

# 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:

<b>CCT Reference</b>	F19/7888
<b>Subject Councillor</b>	Councillor Glenn Tozer (the councillor)
<b>Council</b>	Gold Coast City Council

## 2. Decision (s150AQ):

<b>Date:</b>	24 September 2020
<b>Decision:</b>	<p>The Tribunal has determined, on the balance of probabilities, that the allegation, that on 19 September 2018, Councillor Glenn Tozer, a Councillor of Gold Coast City Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the Act in that his conduct involved a breach of the trust placed in him as a councillor <b>has been sustained</b>.</p> <p>Particulars of the alleged conduct which could amount to misconduct are as follows<sup>1</sup>:</p> <ol style="list-style-type: none"><li>Councillor Tozer was re-elected as a Councillor in March 2016.</li><li>For approximately 4 years, Councillor Tozer has, in his personal capacity, been a voluntary contributor to <i>Blank Magazine</i>.</li><li>Councillor Tozer runs “Summertime Sessions”, a Division 9 Council funded live music event held on Friday evenings over the Summer period.</li><li>The Summertime Sessions are in competition with NightQuarter, a live music venue on the Gold Coast.</li><li>On 19 September 2018, Councillor Tozer sent a private message to the complainant via Facebook, requesting that he and his wife</li></ol>

<sup>1</sup> Amended Application to Conduct Tribunal about alleged misconduct, filed at hearing by consent of the parties on 17 March 2020.

	<p>be put on the guest list for The Cat Empire concert at NightQuarter on 23 September 2018.</p> <p>f. The complainant states that he felt uncomfortable with the request, however, given Councillor Tozer’s position as a councillor and his potential ability to influence GCCC decisions that may impact his business, he complied with the request and provided two free tickets to Councillor Tozer. The complainant had also previously spoken to Councillor Tozer about Council matters impacting on NightQuarter.</p> <p>g. At the time of Councillor Tozer making the request:</p> <ul style="list-style-type: none"> <li>i. The complainant was not aware Councillor Tozer was a voluntary contributor to Blank Magazine;</li> <li>ii. Councillor Tozer was not acting in his capacity as a music writer for Blank Magazine.</li> </ul> <p>Councillor Tozer’s conduct, in requesting free tickets to a NightQuarter run event, involved a breach of trust placed in him as a councillor, in that his conduct was not consistent with local government principle 4(2)(e) being ‘ethical and legal behaviour of councillors’.</p>
<p><b>Reasons:</b></p>	<p>The Tribunal considers that the following matters are relevant to an assessment of whether the private activities of Councillor Tozer as particularised in Allegation 1 are such to attract a finding of breach of trust, and therefore misconduct:</p> <ul style="list-style-type: none"> <li>a. The nature of Councillor Tozer’s request of 19 September 2018 was couched in language that appeared friendly, nonchalant and informal, and was made using the Respondent’s personal Facebook Messenger profile (rather than his official profile as a Gold Coast City Councillor);</li> <li>b. The nature of the complainant’s response of 19 September 2018 was also couched in informal and accommodating language, and did not appear to disclose the level of discomfort to which the subsequent complaint and affidavit subsequently refer;</li> <li>c. The request of 19 September 2018 involved being added to the “door list”, which necessarily involved the Respondent receiving additional tangible and intangible benefits;</li> <li>d. The Respondent made the request of 19 September 2018 in circumstances where he was: <ul style="list-style-type: none"> <li>i. an elected Councillor in his second term with Gold Coast City Council;</li> <li>ii. a Councillor with a keen personal interest in the live music and entertainment industry;</li> <li>iii. under some financial stress, given he and his wife had self-funded his wife’s charity trip to Mozambique.</li> </ul> </li> </ul>

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	<ul style="list-style-type: none"> <li>iv. Also suggesting “OJ” might like to join the event as well. With the reference to “OJ” being a reference to another sitting Councillor.</li> <li>e. The complainant honoured the request of 19 September 2018 in circumstances where he was: <ul style="list-style-type: none"> <li>i. the Managing Director of Night Quarter, a prominent live music and entertainment business on the Gold Coast; and</li> <li>ii. in both his personal and Directorial roles, a constituent of the Gold Coast City Council.</li> </ul> </li> </ul> <p>These contextual circumstances are important because it creates an alternative frame for the nature of the request. On multiple occasions the Respondent had received the benefit of exclusive or VIP access after receiving invitations from NightQuarter to attend events in the past. From the evidence tendered those occasions were as a result of the Respondent’s capacity as a Councillor. No evidence was tendered otherwise of occasions where the Respondent had been invited in his personal capacity that would demonstrate an independent friendship.</p> <p>Further, by making the request of 19 September 2018 to be put on the “<i>door list</i>”, the Respondent obtained benefits which were not open to the general public, either in a general sense or those who purchased “<i>general admission</i>” tickets.</p> <p>By making the request in the way that he did, the Respondent obtained a benefit to which the ratepaying public would not have had access, or created a disadvantaged occasioned to the broader public. This conduct was not ethical conduct, within the meaning of section 4(2)(e) of the Act.</p> <p>Having regard to the wording of the former section 176 of the Act, the local government principles in section 4 of the Act, and the nature and circumstances of the conduct, the Tribunal is satisfied that the conduct of the Respondent is appropriately categorised as misconduct.</p> <p>In this context, the Tribunal finds on the balance of probabilities that the allegation is sustained.</p>
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**3. Orders and/or recommendations (s150AR - disciplinary action):**

<b>Date of orders:</b>	24 September 2020
<b>Order/s and/or recommendations:</b>	<p>The Tribunal orders that:</p> <ul style="list-style-type: none"> <li>a. Pursuant to s150AR(1)(b)(i) of the Act, that Cr Tozer make a public admission that he engaged in misconduct, within 90 days of the date</li> </ul>

	<p>that a copy of this decision and orders are given to him by the Registrar.</p> <p>b. Pursuant to s150AR(1)(b)(iv) of the Act, that Cr Tozer pay to the local government in the amount of \$250, within 90 days of the date that a copy of this decision and orders are given to him by the Registrar.</p>
<p><b>Reasons:</b></p>	<p>The Tribunal distinguished the case of <i>IA v Gleeson</i> as being more serious due to the persistent and serious nature of the conduct considered in that case. However, it is accepted that the case is relevant with respect to their interpersonal relationships outside of the role of a Councillor.</p> <p>The Tribunal notes that the purpose of civil disciplinary proceedings is generally not punitive, but protective. However, the orders made must also reflect the expectations of the community and may also be directed to deterrence or be compensatory. Ensuring that the Councillor is equipped with sufficient assistance to make it less likely that the conduct will be repeated is also a desirable outcome in crafting suitable orders.</p> <p>The Tribunal finds that whilst the Tribunal has previously determined a separate complaint against the Respondent, that at the time of the referral the Respondent did not have any disciplinary history.</p> <p>The Tribunal finds a distinction in the previous decision concerning the Respondent, as the referral on that occasion arose out of a self-notification and did not proceed to a contested hearing of the complaint as it did in this case.</p> <p>The Tribunal finds that the Respondent lacks insight into the conduct and as such there is a need for personal deterrence as well as general deterrence. Again, this is a feature that was not previously demonstrated in the Tribunal decision on 14 December 2019.</p> <p>Accordingly, it is determined that a public apology by the Respondent pursuant to section 150AR(1)(b)(i) of the Act is necessary to ensure that the respondent, and like-minded Councillors, have a full understanding of the requirements of their position so that the issue does not arise again in the future. Further, the Respondent must also pay \$250 to the local government.</p>