

Councillor Conduct Tribunal: Councillor misconduct complaint – decision and summary of reasons for councillor conduct register

Local Government Act 2009: Sections 150AS(2)(b)(iii) and (4) and s150DY.

1. Complaint:

CCT Reference	F19/2810
Subject councillor:	Councillor Geoff McDonald
Council	Toowoomba Regional Council

2. Decision (s150AQ):

Date:	17 April 2019
Decision:	<p>It is alleged that on 14 November 2018, Councillor Geoff McDonald, a councillor of Toowoomba Regional Council, engaged in misconduct as defined in section 176(3)(b)(ii)¹ of the <i>Local Government Act 2009</i>, 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> <ol style="list-style-type: none"> a. On 14 November 2018, a meeting of the Economic Development Committee was held. One of the matters on the Committee agenda was the Temporary Toowoomba CBD Development Incentive Policy Amendments. b. The matter was not an ordinary business matter. c. Councillor McDonald attended the Committee meeting. d. Councillor McDonald is a part-owner of two properties, namely [REDACTED], Toowoomba and [REDACTED], Toowoomba. e. At the Committee meeting of 14 November 2018, Councillor McDonald did not inform the meeting of his personal interest in the matter.

¹ It is noted that this provision is no longer in force, but is applied by section 322 of the Act in the circumstances of this matter, as further outlined in the decision.

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	<p>f. Councillor McDonald's personal interest did not arise merely because of the circumstances specified in section 175D(2)(a) or (b) of the <i>Local Government Act 2009</i> (the Act).</p> <p>g. Councillor McDonald's personal interest in the matter could be deemed as being a real conflict of interest or a perceived conflict of interest because [REDACTED], Toowoomba and [REDACTED], Toowoomba, are located within the area that the Toowoomba CBD Development Incentive Policy (the Incentive Policy) applies.</p> <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 McDonald did not inform the meeting of his personal interest in the matter as required by section 175E of the Act. The Tribunal has determined, on the balance of probabilities, that the allegation, as described above, has been sustained.</p>
<p>Reasons:</p>	<p>a. The amendments to the Toowoomba CBD Development Incentive Policy considered on 14 November 2018 by the council's Economic Development Committee, involved amending the boundary of the incentive area and extending the incentive period to 30 June 2021.</p> <p>b. The Tribunal was satisfied that the decision as to 'amending the boundary of the incentive area' as proposed did not raise a real or perceived conflict of interest situation for Cr McDonald, as he had no interest in any property in the proposed new inclusion area.</p> <p>c. The Tribunal did find that the issue of 'extending the incentive period to 30 June 2021', did raise a perceived conflict of interest, (relevant to the application of section 175E(1)(c)(ii) of the Act), in that the councillor could reasonably be taken to have a conflict of interest in the matter.</p> <p>d. Even though there was no evidence before the Tribunal that Cr McDonald had applied to obtain the benefit of the Incentive Policy in respect of either of the properties, in the past and there was no indication he intended to apply in the future, it remained the fact that the extension of the incentive period until 30 June 2021, benefited or potentially benefited the councillor, by allowing him, as a property owner in the relevant area, the opportunity to apply for the incentive anytime within the extended two year period.</p> <p>e. Section 4(2) of the Act sets out certain local government principles, including "ethical and legal behaviour of councillors and local government employees" (s4(2)(e)). The conduct is not consistent with local government principle 4(2)(e), in that by Cr McDonald did not act in accordance with section 175E(2) of the Act, to inform the meeting of his personal interest.</p>

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	f. It is considered that such non-compliance does amount to a breach of the trust placed in Cr McDonald in his role as a Councillor, which constitutes misconduct as defined in former s176(3)(b)(ii) of the Act.
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	17 April 2019
Order/s and/or recommendations:	The Tribunal orders pursuant to s150AR(1)(b)(i) of the Act, that Cr McDonald make a public admission that the councillor engaged in misconduct at an ordinary meeting of the Toowoomba Regional Council. The Tribunal notes Cr McDonald's apology to the Council at its Ordinary Meeting on 20 November 2018. In the circumstances, the Tribunal accepts the action already taken by Cr McDonald to be compliance with the Order (as above) that it has made.
Reasons:	<p>The Tribunal noted that Councillor McDonald had apparently received training on his obligations in regard to conflicts of interest and should reasonably have been aware of his obligations to inform the Committee meeting of his personal interest in this instance, as he had previously declared his interest and removed himself from previous meetings in regard to the Incentive Policy.</p> <p>Mitigating factors considered included:</p> <ul style="list-style-type: none"> • The failure to make the required declaration of personal interest at the Committee meeting appears to have been due to an inadvertent error, or lack of appropriate attention to the matters being considered by the Committee, as the councillor had made declarations of a conflict of interest or material personal interest on all previous occasions when the Incentive Plan was discussed. • Cr McDonald self-identified the omission of the declaration and sought to bring it to the attention of the Chief Executive Officer at an early stage. • Councillor McDonald has demonstrated insight and awareness as evidenced by his prompt apology to the Council at an Ordinary Meeting of Council on 20 November 2018. • There has been no evidence that the Councillor has sought to take advantage of the Incentive Policy. • The one previous case of sustained misconduct against Cr McDonald was a relatively minor issue.

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	<ul style="list-style-type: none">• Councillor McDonald has offered full and early co-operation in the handling of the matter by the Independent Assessor.
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