

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:

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| CCT Reference | F19/3696 |
| Subject Councillor¹ | ██████████ (the Councillor) |
| Council | Southern Downs Regional Council (the council) |

2. Decision (s150AQ):

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| Date: | 17 May 2019 |
| Decision: | <p>It was alleged that on four occasions between 26 June 2018 and 13 November 2018, Councillor ██████████, a councillor of Southern Downs Regional Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the Local Government Act 2009, in that his conduct involved a breach of the trust placed in him as a councillor.</p> <p>Particulars of the 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>a. On 14 January 2018, a development application was lodged with the council relating [REDACTED]</p> <p>b. The development application was a matter for discussion at Council meetings on each of the following dates:</p> <ul style="list-style-type: none"> i. 27 June 2018; ii. 25 July 2018; iii. 3 September 2018; and iv. 12 November 2018. <p>c. The matter was not an ordinary business matter.</p> <p>d. [REDACTED] attended the above named meetings.</p> <p>e. [REDACTED] had a personal interest in the matter as he and his wife jointly own a residential property at [REDACTED]</p> <p>f. [REDACTED] did not inform the meetings on 27 June 2018, 25 July 2018, 3 September 2018 and 12 November 2018, of his personal interest in the matter.</p> <p>g. [REDACTED] personal interest did not arise merely because of the circumstances specified in section 175D(2)(a) of the Act.</p> <p>h. [REDACTED] personal interest in the matter could be deemed as being a real conflict of interest or a perceived conflict of interest because [REDACTED] is in the vicinity of the property of the development application.</p> <p>i. The alleged conduct could amount to misconduct on the basis that it did not comply with local government principle 4(2)(e) being ‘ethical and legal behaviour of councillors and local government employees’.</p> <p>The Tribunal has determined, on the balance of probabilities, that the allegation that Councillor [REDACTED] engaged in misconduct as defined in section 176(3)(b)(ii)² of the <i>Local Government Act 2009</i>, in that his conduct involved a breach of the trust placed in him as a councillor, has not been sustained.</p> |
| <p>Reasons:</p> | <p>1. The Tribunal first considered:</p> <ul style="list-style-type: none"> • did Cr [REDACTED] have a personal interest in the issue; and |

² It is noted that this provision is no longer in force but is applied by section 322 of the Act in the circumstances of this matter, as further outlined in the decision.

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| | <ul style="list-style-type: none">• if so, was this interest such, that it would conflict with the public interest, so that it might lead to a decision that is contrary to the public interest. <ol style="list-style-type: none">2. The issue of a suggested personal interest of Cr [REDACTED] appears to centre around the issue of geographical closeness of a property he co-owns, with the subject property.3. The Tribunal is satisfied, that although it might be deemed that Cr [REDACTED] has a personal interest in the outcome of the development application, due to the fact he owns a property in the vicinity of the subject property, that in considering all the facts of the nature of the geographic closeness of the properties, that such an interest is minor.4. The matter in issue was discussed at a council meeting and did not fall into “an ordinary business matter”, as defined in the Dictionary to the Act, therefore, s175D of the Act still applied (if other required elements were present). By s175D(2)(b) of the Act, a councillor does not have a conflict of interest in a meeting because of certain matters listed in s175D(2)(a). The Tribunal is satisfied that none of the exemptions listed in s175D(2)(a) of the Act applies in this case.5. The Tribunal then considered the potential exemption application provided for in s175D(2)(b), being:<ul style="list-style-type: none">• “if the councillor has no greater personal interest in the matter than that of other persons in the local government area”.6. The Tribunal accepted that Cr [REDACTED] had a professional interest in the issue arising from his role as a councillor on the Southern Downs Regional Council, who is required from time to time, to participate in council decision-making involving development applications.7. However, when considering Cr [REDACTED] personal interest, the Tribunal believes that Cr [REDACTED] has “no greater personal interest in the matter than that of other persons in the local government area”, which is consistent with the exemption provided for in s175D(2)(b) of the Act.8. The Tribunal further considered whether Cr [REDACTED] minor personal interest was such, that it would conflict with the public |
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interest, so that it might lead to a decision that is contrary to the public interest.

9. There is no evidence provided, that supported any actions by Cr [REDACTED] favouring a private interest.
10. The Tribunal noted Cr [REDACTED] is a long serving councillor, who has attended several training activities which have included the topics of managing material personal interest and conflict of interest situations. From responses in his submission and during interview, it is apparent that he has a good understanding of the concept of conflict of interest and the legislative requirements for councillors to appropriately manage any conflicts, should they arise. The Tribunal is satisfied that Cr [REDACTED] non-declaration of an interest at the council meetings of 27 June 2018, 25 July 2018, 3 September 2018 and 12 November 2018, was a considered action he believed correct, and not a deliberate avoidance or arrogant disregard for the legislative provisions.
11. The Tribunal considered the evidence of Cr [REDACTED] commitment, or otherwise, to the public interest, and was satisfied that this was a predominant factor in Cr [REDACTED] approach to his council decision-making and particularly on this issue. The Tribunal noted:
 - Cr [REDACTED] long involvement, expertise and commitment to land use planning;
 - His personal development in that area through his conference attending and obtaining his Diploma of Town Planning;
 - That the council officers recommended that approval for the complainant's initial development application be denied on multiple grounds. Cr [REDACTED] position supported the council officer's recommendations. He was not supporting an approval for exceptions or non-complying issues contrary to council officers' recommendations.
 - When another councillor moved a motion, 'that there were sufficient grounds to favourably consider the application despite its conflict with the Council's Planning Scheme and that the application be conditionally approved for the purpose of the motor vehicle workshop and chiller boxes only', Cr [REDACTED] noted that, *"this resolution was unusual in that it has been rare for Councillors to approve development applications against council officers' recommendations,*

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| | <p><i>especially where the application conflicted with the Planning scheme”.</i></p> <ul style="list-style-type: none"> • His position throughout the period of consideration of the development application and associated issues, was to support compliance with the council’s planning scheme. <p>12. The Tribunal is satisfied, that Cr [REDACTED] did bring an impartial mind to the resolution of the question, he as a Councillor was required to decide.</p> <p>13. The Tribunal is therefore satisfied on the balance of probabilities, that as outlined above, there has not been a breach of section 175(D) 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.</p> |
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3. Orders and/or recommendations (s150AR - disciplinary action):

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| Date of orders and/or recommendations: | 17 May 2019 |
| Order/s and/or recommendations: | <p>As the allegation of misconduct has not been sustained the Tribunal has not made any orders.</p> <p>However, the Tribunal has made the following recommendation:</p> <p style="padding-left: 40px;">The Department forward this Decision and Reasons document to the Crime and Corruption Commission (CCC) with the recommendation that the CCC consider what action can be taken to prevent complainants publicising their complaints before they can be properly investigated and dealt with.</p> |
| Reasons: | <ol style="list-style-type: none"> 1. The complainant disclosed to the Mayor and other Councillors, the fact and content of a complaint made to the CCC against Cr [REDACTED], before the CCC or any integrity agency had a chance to completely deal with it. 2. This created a possible perceived conflict of interest situation for Cr [REDACTED], when dealing with a development approval related issue involving the complainant on the council’s meeting agenda, thus |

preventing Cr [REDACTED] from participating in the debate and voting on the issue.

3. In an advice to the Councillor, the Integrity Commissioner made the following comment:

“Council will need to remain mindful that, should the Council set the standard that a conflict of interest arises for a councillor where an allegation is raised, this may create a perception that applicants can engineer the exclusion of councillors who they suspect will vote against their interests. Were this to happen it would not be in the interests of representative democracy and could undermine public confidence in the decision-making of Council”.

4. The Integrity Commissioner describes an unfortunate ‘Catch 22’ situation, which appears to have occurred here. The councillor may believe the complaint has been made public to compromise the councillor and create a perceived conflict of interest situation. If the councillor remains in the meeting, the councillor risks a sustained finding of failing to manage a perceived conflict of interest. If the councillor removes himself from the meeting, the complainant (if that is his motive), achieves his objective of removing possible opposition to the issue.
5. While the Tribunal is not required to, nor does it have the power to, make decisions in this area, the Tribunal wishes to express its strong concern in support of the Integrity Commissioner’s comment. The CCC has for many years encouraged genuine complainants to refer complaints to that body, but to do so confidentially and not to advise or alert the subject of the complaint.
6. Making public allegations against a councillor can be used nefariously. The CCC in the past has cautioned councillors especially prior to an election, where at the same time a complaint is lodged with the CCC, it is made public in the media, thus drawing potentially negative publicity to the accused councillor, possibly in cases where the complaint has little substance. In these circumstances the publicised complaint is used as a manipulative tool, rather than an integrity process.
7. The Tribunal cannot determine whether the publicising of the complaint against Cr [REDACTED] was for nefarious intent, nor is it required to. However, the Tribunal records its concern with that practice and **recommends that:**

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| | <p>The Department forward this Decision and Reasons document to the CCC with the recommendation that the CCC consider what action can be taken to prevent complainants publicising their complaints before they can be properly investigated and dealt with.</p> |
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