

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	F20/1108
Subject Councillor	Councillor Jeffrey Baines (the councillor) ¹
Council	Cassowary Coast Regional Council

2. Decision (s150AQ):

Date:	15 February 2021
Decision:	The Tribunal has determined, on the balance of probabilities, that the allegation, that on 7 December 2017, Councillor Jeffrey Baines, a Councillor of Cassowary Coast Regional Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i> (the Act), in that his conduct involved a breach of trust placed in him as a councillor, in that it was inconsistent with local government principles 4(2)(a), ‘transparent and effective processes and decision-making in the public interest’ and or 4(2)(e), ‘ethical and legal behaviour of councillors and local government employees’, in that Councillor Jeffrey Baines’ did

¹ Pursuant to section 150DY(3)(b), the councillor agreed by email dated 3 March 2021, for his name to be published.

	<p>not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act, is not sustained.</p>
<p>Reasons:</p>	<ol style="list-style-type: none"> 1. On 7 December 2017, an ordinary Council meeting was held. Item 13.5 of the agenda related to a request to indemnify the CEO of the Council from certain legal proceedings involving defamation allegations against residents of the Council's local government area. 2. The Councillor attended the meeting and voted for the motions for Agenda Item 13.5. However, the Applicant alleged that the Councillor had a prior personal relationship with the CEO before he was employed by Council, having eaten at the CEO's restaurant a number of times and attending two fishing trips at which the CEO was present. 3. However, the Tribunal did not consider that this amounted to a conflict of interest that could lead to a decision that was contrary to the public interest. 4. Firstly, it would be an unrealistic burden on Councillors if they were required during Council decision-making to disclose, as a matter of prudence to avoid potential conflicts of interest, the identities of every person with whom they had participated in minor social engagement (for example, occasionally struck up a conversation or gone fishing with on two occasions years apart), and where those persons might then conceivably be affected by the Council's decision. This is especially relevant in a small community such as the Cassowary Coast community, where the likelihood of social interactions with fellow community members is greater. 5. Secondly, the Councillor and the CEO had (at the time of the Council meeting on 7 December 2017) a greater professional association with the CEO that eclipsed any prior personal association. 6. Thirdly, there was no evidence before the Tribunal that if there was a personal interest, that it could have led to a decision that was in conflict with the public interest. 7. The Tribunal considered that the Councillor had not engaged in misconduct.

3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	15 February 2021
Order/s and/or recommendations:	The Tribunal found that the Councillor did not engage in misconduct pursuant to section 150AQ(1)(a)(ii) of the Act.
Reasons:	N/A