

**Councillor Conduct Tribunal:
Councillor misconduct complaint –
Summary of decision and reasons
for department’s website**

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

1. Complaint:

CCT Reference	F19/5894
Subject Councillor	Councillor Benjamin Heath (the councillor)
Council	Cassowary Coast Regional Council (the council)

2. Decision (s150AQ):

Date:	5 August 2019
Decision regarding Allegation 1:	<p>The Tribunal conducted a hearing on whether or not It between 18 April 2016 and 15 August 2017, Councillor Benjamin Heath, a councillor of Cassowary Coast Regional Council, engaged in misconduct as defined in (former) section 176(3)(b)(ii) of <i>the Local Government Act 2009</i> in that his conduct involved a breach of the trust placed in him as a councillor.</p> <p>The particulars of the alleged conduct which could amount to misconduct are as follows:</p> <ol style="list-style-type: none">a. In the lead up to the 2016 local government elections, Councillor Heath campaigned for election as a member of a group of candidates called the Cassowary Coast Unity Alliance (the Alliance).b. The administrative activities of the Alliance were overseen by the Cassowary Coast Unity Association Inc (the Association), an incorporated association. The Association received donations on behalf of the Alliance.c. At the local government elections on 19 March 2016, Councillor Heath was elected as a councillor of the Cassowary Coast Regional Council.d. Councillor Heath’s membership with the Association was an interest that was required to be recorded in his register of interest at item 14, pursuant to section 171B of the Act.e. On 5 May 2016, Councillor Heath submitted his first Form 2 – Register of interests of a councillor and their related persons

	<p>(Form 2). The Form 2 did not record Councillor Heath’s membership of the Association.</p> <p>f. On 2 November 2016, Councillor Heath updated his register of interests but omitted to record his membership of the Association.</p> <p>g. On 14 August 2017, Councillor Heath updated his register of interests via a Form 2 and recorded his membership of the Association at item 14.</p> <p>The alleged conduct could amount to misconduct on the basis that it did not comply with local government principle 4(2)(e) being ‘ethical and legal behaviour of councillors and local government employees’.</p> <p>Councillor Heath failed to comply with section 171B of the Act in that the approved forms, signed and submitted by Councillor Heath on 5 May 2016 and 2 November 2016, did not record his membership of the Association.</p> <p>The Tribunal has determined, on the balance of probabilities, that the allegation has been sustained and that therefore the Councillor has engaged in misconduct.</p>
<p>Reasons:</p>	<p>Cr Heath acknowledged that his register of interests was not an accurate reflection of his interests between 18 April 2016 and 15 August 2017. Following his election, he was informed that the Association had been “wound up”. Therefore, following receipt of that advice, Councillor Heath did not record the Association in his register of interests.</p> <p>After a complaint was received by Council from the complainants in relation to the omission of his membership of the Association in his register of interests, Cr Heath made further enquiries with an executive member of the Association. He was advised that the advice provided earlier was incorrect and that the Association still existed. On 14 August 2017, Councillor Heath updated his register of interests via a Form 2 and recorded his membership with the Association at item 14.</p> <p>The conduct has contravened local government principle 4(2)(e), in that the councillor’s register of interests was not an accurate reflection of his interests between 18 April 2016 and 15 August 2017, thus breaching section 290 of the <i>Local Government Regulation 2012</i>, and that this constitutes non-compliance with the local government principle of ‘ethical and legal behaviour of councillors and local government employees – s4(2)(e)’.</p>

<p>Decision regarding Allegation 2:</p>	<p>The Tribunal conducted a hearing on whether or not on 8 November 2018, Councillor Benjamin Heath, a councillor of Cassowary Coast Regional Council, engaged in misconduct as defined in (former) 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.</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 8 November 2018, Councillor Heath attended Council’s Asset Sustainability Committee meeting. b. A matter for consideration at the meeting was a report about the awarding of a contract for the construction of extensions to the Water Office at the Innisfail Depot. The report recommended the contract be awarded to [REDACTED] c. The matter was not an ordinary business matter. d. The meeting resolved unanimously to adopt the recommendation. e. The Principal of [REDACTED] made a \$200 donation at the 2016 local government election to the Cassowary Coast Unity Association Inc. on behalf of the Cassowary Coast Unity Alliance, a registered group of candidates. Councillor Heath was one of the candidates in the Alliance and was a member of the Association. f. Councillor Heath did not inform the meeting of his personal interest in the matter. <p>The conduct was not in accordance with local government principle 4(2)(e) being ‘ethical and legal behaviour of councillors and local government employees’, in that Councillor Heath did not inform the meeting of his personal interest in the matter as required by section 175E of the Act.</p> <p>The Tribunal has determined, on the balance of probabilities, that the allegation has been sustained and that therefore the Councillor has engaged in misconduct.</p>
<p>Reasons:</p>	<p>Cr Heath admitted that he had failed to declare the conflict of interest at the meeting. The day after the meeting on 8 November 2018, Councillor Kremastos realized that he should not have voted on this decision the day before. He advised the Acting CEO. The Acting CEO, contacted the CEO to seek his advice which led to the calling of a special council meeting at which the resolution of the Asset Sustainability Meeting on 8 November was repealed and the matter of awarding the contract was delegated to the Acting CEO.</p> <p>Section 175E(2) of the Act states that a councillor must inform the meeting about the councillor’s personal interests in a matter, including the following particulars about the interest:</p>

	<p>a. The nature of the interests;</p> <p>b. The nature of the relationship or value and date of receipt of the gift; and</p> <p>c. The nature of the other person’s interest in the matter.</p> <p>No exclusions applied, therefore the councillor did have a mandatory obligation to inform the meeting of the conflict and manage it appropriately.</p>
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	5 August 2019
Orders regarding Allegation 1:	<p>Pursuant to Section 150AR(1)(b)(i) & (iv) of the Act, the Tribunal orders that Cr Heath:</p> <ol style="list-style-type: none"> a. Make a public admission that the councillor engaged in misconduct, at an ordinary meeting of the Cassowary Coast Regional Council within one month of the date of this Order; and b. Pay to the local council an amount of \$100, to be paid within 60 days of the date of this Order.
Reasons:	<p>The Tribunal considered the facts and circumstances relevant to any sanction along with the submissions on sanction. The Tribunal determined the following were aggravating circumstances:</p> <ul style="list-style-type: none"> • that Councillor Heath has received training on avoiding the alleged misconduct. <p>The Tribunal agreed that the following were mitigating factors and should be taken into consideration when determining any sanction:</p> <ul style="list-style-type: none"> • Councillor Heath has no disciplinary history; • Councillor Heath has demonstrated full and early co-operation which has spared the OIA the expense of fully investigating both matters; <p>The Tribunal accepts that the non-recording of the councillor’s interest in the Cassowary Coast Unity Association Inc. was not a deliberate attempt to hide this fact from his register or the public. The Tribunal has also noted where the councillor acted on the erroneous statement by [REDACTED] that the Association ‘had been wound up’ during the period of non-recording on the register of interests. The Tribunal notes that reportedly, the Association was inactive during this period.</p>

	<p>It may well be that Cr Heath, in good faith, trusted the advice provided to him by ██████████, a fellow member of the Association. However, the Tribunal considers that when it comes to compliance with statutory requirements, it is incumbent upon a councillor, to be vigilant and make appropriate enquiries to satisfy himself that he is meeting his legal obligations.</p> <p>Regardless of the reason, the end result was that an important factor of statutory integrity compliance for councillors was inaccurate for the period 18 April 2016 and 15 August 2017. The Tribunal views statutory compliance requirements more seriously than other non-statutory integrity conduct.</p> <p>The Tribunal considers that a public admission is an appropriate order in the circumstances but also believes that a small monetary sanction is appropriate, from the perspective that the conduct did involve a breach of a statutory compliance requirement, which is viewed quite seriously in the legislation.</p>
<p>Orders regarding Allegation 2:</p>	<p>Pursuant pursuant to s150AR(1)(b)(i) and (iv) of the Act, that Cr Heath:</p> <ol style="list-style-type: none"> a. Make a public admission that the councillor engaged in misconduct, at an ordinary meeting of the Cassowary Coast Regional Council within one month of the date of this Order; b. Pay to the local council an amount of \$100, to be paid within 60 days of the date of this Order.
<p>Reasons:</p>	<p>The Tribunal considered the facts and circumstances relevant to any sanction along with the submissions on sanction. The Tribunal determined the following were aggravating circumstances:</p> <ul style="list-style-type: none"> • that Councillor Heath has received training on avoiding the alleged misconduct. <p>The Tribunal agreed that the following were mitigating factors and should be taken into consideration when determining any sanction:</p> <ul style="list-style-type: none"> • Councillor Heath has no disciplinary history; • Councillor Heath has demonstrated full and early co-operation which has spared the OIA the expense of fully investigating both matters. <p>The Tribunal strongly recommends that Cr Heath and the other councillors involved should have in place a robust process to enable them to identify potential conflicts of interest. The Tribunal strongly recommends that they work with the CEO to develop and adopt an appropriate process for ensuring that conflicts of interest are identified in the future.</p>

Councillor Conduct Tribunal
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