

# 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:

<b>CCT Reference</b>	F20/7781
<b>Subject Councillor</b>	Mayor Tom Tate (the councillor)
<b>Council</b>	Gold Coast City Council

## 2. Decision (s150AQ):

<b>Date:</b>	25 May 2022
<b>Decision (Allegation One):</b>	<p>The Tribunal has determined, on the balance of probabilities, that between 6 and 12 December 2015, Councillor Tom Tate, the Mayor and a councillor of Gold Coast City Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i>, in that his conduct in giving directions to the Chief Executive Officer of Council, to cease a disciplinary process in relation to his Chief of Staff, involved a breach of the trust placed in him as a councillor, in that it was inconsistent with the local government principles in section 4(2)(a) ‘<i>transparent and effective processes, and decision making in the public interest</i>’ and section 4(2)(e) ‘<i>ethical and legal behaviour of councillors and local government employees</i>’, is <b>sustained</b>.</p> <p>Particulars of the alleged conduct which could amount to misconduct are as follows:</p> <p>a. On 10 May 2012, Mr Wayne Moran (Mr Moran) became a local government employee, having been appointed to the role of Chief</p>

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	<p>of Staff to the Mayor in the Office of the Mayor of Gold Coast City Council.</p> <p>b. Under the <i>Local Government Act 2009</i>, the Chief Executive Officer (CEO) has responsibility for managing local government employees [section 13(3)(b)] and may also take disciplinary action against local government employees [section 197(1)].</p> <p>c. On 23 November 2015, Mr Dale Dickson (the CEO), the CEO of Gold Coast City Council, gave written notice to Mr Moran of his intention to take disciplinary action in relation to Mr Moran’s non-compliance with the Councils Code of Conduct for Employees and Council’s Conflict of Interest for Employee Policy. He provided Mr Moran an opportunity to show cause as to why such action should not be taken.</p> <p>d. On 7 December 2015, the CEO received a letter from Councillor Tate directing him to cease disciplinary action against Mr Moran, the Mayor’s Chief of Staff.</p> <p>e. On 11 December 2015, the CEO received a further letter from Councillor Tate directing him to provide evidence that the ‘show cause’ matter had been closed as he had directed earlier that week, by close of business on 14 December 2015. Alternatively, if the direction had not yet been carried out, he required the CEO to carry out the direction without delay by close of business on 14 December 2015. Councillor Tate stated that if the direction was not carried out by the end of business on the same day, he would take the next step under the Act in relation to the CEO’s failure to comply with this direction.</p> <p>f. On 18 December 2015, the CEO ceased disciplinary action against Mr Moran.</p> <p>g. By directing the CEO to cease disciplinary action against Mr Moran, Councillor Tate interfered in the proper performance of the CEO’s functions, which under section 197 of the <i>Local Government Act 2009</i>, includes the power to take disciplinary action against a local government employee.</p>
<p><b>Decision (Allegation Two):</b></p>	<p>The Tribunal has determined, on the balance of probabilities, that the allegation that on 8 December 2017, Councillor Tom Tate, the Mayor and a Councillor of the Gold Coast City Council, engaged in misconduct as defined in section 176(3)(b)(iii) of the <i>Local Government Act 2009</i>, in that his conduct involved a breach of the 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’, is <b>sustained</b>.</p> <p>Particulars of the alleged conduct which could amount to misconduct are as follows:</p>

	<p>a. On 8 December 2017, an Ordinary Meeting of Council was held. One of the matters for consideration related to a recommendation by the Government and Administration committee (GA17.1206.010) that:</p> <ul style="list-style-type: none"> <li>i. the CEO review all directives issued in Confidential Attachment A, to determine legislative compliance and complete a preliminary assessment in accordance with the complaints provisions of the <i>Local Government Act 2009</i>;</li> <li>ii. the CEO provide a copy of the preliminary assessment of the complaint to the Director-General, Department of Infrastructure, Local Government and Planning together with a copy of Confidential Attachment A;</li> <li>iii. Attachment A remains confidential.</li> </ul> <p>b. Councillor Tate attended the meeting.</p> <p>c. A Motion was moved that the committee recommendation (GA17.1206.010) be not adopted, but in lieu thereof reads as follows: ‘That Attachment A remains confidential’.</p> <p>d. The Motion was put to a vote and Councillor Tate voted in favour of the motion.</p> <p>e. The matter was not an ordinary business matter.</p> <p>f. Councillor Tate did not inform the meeting of his personal interest in the matter and in doing so, 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, as in force at the time.</p> <p>g. Councillor Tate had a personal interest in the matter in that the recommendation related to a list of directions, contained in Attachment A, which he had issued as Mayor between January 2013 and November 2017.</p> <p>Councillor Tate’s personal interest in the matter could be deemed as being a real or perceived conflict of interest in that as a result of the decision, directions issued by him as Mayor would be scrutinised by the CEO and an assessment made about whether there were grounds to make a complaint about the Mayor’s conduct to the appropriate authority.</p>
<p><b>Reasons:</b></p>	<p><b>Allegations One and Two</b></p> <p>1. The conduct at the heart of both Allegations One and Two involve alleged interferences in the transparency of local government. Allegation One alleged that the Respondent inappropriately directed the Council CEO to cease a disciplinary process in respect of the Respondent’s Chief of Staff, whilst Allegation Two involves an alleged failure to declare a conflict of interest in a Council meeting where Council was considering directions issued by the Respondent and</p>

	<p>whether Council ought to refer those directions to the Department of Local Government (as it then was).</p> <ol style="list-style-type: none"><li>2. Despite some claims by the Respondent to the contrary, the Tribunal was vested with jurisdiction to hear these allegations irrespective of whether they were also considered by the Crime and Corruption Commission, the Office of the Independent Assessor, or any other regulatory body.</li><li>3. Starting with Allegation One, it was plainly apparent from the evidence that when the Respondent was made aware of the disciplinary process involving his then Chief of Staff (in which the CEO alleged the Chief of Staff had failed to properly declare and deal with conflicts of interest involving property developers), the Respondent gave a direction to the Council CEO to stop the disciplinary process immediately.</li><li>4. Though the Mayor may issue directions to the CEO, they may not do so in circumstances where the direction undermines the purpose/s of the Act. In this case, the Respondent interfered with the execution of duties which the CEO was entrusted with under the Act, including managing local government employees and the local government in a way that promotes the effective, efficient and economical management of public resources.</li><li>5. Further, the Respondent's actions resulted in a confidential outcome in which the CEO was unable to determine whether the Chief of Staff had complied with Council policy, undermining the concept of "<i>a system of local government in Queensland that is accountable, effective, efficient and sustainable</i>" which the Act provides for.</li><li>6. Such conduct is capable of being a breach of trust reposed in the Respondent. Mayors must be civic leaders with a high benchmark for personal conduct, integrity and probity who demonstrate the types of behaviours they wish to see emulated by other Councillors. By exercising his power to issue directions to the CEO in the way he did evokes the popular phrase of "<i>sweeping things under the rug</i>" – such behaviour is entirely antithetical to the ethos, principles and purposes of the Act.</li><li>7. With regard to Allegation Two, the Respondent was considering an agenda item in Council relating to the exercise of his powers to issue directions to the CEO of Council. The agenda item clearly contemplated making a possible referral of the Respondent's conduct to the Director-General of the Department.</li></ol>
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	<p>8. In such a case, the public interest is squarely on Council acting consistent with <i>“a system of local government in Queensland that is accountable, effective, efficient and sustainable”</i>.</p> <p>9. The Respondent here had at least a personal interest in protecting his reputation, and the public perception of his character. That personal interest could, as perceived by a reasonable and informed observer, have the potential to influence the Respondent’s decision in carrying out his official functions in voting on the recommendation. In effect, the Respondent could have been influenced in protecting his personal interest (in his reputation) by seeking to take steps such that his reputation never came under scrutiny (by removing the Recommendation from consideration by the CEO).</p> <p>10. The Respondent should have declared the existence of a conflict of interest at the meeting but did not do so. This was clearly a breach of the trust reposed in him as Councillor and Mayor. Any conduct which falls short of demonstrating transparency, integrity and probity is a breach of the trust reposed in their office.</p>
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### 3. Orders and/or recommendations (s150AR - disciplinary action):

<b>Date of orders:</b>	25 May 2022
<b>Order/s and/or recommendations:</b>	<p>The Tribunal orders that, within 60 days of the day that he is issued with this decision and reasons:</p> <ol style="list-style-type: none"> <li>1. With respect to Allegation One: <ol style="list-style-type: none"> <li>a. pursuant to section 150AR(1)(b)(i) of the Act, the Respondent must make a public admission that the councillor has engaged in misconduct, on Facebook using the official Facebook account provided to him for use as the Mayor;</li> <li>b. pursuant to section 150AR(1)(b)(iv) of the Act, the Respondent must pay to the local government the amount of 20 penalty units (\$2,757);</li> </ol> </li> <li>2. With respect to Allegation Two: <ol style="list-style-type: none"> <li>a. pursuant to section 150AR(1)(b)(i) of the Act, the Respondent must make a public admission that the councillor has engaged in misconduct, on Facebook using the official Facebook account provided to him for use as the Mayor;</li> <li>b. pursuant to section 150AR(1)(b)(iv) of the Act, the Respondent must pay to the local government the amount of 5 penalty units (\$689.25).</li> </ol> </li> </ol>

<p><b>Reasons:</b></p>	<ol style="list-style-type: none"> <li>1. The Respondent had no relevant misconduct history which would have informed his behaviour at the time of the misconduct.</li> <li>2. The misconduct was viewed so seriously that the Tribunal considered whether it ought to recommend to the Minister that the Respondent be suspended as Mayor.</li> <li>3. However, the Tribunal considered that such an order would be too punitive in circumstances where the Respondent has only one previous instance of misconduct, and where that misconduct occurred after the matters considered here.</li> <li>4. The Tribunal may make any order that is “<i>substantially the same</i>” as an order available under the former Local Government Act. In the circumstances, the Tribunal will order that the Respondent must make a public admission of misconduct on Facebook, using the official Facebook account provided to him for use as the Mayor. The Tribunal considers that this step is necessary to bring the greatest possible public attention to the conduct engaged in by the Respondent, with a view to educating him as to the error of his conduct and communicating to other Councillors the danger of interfering in the broader governance processes of Council.</li> <li>5. A pecuniary penalty is also considered necessary. The Tribunal imposed a higher penalty for Allegation One than Allegation Two for the following reasons: <ol style="list-style-type: none"> <li>a. Allegation One involved an interference by the Respondent in a disciplinary process being undertaken by the CEO, in circumstances where the CEO was exercising a statutory function given to him by the Act;</li> <li>b. The interference by the Respondent resulted in an outcome that was contrary to the local government principles, as it did not permit the CEO to determine whether a local government employee had been acting appropriately;</li> <li>c. However, Allegation Two involved a joint decision by all of the Council to amend the resolution (which amounted to a refusal to refer the directions of the Respondent to the Director-General) and for which the Respondent cannot be held solely responsible (though the failure to declare the conflict of interest was his responsibility alone).</li> </ol> </li> </ol>
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