

ATTACHMENT G

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:

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| CCT Reference | F19/4195 |
| Subject Councillor¹ | Councillor [REDACTED] (the Councillor) |
| Council | Toowoomba Regional Council (the Council) |

2. Decision (s150AQ):

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| Date: | 14 August 2019 |
| Decision: | <p>It is alleged that on 14 November 2018, the Councillor, a councillor of Toowoomba Regional Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the Local Government Act 2009, in that his conduct involved a breach of the trust placed in him as a councillor.</p> <p>Particulars of the conduct which could amount to misconduct are:</p> <ul style="list-style-type: none">a. On 14 November 2018, a meeting of the Economic Development Committee was held. One of the matters on the Committee agenda was the amendment of the Temporary Toowoomba CBD Development Incentive Policy (the Incentive Policy).b. The matter was not an ordinary business matter.c. The Councillor attended the Committee meeting. |

¹ As the decision in this matter is that the Councillor did not engage in misconduct, the name of the councillor may only be included in the councillor conduct register with the agreement of the councillor (s.150DY(3)).

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| | <p>d. The Councillor is a joint Director and 50% shareholder of a superannuation trustee proprietary company. The company owned a one-quarter share of a property situated within the area covered by the Incentive Policy. At the Committee meeting of 14 November 2018, the Councillor did not inform the meeting of his personal interest in the matter.</p> <p>f. The Councillor's personal interest did not arise merely because of the circumstances specified in section 175D(2)(a) of the Local Government Act 2009 (the Act).</p> <p>g. The Councillor's personal interest in the matter could be deemed as being a real conflict of interest or a perceived conflict of interest because the subject property, is located within the area that the the Incentive Policy applies.</p> <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 the Councillor 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 had not been sustained.</p> |
| <p>Reasons:</p> | <p>The Tribunal considers that in all of the circumstances, a fair-minded observer would not consider that there was a real possibility that the Councillor would be swayed in his decision-making by considerations relevant to his interest in the property, in determination of the extension of the policy. The facts which lead to this conclusion include:</p> <ul style="list-style-type: none"> • The policy is not cast in concrete terms to provide a clear entitlement, i.e. it is subject to the discretion of Council; • On the terms of the policy, the apparent focus appears to be redevelopment of a particular character such that it is not apparently easy to qualify; • The interest of the Councillor in the property was indirect, and subject to agreement with other owners of the property and the other shareholder in the company. There was no evidence that the Councillor had control over the decision to apply for the incentive or decide to develop the property. Accordingly, this case is distinguishable from some other indirect interest cases, where the person concerned did have this extent of control. • The Councillor and the other owners of the property have not to date taken advantage of the apparent ability to apply. • The previous inconsistency of approach by the Councillor to the issue of whether or not a conflict of interest arises in regard to his |

Councillor Conduct Tribunal

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| | <p>consideration of the policy over time is not decisive, i.e. it could be explained on the basis of some confusion as to the Councillor's obligations under the legislation, and also on the basis that the assessment by the Councillor as to the extent of any potential conflict could change depending upon the circumstances as at the date of each relevant meeting.</p> <ul style="list-style-type: none"> • The likelihood of the extension of the incentive significantly influencing the value of the Respondent's indirect interest in the property or feasibility of any redevelopment would appear to be remote. <p>Having regard to the onus of proof (to the civil standard) being on the Applicant in this matter, the Tribunal has not found in all the circumstances of this matter, that there was a conflict of interest, real or perceived under section 175E of the Act which should have been informed to the meeting by the Respondent. Accordingly, there was no breach of trust, and as a consequence, the allegation of misconduct has not been sustained. In terms of s150AQ(1)(a) the Tribunal determines that the Councillor has not engaged in misconduct.</p> |
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3. Orders and/or recommendations (s150AR - disciplinary action):

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| Date of orders and/or recommendations: | N/A |
| Order/s and/or recommendations: | As the allegation of misconduct has not been sustained the Tribunal has not made any orders. |
| Reasons: | N/A |