; <p>i. Councillor Hewlett’s personal interest in the matter did not arise merely because of the circumstances specified in section 175D(2) of the Act.</p>
<p>Reasons:</p>	<p>1. The Tribunal found that all four (4) allegations related to the operation of a not-for-profit organisation by the Respondent and a related party, known as the Redlands Community Breakfast. This organisation was of significant benefit and interest to the local community.</p> <p>Allegations One and Two</p> <p>2. Both allegations involved a failure by the Respondent to properly declare the fact that a related party (as defined by the Act) held the Bank Account. They held the Bank Account in their name, and were the sole operator and signatory until its closure. When the funds were then transferred into the Second Bank Account (which did not carry the name of the related party), the related party remained a signatory and account operator.</p> <p>3. Though the Respondent claimed to have disclosed the existence of these accounts, he did not do so in the correct form approved under</p>

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the Act, and did not provide that form to the CEO as required by section 171B(2) of the Act (as it then was).

4. The ongoing failure of the Respondent to disclose the Bank Account or Second Bank Account was not rectified until he submitted a new Form 2 on 14 February 2018.
5. Both allegations involved a breach of trust because:
 - a. The local government principles “underpin” the entire Act, and a failure to comply with a law (including the Act) is a failure to comply with local government principle 4(2)(e);
 - b. The Register of Interests scheme is essentially self-regulatory, with Councillors required to conduct their own due diligence as to their disclosable interests before making such submissions. It is not always immediately apparent (and, barring the intervention of the OIA may never become apparent) if and when a Councillor does not disclose the existence of a relevant interest.
6. On both allegations, the Tribunal found that the Respondent did not engage in any impropriety, nor did he attempt to conceal the interest – indeed, he was motivated by philanthropic and noble goals, and on the evidence was acting for the betterment of the local government area.
7. However, the payments were made by (amongst others) property developers and persons with interests in Council decisions, which is exactly the kind of matter that Registers of Interests were intended to capture.

Allegations Three and Four

8. Though Allegations Three and Four relied on different heads of misconduct under amended Acts, the circumstances of the conduct were quite similar. Councillor Hewlett was alleged to have participated in Council decisions without disclosing his association with the Redland Community Breakfast, which had received donations from the same party whose applications Council was deciding.
9. The Tribunal was satisfied that, in the context of making a decision on an application, a Councillor must not be capable of bringing a completely unfettered and open mind but must be seen to be doing so. If a reasonable observer would have cause to question the participation in a decision because of some association the Councillor has, the existence for a potential conflict of interest is satisfied.
10. There was no evidence that Councillor Hewlett or his related party benefited financially from the operation of the Redland Community

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	<p>Breakfasts, and there was ample evidence that the Breakfasts organised by Councillor Hewlett and his related party benefitted the broader community.</p> <p>11. Nonetheless, the potential for taint of Councillor Hewlett’s decisions was there, even if it never actually manifested. It should be recalled that it is not necessary for the Applicant to prove that a conflict did exist or actually arose, merely that it <u>could</u> exist or <u>might</u> arise.</p> <p>12. The Tribunal is satisfied that a reasonable and informed observer could be presumed to be aware of the background of the Councillor’s involvement in the Breakfasts, and of the fact that the donations came from a major player in the property development of the local government area.</p> <p>13. The Tribunal is satisfied that such an observer would perceive that – in voting on the motion regarding Shoreline’s application – Councillor Hewlett might have been, or could have been, influenced by his private interest.</p> <p>14. This Tribunal has repeatedly pointed out to Councillors that there is nothing incorrect or unlawful about disclosing perceived interests as a matter of caution and leaving the decision on whether the Councillor can take place in the decision-making to his or her peers. Even in circumstances where Councillors themselves do not consider a matter to be a conflict, there is a sound reasoning behind exposing that assessment to a “fresh set of eyes” by those other Councillors considering the decision. This also encourages public confidence in Council decisions, as it affirms that Councillors take the disclosure and scrutiny of their personal interests (and where they might conflict with the public interest) extremely seriously.</p> <p>15. Therefore where a Councillor has failed to comply with their obligations under the Act, i.e., the requirement to disclose personal interests in decisions coming before Council meetings, this is a breach of the trust placed in them by their electors.</p>
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	12 May 2022
Order/s and/or recommendations:	<p>The Tribunal orders The Tribunal orders that, within 60 days of the day that he is issued with this decision and reasons:</p> <p>1. With respect to Allegation One and pursuant to section 150AR(1)(b)(i) of the Act, the Respondent must make an admission that he engaged</p>

	<p>in misconduct during a General Meeting of Council at a time when the meeting is open to members of the public;</p> <p>2. With respect to Allegation Two:</p> <ul style="list-style-type: none"> a. 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. The admission must make specific reference to the fact that the Respondent was elected as Deputy Mayor at that time; b. pursuant to section 150AR(1)(b)(iii) of the Act, the Respondent must attend training or counselling at his own expense on how to address his misconduct, with specific reference to the proper identification, assessment and declaration of matters required in a Register of Interests. <p>3. With respect to Allegation Three, 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; and</p> <p>4. With respect to Allegation Four:</p> <ul style="list-style-type: none"> a. 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. The admission must make specific reference to the fact that the Respondent was elected as Deputy Mayor at that time; b. pursuant to section 150AR(1)(b)(iii) of the Act, the Respondent must attend training or counselling at his own expense on how to address his misconduct, with specific reference to the proper identification, assessment and declaration of matters required in a Register of Interests.
<p>Reasons:</p>	<p>1. The Tribunal found that the Respondent had no prior misconduct history and has no other aggravating factors relevant to penalty.</p> <p>2. In mitigation, the Tribunal found:</p> <ul style="list-style-type: none"> a. The Respondent’s actions in running a philanthropic organisation such as the Redland Community Breakfast was to be commended. The Tribunal received evidence that the efforts of Councillor Hewlett made a significant difference to the local community; b. The Respondent evidenced no intention to defraud any person, nor was there any evidence at all that he or his related party had engaged in any deliberate attempts to conceal their interests; c. The Respondent eventually disclosed his material interest in the bank account for the Breakfast.

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	<p>3. The Councillor’s conduct is still serious – a failure to manage interests which touch upon Council decisions has the potential to cast a pall of impropriety and bias over those same decisions. In this case the Tribunal is satisfied that the Respondent would benefit from an educative order to reinforce his awareness of how to manage his personal interests.</p> <p>4. The Tribunal also considers 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 of other Councillors who might be placed in a similar position in the future.</p>
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