

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:

CCT Reference	F20/1794
Subject Councillor	██████████ (the councillor)
Council	Cairns Regional Council

2. Decision (s150AQ):

Date:	13 April 2021
Decision:	<p>The Tribunal has determined, on the balance of probabilities, that:</p> <p>Allegation One, Councillor ██████████, a councillor of Cairns Regional Council, engaged in misconduct pursuant to section 176(3)(b)(ii) of the Local Government Act 2009, in that her conduct involved a breach of the trust placed in the councillor, in that it was inconsistent with the local government principles in section 4(2)(a) ‘transparent and effective processes, and decision- making in the public interest’ and section 4(2)(e) ‘ethical and legal behaviour of councillors and local government employees’ in that Councillor ██████████ did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act, is not sustained.</p> <p>Allegation Two, that on 22 May 2013, Councillor ██████████ a councillor of Cairns Regional Council, engaged in misconduct pursuant to section 176(3)(b)(ii) of the Local Government Act 2009, in that her conduct involved a breach of the trust placed in the councillor, in that it was inconsistent with the local government principles in section 4(2)(a) ‘transparent and effective processes, and decision- making in the public interest’ and section 4(2)(e) ‘ethical and legal behaviour of councillors and local government employees’ in that Councillor ██████████ did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act, is not sustained.</p>

Councillor Conduct Tribunal

GPO Box 10059, City East, Q 4002

Allegation Three, that on 26 June 2013, Councillor ██████████ a councillor of Cairns Regional Council, engaged in misconduct pursuant to section 176(3)(b)(ii) of the Local Government Act 2009, in that her conduct involved a breach of the trust placed in the councillor, in that it was inconsistent with the local government principles in section 4(2)(a) 'transparent and effective processes, and decision- making in the public interest' and section 4(2)(e) 'ethical and legal behaviour of councillors and local government employees' in that Councillor ██████████ did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act, is not sustained.

Allegation Four, that on 26 March 2014, Councillor ██████████ a councillor of Cairns Regional Council, engaged in misconduct pursuant to section 176(3)(b)(ii) of the Local Government Act 2009, in that her conduct involved a breach of the trust placed in the councillor, in that it was inconsistent with the local government principles in section 4(2)(a) 'transparent and effective processes, and decision- making in the public interest' and section 4(2)(e) 'ethical and legal behaviour of councillors and local government employees' in that Councillor ██████████ did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act, is not sustained.

Allegation Five, that on 30 April 2014, Councillor ██████████ a councillor of Cairns Regional Council, engaged in misconduct pursuant to section 176(3)(b)(ii) of the Local Government Act 2009, in that her conduct involved a breach of the trust placed in the councillor, in that it was inconsistent with the local government principles in section 4(2)(a) 'transparent and effective processes, and decision- making in the public interest' and section 4(2)(e) 'ethical and legal behaviour of councillors and local government employees' in that Councillor ██████████ did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act, is not sustained.

Allegation Six, that on 28 May 2014, Councillor ██████████, a councillor of Cairns Regional Council, engaged in misconduct pursuant to section 176(3)(b)(ii) of the Local Government Act 2009, in that she contravened section 173(4) of the Act, by failing to deal with a real or perceived conflict of interest in a transparent and accountable way her conduct involved a breach of the trust placed in the councillor, in that it was inconsistent with the local government principles in section 4(2)(a) 'transparent and effective processes, and decision- making in the public interest' and section 4(2)(e) 'ethical and legal behaviour of councillors and local government employees' in that Councillor ██████████ did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act, is not sustained.

Allegation Seven, that on 27 June 2012, Councillor ██████████, a councillor of Cairns Regional Council, engaged in misconduct pursuant to

Councillor Conduct Tribunal

GPO Box 10059, City East, Q 4002

	<p>section 176(3)(b)(ii) of the Local Government Act 2009, in that she contravened section 173(4) of the Act, by failing to deal with a real or perceived conflict of interest in a transparent and accountable way her conduct involved a breach of the trust placed in the councillor, in that it was inconsistent with the local government principles in section 4(2)(a) 'transparent and effective processes, and decision- making in the public interest' and section 4(2)(e) 'ethical and legal behaviour of councillors and local government employees' in that Councillor ██████ did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act, is not sustained.</p> <p>Allegation Eight, that on 25 June 2014, Councillor ██████, a councillor of Cairns Regional Council, engaged in misconduct pursuant to section 176(3)(b)(ii) of the Local Government Act 2009, in that her conduct involved a breach of the trust placed in the councillor, in that it was inconsistent with the local government principles in section 4(2)(a) 'transparent and effective processes, and decision- making in the public interest' and section 4(2)(e) 'ethical and legal behaviour of councillors and local government employees' in that Councillor ██████ did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act, is not sustained.</p> <p>Allegation Nine, that on 26 September 2012, Councillor ██████ a councillor of Cairns Regional Council, engaged in misconduct pursuant to section 176(3)(b)(ii) of the Local Government Act 2009, in that her conduct involved a breach of the trust placed in the councillor, in that it was inconsistent with the local government principles in section 4(2)(a) 'transparent and effective processes, and decision-making in the public interest' and section 4(2)(e) 'ethical and legal behaviour of councillors and local government employees' in that Councillor ██████ did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act, is not sustained.</p> <p>Allegation Ten, that on 27 February 2013, Councillor ██████, a councillor of Cairns Regional Council, engaged in misconduct pursuant to section 176(3)(b)(ii) of the Local Government Act 2009, in that her conduct involved a breach of the trust placed in the councillor, in that it was inconsistent with the local government principles in section 4(2)(a) 'transparent and effective processes, and decision-making in the public interest' and section 4(2)(e) 'ethical and legal behaviour of councillors and local government employees' in that Councillor ██████ did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act, is not sustained.</p>
Reasons:	<ol style="list-style-type: none"> On 12 March 2012 the Councillor received an electoral donation of \$900 from a company ("Company A"), which she disclosed in an Electoral Commission of Queensland (ECQ) Disclosure Return. The

	<p>director of Company A was also a director of at least two other companies known to Council (the Related Entities).</p> <ol style="list-style-type: none"> 2. The Councillor attended a series of Council meetings between 27 June 2012 and 25 June 2014, during which she voted on Council decisions in relation to: <ol style="list-style-type: none"> a. Awarding a contract to the Related Entities (Allegations One to Six); b. Accepting the Related Entities as first preference for a preferred supplier arrangement (Allegations Seven and Eight); c. Noting a progress report for a project in which one of the Related Entities was the contractor (Allegation Nine); and d. Approving a preferred supplier arrangement which included a register of pre-qualified suppliers with one of the Related Entities being one of five contractors recommended for inclusion on the register (Allegation Ten). 3. The Councillor claimed that at the time of the donation, she was not aware that the director, secretary and shareholder of Company A was also the director of the Related Entities. She also had not ever heard of Company A either before or after the 2012 local government elections, or during the periods of alleged misconduct. 4. In around May 2019 the Councillor undertook some searches relating to Company A prior to the Council Ordinary Meeting of 22 May 2019. The Councillor learned that the director of Company A was the same as the related entities. The Councillor self-reported her conduct to the Applicant's office on 21 May 2019, and also declared a conflict of interest with the Related Entities at the Council meeting on 22 May 2019. 5. The Councillor maintained her position that she did not know anything about Company A or the Related Entities, did not suspect at any time the connection between these companies and her electoral donation, and had never personally dealt with any of the companies personally. 6. The Councillor received a financial benefit of \$900 towards her electoral campaign from Company A, controlled by a person who also held control of the Related Entities. These entities were subsequently subject to decisions made by Council at meetings attended by the Councillor, who voted on such resolutions as and when Council made them. 7. The Tribunal was satisfied that there was a "<i>real sensible possibility of conflict</i>" and this created a perception that the Councillor might not bring an impartial view to the decision/s being made. A conflict of interests exists where "<i>the applicant's private interests had the</i>
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Councillor Conduct Tribunal

GPO Box 10059, City East, Q 4002

appearance of interference with or influence over her performance of her duties, or that there was a potential for that to occur”.

8. The Tribunal also found that the Councillor did not deal with the conflict in a transparent and accountable way. There is of course a practical difficulty of complying with that requirement where there is a perceived conflict of interest, but a Councillor is not aware of it. However, this difficulty may no longer arise given recent amendments to the Act.
9. In considering whether the conduct was a breach of trust, a breach of trust does not need to be directly related to the official’s role or involve an abuse of power reposed in the official. Instead, the test involves whether or not the conduct has the potential to undermine public confidence in the integrity of the person, in the role they are occupying.
10. In *Tozer* this Tribunal said *“not every breach of a provision of the Act will be considered serious enough to amount to misconduct, having regard to the circumstances and any exculpatory considerations”.*
11. There is no hard and fast ruling on what this Tribunal considers an “exculpatory consideration”. However, by reference to the local government principles, misconduct must involve *“undermining public confidence in the integrity of the person”.* When the Councillor was made aware of the connection between Company A and the Related Entities, she immediately:
 - a. Identified all prior Council meetings at which she had potentially failed to disclose an interest;
 - b. Declared conflicts in respect of the Related Entities in further Council meetings; and
 - c. Notified the Office of the Independent Assessor, even though she might have then faced a penalty.
12. Though her behaviour does not excuse her earlier failures around her election disclosures, it gave the Tribunal faith that public confidence in her integrity can be maintained. The Councillor did not seek to shirk or avoid her responsibilities, nor did she attempt to conceal them. Instead, she confronted them and took appropriate actions to attempt to mitigate them.
13. On the evidence presented to it, the Tribunal cannot be satisfied on the balance of probabilities that the Councillor has breached the trust reposed in her as Councillor, and so found the IA has not discharged its onus of proof as required by section 150AN(2) of the Act. To make a misconduct determination, the Tribunal must be presented with a strength of evidence necessary to establish satisfaction on the balance

Councillor Conduct Tribunal

GPO Box 10059, City East, Q 4002

	of probabilities but having regard to the seriousness of consequences flowing from such a determination.
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	13 April 2021
Order/s and/or recommendations:	Pursuant to section 150AQ(1)(a)(ii) of the Act, the Tribunal has found the Councillor did not engage in misconduct on any of Allegations One to Ten.
Reasons:	N/A