

**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>	F19/2575
<b>Subject councillor:</b>	Councillor Jeffery Baines (the councillor)
<b>Council</b>	Cassowary Coast Regional Council (the council)

**2. Decision (s150AQ):**

<b>Date:</b>	3 April 2019
<b>Decision:</b>	<p>The Tribunal conducted a hearing on whether or not Cr Jeffery Baines, a councillor of Cassowary Coast Regional Council, engaged in misconduct. It is alleged that on 8 November 2018, Councillor Jeffery Baines, a councillor of Cassowary Coast Regional Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i> (the Act), in that his conduct involved a breach of the trust placed in him as a councillor.</p> <p>Particulars of the alleged conduct which could amount to misconduct are as follows:</p> <ul style="list-style-type: none"><li>a. On 8 November 2018, Councillor Baines attended Council’s Asset Sustainability Committee meeting.</li><li>b. A matter for consideration at the meeting was a report about the awarding of a contract for the construction of extensions to the Water Office at the Innisfail Depot. The report recommended the contract be awarded to [REDACTED].</li><li>c. The matter was not an ordinary business matter.</li><li>d. The meeting resolved unanimously to adopt the recommendation.</li><li>e. The Principal of [REDACTED], made a \$200 donation at the 2016 local government election to a registered group of candidates, the Cassowary Coast Unity Alliance, of which Councillor Baines was a member.</li><li>f. Councillor Baines did not inform the meeting of his personal interest in the matter.</li></ul>

	<p>The conduct was not in accordance with local government principle 4(2)(e) being 'ethical and legal behaviour of councillors and local government employees', in that Councillor Baines did not inform the meeting of his personal interest in the matter as required by section 175E of the <i>Local Government Act 2009</i>.</p> <p>The Tribunal has determined, on the balance of probabilities, that the allegation <b>has been sustained</b> and that therefore the Councillor has engaged in misconduct.</p>
<p><b>Reasons:</b></p>	<p>Cr Baines admitted that he failed to declare a conflict of interest at the meeting.</p> <p>The Tribunal also noted that Cr Baines was one of four Cassowary Coast Unity Alliance councillors who attended the Asset Sustainability Committee Meeting on 8 November 2018 where the recommendation to award a contract. The day after the meeting on 8 November 2018, one of the four, Councillor Kremastos, the mayor, realized that he should not have voted on this decision the day before. He advised the Acting CEO. The Acting CEO, contacted the CEO to seek his advice which led to the calling of a special council meeting at which the resolution of the Asset Sustainability Meeting on 8 November was repealed and the matter of awarding the contract was delegated to the Acting CEO. Upon returning from his holiday, the CEO reported the matter to the CCC and the Department.</p> <p>Section 175E(2) of the Act states that a councillor must inform the meeting about the councillor's personal interests in a matter, including the following particulars about the interest:</p> <ul style="list-style-type: none"> <li>a. The nature of the interests;</li> <li>b. The nature of the relationship or value and date of receipt of the gift; and</li> <li>c. The nature of the other person's interest in the matter.</li> </ul> <p>No exclusions applied, therefore the councillor did have a mandatory obligation to inform the meeting of the conflict and manage it appropriately.</p> <p>The Act at s4(2) sets out certain local government principles, including "ethical and legal behaviour of councillors and local government employees". At s12(3)(a)(iii), the Act states that councillors have the responsibilities to ensure local governments comply with all laws that apply to local governments. This conduct has contravened local government principle 4(2)(e), in that Councillor Baines' breach of section 175E(2) of the Act constitutes non-compliance with the local government principle of "ethical and legal behaviour of councillors and local government employees" – s4(2)(e).</p>

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

Date of orders:	27 April 2019
Orders regarding Allegation:	<p>The Tribunal orders pursuant to s150AR(1)(b)(i) and (iv) of the Act, that Cr Baines:</p> <ol style="list-style-type: none"> <li>a. Make a public admission that the councillor engaged in misconduct, at an ordinary meeting of the Cassowary Coast Regional Council within one month of the date of this Order;</li> <li>b. Pay to the local council an amount of \$100, to be paid within 60 days of the date of this Order.</li> </ol>
Reasons:	<p>The Tribunal considered the facts and circumstances relevant to any sanction along with the submissions on sanction. The Tribunal determined the following were aggravating circumstances:</p> <ul style="list-style-type: none"> <li>• that Councillor Baines has received training on avoiding the alleged misconduct.</li> </ul> <p>The Tribunal agreed that the following were mitigating factors and should be taken into consideration when determining any sanction:</p> <ul style="list-style-type: none"> <li>• Councillor Baines has no disciplinary;</li> <li>• Councillor Baines has demonstrated full and early co-operation which has spared the OIA the expense of fully investigating both matters.</li> </ul> <p>The Tribunal in considering whether the claimed 'self-declaration by the Council' was a mitigating factor, noted that it was Cr Kremastos who realised and reported that he should not have voted on this decision the day before. There is no evidence to suggest that Cr Baines identified the breach himself. As such, the Tribunal does not consider it a mitigating factor in relation to Cr Baines.</p> <p>With respect to previous orders made by the former Local Government Remuneration and Discipline Tribunal in relation to matters of a similar nature, the IA submitted a number of examples where non-declaration of a conflict of interest had been sustained and orders mainly requiring an admission of misconduct at a future council meeting was ordered. The Tribunal did consider each example from a relativity perspective and was satisfied that there were factors which could distinguish each of those matters from the present matter.</p> <p>While the Tribunal agreed with the submissions that "an admission that the councillor has engaged in misconduct" was an appropriate sanction,</p>

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the Tribunal also considered a small monetary sanction (s150(1)(b)(iv) would be appropriate.

A breach of s175E is a statutory offence which can be prosecuted in the Magistrates Court, but in this case on the facts of the matter the IA has not considered it in the public interest to prosecute. Instead, pursuant to s150W of the Act, the IA has referred it to the Tribunal to deal with as misconduct.

The Tribunal strongly recommends that Cr Baines and the other councillors involved should have in place a robust process to enable them to identify potential conflicts of interest. The Tribunal strongly recommends that they work with the CEO to develop and adopt an appropriate process for ensuring that conflicts of interest are identified in the future.

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