

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:

CCT Reference	F19/3356
Subject Councillor¹	[REDACTED]
Council	Gympie Regional Council

2. Decision (s150AQ):

Date:	26 April 2019
Decision:	<p>It was alleged that on 24 February 2016, [REDACTED] a councillor of Gympie Regional Council, engaged in misconduct as defined in section 176(3)(d) of the Local Government Act 2009 (the Act), in that he failed to comply with the requirements of section 173(4), being the provision that was in effect at that time, to deal with a real conflict of interest or perceived conflict of interest in a transparent and accountable way.</p> <p>Particulars of the alleged conduct which could amount to misconduct are</p>

¹ The department's chief executive will decide whether a councillor's name is published, where a complaint has not been sustained. The *Local Government Act 2009* is silent on this issue with respect to publication on the department's website, where a complaint has not been sustained. Although the Tribunal can not mandate it, the Tribunal's preference would be, that a similar practice to that of the local government's Councillor Conduct Register be followed, where agreement should be sought from the councillor before his/her name is published, where a complaint against a councillor has not been sustained.

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	<p>as follows:</p> <ol style="list-style-type: none"> a. On 24 February 2016, at an ordinary meeting, the council discussed the Final Concept Master Plan for “Our Towns - Sustainable Centres Program”, Stage 3 – Tin Can Bay and Cooloola Cove (Our Towns Program). b. The matter was not an ordinary business matter. c. [REDACTED] property located on the corner of [REDACTED]. d. At the council meeting of 24 February 2016, [REDACTED] did not inform the meeting of his personal interest in the matter. e. [REDACTED] personal interest in the matter did not arise merely because of the circumstances specified in section 173(3)(a). f. [REDACTED] the matter could be deemed as being a real conflict of interest or a perceived conflict of interest because the work conducted included various streetscape improvements around the Local Centre. These improvements occurred along Tin Can Bay Road including outside [REDACTED] business premises g. The Detailed Concept Plan for the local centre indicated that works that were to be conducted adjacent to [REDACTED] property involved the installation of a seat, rubbish bin, plantings and mulch. <p>The Tribunal has determined, on the balance of probabilities, that the above allegation has not been sustained.</p>
<p>Reasons:</p>	<ol style="list-style-type: none"> 1. The Tribunal, noting that the councillor was a resident of Tin Can Bay as well as a business owner and operator in that town centre, concluded that it could be seen that he did have an interest in the improved town centre environment which was incorporated in the Final Concept Master Plan for the Our Towns Program, as it contained a schedule of proposed mainly landscaping works, which would enhance the environment of the central business area of Tin Can Bay. 2. The Tribunal then considered if this interest could be described as a conflict of interest, either real or perceived as described in former s173(2) of the Act. 3. The matter in issue was discussed at a council meeting and did not fall into “an ordinary business matter”. By s173(3) of the Act, a councillor does not have a conflict of interest in a meeting because of certain matters listed in s173(3). The Tribunal is satisfied that none of the exemptions listed in s173(a) of the Act applies in this case.

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4. The Tribunal then considered the potential exemption application provided for in s173(3)(b), being:
- “if the councillor has no greater personal interest in the matter than that of other persons in the local government area”.
5. The Tribunal considered what benefits were included in the “Our Towns - Sustainable Centres Program”, Stage 3 – Tin Can Bay and Cooloola Cove (Our Towns Program). These were mainly “public realm improvements which protect and enhance the existing character and amenity of the region’s township”, to:
- Assist in ensuring ongoing sustainability of townships, as attractive and desirable places to live, work, recreate and visit;
 - Enhance the existing character and amenity currently enjoyed by residents and visitors;
 - Contribute towards strengthening the sense of place and unique identity of the township;
 - Include the addition of elements such as low maintenance entry statements/improvements of existing entry statements, street trees, pathways, landscaping and or street furniture, where considered appropriate.
6. The Tribunal also noted that:
- i. The proposal was officer developed and came from the council’s Planning Department.
 - ii. The proposal was brought to the council meeting by staff through the normal process.
 - iii. The councillor did not propose the works in Tin Can Bay.
 - iv. The councillor stated that:
 - he had not discussed the proposal with anyone prior to the matter coming to Council;
 - he did not attend any community engagement sessions as he did not want to influence or be seen to influence any community consultation outcomes;
 - he did not involve himself in identifying what work was to be done. He states that this was determined by the community;
 - his wife attended one community meeting, however she did not advocate for the work outside the shops, rather she suggested a block of amenities be built elsewhere in the town centre.
 - v. [REDACTED] the seat and bin that were in the original plans for the program have not been installed adjacent to their property.
 - vi. [REDACTED] stated that his sole intent at the time

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was to maximise the benefits that Council can provide to the wider Gympie Region.

vii. The motion was passed unanimously without dissent from any councillor which would suggest that the program had Council support generally across the region and in this case its application to Tin Can Bay.

viii. [REDACTED] ning portfolio during his first term in Council (2012 – 2016), when council endorsed the Final Concept Master Plan for the Our Towns Program.

ix. [REDACTED] stated that:

- he did not set out with any intention to benefit from the works either in designing the program or in proposing it to Council;
- any improvement from the works indirectly benefitted all landowners and the community;
- on any objective criteria his property did not benefit directly in any significant way greater or less than any other business from the improvement of the streetscape.

7. The tribunal considered the overall and specific purpose and benefits of the plan to Tin Can Bay, as well as the specific benefits proposed. It noted most improvement benefits were in the category of general landscaping, e.g. new trees, replacement of dead trees, garden delineation, mulch, town entry and exit signage. The benefits were of a general nature improving or maintaining the environmental ambiance of the Tin Can Bay town centre or giving it more of a sense of a 'town centre'.

8. the Tribunal was satisfied that the benefits conferred upon the centre benefitted the community as a whole and did not give any individual property or business owner an advantage other another. The Tribunal considered the councillor's business, the sole [REDACTED] in Tin can Bay, and could not see where his property or business would benefit more than any other property or business in the town centre of Tin Can Bay from the improved or better maintained environmental features. From this perspective the Tribunal believed that the councillor had "no greater personal interest in the matter than that of other persons in the local government area" (s173(3)(b)).

9. Although as stated previously it could be deemed that [REDACTED] had an interest in the concept plan, the Tribunal was satisfied that it was not to a level or of a nature that would create a conflict of interest situation. As no conflict of interest for [REDACTED] was

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	<p>deemed to exist, this therefore did not enliven s173(4) of the Act, which required the councillor to deal with the real or perceived conflict of interest in a transparent and accountable way.</p> <p>10. The Tribunal is satisfied on the balance of probabilities that as outlined above, there has not been a breach of former section 173(4) of the Act, and thus there has been no breach of the trust placed in the councillor to constitute misconduct, as defined in former s176(3)(b)(ii) of the Act. Considering all the evidence received, the Tribunal has determined on the balance of probabilities, that this allegation has not been sustained.</p> <p>11. While the Tribunal has determined that the evidence was not such to sustain this allegation of misconduct, the Tribunal would recommend to the councillor, that in any similar future situation that the councillor register his interest at the council meeting. ‘Registering an interest’ at a meeting enables it to be recorded and thus makes the councillor’s interest transparent. One should not assume transparency just from long term familiarity with persons in the area. Often where there is a possible interest, which may not constitute a conflict of interest, if a councillor registers that interest, it may be perfectly acceptable for the councillor to remain in the meeting and participate in discussions. Registering such an interest may also possibly avoid alleged misconduct complaints which can be both stressful to a councillor and a cost to the council.</p>
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	Not applicable.
Order/s and/or recommendations:	
Reasons:	