

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	F21/2591
Subject Councillor	The Respondent/Councillor As the allegation is not sustained the name of the Councillor is withheld pursuant to section 150DY(3) of the Local Government Act (the Act)
Council	Maranoa Regional Council (the Council)

2. Decision (s150AQ):

Date:	6 May 2022
Decision:	<p>The Tribunal has determined, on the balance of probabilities that the allegation of misconduct as defined by section in section 150(1)(b)(i) of the <i>Local Government Act 2009</i> has not been sustained.</p> <p>The Allegation provided: “that on 21 July 2020, (the) Councillor of the Maranoa Regional Council, engaged in misconduct as defined in section 150(1)(b)(i) of the <i>Local Government Act 2009</i>, in that their conduct involved a breach of trust placed in them as a Councillor, either knowingly or recklessly, in that their conduct was inconsistent with the local government principle in section</p>

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	<p>4(2)(a) ‘transparent and effective processes, and decision-making in the public interest and 4(2)(e) ‘ethical and legal behaviour of Councillors’ of the Act, in that they failed to declare a real or perceived conflict of interest as required by section 175E of the Act.</p> <p>Particulars of the allegation provide by the IA</p> <ol style="list-style-type: none"> 1. On 21 July 2020, a Budget Submissions and Financial Planning and Standing Committee Meeting was held (the meeting), and agenda item C.4 2020/21 Draft Forecast Project Carry Overs from 2019/2020 (including funding source) was tabled for discussion and debate during a closed session (the agenda item). 2. An Officer Report for the agenda item attached a spreadsheet which included a preliminary forecast carry over of \$2,290 for item 00020551 – Regional Universities Centre – Maranoa (the matter). 3. The following resolution (Resolution No. BUD/07.2020/59) was moved at the meeting in relation to the matter: <ol style="list-style-type: none"> i. That the committee recommend that the draft forecast project carry overs from 2019/20 (including funding source) are included in the next draft of the 2020/21 budget. 4. The matter was not an ordinary business matter. 5. The Respondent attended the meeting. 6. The Respondent had a real or perceived conflict of interest in the matter on the following basis: <ol style="list-style-type: none"> i. Regional Universities Centre – Maranoa and Country Universities Centre – Maranoa are terms used by Council interchangeably; ii. A working group (Interim Board) for Country Universities Centre – Maranoa arranged for the incorporation of Country Universities Centre – Maranoa as CUC Maranoa Ltd; iii. CUC Maranoa Ltd is an entity in that it is a company which was registered on 23 June 2020; and iv. The Respondent was a director of CUC Maranoa Ltd as at the date of the meeting on 21 July 2020. 7. The Respondent did not inform the meeting of their real or perceived conflict of interest in the matter. 8. The Respondent’s real or perceived conflict of interest did not arise because of a matter in section 175D(2) or (3) of the Act.
CCT Reasons decision:	

Background.

9. The parties generally agreed on the factual details. The Respondent accepted that they participated in the Council meeting on 21 July 2020 and did not declare a real or perceived conflict of interest.
10. At the General Council Meeting on 22 July 2020, Council resolved (Resolution No. OM/07.2020/49) agenda item 13.3 in relation to Country Universities Maranoa.
11. The Respondent declared a material personal interest in the matter as follows:
“I, (Respondent), declare that I have a ‘Material Personal Interest’ as defined by the Local Government Act 2009, section 175B for the agenda item 13.3, with subject heading – Country Universities Centre Maranoa as of which I’m a non-executive Director and Chair and that the Country Universities Centre Maranoa stands to gain a benefit or suffer a loss (directly or indirectly) depending on the outcome of Council’s consideration of this matter. In accordance with Section 175C(2)(b) of the Local Government Act 2009, I will leave the room while the matter is discussed and voted on.”
12. At the Budget Submissions and Financial Planning Committee meeting on 11 August 2020, Council resolved Resolution No BUD/08.2020/35 in relation to agenda item C.2 (Carry Over Project) Draft Revised 2020-21 Operational (Business as usual) Budget and draft proposals.
13. The Respondent again declared a Material Personal Interest and made a declaration in the same terms of the previous declaration.
14. The Respondent on this date self-referred their conduct from 21 July 2020 in relation to an alleged failure to declare a material personal interest, or in the alternative a conflict of interest, at a Budget Submissions and financial Planning Standing Committee which considered Draft Forecast Project Carry Overs from 2019/2020 to be included in a Draft 2020/2021 Budget.

Applicable legislation

15. The relevant provisions in respect of the allegation of misconduct and the particulars relied upon by the Applicant are:
 - a) The definition of misconduct is defined in section 150L(1)(b)(i) of the Act:

Those provisions provide:

- (1) The conduct of a councillor is **misconduct** if the conduct—
 - (b) is or involves—

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

16. Section 4 of the Act which sets out certain local government principles, including 'transparent and effective processes, and decision-making in the public interest' (s4(2)(a) and "ethical and legal behaviour of councillors and local government employees" (s4(2)(e)).

17. At the time of the alleged conduct, the relevant conflict of interest provisions were contained in section 175E of the Act:

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 councillors 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.

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

175D Meaning of conflict of interest

16. A **conflict of interest** is a conflict that –

- a) is between –
 - i) a councillor's personal interest; and
 - ii) the public interest; and

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	<p>b) might lead to a decision that is contrary to the public interest.</p> <p>17. Sections 175D(2) to (3) provided various exemptions to the conflict of interest provisions, stating as follows: However, a councillor does not have a conflict of interest in a matter-</p> <p>a) merely because of –</p> <ul style="list-style-type: none"> 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 <p>b) if the councillor has not greater personal interest in the matter than that of other persons in the local government area.</p> <p>18. Also, a councillor who is nominated by the local government to be a member of a board of a corporation or other association does not have a personal interest in matters relating to the corporation or association merely because of the nomination or appointment as a member.</p> <p>Ordinary business matter</p> <p>19. The Respondent submitted¹ that the matter subject to the complaint, when considered by the Budget Submissions and Financial Planning Standing Committee, was an ordinary business matter, given that at the relevant time, the matter was a resolution required for the adoption of a budget for the local government.²</p> <p>20. The Tribunal did not accept that the definition of ‘ordinary business matter’ should be interpreted so broadly in that it could extend to any decision which may lead up to and therefore be required for the adoption of a budget. The Tribunal formed this view, as allowing such a wide interpretation would lead to a broad and uncertain range of resolutions becoming ‘ordinary business matters’ and therefore exempt from the conflict-of-interest framework.</p>
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¹ In response to the Section 150AA notice.

² Schedule 4 of the Act – Definition of Ordinary business matter means (f) a resolution required for the adoption of a budget for the local government area.

21. The Tribunal considered that approach would not be consistent with the Act, in particular the local government principle of 'transparent and effective processes, and decision making in the public interest'.³

Conflict of Interest

22. Having considered the evidence and the submissions, the Tribunal did not come to a unanimous view if the Respondent had a conflict of interest in this matter.

23. One Tribunal member took the view that there was insufficient evidence that there was any conflict between the Councillor's personal interest and the public interest, because:

- a) CUC Maranoa Ltd had its origins in a Council initiative dating back to August 2019.
- b) It was very much a creature of council in substance (and unanimously approved by the community's local government representatives).
- c) The concept of the Country University was purely for the benefit of the community in a number of ways (e.g., Driving up liveability and providing opportunity for the next generation to remain in the Maranoa region whilst studying).
- d) Obvious benefits would flow to the broader economic and social benefits of the Maranoa community.
- e) The Respondent's role in CUC Maranoa Ltd was never in their capacity as a private individual (rather it was clearly in their capacity as a community serving councillor).
- f) CUC Maranoa Ltd was a not-for profit community-based organisation that offered no monetary benefit to the Respondent personally.
- g) The matter concerned a \$2,290 project carry-over only which was already the subject of a council resolution and had been adopted as a budget item for the previous year.

24. In contrast, the majority of the Tribunal held that when broadly applying the relevant *Ebner* test⁴ a reasonable and fair-minded observer might perceive that the Respondent, given their position and the duties imposed as a Director of CUC Maranoa Ltd, might not bring an impartial mind to any decision around Council funding for CUC Maranoa Ltd, and therefore might decide contrary to the public interest.

³ Local Government Act 2009, section 4(2)(a).

⁴ *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337

	<p>25. Consequently, the majority of the Tribunal determined that the Respondent did have a real or perceived conflict of interest in the matter.</p> <p>Breach of Trust</p> <p>26. The Applicant alleged that the Respondent’s conduct being a contravention of section 175E(2) was “so intrinsically linked to the local government principles that it must equate to a breach of the trust”.⁵</p> <p>27. The Tribunal did not accept that a finding of a perceived or real conflict of interests will automatically lead to a finding of misconduct.</p> <p>28. The Tribunal recognised that the conflict of interest provisions are fundamental to the transparency of local government decision-making, and acknowledged contraventions of this nature do have the potential to undermine public confidence in the integrity of elected representatives. However, the Tribunal did not accept that a breach of section 175E(2) must result in a finding of a breach of trust. Consideration must also be given to the Councillor breaching the trust placed in the Councillor ‘knowingly or recklessly’.⁶</p> <p>29. The Respondent’s stated reason for not declaring a conflict of interest at the 21 July 2020 meeting was that it was in effect, a genuine oversight in that they failed to identify the item in the Agenda which appeared as fine print in a line item <i>Regional University Centre – Maranoa Carry Over Project</i> contained in a spreadsheet.⁷</p> <p>30. The Tribunal accepted the Respondent’s explanation as being reasonable and genuine.</p> <p>31. The Tribunal considered that it might be argued that a reasonable Councillor exercising the requisite standard of care to avoid conflicts of interests would not have failed to identify the agenda item. At its highest in not recognising the item on the occasion alleged, the Tribunal determined on the evidence the Respondent’s conduct was less than reckless.</p> <p>32. In relation to its finding that there was no breach of trust in the present matter, the Tribunal also considered the following:</p> <ul style="list-style-type: none">a) The development and implementation of a Country University in the Maranoa Region was a Council initiative for the benefit of the region;
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⁵ Applicant’s submissions 1 April 2022 paragraph 50.

⁶ Section 150L(1)(b)(i) of the Act.

⁷ This reason appeared as evidence in the Respondent’s self-referral letter dated 11 August 2020.

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	<p>b) The Respondent’s role in the investigation, development and formation of the CUC Maranoa Ltd was consistently and unanimously endorsed by the Council;</p> <p>c) The Respondent’s role in relation to the development and establishment of CUC Maranoa Ltd was in the Respondent’s capacity as a Councillor;</p> <p>d) The Respondent did not receive any financial benefit for the role as Chair of the CUC Maranoa Ltd Board and Director;</p> <p>e) In the Local Government context, Councillors are required to engage in high volume, high frequency and high value decision-making.⁸</p> <p>f) The matter that came before the Committee at the Meeting related to projects that were already contained in the adopted 2019/20 annual budget, but had not been completed by 30 June 2020. Procedurally, the funds were therefore required to be carried over to the 2020/21 annual budget.⁹</p> <p>g) Specifically, this matter concerned only a relatively nominal \$2,290 project carry-over, which was already subject of a Council resolution and an adopted budget item from the previous year;</p> <p>h) It was accepted that the Respondent took the role of a Councillor very seriously.</p> <p>33. The Tribunal considered the above circumstances and explanation for the alleged conduct and all relevant provisions of the Act and formed the view that the Respondent did not <i>‘knowingly or recklessly’</i> act in a way that was inconsistent with local government principles, section 4(2)(a) and/or section 4(2)(e) as alleged.</p> <p>34. Accordingly, the Tribunal found the Respondent did not breach the trust placed in them as a Councillor (s150L(1)(b)(i)).</p> <p>35. The Tribunal has determined on the balance of probabilities, that the allegation has not been sustained.</p>
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	Not applicable.
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⁸ Applicant’s submission 1 April 2020 paragraph 59.
⁹ Respondent’s submission 22 April 2020 paragraph 61.

Order/s and/or recommendations:	The Councillor was not found to have engaged in misconduct and accordingly Orders and recommendations are not applicable.
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