

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	F19/8258
Subject Councillor	Councillor Tyson Golder (Mayor)
Council	Maranoa Regional Council
Complainant	The details of the Complainant are not to be published and have been redacted from this summary pursuant to section 150AS(5) Local Government Act 2009

2. Decision (s150AQ):

Date:	26 November 2020
Decision:	The Tribunal has determined on the balance of probabilities, the allegation, that on 9 November 2017 Councillor Tyson Golder - the Mayor and Councillor of the Maranoa Regional Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the Act, as his conduct involved a breach of trust placed in him as a Councillor has been sustained .

Reasons:

It is alleged that on 9 November 2017, Councillor Tyson Golder, a councillor and Mayor of Maranoa Regional Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the Local Government Act 2009 as it then was, in that his conduct involved a breach of trust placed in him as a councillor.

Particulars of the alleged conduct which could amount to misconduct are as follows:

- a. On 8 November 2017, a general Council meeting was held. A resolution was passed that Council add a further item to the confidential agenda being Item LC 1 – Roma Flood Mitigation Project – Stage 2 – Landholder Negotiations.
- b. Council closed the meeting to consider the matter and those present at the Council meeting were of the understanding that the parameters for the Mayor’s discussion with Mr and Mrs Dare was Council’s without prejudice offer to purchase the property for the amount of \$150,000 which was equivalent to the original purchase price.
- c. On re-opening the meeting, Council passed Resolution No. GM/11.2017/52 “that Council offer the landholder a ‘without prejudice’ meeting with the Mayor accompanied by both parties’ relevant legal representation, with an outcome of that meeting to be finalised by 12pm noon on Friday 10 November 2017.”
- d. On 9 November 2017, Councillor Golder attended a ‘without prejudice’ meeting with the landowners namely, Mr Trevor Dare (Mr Dare) and Mrs Jody Dare (Mrs Dare) at the Council Office. The legal representatives for both parties were also in attendance via teleconference.
- e. During the without prejudice meeting, Councillor Golder made the following comments/statements that were dishonest, unauthorised or misleading:
 - i. Councillor Golder stated to Mr and Mrs Dare that he was there in his personal capacity and not there as a councillor. Councillor Golder reiterated that the meeting was at his personal request and not on behalf of the Council.
 - ii. Councillor Golder stated that he wanted to reach a deal with the landowners and in his personal opinion it was not reasonable to take people’s land by compulsory acquisition.
 - iii. In reference to the police paddock, Councillor Golder indicated that it was a large lot and that they (Dare’s) could have a look and pick an area they liked, and Council would

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subdivide it. Later in the conversation, Councillor Golder offered 30 to 40 acres at no cost... from the police paddock.

iv. Councillor Golder stated that he was on a deadline to respond to the Council and had to have a response from them (Dare's) about any room to move with the offer and/or the land swap option.

v. Councillor Golder offered to write a letter to the Council setting out the Dare's position to try and do a deal for them with the Council.

vi. Councillor Golder stated that he understood the emotional toll these things took on people as his own mother's land was also resumed in stage 1.

vii. Councillor Golder reminded the Dare's that the sliver of land that is required by Council is valued at \$10,000. Councillor Golder agreed the valuation was strange and thought that it should have been the rate paid for the Rose property next-door as that valuation was not far off what was paid for the lot.

f. The comments/statements made by Councillor Golder in particulars (e)(i)-(vii) did not reflect the position of Council and went beyond the scope of what Council considered at the closed session of the general meeting.

g. The alleged conduct was not consistent with local government principle 4(2)(a) 'being transparent and effective processes and decision making in the public interest'; 4(2)(d) being 'good governance of, and by, local government'; 4(2)(e) 'ethical and legal behaviour of councillors and local government employees' and section 12 being to represent the current and future interests of the residents of the local government area and providing high quality leadership to the local government in that Councillor Golder's conduct was dishonest and misleading.

The Tribunal considered the evidence available in the context of the Principles that underpin the Local Government Act, and noted:

1. That Councillor Golder, the Mayor of the Maranoa Council having been elected in March 2016 was authorised by the Council to attend a meeting with Mr and Mrs Dare (the Landowners) and was authorised to offer them an amount of \$150,000.00. The meeting took place on 9 November 2017 and involved negotiations to purchase their land. The Council did not provide any other

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parameters for Councillor Golder to make alternative offers.

2. The negotiations related to the Roma Flood Mitigation Project, an approved Council project with financial assistance provided from Federal, State and Local government.
3. That Councillor Golder made statements (e)(i) to (e)(vii) as outlined in the particulars during the meeting held on 9 November 2017.

Councillor Golder's statement that he was at the meeting in his personal capacity and not there as a councillor was held to be dishonest, misleading and/or unauthorised

4. The Tribunal determined from the evidence that Councillor Golder was not authorised to meet with the Landowners in his personal capacity and was only authorised to attend the meeting on behalf of the Council and in his capacity as Councillor and Mayor of the Maranoa Council. The Tribunal found that Councillor Golder's statement that he was at the meeting in his personal capacity and not as a councillor was not authorised by the Council and was misleading and dishonest.

Councillor Golder's statements to the Landowners that, in his personal opinion, it was not reasonable to acquire someone's land through compulsory acquisition and the valuation for the Landowners' land was strange and should have been the same as the neighbouring property were held to be unauthorised

5. The Tribunal found Councillor Golder was authorised to attend a meeting with the Landowners and offer them \$150,000 for their land and that no other explicit parameters were placed on his conduct. But it was implicit upon him to act in accordance with the principles of local government and the responsibilities of councillors. Although the Tribunal accepted Councillor Golder made it clear his statements about compulsory acquisition and the valuation for the Landowners' land were his personal views, the Tribunal determined expressing those views did not demonstrate high quality leadership and good governance in the circumstances. The Tribunal found the statements were unauthorised.

Councillor Golder's statements about a potential land swap, writing a letter on behalf of the Landowners to the Council and his own mother's land being resumed were held not to be dishonest, misleading and/or unauthorised

6. The Tribunal found Councillor Golder's statements about the land

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swap were a potential resolution that would need to go back to Council for consideration. The Tribunal did not accept these statements were unauthorised in the circumstances.

7. The Tribunal did not accept Councillor Golder intended to write a letter to the Council on behalf of the Landowners and did not accept that statement was unauthorised and/or misleading. Nor did the Tribunal accept Councillor Golder's statement about his mother's land being resumed was dishonest and/or misleading on the facts.
8. The Tribunal accepted Councillor Golder believed, based on previous advice, that his conduct was within the Act and that he was acting in the best interests of the Council. In the particular circumstances, the Tribunal was not satisfied his conduct was inconsistent with local government principle 4(2)(a) - 'being transparent and effective processes and decision making in the public interest' - or section 12 of the Act - being to represent the current and future interests of the residents of the local government area.
9. Despite the Respondent's intentions, the Tribunal found statement (e)(i) was dishonest, - to the requisite standard of proof - misleading and unauthorised. The Tribunal found statement (e)(i) was not in accordance with local government principle 4(2)(e) 'ethical and legal behaviour of councillors and local government employees'. The Tribunal also found that statements (e)(ii) and (vii) did not demonstrate high quality leadership and/or good governance and were unauthorised. The Tribunal found statements (e)(ii) and (vii) were not in accordance with 4(2)(d) being 'good governance of, and by, local government'; and section 12 (3)(ii) being to providing high quality leadership to the local government.

Did Councillor Golder's action constitute a breach of trust?

10. The term breach of trust is not defined in the Act and the Applicant referred to a previous decision of the Tribunal which referred to the decision of *Flori v Winter*.¹ The Tribunal noted *Flori v Winter* involved the conduct of police and the decision was overturned by the Court of Appeal. However, the principle relevant to the issues before the Tribunal was the potential for the alleged conduct to undermine "public confidence in the integrity of the person in the role they are occupying."² The Tribunal found Councillor Golder's

¹ *Fiori v Winter & Ors* [2019] QCA 281

² *Fiori v Winter & Ors* [2019] QCA 281 at [59]

	<p>statements about compulsory acquisition and the Landowners' land valuation were unauthorised and, on their face, those statements undermined the position of the Council which Councillor Golder leads.</p> <p>11. The Tribunal accepted those comments were made in an attempt to get a resolution and Councillor Golder believed he was acting in the best interests of the Council. And those comments were made during a 'without prejudice' meeting meaning his comments could not be introduced in future formal processes to resolve the dispute. In those particular circumstances, the Tribunal was not satisfied the statements amounted to a breach of trust placed in him as a councillor. However, Councillor Golder was only authorised to meet the Landowners in his capacity as the Mayor. He did not do that. He met them in his personal capacity which the Tribunal found on the balance of probabilities was dishonest. The Tribunal was satisfied Councillor Golder's statement about meeting the Landowners in his personal capacity did amount to a breach of trust pursuant to section 176(3)(b)(ii) of the Act warranting sanction.</p> <p>12. The Tribunal found Councillor Golder's conduct in making statements (e)(i) amounted to a breach of trust pursuant to section 176(3)(b)(ii) of the Act.</p>
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	26 November 2020
Order/s and/or recommendations:	<p>Having found that Councillor Golder engaged in misconduct, pursuant to section 150AR(1) of the Act, the Tribunal ordered that:</p> <p>The Tribunal ordered pursuant to 150AR (1) of the Act (being an order substantially the same as an order that could have been made under the former section 180), that:</p> <ol style="list-style-type: none"> a. Pursuant to section 150AR(1)(b)(i) of the Act, Councillor Golder make an admission at the next Council meeting that he engaged in misconduct; b. Pursuant to section 150AR(1)(b)(iii) of the Act, Councillor Golder attend relevant training to address the conduct; c. The training to be at the expense of Councillor Golder and undertaken within 90 days of receipt of this Order.

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Reasons:	<p>The Tribunal took into account that Councillor Golder had no prior disciplinary history (section 150AQ(2)(a)) and that he believed he was acting in the best interests of the Council and his conduct was within the Act based on previous advice.</p> <p>However, the Tribunal was of the view that making no order would not achieve the desired outcomes of Councillor Golder acknowledging his conduct was not acceptable and equipping him with sufficient knowledge to make it less likely that the conduct is repeated in the future.</p> <p>The Tribunal was satisfied that the orders that Councillor Golder make an admission at the next Council meeting that he engaged in misconduct and that he attends further training, would achieve the desired outcome of reducing the likelihood of the conduct being repeated in the future.</p>
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