

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	F20/8145
Subject Councillor	Councillor Allan Sutherland (the councillor)
Council	Moreton Bay Regional Council

2. Decision (s150AQ):

Date:	26 October 2022
Decision (Allegation One):	The Tribunal has determined, on the balance of probabilities, that the allegation that between 18 February 2016 and 13 December 2019, Councillor Allan Sutherland, the Mayor and a Councillor of Moreton Bay Regional Council, engaged in misconduct as defined in 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 in that his use of the Moreton Futures Trust 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 not sustained .

Decision (Allegation Two):	The Tribunal has determined, on the balance of probabilities, that the allegation that between 16 April 2016 and 20 December 2019, Councillor Allan Sutherland, the Mayor and a Councillor of Moreton Bay Regional Council, engaged in misconduct as defined in 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 his role as a councillor, in that it was inconsistent with local government principle 4(2)(e) of the <i>Local Government Act 2009</i> being ‘ethical and legal behaviour of councillors and local government employees’ is not sustained .
Decision (Allegation Three):	The Tribunal has determined, on the balance of probabilities, that the allegation that on 17 May 2016, Councillor Allan Sutherland, the Mayor and a Councillor of Moreton Bay Regional Council, engaged in misconduct as defined in 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 the councillor in that his conduct 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 not sustained .
Decision (Allegation Four):	The Tribunal has determined, on the balance of probabilities, that the allegation that on 17 May 2016, Councillor Allan Sutherland, the Mayor and a Councillor of Moreton Bay Regional Council, engaged in misconduct as defined in 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 the councillor in that his conduct 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 not sustained .
Reasons:	<p>Allegation One</p> <ol style="list-style-type: none"> 1. The Councillor was alleged to benefited from the “use” of a trust as a vehicle to receive election donations amounting to \$137,000. 2. However, the evidence did not support a proposition that the Councillor had “use” of MFT in any factual or legal sense. 3. Although the Councillor’s conduct was investigated by the Crime and Corruption Commission during Operation Belcarra, the CCC observed that he had little control over the trust and that the use of trusts to receive donations was commonplace at the time. 4. Further, the Councillor acted under the advice – reasonably sought and honestly given – from the Council, LGAQ and ECQ, in addition to the conference he attended where he heard from a respected member of the local government community. 5. Whilst the receipt of donations by a Councillor from property developers using a trust is unsound by current standards of governance, it did not contravene the laws as they stood then. A legitimate argument could be raised that it was the scrutiny of the

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CCC's Operation Belcarra which drew attention to this issue and resulted in significant law reform in local government.

Allegation Two

1. The Councillor was also alleged to have not disclosed the use of the trust in his register of interests.
2. Matters which must be disclosed included (at the time) any "gift" over \$500 in value with "the donor's name and a description of the gift", as well as those interests which raise, appear to raise, or could raise a conflict between the relevant person's duty under the Act and the holder of the interest.
3. On this point, the Tribunal rejects the Councillor's submissions that once an interest is captured by one section of a register of interests, this extinguishes all possible applications to a Councillor's interests. For example, if a Councillor were the trustee of a trust that also receives gifts or donations, both must be disclosed.
4. However, both the ethics of the Councillor's action and the terms of the law as they stood at the time are plain. His obligation was in the receipt of gifts from the trust, not the individual donors, and there was no requirement to "conduct a tracing exercise through various entities to identify an original source of funds".
5. Even if it could be said that the Councillor should have contemplated any such conflict of interest arising from the donations, the obligations only required "sufficient details of the interest to identify it". Disclosing the payments from the trust as he did would have clearly discharged this obligation. The Councillor therefore complied with all of the requirements of the Act in relation to his Register of Interests.
6. The Tribunal wishes to sound a note of caution here for other Councillors: nothing in this decision should be taken to approve the derivation of benefits from blind trusts as vehicles for election funding. Such conduct is unlawful and unethical according to the law as it stands today. Had he come before this Tribunal under the current provisions of the Act, the outcome and treatment of this conduct could have been vastly different.

Allegation Three and Four

1. Allegations Three and Four alleged that the Councillor failed to disclose the existence of a conflict of interest at a Committee and then a General Council meeting on 17 May 2016.
2. The Tribunal is satisfied that the Councillor undertook enquiries of a number of persons with regard to his obligations, including the LGAQ, the CEO of Council and the director of the company who was the subject of Council's deliberations. At no time was the Councillor informed of matters which could have raised a conflict of interest.

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	<ol style="list-style-type: none"> 3. Yet the Councillor had had a significant relationship with the director’s family over a number of years, including a close business association that persisted for a large number of years. 4. That involvement with the family is sufficient for the Tribunal to find a personal interest existed for the Councillor, and for a reasonable layperson to conclude that that personal interest could conflict with the public interest in transparent and accountable decision making by local government. 5. Based on this relationship with the family, the Councillor should have steered well clear of any matters involving any of their business interests for fear of perceived bias. 6. In <i>Councillor, Cairns Regional Council (F20/1794)</i>, the Tribunal considered not every breach of a provision of the Act will be misconduct, having regard to the circumstances and any exculpatory considerations. In that matter, the Tribunal held that a Councillor’s failure to identify the directorships of companies which contributed funds to that Councillor’s election and subsequently came in matters before Council was not misconduct, because the Councillor was not aware of the directors of the related entities despite taking reasonable steps to identify them. 7. The Tribunal does not consider it reasonable to impose stringent investigative requirements on a Councillor in circumstances where there is no objective reason for the Councillor to doubt the advice they received, in circumstances where the Councillor was diligent enough in seeking it. 8. The Councillor also sought the advice of the CEO on his potential conflicts of interest. The fact that he received incorrect advice from the CEO (or perhaps, framed the question to the CEO incorrectly which led to that advice being furnished) should not be considered as a matter adverse to the Councillor’s position. 9. It is important to recognise the distinction between this outcome and the outcome had the Councillor been alleged to have engaged in misconduct under section 176(3)(d) of the Act. In that case, given the Councillor failed to deal with the conflict with the Newcombe family in a transparent and accountable way, this could have resulted in a finding of misconduct.
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	26 October 2022
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Order/s and/or recommendations:	As the Tribunal has found that the Councillor did not engage in misconduct, section 150AR(1) of the Act is not enlivened. Therefore, the Tribunal makes no orders in respect of the Councillor.
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