

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	F19/4035
Subject Councillor¹	Councillor Tom Tate (the Councillor)
Council	Gold Coast City Council (the council)

2. Decision (s150AQ):

Date:	14 August 2019
Decision:	<p>It was alleged that on 13 November 2018, a councillor engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i>, in that his conduct involved a breach of trust placed in him as a councillor.</p> <p>Particulars of the conduct which could amount to misconduct are:</p> <ol style="list-style-type: none">a. On 13 November 2018, a general Council meeting was held. One of the matters on the agenda was the Development Application

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>for making a Material Change of Use (Code Assessment) for a multiple dwellings property.</p> <ul style="list-style-type: none"> b. The matter was not an ordinary business matter. c. The Councillor attended the general Council meeting. d. A legal firm was listed in the consultancy team by the Applicant for the Development Application for making a Material Change of Use. e. The councillor had engaged the legal firm on many occasions over a period of time. f. The councillor’s personal interest in the matter did not arise merely because of the circumstances specified in section 175D(2)(a). g. The councillor’s personal interest in the matter could be deemed as being a real conflict of interest or perceived conflict of interest because of the nature and duration of the relationship with the lawyers. h. The alleged conduct could amount to misconduct on the basis that it did not comply with local government principle 4(2)(a) being ‘transparent and effective processes and decision making in the public interest and 4(2)(e) being ‘ethical and legal behaviour of councillors and local government employees’, in that the councillor did not properly inform the council meeting on 13 November 2018, of his interest in the matter as required by section 175E of the Act which then denied the other councillors the opportunity to decide whether he had a real conflict of interest or perceived conflict of interest in the matter. <p>The Tribunal has determined, on the balance of probabilities, that the allegation had not been sustained.</p>
<p>Reasons:</p>	<p>The Tribunal determined that “it might be perceived by the reasonable and fair-minded observer”, that a personal interest might be perceived to exist for councillor, due to his long and extensive relationship with the legal firm.</p> <p>The Tribunal then considered did the councillor effectively manage the conflict and concluded he had met the minimum requirements of the legislation. From analysis of the interactions that transpired at that time in the council meeting, the Tribunal accepted that there was a sufficient disclosure of the interest to satisfy s175E(2)(a) of the <i>Local Government Act 2009</i>.</p>

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

Date of orders and/or recommendations:	N/A
Order/s and/or recommendations:	As the allegation of misconduct has not been sustained the Tribunal has not made any orders.
Reasons:	