

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	F21/4142
Subject Councillor	Councillor Greg Rogerson (the councillor) <i>Note that the name of the councillor may be included on the register if the Tribunal decided the councillor engaged in misconduct. Where misconduct by the councillor has not been sustained the councillor needs to agree to their name being included (s150DY(3)).¹</i>
Council	Sunshine Coast Regional Council

2. Decision (s150AQ):

Date:	19 June 2023
Decision (Allegation One):	The Tribunal has determined, on the balance of probabilities, that the allegation that on 31 July 2019 the Respondent engaged in misconduct as defined in section 150L(1)(b)(i) of the Local Government Act 2009 (the Act), when he breached the trust placed in him as a councillor, either knowingly or recklessly, in that his conduct was inconsistent with local government principle 4(2)(e) being ethical and legal behaviour of councillors, when, with a conflict of interest in a matter, he influenced or attempted to influence a local government employee in a manner contrary to section 175I(3) is not sustained .

¹ This notice should be delayed until 7 days after the date of the Tribunal letter advising the councillor of the decision and reasons in relation to the complaint, to enable the councillor time to indicate if they would like their name included in the publication or not.

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	<p>Particulars of the alleged conduct which could amount to misconduct are as follows:</p> <ul style="list-style-type: none"> a. On 10 April 2019, Builder A submitted a development application Council. b. Company B were the consultant to the applicant for the development application. c. On 16 April 2012, Councillor Greg Rogerson received a donation of \$1,500.00 from Company B. d. On 31 July 2019, following ongoing discussions with the applicant, Councillor Greg Rogerson sent an email to a Council employee advising that he wanted to “call in” the development application to an Ordinary Meeting, to be decided by full Council. e. Councillor Greg Rogerson had a conflict of interest in development application as he received a \$1,500 donation from Company B on 16 April 2012. f. By sending the email to the Council Employee on 31 July 2019 to request the “call in”, Councillor Greg Rogerson influenced a local government employee to deal with the development application in a particular way, namely to remove the decision-making authority from a council officer and instead bring the decision to a Council meeting. g. This conduct contravened section 175I(3) of the Act and was therefore inconsistent with the requirement of ethical and legal behaviour of councillors and local government employees.
<p>Decision (Allegation Two):</p>	<p>The Tribunal has determined, on the balance of probabilities, that the allegation that on 20 September 2019, the Respondent engaged in misconduct as defined in section 150L(1)(b)(i) when he breached the trust placed in him as a councillor, either knowingly or recklessly, in that his conduct was inconsistent with local government principle 4(2)(e) being ethical and legal behaviour of councillors, when, with a conflict of interest in a matter, he influenced or attempted to influence a local government employee in a manner contrary to section 175I(3) is not sustained.</p> <p>The particulars of the alleged conduct which could amount to misconduct are as follows:</p> <ul style="list-style-type: none"> a. On 19 September 2019, Council considered the Development Application (DA). b. Councillor Greg Rogerson informed the meeting of a personal interest in relation to the matter. c. By way of two Council Resolutions, the remaining councillors resolved that Councillor Greg Rogerson did have a personal interest in the matter and must leave the meeting for the discussion and vote.

	<ul style="list-style-type: none"> d. Following Councillor Greg Rogerson’s departure from the meeting, the remaining councillors considered the matter and resolved to refuse the application. e. On 20 September 2019, Councillor Greg Rogerson sent an email to the CEO, expressing his disappointment at being excluded from the discussion, debate and deliberation of the DA, and not having had the opportunity to put forward an alternative motion in relation to the item. f. The email from Councillor Greg Rogerson to the CEO on 20 September 2019, concluded with Councillor Greg Rogerson stating he requested the right to lodge a Rescission Motion. g. By sending the email to the CEO on 20 September 2019 requesting the right to lodge a Rescission Motion and have the DA placed on the agenda for the next Council meeting, Councillor Greg Rogerson influenced or attempted to influence a local government employee to deal with the development application in a particular way namely, to have the council decision made on 20 September 2019 (that is, to refuse the application) rescinded and reconsidered. h. This conduct contravened section 175I(3) of the Act and was therefore inconsistent with the requirement of ethical and legal behaviour of councillors and local government employees.
<p>Reasons:</p>	<p>Allegation One</p> <ul style="list-style-type: none"> 1. The Respondent was alleged to have influenced a Council employee in the dealings with the Development Application (DA), in circumstances where the Respondent held a conflict of interest because of one of the parties to the DA. 2. It was not contested that the Respondent had a conflict of interest, nor was it contested that he properly disclosed this conflict during the Council meeting of 19 September 2019. 3. However, the mere fact that Council delegates much of its decision-making powers in relation to DAs does not prevent Council from exercising that power itself. This is especially the case where Councils routinely empower Councillors to “call-in” DAs for consideration by an Ordinary General Meeting of Council at any time and for any reason. 4. The Respondent did not threaten to call-in the DA to influence the Council employee to make a particular decision – this would have been unlawful. Instead, he exercised a power which he held in his position as Councillor, and did so in a way consistent with the power’s previous use. 5. Once exercised, the power of the “call-in” was such that the Council employee was not influenced, as the employee no longer had any power to exercise or decision to make. Further, the Respondent could not “influence” the Council employee to deal with the matter in any

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	<p>different way, as the dealings with DAs are prescribed under Queensland law (i.e., the <i>Planning Act 2016</i> (Qld)).</p> <p>6. Allegation One was not made out.</p> <p>Allegation Two</p> <ol style="list-style-type: none"> 1. The Councillor was also alleged to have influenced the CEO by requesting the right to bring a Recission Motion before Council regarding the rejected DA. 2. To be considered “influence”, the Respondent needed to be trying to have the CEO deal with the matter in a way other than the way it was progressing. In this case, the CEO was not a decision-maker: he had no power or authority to “overturn” the DA, nor was the CEO involved in the DA process in any way. Therefore, the Respondent could not “influence” the CEO to deal with the DA in a particular way (or indeed in any way) because the CEO was not empowered to do so. 3. Nor did the Respondent have the capacity to “influence” the CEO to exercise any power as to the acceptance of the recission motion. The Applicant freely admits that the power to accept or refuse whether a recission motion would even be considered sat with Council, and not the CEO, and even if Council accepted the motion for consideration, it still could have been voted down. 4. In any event, the Respondent withdrew his request before seeking the CEO’s signature (which was required before the Motions could be tabled in Council). The Respondent simply indicated he “<i>requested the right to lodge a Recission Motion</i>” but did not actually go through the formal process to do so. 5. Allegation Two is not made out.
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	19 June 2023
Order/s and/or recommendations:	As the Tribunal has found that the Councillor did not engage in misconduct, section 150AR(1) of the Act is not enlivened. Therefore, the Tribunal makes no orders in respect of the Councillor.