



Crime and Corruption Commission
QUEENSLAND

Operation Yabber

An investigation into allegations relating
to the Gold Coast City Council

Investigation Report

January 2020





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January 2020

The Honourable Curtis Pitt MP
Speaker of the Legislative Assembly
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Speaker

On 21 January 2020, the Parliamentary Crime and Corruption Committee provided the Crime and Corruption Commission with a direction pursuant to section 69(1)(b) of the *Crime and Corruption Action 2001* to give the report to the Speaker of the Legislative Assembly.

Accordingly, the Crime and Corruption Commission hereby furnishes to you its report, *Operation Yabber – An investigation into allegations relating to the Gold Coast City Council*.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. MacSporran', followed by a long horizontal line extending to the right.

A J MacSporran QC
Chairperson, CCC

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Foreword

The Crime and Corruption Commission (CCC) remains focused on integrity issues in the local government sector. This has been necessary as the CCC continues to receive complaints involving allegations of corrupt conduct by local government employees and councillors.¹

In August 2018, in my foreword to the report regarding Operation Windage, I observed that “local governments have an enormous impact on the daily lives of Queenslanders”. This observation continues to be accurate. Citizens rely on local government authorities to deliver important services and infrastructure. I firmly believe that citizens want service and infrastructure delivery to be carried out within a framework of ethical decision-making, good governance and accountability. They are astute enough to know that they suffer when this does not occur and diligent enough to insist that public sector agencies remain vigilant to prevent corruption and maladministration and take decisive, proportionate action when necessary.

The last couple of years have seen a lot of activity in the local government sector in Queensland. There has been significant legislative reform. The Office of the Independent Assessor (OIA) has been created. Public sector integrity agencies, including the CCC, the OIA, the Queensland Integrity Commissioner, the Queensland Ombudsman and the Queensland Audit Office continue to be active in the local government space, including by investing resources in prevention and education initiatives. These initiatives are vitally important.

Unfortunately, the significant work referred to above will only be undermined, and the legitimate expectations of citizens will be frustrated, if mayors, councillors and senior local government officers do not take responsibility for embedding and growing an ethical culture in their organisation, implementing and enforcing sound governance frameworks, and taking action where standards are not met. Conflicts of interest are a prime example of where vigilance must be maintained. It remains disappointing that conflicts of interest in the public sector generally, and in the local government sector specifically, continue to create corruption risks by not being declared and dealt with appropriately.

I urge all councillors, council employees and ratepayers to read this report.

A J MacSporran QC
Chairperson

¹ In 2017/18, the CCC received 346 complaints against councillors (including mayors) and/or council employees; in 2018/19, 436; and in 2019/20 (year to date), 229.



1 – Introduction

The Crime and Corruption Commission's (CCC's) focus on the local government sector has continued over a number of years and is evidenced by, amongst other activity, public reports such as *Operation Belcarra – A blueprint for integrity and addressing corruption risk in local government*² (the Belcarra Report) and *Culture and corruption risks in local government – Lessons from an investigation into Ipswich City Council (Operation Windage)*³ (the Windage Report).

The Windage Report spoke of serious and widespread governance failures and cultural issues at the Ipswich City Council and was issued following the charging of numerous elected officials and senior council officers with serious criminal offences. The situation at Ipswich City Council was serious indeed, and led to the Council being dismissed by the State Government and an interim administrator being appointed.

It should be acknowledged at the outset that the CCC did not find such serious and systemic governance and cultural issues at the Gold Coast City Council (the GCCC) and the GCCC should not be compared in this regard with Ipswich City Council. However, complaints to the CCC regarding the GCCC have been the subject of significant media attention and public commentary. The CCC has itself issued two (2) media releases in relation to the investigation of those complaints.^{4,5} In the circumstances, the CCC has decided that it is in the public interest to publish a report dealing with some aspects of its investigation into complaints regarding the GCCC. The reasons for this decision are dealt with further below.

Three main issues arose during the investigation that concerned the CCC. Firstly, the failure to properly declare and manage conflicts of interest. As the CCC has recently pointed out, failing to declare and properly manage a conflict of interest creates a corruption risk. Further,

In addition to creating a corruption risk, failing to properly declare and manage a conflict of interest undermines perceptions of the integrity of processes, and creates a lack of confidence in processes and the outcomes they lead to. And the very legitimacy of projects can be undermined.

Properly dealing with conflicts of interest is integral to the effective and efficient functioning of the public sector.

The Queensland community expects all people involved in public sector administration to adhere to the highest standards of integrity in dealing with conflicts of interest.

Moreover, the community expect the highest standards of ethical leadership – both political and within public sector agencies.⁶

The CCC investigation found that the Mayor's Chief of Staff failed to properly declare conflicts of interest and that the conflicts were not properly managed. The GCCC Chief Executive Officer (CEO) attempted to deal with this issue to the extent of escalating the matter to a disciplinary process. However, the CCC investigation found that the Mayor frustrated this process by giving a direction to

2 <https://www.ccc.qld.gov.au/sites/default/files/2019-08/Operation-Belcarra-Report-2017.pdf>

3 <https://www.ccc.qld.gov.au/sites/default/files/Docs/Publications/CCC/Culture-and-corruption-risks-in-local-government-Lessons-from-Ipswich-City-Council-Operation-Windage-Report-2018.pdf>

4 <https://www.ccc.qld.gov.au/news/no-corrupt-conduct-identified-black-swan-lake-or-waterglow-development-decisions>

5 <https://www.ccc.qld.gov.au/news/ccc-finalises-gold-coast-city-council-investigation-and-determines-issue-public-report>

6 <https://www.ccc.qld.gov.au/news/ccc-determines-not-investigate-deputy-premier-calls-improvements-cabinet-processes-and>



the CEO to cease the disciplinary process, effectively protecting the Chief of Staff from potential disciplinary action. This was the second main issue of concern to the CCC.

Thirdly, the CCC was also concerned with the manner and nature of the interaction of the Chief of Staff with other council officers with respect to the carrying out of council business. The CCC takes the view that the interactions, in many cases, represented inappropriate attempts to influence council decision-making.

Decision to issue a public report

In relation to corruption, the *Crime and Corruption Act 2001* (the CC Act) sets out the roles, responsibilities and functions of the CCC, which include:

- to continuously improve the integrity of, and to reduce the incidence of corruption in, the public sector: s. 4(1)(b)
- helping to prevent corruption (s. 23) by, amongst other things, reporting on the ways to prevent corruption: s. 24(i)
- to raise standards of integrity and conduct in units of public administration: s. 33(1)(a)
- to investigate and otherwise deal with conduct liable to allow, encourage or cause corrupt conduct: s. 33(2)(a)(i) and
- the CCC has an overriding responsibility to promote public confidence in the integrity of units of public administration: s. 34(d).

The CCC does not publish reports on every matter it assesses or investigates. In this case, the CCC decided to issue a public report on this matter in order to contribute to the discharge of its roles, responsibilities and functions by:

- identifying and exposing corruption risks that arise when governance obligations and usual protocols pertaining to local government are ignored
- reminding public officials and elected officials of the importance of transparency and accountability
- making recommendations to government for reform of legislation.

This report is published under section 69 of the CC Act.

Under the CC Act, the CCC must act independently, impartially and fairly having regard to the purposes of the CC Act and the importance of protecting the public interest.⁷ The CCC must also act in accordance with the *Human Rights Act 2019* (the HR Act) and must not act or make a decision in a way that is not compatible with human rights or, in making a decision, fail to give proper consideration to a human right relevant to the decision.⁸ The CCC acknowledges the publication of this report is likely to engage human rights in relation to equal protection of the law without discrimination⁹, taking part in public life¹⁰ and privacy and reputation.¹¹ Having regard to the clear statutory basis and reasons for the publication of this report, together with the measures adopted to ensure fairness with respect to the content of the report¹², the CCC considers the decision to publish

7 Section 57 CC Act.

8 Section 58 HR Act.

9 Section 15(3) and (4) HR Act.

10 Section 23 HR Act.

11 Section 25 HR Act.

12 Including revealing the identity of relevant persons only when it is necessary to understand and/or give context to the report; the procedural fairness process; and the inclusion of the content set out under the heading 'Caution regarding the drawing of adverse inferences and the fact that proceedings and processes remain unresolved', below.



the report is compatible with human rights in that it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.¹³

Procedural fairness process

As mentioned above, the CCC has a statutory duty to act independently, impartially and fairly, in the public interest, having regard to the purposes of the CC Act, and in accordance with the HR Act. Accordingly, for the purpose of procedural fairness, the CCC gave the draft report (or relevant parts of it) to people and organisations referred to in it (whether those people or organisations were specifically identified or not) where those references may be viewed as adverse, and invited them to make submissions prior to the CCC determining the final form of the report. Respondents could provide confidential or non-confidential submissions. The CCC indicated to respondents that non-confidential submissions may be annexed to the final report, while confidential submissions would be noted as received but not attached to the final report. A redacted copy of the non-confidential submission is included in Appendix 1.

The CCC's jurisdiction

The CCC has the responsibility to investigate matters that may involve corrupt conduct by anyone who holds an appointment in a unit of public administration in Queensland. A person holds an appointment in a unit of public administration if they hold any office, place or position in that unit, whether the appointment is by way of election or selection.¹⁴

Local government councillors (including mayors) are such office holders. As there is no disciplinary standard prescribed by the *Local Government Act 2009* for the removal of a councillor of local government, a decision about the termination of a councillor's services for a disciplinary breach is entirely a discretionary matter for the Minister and Governor in Council.¹⁵ Hence, councillor disciplinary breaches do not fall within the definition of corrupt conduct under the CC Act and "corrupt conduct" by elected representatives, such as local government councillors, is limited to circumstances where the alleged conduct would, if proved, amount to a criminal offence. The term "criminal offence" includes simple offences such as breaches of the offence provisions of the *Local Government Act 2009*.

Crime and Corruption Act 2001 – "corrupt conduct"

Under the CC Act, corrupt conduct, at the time when the investigation commenced, was defined as conduct relating to the performance of a public sector official's duties that:

- adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of—
 - a unit of public administration; or
 - a person holding an appointment; and
- results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned above in a way that—
 - is not honest or is not impartial; or
 - involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or

¹³ Section 8(b) HR Act.

¹⁴ Section 21 CC Act.

¹⁵ Section 122 *Local Government Act 2009*.



- involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; and
- is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person; and
- would, if proved, be a criminal offence; or a dismissible disciplinary breach.¹⁶

Background

The CCC commenced Operation Yabber in August 2018 to investigate allegations of corrupt conduct relating to senior employees and councillors at the GCCC. The scope of the operation was wide and considered numerous allegations from multiple complaints.

Allegations examined during Operation Yabber broadly included:

- Failing to declare conflicts of interest across various issues involving numerous councillors and staff
- Voting on proposals when gifts and benefits were received from proposal applicants
- Voting on proposals while having a material interest in the outcome
- Acting in conflict with council policies and procedures
- Providing misleading information to council for self-benefit
- Misusing council funds
- Allegations relating to decisions involving Black Swan Lake and the Waterglow developments.

The CCC interviewed a number of people who had publicly and privately raised allegations of corrupt conduct relating to the GCCC, and also examined material not readily available to the public, including a significant volume of documentation.

Criminal proceedings have not been commenced

Police officers seconded to the CCC are able, in appropriate circumstances following investigations, to charge people with offences. This has occurred with respect to a number of CCC investigations into alleged corrupt conduct in local government authorities. However, charges have not resulted from Operation Yabber.

Charges that have resulted from other CCC local government authority investigations have included fraud, misconduct in relation to public office and official corruption. Those offences require sufficient evidence to prove that the alleged offender acted dishonestly or corruptly. Operation Yabber, which was an extensive investigation, did not uncover sufficient evidence in this regard.

¹⁶ Section 15 CC Act (as it then was). The changes to section 15 came into effect on 1 March 2019 and did not affect the investigation outcomes.



Referral to other agencies

In some instances, the conduct uncovered by the investigation justified referral to the Office of the Independent Assessor (OIA) or the GCCC. This has been indicated throughout the report, where relevant.

The OIA is able to take disciplinary action for misconduct, for which the standard of proof is the balance of probabilities, and also commence criminal proceedings for certain offences, for which the standard of proof is beyond reasonable doubt.

The matters referred to the OIA or GCCC as a result of Operation Yabber do not affect any person's entitlement to the presumption of innocence.

Caution regarding the drawing of adverse inferences and the fact that proceedings and processes remain unresolved

As indicated above, the CCC's investigation focused on council officers and councillors at the GCCC. A number of other people and organisations are referred to in this report, although not by name. In many instances, those people and organisations cooperated with the investigation. No adverse inferences should be drawn about those people and organisations.

As indicated in Mayor Tate's submission (annexed to this report), he denies any breach of council policies, inappropriate conduct and misconduct. He denies the allegations against him that are referred to in the report. Mayor Tate is entitled to the presumption of innocence.

The OIA is currently considering some matters and has not yet come to a conclusion about whether or not some of the referrals to it referred to in this report constitute inappropriate conduct or misconduct. Only one of the referrals has yet resulted in the OIA making a decision about whether or not the OIA will refer any allegation of misconduct to the Councillor Conduct Tribunal (CCT) or any allegation of inappropriate conduct to the GCCC for investigation and referral to the CCT. Moreover, the referral to the GCCC in relation to Mr Moran has not yet been resolved.

The CCC cautions against drawing adverse inferences against Mayor Tate and Mr Moran from the fact that any related proceedings or processes which might follow from the CCC's referral of matters to the OIA or GCCC remain unresolved.



2 – Issues and investigation outcomes

Allegations relating to the Mayor's Chief of Staff

During the course of the investigation, allegations were investigated about the conduct of Mayor Tom Tate (Tate) and of his Chief Of Staff, Wayne Moran (Moran). Particular concerns were raised in relation to:

- Moran involving himself in matters before Council that involved companies for whom Moran had previously performed paid work and/or whose directors had close personal relationships with Moran.
- Tate directing the CEO not to take disciplinary action against Moran for failing to declare a conflict of interest.
- Tate's misuse of section 170 (Giving Directions To Local Government Staff) of the *Local Government Act 2009* to direct the CEO in relation to a disciplinary process involving Moran.

The allegations brought to light the problematic nature of the relationships between the Mayor, his Chief of Staff, and the CEO, and the adverse impact those relationships had on the GCCC and its employees.

An outline of the evidence in relation to the allegations is given below.

Appointment of Moran as Chief of Staff

Moran was the campaign manager to Tate in the lead-up to the 2012 local government quadrennial election. Moran managed Tate's campaign via his business, Jacem Business Developments Pty Ltd (Jacem). Jacem has provided business consulting services across a number of industries including property development and campaign management. Analysis of Moran's business bank accounts show over \$200,000 was transferred from one of Tate's bank accounts to Moran's Jacem business account in the lead-up to the 2012 election.

After Tate's successful election campaign in 2012, Moran was offered the position of Chief of Staff to the Mayor. In an interview with the CCC, CEO Dale Dickson stated that a rudimentary process was undertaken. He said while the process dealt with the legal obligation to have a merit-based appointment, the legislation did not take into account the practical realities of political appointees. The CEO said Tate made it clear to him he wanted Moran in the organisation. Moran was appointed to the position and signed a contract on 10 May 2012. A further contract was entered into in 2016.

Moran is not an elected official. As Chief of Staff and under the terms of his contract of employment, he is an employee of GCCC and reports to (or through to) the CEO, not to the Mayor. The CEO and not the Mayor is responsible for his performance appraisal and for any disciplinary responsibilities. Moran is bound by all GCCC policies, procedures, the Code of Conduct and his contractual obligations.



Moran's contractual obligations

Moran's contract of employment includes the following:

3. Executive's duties

3.1. Duties

The Executive will:

- (a) Perform the duties set out in Schedule 1 and such other duties as Council may direct from time to time;*
- (b) Report directly to Council, or Council's delegate from time to time, as notified by Council;*
- (c) Serve Council faithfully and diligently;*
- (d) Act with professional skill with a view to promoting, advancing and improving the Business of Council;*
- (e) Refrain from acting, or being seen to act, in conflict with Council's best interests;*
- (f) Use the Executive's best endeavours to protect and promote Council's interests and reputation;*
- (g) Comply with all policies, procedures and reasonable and lawful directions of Council;*
- (h) Demonstrate commitment to Council; and*
- (i) Perform the Executive's duties with a high degree of quality.*

3.2. Compliance with law

The Executive represents and warrants that the Executive will at all times comply with all laws, regulations or standards relevant to the performance of the Executive's obligations under this Agreement.

Moran's contract of employment also requires that he:

not without the previous written consent of Council:

- (i) be employed in any way for any purpose whatsoever for any time (including outside of business hours) by any person, firm or body corporate other than Council; or*
- (ii) operate any business or trade on [his] own account or in partnership or as a director of any company.*

On 29 May 2012, shortly after Moran commenced as the Mayor's Chief of Staff, he sent CEO Dickson an email concerning his involvement with Jacem, which contained the following:

I am still untangling myself from Jacem Business Development Pty Ltd.

While I am doing some out of hours business development work for a number of clients (to finish some projects off) I realised that I need to have permission from you specifically to undertake such out of hours, non council role related work.

The work is in supporting/completing the existing work for clients. It is marketing/business development related. None of the clients are council related in any way shape or form.

Believe me, I would rather have it done with it that stage then be still mucking around with it but alas I don't want to let people down.

My wife will be taking over the far more dormant Jacem in the future, including becoming its sole director

Is this email request sufficient?



The CEO placed the email on Moran's personal file and in response he replied, *"That's fine, thanks Wayne. No need to do anything further. D."*

It is clear from ASIC searches conducted on 28 March 2019 that Moran, notwithstanding his statement to the CEO, remained a director of Jacem and at no time did he remove himself as a director of the company. Moran's statement to the CEO was misleading. He not only remained as a director but also performed paid work for Tate in relation to the 2016 quadrennial council election while still under contract with GCCC. Financial records show that Moran was paid \$4366.16 on 12 April 2016. The CCC did not uncover evidence to suggest Moran ever declared his ongoing involvement as a director of Jacem, nor the paid work he was doing for Tate in the lead-up to the 2016 election.

Moran's ongoing involvement with Jacem is particularly significant when considered in light of his involvement with property development consultants Company A and Company B, discussed later in this report.

GCCC conflicts of interest policy

The Chief of Staff, like any GCCC employee, is bound to adhere to the GCCC conflicts of interest policy. This policy requires employees to declare an actual, perceived or potential conflict of interest. The definitions provided to GCCC staff in policy are as follows:

- *An actual conflict of interest involves a direct conflict between current duties and responsibilities and existing private interests.*
- *A perceived or apparent conflict of interest can exist where it could be perceived, or appears, that private interests could improperly influence the performance of an employee's duties – whether or not this in fact the case.*
- *A potential conflict of interest arises where private interests could conflict with official duties in the future.*

There is a clear requirement in the policy for employees to avoid involvement in any activity that might give the appearance of a conflict of interest with respect to their duties. Employees must declare any conflict through their manager to the CEO.

Moran's conflicts of interest in relation to Company A and Company B

Some context

During the investigation, the CCC considered whether councillors or council officers were providing favourable treatment to firms representing development companies.

Evidence was uncovered during interviews with council staff that Moran, as the Mayor's Chief of Staff, would often contact GCCC department areas directly wanting to know about developments or he would arrange meetings with the developer's consultant, himself and a GCCC planner to work issues out. The CEO advised there were a lot of issues about the Chief of Staff's conduct in this regard that were brought to him by senior council officers.

The CEO said he considered Moran a high-risk individual and there had been quite a few occasions where Moran had involved himself in development-related issues, advocating certain outcomes and behaviours expected from the Council. The CEO said he had advised the senior council officers that Moran was not a decision-maker and had to be managed very carefully. The CEO told senior council officers not to accept situations where Moran may represent himself as speaking for the Mayor and requested his senior council officers, when confronted with such situations, to go to the Mayor or come to him.



Moran's relationship with Company A

Company A is a firm on the Gold Coast specialising in providing town planning and other services to the property development industry.

During the investigation a Notice to Discover was served on a Company A director. Among the information sought were all financial transactions and email communications between Company A and Jacem.

Evidence was collected showing that Moran, via his company Jacem, had performed paid work for or in connection with Company A. In the majority of instances, Jacem was directly engaged by a developer and formed part of a project team which also included Company A. In some instances, Jacem was engaged directly by Company A. Jacem received approximately \$75,000 between 2011 and 2013, with all payments being for work carried out prior to Moran taking up the position of Chief of Staff.

Also located were numerous examples from between 2011 and 2019 of Moran socialising, organising parties and lunches, discussing projects and sharing confidential information via email with Company A directors. By way of example, Moran regularly attended a yearly function held at a Company A director's private residence. CEO Dickson was not aware of any permission obtained by Moran to attend these functions during work hours.

In April 2012, in the weeks prior to Moran taking up the Chief of Staff Position, a Company A director advised Moran via email of a function invitation he had sent to Tate on behalf of a Company A client. The email shows Moran's willingness to try and influence Tate in support of friends at Company A just after Tate was successfully elected as Mayor in 2012. For completeness it is noted that Moran, at this time, had not yet commenced as Chief of Staff to Tate. In forwarding the email from the Company A director on 13 April 2012, Moran wrote to Tate:

Hi Tom,

[Company A director] is one of the "good guys" – I trust him completely.

I have had somewhat of a briefing on this stuff – basically if we do wind up with a staff accommodation problem post restructure, especially if the cultural centre plan requires an early exit from Evendale then this is a staff accommodation solution without impacting our city debt ratio.

Between 2012 and 2019, there were numerous examples of Company A directors seeking favour from Moran directly. In these cases, Company A were representing clients with matters before GCCC and required intervention to solve problems they were having.

For example, in a matter involving infrastructure credits Moran replied to a Company A director's request for assistance: *"pursuing this one for you mate... stand by for some calls from PET [Planning Environment and Transport, GCCC] on it"*. Another example was Moran's response to a request for assistance from a Company A director concerning a particular project that was being considered by council officers. Moran replied to the request: *"I'll stick my nose in."* In relation to that matter, the Company A director was not happy with council's response and he needed an intervention otherwise there would be significant delays and potential financial detriment.



Moran's reluctance to declare a conflict of interest in relation to Company A

The evidence of Moran's close relationship with Company A directors is particularly significant when considered in light of the numerous attempts CEO Dickson made to have Moran declare a conflict of interest. This issue, and the Mayor's intervention in this matter, is discussed later in the report. The correspondence between Moran and CEO Dickson relating to this issue occurred between August 2013 and February 2014. There is evidence of Moran sending emails to Company A directors about his disagreement with the CEO.

In an email dated 19 February 2019, Moran is discussing "new road" capital works with a Company A director. In the email, Moran thanks the Company A director for the information and writes:

...Sadly it seems its all starting to seriously fall on deaf ears....

Its getting too much for me to keep running up the ball against DD's [Dale Dickson's] forward pack with no Councillor back line to pass the ball to after the initial hit, after hit, after hit... .

Moran's admission to the CEO of association with Company A only extended to having performed work for the firm in the "distant past", prior to commencing work with GCCC. The CEO attempted in a series of memoranda and emails to have Moran comply with council policy and the Code of Conduct in declaring a conflict. In refusing to comply with the CEO's instruction, Moran cited legal advice obtained suggesting he did not have a conflict based on his past paid work for Company A, however it seems that Moran had failed to fully disclose the extent or nature of his relationship with the Company A directors.

Of concern is an email Moran drafted under Tate's signature block on 7 April 2017, urging the CEO not to include previous employers under the conflicts of interest policy. There is no evidence to suggest Tate sent this email onto the CEO, however it provides an indication of what Moran was willing to do to ensure he did not have to declare a conflict with Company A.

CCC investigators also uncovered evidence that Company A placed a close relative of Moran's at the company as part of an academic program, and sent congratulatory emails to Moran in relation to this work experience placement.

Moran's relationship with Company B

The CCC uncovered similar issues in relation to Moran becoming involved in development matters where the Company B director was the consultant. The Company B director is also the owner of Company B. The company specialises in project co-ordination including urban and regional planning, civil engineering, landscape and urban design, environmental management, surveying and spatial services.

The Company B director has undertaken a number of very large projects within the City of the Gold Coast and, on that basis, having contact with elected officials on behalf of his clients is not unusual. The concerning issue arises where there is evidence Moran has intervened on behalf of the Company B director in development-related matters but failed to declare their personal relationship to the relevant GCCC director or CEO.

Information was obtained by CCC investigators indicating the Company B director had a personal relationship with both Moran and Deputy Mayor Donna Gates. Examples include:

- The Company B director donated \$5940 to Cr Gates in the lead-up to the 2016 election. Information was provided to the CCC that big developers knew the Company B director was politically connected to the GCCC.
- Moran's personal relationship with the Company B director extended to them going on holidays together. An email dated 19 June 2018 from the Company B director to Moran titled



“Whitsundays and Jetski”, indicates Moran and the Company B director intended travelling on a holiday together to the Whitsunday Islands. Email evidence from January 2018 shows the Company B director attending meetings with Moran and one of his major clients. The Company B director also arranged to send mapping material directly to Moran for a meeting.

Email evidence also shows the Company B director using his relationship with Moran and Cr Gates to obtain benefits for his clients.

- On 19 January 2018, the Company B director sent correspondence to Moran and Cr Gates which contained:

Donna and Wayne,

They now have the application [a council officer] asked for. If you could help to keep the pressure on for approvals by next Wednesday it would be most appreciated by [Company B director's clients]. Many thanks and regards, [Company B director].

- An informal email dated 19 June 2018 demonstrates how the Company B director was able to dictate his own letter of support which Moran agreed to have Tate sign. The letter concerned a project the Company B director was managing. Following the Company B director's request, Moran replied, “... Write the guts of what you want in the Ltr and I'll get the Mayor to sign this week before he goes.” The Company B director then provided a return email to Moran with dot points outlining council's willingness to supply resources and support to the application.
- A further example shows the Company B director using his relationship with Moran to his benefit. The Company B director appeared to be able to dictate to the Chief of Staff how a matter would be handled by GCCC. This email concerned a particular project. The Company B director wrote

...Thought I would capitalize on your good work with [a client] and hit GCW [Gold Coast Water and Waste] with a similar email. It did the trick and next day met with 6 of them, they got conditions out next day. Put that pressure back on the Planners and we should be on track to get the three sets of approvals out by next Friday. See... you do good work!

- Moran's willingness to forward internal communications with the planning department to the Company B director is shown in an email dated 19 September 2017. It indicates that Moran was inquiring with the planning department on behalf of the Company B director and forwarding the response straight to the Company B director.

The CCC were unable to uncover any evidence of Moran declaring his close relationship with the Company B director.

There is further evidence of Moran using his corporate card when meeting with the Company B director. The handwritten notes for the acquittal of this expenditure are illegible.

While it is acknowledged that Company B consults on large projects in the GCCC area which may require the involvement of the Mayor, there are examples of overly familiar email correspondence between Moran and the Company B director. The issue in this instance is the undeclared private relationship Moran has with the Company B director coupled with the level of assistance Moran provided to the Company B director concerning official council matters. The Company B director operates a very successful business and, according to a witness interviewed, has a reputation in the market of having access to government figures. It is difficult to place a value on the prestige the Company B director enjoys in the market due to this access, however it is clear that Moran has assisted the Company B director to expedite the Company B director's clients' projects.



Mayoral use of directions powers to prevent disciplinary action against Moran

The CCC has examined an allegation that Tate used his directions powers under section 170 of the *Local Government Act 2009* to ensure his Chief of Staff could not be disciplined. The provision allows the Mayor to give directions to the CEO as long as they are not inconsistent with a resolution, or a document adopted by a resolution, of the local government. However, the implications of the use of this power by the Mayor to ensure that a senior council employee, who was also his campaign manager, could not be disciplined by the CEO (to whom that staff member reported) has caused the CCC to make a recommendation in relation to section 170. This will be further discussed in Chapter 3.

Between 2013 and 2015, CEO Dickson commenced a long process of requiring Moran to declare conflicts of interest. These attempts were made by a series of emails and memoranda. Relevant emails and memoranda involving Moran, Tate and the CEO are annexed to this report as Appendix 2.

The CEO had become aware via an internal senior council officer that Moran, through his business Jacem, had performed past paid work for Company A prior to becoming the Mayor's Chief of Staff. One of the issues causing the CEO to look at the Moran/Company A relationship concerned a particular development in 2015. As Moran was involving himself in a development before council which Company A was also involved in as a consultant, the CEO requested Moran to declare a conflict. It is clear in the correspondence that Moran denied he had any conflict of interest and played down the work he had done for Company A. Moran asserted he had nothing to declare, was argumentative with the CEO and would not comply.

Moran assured Dickson that he had "*no private professional association with [Company A] since joining the City of Gold Coast*" (May 2012). Moran outlined to the CEO that he had complied with all State laws concerning conflicts of interests and he had reviewed his response with the Mayor, who agreed he had responded correctly. In the CCC's view, had Moran declared a conflict he would, in all likelihood, have been prevented from involving himself in matters associated with Company A.

CEO attempts to discipline Moran

On 16 November 2015, CEO Dickson attempted to discipline Moran for failing to declare a conflict of interest while being involved in a matter involving Company A. Several emails were sent to Moran outlining his obligation to declare conflicts of interest under GCCC policy, and the need for Moran to act professionally to ensure community trust and confidence in the Mayor's office. When Moran maintained his position and refused to declare a conflict of interest, the CEO issued him with a show cause letter for disciplinary action. CEO Dickson also explained to Moran that it was inappropriate to involve the Mayor in the matter.

On 2 December 2015, Moran obtained legal advice regarding having performed past paid work for Company A and whether he had a conflict of interest. The legal advice indicates that Moran did not instruct his legal counsel regarding the extent of his relationship with Company A directors:

I do not see how it can be reasonably asserted that the mere fact you have received remunerative work [Company A] (sic.) in the past, on factually unrelated matters, in circumstances where that has not occurred since you took up your employment with the Council, and in circumstances where there is no subjective or objective expectation that you will receive such work in the future (as you instruct) leads to the conclusion that you have or should be taken to have some form of personal or commercial "loyalty" to [Company A] which is capable of coming into conflict with the duties imposed on you by s13(2) of the LGA.

There was no mention of the relationship Moran had with Company A directors, including the numerous social and email interactions, and Company A placing Moran's close relative at the company.



Mayor issues direction to CEO about disciplinary action

Tate then involved himself in the matter. On 7 December 2015, Tate signed an official direction letter to the CEO entitled “Show Cause Action – Chief of Staff – Direction”, which contained the following content:

I have reviewed the legal opinion obtained by my Chief Of Staff on his situation and am satisfied by its content. I therefore, direct that you accept the response from Mr Moran and that no further action be taken in regards to your “show cause” on Mr Moran, bringing this matter to a close.

According to the CEO, Tate never showed the legal advice to him but rather relied on the above direction in an attempt to finalise the matter.

A further letter dated 11 December from Tate to CEO Dickson entitled “Show Cause Action – Chief of Staff – Direction” has the following content:

I asked Wayne Moran today if he had received confirmation from you that the “show cause” matter had been closed as I had directed you to do earlier this week. He reported nothing had been received verbally or in writing.

If this is not the case then I request to receive evidence that my direction has been carried out by close of business Monday 14 December 2015.

If my direction has not been carried out as yet, I request that it is carried out without delay, by end of business Monday 14 of December 2015.

I will be available only on email for the next week.

If my direction is not carried out by end of business today then I will take the next step afforded me under the Local Government Act 2009 in relation to your failure to following my direction.

Dale, I view this matter very seriously.

In a response to Tate’s letter, CEO Dickson outlined that it was not his intention to ignore Tate’s directive, however he highlighted his legal responsibility under section 197 of the *Local Government Act 2009* regarding taking disciplinary action against a council employee and queried how this could be reconciled against a mayoral directive. Emails obtained by the CCC established Tate forwarded CEO Dickson’s email the following day to the subject officer Moran without any narrative.

Moran replied to Tate’s email on 12 December 2015 outlining how he should use his directions powers as Mayor, effectively ensuring that Moran would not be disciplined. The email has the following content:

Hi,

Well he’s trying to give you the finger.

Section 170 of the lg act gives you unconstrained power to direct, there is no constraint of “inline of policies of council” as mentioned elsewhere. And mayor is giving direction in relation to a matter of discipline by the CEO under section

[an image of section 170 is pasted into the response]

I think it’s a simple reply to this email: “I’ve given you a clear directive, carry it out without delay”. Once that is done then DD can go on with discussions to try to convince you otherwise.



On 18 December 2015, the CEO sent an email to the Mayor highlighting some of the issues he had to consider resulting from the Mayor's direction, which included his legal and contractual obligations, risks to development assessments and a review of existing policies. The CEO stated:

While the Mayoral directive power is legally/generally clear, it was the unusual circumstances of this issue that have been at play... I can now advise that your directive effectively ends my dealing with the matter.

Impact of and concerns about the mayoral direction

Many councillors believed the mayoral power was being misused and that the Mayor was not using section 170 as it was intended in the legislation. Some councillors and staff also felt that, as a result of the mayoral direction to the CEO, Moran was untouchable and free to do and act however he wanted. This created an unhealthy environment which may have deterred staff at GCCC from reporting misconduct against those who were closely aligned with the Mayor, believing the Mayor would intervene to protect those close to him.

The potential adverse organisational impact of Tate's actions cannot be underestimated. There is no evidence to suggest that Tate was aware of a lot of Moran's conduct with respect to Moran's interference in council business. However, the position Moran occupied meant that his conduct, including conduct in situations where a conflict of interest existed, appeared to have the authority and approval of the Mayor's office and the Mayor. This could only have been detrimental to the culture of the organisation and the interference by the Mayor in the disciplinary process would only have compounded this.

The CCC considers the Mayor has misused the powers of section 170 to protect his Chief of Staff from disciplinary action. The CEO's efforts in trying to have Moran declare a conflict of interest were in accordance with the best interests of GCCC, in line with policy and designed to ensure transparency, accountability and governance standards were upheld.

Moran's involvement in the mayoral direction is very concerning. It meant that the subject officer of disciplinary action was able to influence action to prematurely conclude the disciplinary action, an outcome that was in his own interests.

Moreover, the threats to take action against CEO Dickson if he did not comply with the Mayor's direction placed the CEO in a very difficult position. The general wording of section 170 of the *Local Government Act 2009* did not assist and the CEO had limited options to respond at the time to what he considered to be a questionable use of the Mayor's powers.

Referral of Mayor to OIA

While Tate's conduct does not meet the threshold for criminal prosecution, his actions could amount to misconduct pursuant to s150L of the *Local Government Act 2009*. The CCC has, therefore, referred the matter to the OIA.

Referral of Moran to CEO for disciplinary action

Moran's conduct has been referred to the CEO for appropriate disciplinary action.



Chief of Staff's interference in operational matters

The CCC received information concerning Moran interfering in council operational matters.

Investigators uncovered evidence of Moran being gifted tickets to a major event on the Gold Coast in 2017 and 2018. These tickets were declared and the receipt of these benefits was not by itself an issue requiring investigation. However, the assistance Moran attempted to provide some event participants to avoid paying for a food licence (as required by Council policy) after he had received the gift is a matter of concern.

Moran provides advice contrary to Council policy

On 28 March 2019, CCC investigators interviewed a senior council officer. During the interview the council officer said providers wanting to operate a food business at the major event needed to have a food licence in accordance with the *Food Act 2006*. There were 40 providers who were required to be licensed. The council officer said that, in the lead-up to the event, she received a call from Moran, who said he had been contacted by the event's organisers but he did not say who he spoke to. Moran told the council officer that he had told the event organisers that the food licence was "*rubbish*" and they didn't have to pay. The council officer explained to Moran that they did have to pay and told Moran he had to go back and tell the operators this. Moran then became abusive towards the council officer and started calling the council officer names. The council officer said other council officers had gone down to do the inspections and they were getting abused by the food operators. The inspections team were being told the Mayor's office said "*they didn't need to have licences*".

The council officer said this had happened quite often with Moran and the council officer made contact to have him correct the situation with the food operators but Moran refused to do so. This was very embarrassing for the council officer's team. The council officer said people saw the Mayor's office as the highest authority and it created a big problem with wasted labour hours and officers getting abused, and that it was potentially a big embarrassment for the City. The council officer said once Moran realised he had lost the argument he then tried to have council pay for the licences, which the CEO refused to support. It was a legislative requirement to have the licence and council had no provisions to override it.

There is email evidence of Moran indicating to a senior officer from the event organiser:

...If any of the teams are approached then please provide them with my number to call and I will deal with the council officer(s) making the approach...

The senior officer from the event organiser then forwarded the email to the event participants, adding:

... If council are attempting to charge you for this "food business licence" then please contact Wayne Moran direct from council to report...

Moran further sent emails to the council officer and other staff members arguing they were wrong about the need for the teams to have a licence. Of concern is the approach Moran took following the event when he was unsuccessful in having the food licences refunded. On 9 November 2018, Moran wrote to parties involved apologising for the bad taste it must leave and singled out the council officer and the CEO as being responsible for not following Moran's proposed solutions.

The CCC did not uncover evidence to show Moran was acting on behalf of the Mayor in relation to these matters.



Moran's actions are clearly against his obligations as a council employee because:

- His conduct caused considerable disruption to the council officer's staff, who were attempting to do their job and enforce the legislation.
- He clearly had a perceived conflict of interest in attempting to waive food licence fees which were a legal requirement.
- When that attempt failed, Moran tried to have GCCC pay for the licences and, according to the council officer, engaged in very unprofessional behaviour towards the council officer.

Allegation regarding Tate's relationship with Company C and conflict of interest in relation to the Company D development

The CCC received complaints alleging that Tate voted on development matters while having a conflict of interest that he failed to declare. Allegations included that Tate had an inappropriate relationship with a lawyer who represented a Chinese developer, voted on council matters involving that developer and failed to declare on his Register of Interests (ROI) flights and accommodation provided to him to attend the launch of a building project in Beijing, where all costs were paid by the developer's agent.

From 14 to 18 August 2017, Tate travelled to Beijing, China, for the launch of a proposed high-rise building project on the Gold Coast. Tate later stated that his only involvement in the Company D development was that, in his view, the building needed to be iconic for the site. Person 1 of Company C was the project consultant. Tate also stated that he believed he was to reimburse the costs associated with the travel as he told the chairman of Company D that he (Tate) would pay his way. In Tate's view, he was a speaker to promote the Gold Coast.

Information provided by GCCC is that Council did not consider Tate's trip to Beijing to be a formal Council business trip. According to the GCCC, all formal international travel that is to be paid for by Council must be approved in advance by Council and no such approval was sought or given in relation to this trip. Additionally, this trip was not listed in the September 2017 quarter report for Councillor and Officer Travel, which was approved by Council's Governance Committee and subsequently by the Council.

On 5 Oct 2017, Tate amended section 12 of his ROI to include that he received return flights to and accommodation in China from Company C. A number of further amendments were made on later dates to confirm the involvement of Company C as agent for Company D.

While the complainant alleges the flights and accommodation to Beijing should have been recorded under section 13 of the ROI, the information provided by Tate suggests his travel to Beijing was in his official capacity and therefore it was appropriate to record the benefit under section 12 of the ROI.

Irrespective of whether the travel was undertaken by Tate in an official capacity, in a private capacity while acknowledging his role as Mayor of Council, or in a purely personal capacity, Tate has made what is considered an adequate recording in his ROI.

In relation to Tate's timeliness of recording the matter, he asserts he was not reasonably aware he was required to record the gift, as he believed he was personally paying for the trip. Tate further states it was not until he became aware that no invoice for the trip costs was forthcoming that he was required to class the trip's associated expenses as a gift. It is not known when Tate became aware that no invoice for the trip's costs was forthcoming.



On 8 December 2017, at the 748th Council meeting, Company D made application to permanently relocate an electrical substation from the building site to the nearby park area. A council officer gave a verbal briefing to council about the changes and that Planning had no concerns about the changes.

Although one councillor did declare a real or perceived conflict of interest at that meeting, Tate did not make any declaration and stayed in the room and voted on the unanimous decision.

At the 750th Council Meeting on 13 February 2018, Council voted to adopt the committee recommendation to approve the Company D material change of use application. Tate voted on the decision and did not declare any conflict.

Relationship with Person 1

Tate's association with Person 1 commenced just prior to the 2012 election.

A photograph from the Gold Coast Bulletin, supplied by the complainant, shows Tate and Person 1 together eating lunch. It is insufficient to prove that Tate had a conflict of interest with Person 1 or there was any influence when the decision was made by the Planning Committee to approve the Company D development. There is no evidence that suggests Tate was involved in the decision to approve the application.

Failure to update Register of Interests in relation to the 2017 China trip

Tate has admitted that he failed to update his ROI within the required timeframe (that is, within 30 days). The CCC's investigation did not find that this conduct was a part of any criminal offence involving corruption or fraud, and there is no evidence that suggests Tate deliberately failed to complete his register to hide information about the purpose of his travel to China.

Failure to declare a conflict of interest

At the time of the voting on Company D's application for a material change of use (13 February 2018), Tate had already made a declaration in his ROI, which is an open source document, available to the public. It could therefore be perceived by the public that Tate and his association with Person 1's firm could affect council decisions, therefore giving an advantage or benefit to Person 1.

Referral to the OIA

In relation to the failure to declare a conflict of interest allegation, there are no grounds for consideration of prosecution proceedings as, at the time, failing to appropriately deal with conflicts of interests at council meetings, whilst contrary to the *Local Government Act 2009*, did not constitute an offence.

However, there are sufficient grounds for consideration of action by the OIA against Tate, and on this basis, the CCC has referred the ROI and the conflict of interest matters to the OIA for action the OIA considers appropriate.

Remedial action taken by the Gold Coast City Council

Since legislative amendments came into effect on 21 May 2018 and failing to appropriately deal with conflicts of interest at Council meetings has been made an offence, all GCCC councillors have received an email from the CEO explaining the changes. On 13 July 2018, CEO Dickson further assisted the councillors, including by providing guidance using scenario questions.

It is evident that, since amendments to legislation in May 2018, the GCCC has gone to some lengths to provide advice to councillors regarding both conflict of interest and material personal interest issues. CCC investigators have noticed a number of improvements to relevant policy and conduct by councillors when dealing with these issues.



The GCCC has also been quick to update and refine existing policies in other relevant areas that were the subject of the CCC's investigation.

Allegations of inappropriate use of council funds by Tate

The CCC received a complaint alleging that Tate purchased handmade leather luggage on 1 March 2018 for personal use but which was paid for using council funds. The CCC also investigated to determine whether Tate had breached the councillor expenses reimbursement policy by making a series of large donations well above the amount permitted within the policy.

Investigators considered whether Tate's actions amounted to "misconduct" as defined in the *Local Government Act 2009*, which includes "*contravenes a policy of the local government about the reimbursement of expenses*" (section 150L(1)(c)(iii)).

Financial analysis of Tate's expenditure was done for the period 1 January 2016 to 8 October 2018. It established that he received an advance in accordance with policy of \$23,000 for incidental expenditure per annum. This figure is to be reconciled at 30 June each year. The policy provides that mayors may spend \$500 for obligatory raffle tickets and donations while attending a community function event in an official capacity.

Donations by a mayor can be used to build a positive perception amongst voters at community events. It is difficult to place a value on the political reputational benefit a mayor would receive by being seen in the community to be making large donations to charitable causes. It could be construed by voters as an act of personal goodwill by the mayor. In reality, however, the donations are made using public money.

Tate's expenditure

Tate's incidental expenditure related predominantly to dry cleaning, raffle tickets and donations. The financial analysis showed that the Mayor did not comply with the limits imposed by the policy, with items described below:

- 5 January 2016 — \$2500 — Table GC Mayoress Charity Ball
- 22 November 2016 — \$1000 — GC Community Fund White Christmas Appeal
- 30 November 2016 — \$2500 — Gold Table GC Mayoress Charity Ball
- 8 June 2017 — \$5000 donation — Juice 107.3
- 14 June 2017 — \$5000 donation — Salvation Army Red Shield Appeal
- 6 June 2018 — \$5000 donation — Salvation Army Red Shield Appeal.

For other items, the Mayor sought out-of-pocket expenses or used a staff member's corporate charge card. These purchases included:

- 27 April 2017 — \$110 — Mayor's suitcase repair (purchased on corporate charge card)
- 18 May 2017 — \$1474.52 — Wheel Suitcase (Out of pocket expenses claim — Rimowa Limbo Business Multi — credit card receipt indicates purchase in Shanghai, China)
- 14 June 2017- \$1415.00 — Suitcase for Mayor — Hunt Leather Brisbane (purchased on corporate charge card)
- 5 July 2018 - \$1435.00 — Hunt Leather Brisbane — coded to "Travel Exp int Councillor" (purchased on corporate charge card, no details on who the bag was for).



In most cases the luggage expenditure was approved by either the CEO or the Chief Financial Officer. The CCC understands that the GCCC has since amended their policy to provide clear guidelines on expenditure items in future.

Other questionable items of expenditure included memberships to the Gold Coast Titans, watch batteries, \$500 head phones, home media equipment, and a full business Internet service.

On 15 March 2017, the office of the Mayor purchased two “selfie sticks” at a total cost of \$998, one for the Office of the Mayor and the other for the Mayor’s daughter. Moran organised the purchase through administration staff, stating in the email that the Mayor would like one for his daughter and would repay the council. The items were purchased for \$499 each on 15 March 2017, authorised by Moran. Payment to the GCCC from the Mayor was made on 30 May 2017.

Councillor misconduct

The legislation in relation to councillor misconduct is clear. A councillor who contravenes policy in relation to the reimbursement of expenses commits misconduct.

In this case, evidence exists of Tate using official expenditure for making donations up to ten times the amount permitted under policy. The other items of expenditure mentioned in this report also constitute technical breaches of the policy.

Referral to the OIA

On this basis the CCC believes there are sufficient grounds for the OIA to consider disciplinary action against Tate concerning the allegation relating to the donations, and to consider further investigation in relation to the other items of expenditure, and has referred the matter accordingly.

Conflict of interest involving ownership of a racehorse

On 4 March 2018, the CCC received allegations against Tate relating to his ownership of racehorses and failing to comply with his obligation to update his ROI as required under section 171B of the *Local Government Act 2009*. The allegations were that Tate:

- has, since January 2017, had an interest in a racehorse and a racing syndicate partnership, the value of which is believed to exceed \$5000, and that he has not recorded the interest or partnership in his register of interests
- has a conflict of interest for failing to declare his interest and partnership in a racehorse when involved in Council decision-making with respect to Black Swan Lake.

Conflict of interest in relation to Black Swan Lake

Allegations relating to GCCC councillors having a conflict of interest while making decisions about the filling of the body of water known as Black Swan Lake, because of their association with the Gold Coast Turf Club (GCTC), have been investigated by CCC officers and were not substantiated as corrupt conduct. The CCC’s media release of April 2019¹⁷ refers.

Conflict of interest involving ownership of racehorse “Go Gold Coast”

It was alleged that Tate had a further conflict of interest in relation to his ownership of racehorse “Go Gold Coast”, which was stabled at the GCTC. Tate did not purchase this horse until January 2017, after the 15 November 2016 vote on Black Swan Lake.

¹⁷ <https://www.ccc.qld.gov.au/news/no-corrupt-conduct-identified-black-swan-lake-or-waterglow-development-decisions>



The CCC considers that the ownership of the racehorse which was stabled at the GCTC did not amount to a material personal interest in the circumstances. It would, however, have been prudent for Tate to declare a conflict of interest when taking part in any further discussions in relation to the GCTC following the purchase of the racehorse. However, investigators do not consider the issue to be of a nature such that referral to the OIA for disciplinary action is appropriate.

Tate's ROI dated 14 February 2018 does not disclose any ownership of a racehorse. It is clear from Tate's Facebook account that he was aware that he failed to update his ROI. On 7 March 2018, Tate rectified his register, adding "Racehorse" in section 15. Newspaper articles reveal that Tate is a part of a syndicate that purchased the racehorse at the 2017 Magic Millions for \$170,000. The syndicate consisted of 15 persons, making Tate's share worth \$11,334. It is understood that Tate is no longer a syndicate shareholder of the horse.

Section 171B(2) of the *Local Government Act 2009* states the following:

(2) The councillor must, in the approved form, inform the chief executive officer of the particulars of the interest or the change to the interest within 30 days after the interest arises or the change happens.

Referral to the OIA

Tate making admissions and rectifying his register 12 months after the purchase of "Go Gold Coast" shows that a breach of section 171B of the *Local Government Act 2009* has occurred. The breach is a simple offence that carries a 12-month time limit for commencing a prosecution. As the breach is now outside this time limit, it is to be referred to the OIA as a disciplinary matter.

Allegations involving the Waterglow development

Allegations against Tate and the CEO, relating to the Waterglow development, were investigated by the CCC. The allegations were not substantiated. The CCC's media release of April 2019¹⁸ refers. The investigation revealed that, amongst other things, Tate acted appropriately in declaring and managing a material personal interest. In relation to the development application, it is important to note that the GCCC employed a probity advisor to provide advice to ensure the process was managed appropriately from a governance and ethical decision-making point of view. The appointment of a probity advisor in such circumstances was a sound governance decision, which the CCC commends.

¹⁸ <https://www.ccc.qld.gov.au/news/no-corrupt-conduct-identified-black-swan-lake-or-waterglow-development-decisions>



3 – Conclusion and recommendations

The CCC investigation has highlighted, once again, the problems that arise when conflicts of interest are not declared and properly managed. In relation to Moran, the perception that his friends and associates were the beneficiaries of his position at the GCCC was bad enough. However, it is clear that this was also the reality. As the CCC has said before, the failure to properly declare and manage conflicts of interest represents a corruption risk. In dealing with conflicts of interest, a cautious approach must always be taken rather than an approach that is cynical and based only on some of the relevant facts.

The CCC investigation also highlighted the inappropriate use by Tate of section 170 of the *Local Government Act 2009*. Under section 13(3) of the *Local Government Act 2009*, in addition to the responsibilities that every local government employee has, the Chief Executive Officer of a local government authority has responsibilities including:

- (a) managing the local government in a way that promotes—*
 - (i) the effective, efficient and economical management of public resources; and*
 - (ii) excellence in service delivery; and*
 - (iii) continual improvement;*
- (b) managing the other local government employees through management practices that—*
 - (i) promote equal employment opportunities; and*
 - (ii) are responsive to the local government's policies and priorities;*

Chief Executive Officers of local government authorities are responsible for ensuring that sound governance policies and procedures are observed and that the employees of their local government authority behave ethically and in the best interests of the authority. Chief Executive Officers should feel confident in discharging such responsibilities in a way that is not undermined by, for example, action directed at protecting political appointments. Whilst the CCC accepts that mayors, in certain circumstances, should be able to give directions to Chief Executive Officers, the investigation that was the subject of this report demonstrates that such a power can be misused.

Recommendation 1

The CCC recommends that the Department of Local Government, Racing and Multicultural Affairs reviews the operation of section 170 and progresses amendments to ensure that section 170 directions cannot be used to undermine efforts of Chief Executive Officers to carry out their responsibilities under the Local Government Act 2009 and ensure that sound governance policies and procedures are observed and that the employees of their local government authority behave ethically and in the best interests of the authority.

The CCC investigation revealed that Moran had inappropriately interfered in council business. Such interference has the capacity to compromise the efficient and effective carrying out of council business, favour certain council stakeholders over others, and create an unpleasant working environment for council officers.



The CCC is aware that the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Bill 2019*¹⁹ (the Bill) is currently before the Queensland Parliament and is being considered by the Economics and Governance Committee. The Bill, amongst other things, inserts new sections into the *Local Government Act 2009*.²⁰ Relevant provisions, if enacted as currently drafted, would state:

170AA Guidelines about provision of administrative support to councillors

(1) The chief executive officer of a local government may make guidelines about the provision of administrative support by local government employees to a councillor.

(2) The guidelines must include—

(a) when a councillor may be provided with administrative support by a local government employee; and

(b) how and when a councillor may give a direction to a local government employee in relation to the provision of administrative support; and

(c) a requirement that a councillor may give a direction to a local government employee only if the direction relates directly to administrative support to be provided by the local government employee to the councillor under the guidelines.

(3) A direction purportedly given by a councillor to a local government employee is of no effect if the direction does not comply with the guidelines.

197A Appointment and functions of councillor advisors

(1) A local government prescribed by regulation may, by resolution, allow a councillor to appoint 1 or more appropriately qualified persons (each a councillor advisor) to assist the councillor in performing responsibilities under this Act.

Examples of assistance— administrative support, coordinating media activities, event management functions, policy development, office management

(2) However, the councillor must not appoint a close associate of the councillor as a councillor advisor.

(3) If the councillor appoints a councillor advisor, the councillor advisor must enter into a written contract of employment with the local government.

(4) The contract of employment must provide for—

(a) the councillor advisor's conditions of employment, including remuneration, leave and superannuation entitlements; and

(b) the councillor advisor's functions and key responsibilities; and

(c) a requirement that the councillor advisor comply with the councillor advisor code of conduct made by the Minister under section 197C; and

(d) when disciplinary action may be taken, and the types of disciplinary action that may be taken, against the councillor advisor.

¹⁹ The Bill can be found at <https://www.legislation.qld.gov.au/view/html/bill.first/bill-2019-052/lh>

²⁰ New sections are also proposed to be inserted into the *City of Brisbane Act 2010*. For simplicity, only the *Local Government Act 2009* provisions are referred to.



(5) The councillor advisor's functions and responsibilities cannot include—

(a) carrying out or assisting in an activity relating to a councillor's campaign for re-election; or

(b) directing a local government employee.

(6) The councillor who appointed the councillor advisor may give a direction to the councillor advisor.

(7) A regulation may—

(a) prescribe the number of councillor advisors each councillor may appoint; or

(b) limit the functions and key responsibilities that may be provided for in a councillor advisor's contract of employment.

197C Minister to make councillor advisor code of conduct

(1) The Minister must make a councillor advisor code of conduct that sets out standards of behaviour for councillor advisors in performing their functions for a local government or the council under this Act or the City of Brisbane Act 2010.

(2) The councillor advisor code of conduct—

(a) must be consistent with the local government principles; and

(b) may contain anything the Minister considers necessary for, or incidental to, the standards of behaviour.

(3) The approved councillor advisor code of conduct must be published on the department's website.

According to the Explanatory Notes to the Bill²¹, at page 7:

Engagement of advisors to assist councillors

There is a growing trend, particularly in larger local governments, for the appointment of 'political staff' predominately to assist mayors and to undertake a range of duties including management of the mayor's office, administrative support, media activities, event management, policy development and in some cases political activities. It is understood the appointment of such staff varies from local government to local government with some engaged as local government employees and others as contractors.

To acknowledge the political nature of these appointments and their unique status in the local government context, the Bill amends the COBA²² and the LGA to provide that BCC and local governments (to be prescribed by regulation) under the LGA may contract persons as councillor advisors to assist councillors in performing responsibilities under the respective Acts; and to provide appropriate employment conditions, statutory obligations and offences and penalties. The same obligations that apply to councillors in relation to registers of interests are also to apply to councillor advisors, including the dishonest conduct offences for dishonestly contravening the register of interests obligations.

21 The Explanatory Notes can also be found at <https://www.legislation.qld.gov.au/view/html/bill.first/bill-2019-052/lh>

22 City of Brisbane Act 2010.



The proposed amendments endorse the appointment by mayors and councillors of political staff/advisors. It appears that such staff/advisors will perform similar functions as staff at State Government level appointed under the *Ministerial and Other Office Holder Staff Act 2010*. The interaction of such staff with members of the State Public Service has, at times, created problems and the need for clear protocols in this regard has been recognised.²³ Indeed, *Protocols for communication between ministerial staff members and public service employees*²⁴ have been published, the purpose of which is “to provide proper and transparent communication between ministerial staff members and public service employees”. The *Premier’s Communique – Interaction between ministerial staff and public servants* has also been published.

Moreover, as the CCC investigation has shown, there is a risk that political staff/advisors may, whether at the urging of a mayor or councillor or of their own initiative, inappropriately interfere in council business. This risk must be mitigated to the greatest extent possible. One way to do this would be to make clear that mayors and councillors are responsible for the actions of their political staff/advisors and must take all reasonable steps to ensure that their staff/advisors act in accordance with guidelines and the code of conduct. In other words, mayors and councillors should not be able to rely on “plausible deniability” in relation to contraventions of the guidelines and/or code of conduct by their staff/advisors.

Recommendation 2

That amendments be made to the proposed sections 170AA and 197C of the Local Government Act 2009 to impose further requirements relating to the guidelines and code of conduct to:

- *set out clear protocols to ensure proper and transparent communication between staff/advisors and local government officers;*
- *clarify responsibilities for the management and, if necessary, disciplining of such staff/advisors; and*
- *make clear that mayors and councillors are responsible for the actions of their staff/advisors and must take all reasonable steps to ensure that their staff/advisors act in accordance with the guidelines and code of conduct.*

Recommendations have also been made to the GCCC for their consideration, which are set out in Appendix 3.

²³ See, for example, the *Report on an investigation into the alleged misuse of public monies, and a former ministerial advisor*, CMC, December 2010, found at <https://www.ccc.qld.gov.au/sites/default/files/Docs/Public-Hearings/Alleged-misuse-of-public-monies/Report-on-an-investigation-into-the-alleged-misuse-of-public-monies-and-a-former-ministerial-adviser-2010.pdf>

²⁴ <https://www.premiers.qld.gov.au/publications/categories/policies-and-codes.aspx>. The protocols include the Premier’s Communique that provides direction on expected standards of conduct.



Appendix 1

Submission received

**Holt
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Our Ref: RBH:CJ:191138
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Writer's email: richard@holtlawyers.com.au

15 January 2020

Mr AJ MacSporran QC
Crime and Corruption Commission
GPO Box 3123
BRISBANE QLD 4001
Email: paul.alsbury@ccc.qld.gov.au
mailbox@ccc.qld.gov.au

Dear Mr MacSporran

**RE: Our Client: Mayor Tom Tate
Operation Yabber – Draft Report**

We refer to your letter of 20 December 2020 addressed to Mayor Tom Tate and advise that we act for Mayor Tom Tate ("Mayor Tate").

PART A – INTRODUCTION

The Queensland Parliament has given the Crime and Corruption Commission (CCC) investigative powers that are not ordinarily available to police or other government agencies [REDACTED]
[REDACTED]
[REDACTED]

While these powers are exceptional in the context of Queensland law enforcement, they shouldn't result in "prejudice" to citizens against whom no wrongdoing has been established. The matters referred by the CCC to the Office of the Independent Assessor (OIA) in April, August and December 2019 regarding Mayor Tate (while important), do not constitute:

- (a) Organised crime; or
- (b) Serious or systemic corrupt conduct.

As we explain in this letter, these matters have not been resolved.

PART B – OBJECTIONS BY MAYOR TATE

In this context, our client reasonably objects to the publication of pages 7 to 21 and Appendix 2 of your draft Report of "Operation Yabber – An Investigation into Allegations Relating to the Gold Coast City Council".

Holt Lawyers Pty Ltd ABN 73 168 550 132.
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www.holtlawyers.com.au



The matters set out in pages 7 to 21 and Appendix 2 of the draft report:

- (a) Are highly prejudicial to Mayor Tate pending the conclusion of the enquiries being undertaken by the OIA.
- (b) Do nothing to further the public interest, in circumstances where the CCC has published a number of media releases regarding:
 - (i) the absence of any wrongdoing by the City of Gold Coast or Mayor Tate in relation to the Waterglow Development and the Black Swan Lake controversy (18 April 2019);
 - (ii) the absence of any systemic crime and corruption in the governance of the City of Gold Coast (10 December 2019); and
- (c) Are highly prejudicial to Mayor Tate in circumstances where the matters relating to the contract of employment between the City of Gold Coast and Mr Wayne Moran are unresolved.
- (d) Will be subject to intense media coverage in the pre-election period for the local authority elections in March 2020.

Our client requests that Section 2, pages 7 to 21 and Annexure 2 be deleted from the final version of your report. A significant part of Section 2 and Appendix 2 detailing the CCC's investigation into the role and conduct of Mr Moran, adversely impact Mayor Tate in circumstances where:

- (i) no allegations of inappropriate behaviour or misbehaviour have been made by the OIA against Mayor Tate.
- (ii) Matters relating to the employment agreement between Mr Moran and the City of Gold Coast are unresolved.

PART C – DETAILS OF THE CCC'S FINDINGS

We now set out further details of the matters of concern to Mayor Tate. The draft report is prejudicial to the interests of Mayor Tate in circumstances where:

- (a) On 16 April 2019, the CCC wrote to Mayor Tate advising that:

"... the CCC has determined that no further action will be taken at this time in relation to your conduct as our investigation found insufficient grounds for consideration of prosecution proceedings or disciplinary action"

in respect of two allegations of *"misuse of authority"* relating to Black Swan Lake.
- (b) On 17 April 2019, the CCC wrote to Mayor Tate advising him that:

"... the CCC has determined that (except for allegation 6) no further action will be taken at this time in relation to your conduct as our investigation found insufficient grounds for consideration of prosecution proceedings or disciplinary action...."

in relation to five allegations of misuse of authority. In relation to the sixth allegation regarding Mayor Tate's register of interests, the CCC advised Mayor Tate that the allegation would be



referred to the Office of the Independent Assessor (OIA) to deal with an allegation of failure of duty.

- (c) On 17 April 2019, the CCC wrote to Mayor Tate advising him that:

"... the CCC had determined that no further action will be taken at this time in relation to your conduct as our investigation found insufficient grounds for consideration of prosecution proceedings or disciplinary action..."

in relation to an allegation of "failure of duty" relating to the Gold Coast City Council.

- (d) On 17 April 2019, the CCC wrote to Mayor Tate advising that:

"... the CCC has determined that no further action will be taken at this time in relation to your conduct as our investigation found insufficient grounds for consideration of prosecution proceedings or disciplinary action ..."

in relation to an allegation of corrupt conduct involving the Gold Coast City Council and its investigations and legal process.

- (e) On 20 August 2019, the CCC wrote to Mayor Tate detailing 4 allegations and advising him that:

"... there is insufficient grounds for consideration of prosecution proceedings against you for any of the allegations identified above."

relating to three allegations of "failure of duty" and one allegation of corrupt conduct relating to conflicts of interest.

In that letter, the CCC also advised Mayor Tate that

"There is sufficient grounds for consideration of taking disciplinary action against you with respect to allegations 1 – 4."

On that basis, the CCC will disseminate the evidence collected throughout the investigation to the Office of the Independent Assessor for consideration."

As at the date of this letter, the OIA has not written to Mayor Tate about these 4 allegations detailed in your letter of 20 August 2019.

- (f) On 10 December 2019, the CCC wrote to Mayor Tate advising him that the CCC found there was sufficient evidence for four allegations to be referred to the Office of the Independent Assessor for consideration of disciplinary action.

Prior to 10 December 2019, the OIA had written to Mayor Tate in relation to the second, third and fourth allegations set out in your letter. In respect of those three allegations, Mayor Tate and his advisors have written to the OIA denying any breach of council policies, inappropriate conduct, misconduct and Mayor Tate's obligations in relation to his register of interests. To date, the OIA has not responded to that correspondence or resolved to make any allegation of inappropriate conduct or misconduct arising from those allegations.

The OIA has not determined that any of the referrals for disciplinary action amount to inappropriate conduct or misconduct and should be referred to the CCT or the CEO of the City of Gold Coast (for a referral to the CCT). In these circumstances, the publication by the CCC of a report incorporating all of Section 2 and Appendix 2 is prejudicial to Mayor Tate and his right to respond to any future Section 150AAA Notice from the OIA and his right to contest any allegation of inappropriate conduct or misconduct by the OIA.

The OIA's investigations are unresolved. Accordingly, publishing any part of Section 2 and Annexure A of the draft report is prejudicial to Mayor Tom Tate because his conduct, role and directions may never be the subject of a finding against him by the CCT of inappropriate conduct or misconduct.

PART D – MAYOR TATE'S FURTHER CONCERNS

We will now address Mayor Tate's concerns about other matters.

1. We are concerned that the introduction to Section 2 on page 7 of the draft report and the second and third allegations imply serious wrongdoing by Mayor Tate (in support of Mr Moran) in circumstances where no wrongdoing by Mayor Tate has been established by the CCC or alleged by the OIA as a result of the referrals to the OIA.
2. There is no statement in Section 2 of the draft report (or at all) setting out Mayor Tate's denial of the allegations that have been made against him. Nor is there any statement in Section 2 that any disciplinary matters between Mr Moran and the City of Gold Coast are unresolved.
3. It is our view that in the absence of these qualifications, media interest, press reports and political opponents will highlight the allegations in the report in circumstances where Mayor Tate and his advisors will not be able to point to any part of the report recording:
 - (a) Mayor Tate's denial of all the allegations made against him.
 - (b) That the OIA has not completed its investigations into the matters referred to it and has not made any allegations of inappropriate conduct or misconduct and has not referred any such allegations to the CEO of the City of Gold Coast for a referral to the CCT or to the Councillor Conduct Tribunal respectively.
4. In these circumstances, Section 2 of the draft report is unbalanced and unfair.
5. The absence of this "balance" in the draft report and especially in the introduction to Section 2 is a great concern to our client and his advisors. We believe that it will be of concern to objective persons reading the report and wanting to discuss the contents of the report in media forums and news articles and programs.
6. In this context, we are also concerned that there isn't sufficient clarity about the matters alleged against Mr Moran on pages 7, 8, 9, 10, 11 and the first half of page 12. To date, any disciplinary action in relation to Mr Moran's employment agreement with the City of Gold Coast has not been resolved.
7. In our view, the extent of the allegations in Section 2, the details of Mr Moran's conduct and the references to Mayor Tate are disproportionate to the conclusion that the three allegations *"bought to light the problematic nature of the relationship between the Mayor, his Chief of Staff and the CEO and the adverse impact those relationships have on the GCCC and its employees"*.



8. For the reasons set out in this letter, we are concerned that what we have described as a lack of “balance” in Section 2 of the draft report, has not met the test of “procedural fairness” set out on page 2 of the draft Report.
9. For example, page 14 of the draft report says that “*many Councillors believe that the mayoral power was being misused and that the Mayor is not using Section 170 as it was intended in the legislation*”. Nevertheless, your Commission found that “*Tate’s conduct does not meet the threshold for criminal prosecution actions could amount to misconduct pursuant to S 150 of the Local Government Act 2009. CCC has therefore referred the matter to the OIA*” which, as we have said, has not written to Mayor Tate or resolved to take any action about these matters to date.
10. Secondly, we refer you to that sentence in your report that says “Moran’s conduct has been referred to the CEO for appropriate disciplinary action” but nothing is said about the unresolved nature of any proceedings between Mr Moran and the City of Gold Coast. It is plausible that Mr Moran may satisfactorily resolve any such proceedings by the City of Gold Coast.
11. As to the matters involving Mayor Tate detailed at pages 16, 17, 18, 19 and 20 of the draft report, there is no statement or commentary about the status of any investigations by the OIA. In particular, there is no statement that the OIA hasn’t resolved that any of the referrals to it by the CCC constitute inappropriate conduct or misconduct by Mayor Tate.
12. Our office and Mayor Tate have a very strong concern that very few readers of the final report will have a full understanding of the steps that must be taken by the OIA once it receives a referral from the CCC (or a complaint about a Councillor).
13. Your draft report doesn’t highlight or explain that the OIA:
 - (a) May resolve to take no further action.
 - (b) May resolve to give Mayor Tate a Section 150AAA Notice setting out its concerns that the alleged conduct may amount to inappropriate conduct or misconduct and invite a response from Mayor Tate.
14. Once Mayor Tate responds to any Section 150AAA Notice, the OIA may:
 - (a) resolve to take no further action;
 - (b) resolve that the alleged conduct amounts to inappropriate conduct or misconduct;
 - (c) refer an allegation of inappropriate conduct to the Chief Executive Officer of the City of Gold Coast for investigation by the CCT.
 - (d) refer an allegation of misconduct to the Councillor Conduct Tribunal where Mayor Tate is entitled to give evidence and make submissions that the alleged conduct does not constitute misconduct.
15. These provisions in the *Local Government Act 2009* (as amended) ensure that every Councillor in Queensland (and in this case, Mayor Tate) are accorded natural justice, procedural fairness and, where necessary, participate in a hearing by an independent tribunal which ultimately determines whether or not the alleged conduct constitutes inappropriate conduct or misconduct.



16. With respect, all the information in the preceding three paragraphs should be included in the report with the same emphasis as the allegations against Mayor Tate.

CONCLUSION

It is our submission that Section 2 of the draft report (and Appendix 2) should be deleted from the report. If this submission isn't accepted by the CCC, it is our further submission that the detail of the conduct of Mayor Tate (and Mr Moran) should be deleted from the draft report.

If it's necessary to record that there have been referrals to the OIA regarding Mayor Tate (and a referral to the Chief Executive of the City of Gold Coast regarding Mr Moran), then, with the same prominence, your report should include the denials by Mayor Tate of the matters alleged against him and the unresolved nature of any proceedings between the City of Gold Coast and Mr Moran.

It is our submission that the proposed amendments do not present any risk to transparency in the public interest because any ultimate findings:

- (a) of inappropriate conduct by the City of Gold Coast in open session; or
- (b) of misconduct by the CCT;

will be published in the minutes of the relevant meeting of the City of Gold Coast or on the CCT website, respectively.

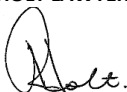
The Chief Executive Officer of the City of Gold Coast is also required by the Act to update the Councillor Conduct Register on the City of Gold Coast website and include the names of any Councillor found to have acted inappropriately of guilty of misconduct.

At the very least, your report should highlight (as starkly as it highlights the allegations against Mayor Tate):

- (a) Mayor Tate's denial of all the allegations made against him.
- (b) That the OIA hasn't resolved that any of the referrals to it by the CCC constitute inappropriate conduct or misconduct.
- (c) None of the referrals have resulted in the OIA referring any allegation of misconduct to the Councillor Conduct Tribunal or any allegation of inappropriate conduct to the City of Gold Coast for investigation and referral to the CCT.

We look forward to your reply.

Yours faithfully
HOLT LAWYERS



Richard Holt
Principal

Appendix 2

Emails and memoranda between GCCC CEO Dale Dickson, Chief of Staff Wayne Moran and Mayor Tom Tate relating to conflicts of interest and disciplinary action

1-2) (3)

CITY OF
GOLDCOAST.

Memorandum

To Chief of Staff, Office of the Mayor

Copy Mayor Tom Tate
Chief Operating Officer
Director Planning, Environment & Transport
Manager Executive Services
Manager City Development

From Chief Executive Officer

Action by

Subject Managing Conflicts of Interest

Date 13 August 2013

File no Personal File TRACKS Doc # 40745004

Wayne,

I refer to our recent discussions on the matter of conflicts of interest.

The purpose of this advice is to balance the desire for you as Mayoral Chief of Staff to continue to be a conduit for potential investors and commercial interests on Mayor Tate's behalf (when he is unavailable due to his Mayoral commitments), with the need to ensure the integrity of the Office of the Mayor and the Council and thus ongoing community trust and confidence in the Mayor, Office of the Mayor and Council.

This advice is provided in the interests of ensuring your understanding of your obligations with respect to managing conflicts of interest and will assist you to achieve and uphold the standard required of all City of Gold Coast employees in this area.

The following are some key points:-

Position Description

I note the following duties from your position description:

- Provide timely, professional advice, guidance and support to the Mayor and the staff of the Mayoral Support Unit.
- Professionally manage internal and external stakeholder relationships and expectations and provide specialist advice where necessary in issues of a sensitive political or community nature.
- Establish, foster and maintain appropriate networks with other organisational branches, external organisations and other levels of Government.

Finally, I note that your position description includes a duty for you to maintain and model to the Mayoral Support Unit staff an exceptionally high professional code of ethics and personal standards.

While your duties do not require a specific involvement in assessment and/or development matters, your role in managing external stakeholder relations and establishing and fostering networks with external organisations may give you cause to interact with developers, and/or planning or property consultants.



Previous Employment

Your previous employment by or with developers or consultants associated with the development, planning or property industry results in a conflict of interest in any dealings that you may have with them in your current role.

Care must therefore be taken in how attendances at meetings and correspondence or communication with such parties are managed.

Legislative and Policy Framework

The principles pertaining to conflicts of interests and other probity issues apply to employees as a result of the Local Government Act, in which:

- Section 4 refers to the Local Government principles
- Section 13 refers, in the case of Local Government employees, to the need to comply with the Public Sector Ethics Act

The Public Sector Ethics Act (PSEA) then requires public officials to promote public confidence in the integrity of the public sector, one which refers to the management in favour of the public interest any conflict of interest. In accordance with the PSEA, Council has developed a Code of Conduct which binds all officers. Council also has a Conflicts of Interest for Employees Policy.

The Conflict of Interest for Employees Policy requires employees to:

- Avoid involvement in any activity that might give the appearance of a conflict of interest with respect to their duties;
- Declare a material or perceived conflict of interest where one exists (in your case to me).
- Must not involve themselves in circumstances where the private interest may conflict with the performance of their role and functions.

Managing Material and Perceived Conflicts of Interest

With the above in mind, the following approach must be followed in managing actual and perceived conflicts of interest:

1. (a) You must immediately inform me in accordance with the Conflict of Interest for Employees Policy, on a case by case basis. Subject to any further advice from me (which will depend on individual circumstances), as a minimum you must:
 - (i) avoid providing comment or advice in relation to proposals; and
 - (ii) not express your personal views as to how a proposal may be received by Council to any external party.

Your role in such meetings should principally be one of collecting and relaying information to the relevant Director or Manager, or the Mayor, as may be appropriate.

- (b) In dealing with Councillors and Council officers (apart from the staff of the Office of the Mayor), you must avoid actions or communications which may be interpreted as giving directions, advice or otherwise encouraging officers to take action one way or another on any matter.

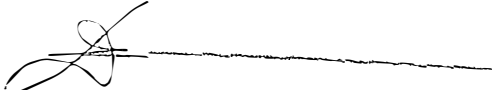


- (c) Care must be taken in drafting or sending letters or sending emails such that the recipient cannot interpret the communication from you as advocating a position, or seeking to influence the outcome of a proposal. Such communications should be neutral and seek to inform or communicate information only.

- 2. In any other circumstance, the Conflict of Interest for Employees Policy still applies.

Managing conflicts of interest is critical for all officers, and your role of Chief of Staff to the Mayor means that you must be particularly vigilant in your conduct.

Should you have any questions in relation to the above, please don't hesitate to discuss them with me.



Dale Dickson
Chief Executive Officer

(4)

RECORD OF EMAIL CORRESPONDENCE BETWEEN CEO AND WAYNE MORAN RELATED TO CONFLICTS OF INTEREST

On 13/08/2013, at 10:39 AM, "DICKSON Dale Private" <[REDACTED]> wrote:

Wayne, good morning.

Please find attached the memo from me regarding the above.
May I suggest we have a chat about its implementation once you've had time to digest it.
After careful deliberation, I'm finally satisfied that we have something that will be simple and straightforward to apply, yet covers all necessary bases.

By all means arrange for a chat when it suits.

thanks
Dale

On 14/08/2013, at 7:51 PM, "Mayoral CoS" <[REDACTED]> wrote:

Hello Mr CEO,

I will be taking the next week or so review and respond to your memo as there is, on first reading, a considerable number of errors of fact and interpretations that can't be left to stand.

Regards,

Wayne Moran
Chief of Staff
Office of the Mayor Tom Tate
City of Gold Coast

From: Mayoral CoS <[REDACTED]>
Date: 14 August 2013 8:06:10 PM AEST
To: DICKSON Dale Private <[REDACTED]>
Cc: MAYOR <[REDACTED]>

Subject: Re: Managing Conflicts of Interest

Mr CEO,



That instruction would be impossible to comply with given your memo effectively prevents me from even dealing with the Mayor himself given the previous contact I have had with Tom Tate since 2007.

I also note that you have escalated this matter to now involve the City Solicitor given his sudden inclusion in the ever growing list of CC addresses. Clearly I need to be obtaining legal advice on the matter it seems.

Regards,

Wayne Moran
Chief of Staff
Office of the Mayor Tom Tate
City of Gold Coast

From: DICKSON Dale On Behalf Of DICKSON Dale Private

Sent: Friday, 16 August 2013 9:23

To: Mayoral CoS

Cc: MAYOR; [REDACTED]

Subject: FW: Managing Conflicts of Interest

Wayne

I remain quite comfortable with receiving any comments from you as to facts or interpretations. On this point, I would encourage you to take up my original offer for a chat.

It remains very important that our organisation, of which you are a key part, serves the Mayor and city well in terms of delivering economic, social and other outcomes, whilst also ensuring that the reputation of the Mayor, Mayor's Office and Council is not put at risk. You have a critical role in ensuring community trust and confidence in the Mayors Office is of a high level. These twin goals can be met, but require all staff and Councillors to understand and apply some simple parameters, including you.

A key point in my advice is that you must in future disclose conflicts of interest - this does not mean that you can't deal with related issues, which seems to be your interpretation of my advice. With all due respect, such an interpretation is not correct.

Again, I encourage you to arrange for the chat.

Regards
Dale

Dale Dickson

Chief Executive Officer
City of Gold Coast

T: [REDACTED] F: [REDACTED]
PO Box 5042 Gold Coast Mail Centre Qld 9729
cityofgoldcoast.com.au



From: Mayoral CoS
Sent: Friday, 16 August 2013 12:06
To: DICKSON Dale Private
Cc: MAYOR; [REDACTED]
Subject: RE: Managing Conflicts of Interest

Hello Dale,

It seems you have had a subsequent chat with the Mayor on the matter. Is there any update on your memo from that chat?

Kind regards,

Wayne Moran
Chief of Staff
Office of the Mayor

Gold Coast City Council
Ph: (07) [REDACTED] Fax: (07) [REDACTED]
PO Box 5042 GCMC QLD 9729
[REDACTED]
www.goldcoastcity.com.au

From: DICKSON Dale **On Behalf Of** DICKSON Dale Private
Sent: Friday, 16 August 2013 1:52 PM
To: Mayoral CoS
Cc: MAYOR; [REDACTED]
Subject: RE: Managing Conflicts of Interest

Wayne

There are no proposed changes to the memo that I can recall, however Mayor Tom and I did chat yesterday.
The upshot is that we agreed that you and I can and should finalise the matter with the discussion I've suggested to you.

You can be assured you are not being singled out. As you know, for example, a conflict issue that arose from [REDACTED] personal circumstances has now been addressed satisfactorily. Another example has been the conflict that arose or arises from my involvement as a director of the Gold Coast Suns - I have addressed this in a number of ways, including disclosure of the conflict (to Mayor Tom, at meetings of the Commonwealth Games Infrastructure Authority etc etc) and by my resignation from the Suns board etc.

The key point I come back to is the importance of disclosure, and then personal and professional conduct within prescribed parameters - this the essence of the advice to you, which, when understood and respected, is not difficult to apply in practice.

Enjoy your weekend.



Dale

Dale Dickson

Chief Executive Officer
City of Gold Coast

T: [REDACTED] F: [REDACTED]
PO Box 5042 Gold Coast Mail Centre Qld 9729
cityofgoldcoast.com.au

CITY OF
GOLD COAST

From: Mayoral CoS [REDACTED]
Date: 28 August 2013 5:28:53 PM AEST
To: DICKSON Dale Private [REDACTED]
Subject: Conflict of interest

Hello Dale,

In your memo of the 13th of August on 'Managing Conflicts of Interest' the threshold statement you made, in my humble opinion, was "Your previous employment by or with developers or consultants associated with the development, planning or property industry' results in a conflict of interest in any dealings that you may have with them in your current role".

I obtained legal advice as mentioned in one of the emails between us. That advice to me indicates that your interpretation in this matter is incorrect: previous employment does not constitute a current 'personal interest' therefore there can not be a material, perceived nor potential conflict of interest between my personal interests and my current role.

In providing the advice to me, a page from the Integrity Commissioners website that explains 'Personal Interest' was particularly instructive, including as it did examples of 'personal interests' that can arise. I have reproduced it below but you can see it for yourself on <http://www.integrity.qld.gov.au/page/conflicts-of-interest/personal-interests.shtml>

You will notice that each of the non-exhaustive examples listed, every 'personal interest' was in the 'present' tense not in the past. Of particular was the 4th dot point regarding employment where it specifically mentioned 'has or seeks' employment - being in the present or future tense. None of the dot points mentioned past employment as a current 'personal interest'. In fact none of the dot points were set in the past. Similar 'personal interests' examples are found on the State Government Public Service assistance website and the CMC website. All deal in the present tense as does the legislation covering these conflicts of interest matters.

Your own example provided in one of our email exchanges was a good case in proving my point. You mentioned you resigned recently from the Board of the Suns which exhausted your conflict of interest however if your assertion that past employment, and I assume previous directorship should be included in that definition, is a current 'personal interest' then a conflict of interest exists in your dealings with the Suns and the wider Carrara Master plan issue *forever*. Since you have, following resignation from the Board of the Sun, continued to deal with the Carrara Master plan matters then clearly you believe that with that directorship being in the past that 'personal interest' no longer applies and your conflict of interest is exhausted.

My company Jacem Business Development has been effectively been mothballed with no new clients being acquired and almost all its activities and client projects ceasing save for some legacy website hosting and domain management. An example is [REDACTED]

Dale, let me assure you, I am quite happy to declare to you any 'personal interests' I think I have triggering a perceived or potential conflict of interest.



I also note your assertion that the legal action between [REDACTED] and myself, despite being inactive for over six months, constitutes a perceived conflict of interest. I accept that and will act accordingly along the instructions of your memo however I know of no representations [REDACTED] has made to the Office of the Mayor to this point.

For material conflicts of interest you have my absolute commitment that I will remove myself from any decisions or advice provision to the Mayor. However none has arisen in the 18+ months plus I have worked for the city.

Also for a point of clarification from your memo: for the past 12 years I have been employed by Jacem Business Development Pty Ltd. I have not been employed by a developer or development consultant personally. That can be confirmed from my resume supplied to you at the time of my recruitment.

Kind regards,

Wayne.

Personal interests

Because of the broad duties imposed on public sector officials, a variety of personal interests may come into conflict, or appear to come into conflict, with the performance of official duties.

The appearance of a conflict of interest may be as serious as an actual conflict because it may reduce public confidence in the integrity of the public sector. Consequently, actions that would raise the appearance of a conflict of interest in the mind of a reasonable person with knowledge of the relevant facts should be avoided.

In the public sector such personal interests can arise in the following circumstances:

- A person has an interest in property of any kind, including money, the value of which may be altered by a decision the person may be involved in making. This is the kind of interest which is usually disclosed by the registration of personal interests. Such interests can give rise to an actual, apparent or potential conflict of interest.
- A person has an interest in any kind of property, including money, the value of which may be altered by the use of confidential information obtained in the discharge of official duties. For example, selling shares in a company because of confidential information that a pending Government decision will reduce the value of those shares.
- A person seeks and/or accepts gifts and/or hospitality which may influence or appear to influence decision-making. The *Financial and Performance Management Standard 2009* contains a general standard for reporting gifts and hospitality received by public officials where the value is in excess of \$150. However, it is possible that hospitality of a lesser value than \$150 can be received in a way that compromises the decision maker's impartiality.
- A person has or seeks employment either in or outside the public sector that could compromise decision making, for example, if a public official makes a decision favourable to a non-public sector person or entity in the hope of obtaining employment, or if an official attempts to set up a business that could deal with the entity in which the official is employed. Such conduct may involve a criminal offence under section 89 of the Criminal Code.
- A person's relationship or friendship influences or appears to influence decision making: as a general rule, when a decision is to be made involving a relative or friend, the decision-maker should not make that decision alone. If the decision is being made by a panel, the nature of the relationship or friendship should be disclosed to the other panel members so that the decision is based on merit.
- A person has a strongly held personal conviction: for example, an official with a strongly held opinion about euthanasia may be unable to give sound and impartial advice to the Government about the issue.
- A person's private activities benefit from the use of government property: for example, when access to the internet is used for personal e-commerce.

Kind regards,

Wayne Moran



Chief of Staff
Office of the Mayor

Gold Coast City Council
Ph: (07) [REDACTED] Fax: (07) [REDACTED]
PO Box 5042 GCMC QLD 9729
[REDACTED]
www.goldcoastcity.com.au

From: DICKSON Dale **On Behalf Of** DICKSON Dale Private
Sent: Thursday, 29 August 2013 5:09 PM
To: Mayoral CoS
Cc: [REDACTED] Tom Tate'
Subject: RE: Conflict of Interest

Thanks Wayne

Before I respond, could you please advise me of all other persons who have received your email below, so that I may copy them into my reply.

Enjoy your long weekend.
Dale

Dale Dickson

Chief Executive Officer
City of Gold Coast

T: [REDACTED]
PO Box 5042 Gold Coast Mail Centre Qld 9729
cityofgoldcoast.com.au

From: DICKSON Dale **On Behalf Of** DICKSON Dale Private
Sent: Tuesday, 3 September 2013 11:13 AM
To: Mayoral CoS
Cc: GATES Donna; 'Tom Tate'; [REDACTED]
Subject: FW: Conflict of Interest

Wayne, good morning

I refer to my memorandum to you of 13 August 2013, and subsequent emails.

I have invited you to make an appointment to discuss this matter several times, however you have declined to do so.

My memorandum constitutes a lawful and reasonable direction to you.

I expect that all staff will do their best to comply with the Code of Conduct and the relevant policy. That framework is clear in communicating to staff that perceptions of conflict may arise and past employment or client relationships is quite obviously one factor that may reasonably give rise to



perceptions that an officer may tend to favour (or prejudice, due to animosity) a past client/employer in their future dealings.

Turning to some specific points raised by you:-

In an email from you to another Council officer (not myself) on the 26 August, you stated, inter alia, that "Taking on the advice legally prevents me from advising the mayor on around 70% of all major projects in the city". Leaving aside the magnitude of matters you personally advise the Mayor on, this comment is wrong.

In my email to you of the 16 August, where I encourage you to take up my offer for a chat on the issue, I state:

"A key point in my advice is that you must in future disclose conflicts of interest - this does not mean that you can't deal with related issues, which seems to be your interpretation of my advice. With all due respect, such an interpretation is not correct".

Further, your comments regarding my example of my involvement with the Gold Coast Suns in your response below, are wrong. I have not stated that my resignation as a club director exhausted any conflict of interest - these are your words.

In my email to you of the 16 August, I refer to "the conflict that arose or arises from my involvement as a director of the Gold Coast Suns", and then explain what I have done to date to address this. Appropriate disclosure or other actions by me will continue into the future, should circumstances dictate this.

Your response below is also clearly inconsistent with a recent disclosure by you, which referred to a past (historical) relationship with [REDACTED] you referred a matter to me by email on 5 June, and in doing so stated:

"Given my history I feel I can't be further involved in the matter".

I have required that this standard of disclosure in future be applied to your involvement in matters where past employers (clients) of yours are seeking to advance development interests. Again, this is a quite lawful and reasonable expectation, given your circumstances and conduct to date in your role as Chief of Staff.

I note you have also selectively quoted from the Integrity Commissioner's website relating to Conflicts of Interest (Personal Interest). I would suggest you read the guidance provided by that site in its entirety, and in particular the reference to Conflicts of Interest (Public Interest), where it states (emphasis mine):

"In respect of other interests, the public official should disclose the conflict of interest to the chief executive officer and appropriate arrangements should be made to deal with the conflict, usually by reassigning the task to another official. This is so not only when there is an actual conflict of interest but also when there appears to be a conflict of interest or when there is a potential for a conflict of interest to arise".

I refer you to the definition of 'non-pecuniary interests' in the Conflict of Interest for Employees Policy (emphasis mine):

"Non-pecuniary interests" do not have a financial component. They may arise from personal or family relationships, or involvement in sporting, social or cultural activities. They include any tendency toward favour or prejudice resulting from friendship, animosity, or other personal involvement with another person or group. These are not limited to pecuniary interests or to interests that can bring direct personal gain or help avoid personal loss. They also include many social and professional activities and interests, etc."

While sources such as the Integrity Commissioner's web site are instructional, the reality is that we are bound by the definitions contained in the policy.



Further, your point of clarification that you have not been employed by a developer or development consultant personally is not a revelation, and is simply an artificial distinction. It does not alter my advice to you of 13 August,

Wayne, with all of the above now dealt with, I will arrange a meeting with you shortly to go over the practical aspects of how you can disclose conflicts of interest into the future.

In closing, I will reiterate the words of my email to you of 16 August 2013:

"It remains very important that our organisation, of which you are a key part, serves the Mayor and city well in terms of delivering economic, social and other outcomes, whilst also ensuring that the reputation of the Mayor, Mayor's Office and Council is not put at risk. You have a critical role in ensuring community trust and confidence in the Mayor's Office is of a high level. These twin goals can be met, but require all staff and Councillors to understand and apply some simple parameters, including you."

Regards
Dale

Dale Dickson

Chief Executive Officer
City of Gold Coast

T: [REDACTED] F: [REDACTED]
PO Box 5042 Gold Coast Mail Centre Qld 9729
cityofgoldcoast.com.au

From: Mayoral CoS
Sent: Saturday, 30 November 2013 10:14 AM
To: DICKSON Dale Private
Cc: [REDACTED] Tom Tate Private; [REDACTED]
Subject: Managing Conflicts of Interest

Mr CEO,

Further to your Memorandum of the 13 August, you state "Your previous employment by or with developers or consultants associated with the development, planning or property industry results in a conflict of interest in any dealings that you may with them in your current role". You provided a deadline of response prior to the end of the month so here it is:

Leaving aside the fundamental error that I have never been directly employed by a developer or consultant associated with development or planning, my legal advice is that your assertion is plain wrong.

Simply put, my previous employment does not constitute a 'personal interest' as no financial gain nor avoidance of loss in the present results from 'previous employment'. Without a 'personal interest' there can be no conflict between my private interests and my role for the city. The legal opinion I've received advises that your test of 'personal interest' is even far more draconian than that faced by the Councillors.

Alas, the ruling in your memo is set in black and white and I therefore can not deal with any matters involving your 'previous employment' definition of conflict of interest.

While you set out all sorts of actions and procedures for 'dealing with such conflicts of interest', the text of your memo is clear in indicating the conflict of interest exists for me. My lawyer however has advised that unless that fundamental statement is withdrawn and the error in assessment in this regard admitted, the procedures outlined still leave me personally exposed for further action by the organisation and other authorities over failures in dealing with conflicts of interest as defined by you. This is the case even if I was to follow those 'unique to me' procedures precisely. I suspect you won't be making any such a withdrawal or correction so I am left with excluding myself.

I also note that the instructions and procedures outlined have not been applied to other staff members in the organisation. Given that almost every one of the 3500 staff would have previous employment in one form or another, many in the developments sectors at the centre of this matter, the lack of this being specifically mentioned in existing Council employee guidance policy documents indicates that I am clearly being singled out.

I note that my conflict of interest matter has been raised and documented by the city solicitor in the latest audit committee agenda as a reportable item in the fraud report. To be mentioned in such a context absolutely floors me as I am led to believe such reports are provided to the CMC and other external agencies.

I also note your statement in proving the 'common man perceived conflict of interest test' that a number of unnamed people have made an 'issue' about my previous employment constituting a conflict of interest to you. It disgusts me in that I have, to date, received no detail of whom nor the details of the 'specific issues raised' against me in this regard. Working in such a politically charged environment, I can't help but wonder about the independence of such 'approaches' and the lack of due process of the handling of such complaints against me.

To say I feel shattered by my treatment in this matter, is quite frankly, an understatement.

I believe the pursuit of me has more to do with an effort in reducing my perceived advisory capacity for the Mayor than any true conflict of interest avoidance or resolution by the organisation.

I stand ready, bruised, breathing hard and a little wobbly on my feet, but determined to face the next round.

Kind regards,



Wayne Moran
Chief of Staff
Office of the Mayor Tom Tate

T: [REDACTED] M: [REDACTED]
P: PO Box 5042 Gold Coast Mail Centre Qld 9729
A: 135 Bundall Road Bundall Qld 4217
W: cityofgoldcoast.com.au

CITY OF
GOLD COAST.

(6)

From: DICKSON Dale **On Behalf Of** DICKSON Dale Private
Sent: Tuesday, 21 January 2014 2:16 PM
To: Mayoral CoS
Cc: MAYOR; GATES Donna; [REDACTED]
Subject: Managing Conflicts of Interest and Related Matters

Wayne, good afternoon

I trust that you have had a good break and are looking forward to 2014.

The attached memo is my position on the various communications dating back to August 2013, most particularly my email of 6th November and your response of 30th November, regarding the above issue. You'll note that Cr Gates has been added to the recipients list, given that she received a BC of your 30th November email.

My view has always been that the issue is, in reality, a simple one that can be dealt with simply.

I will respond separately to you on your 30th November email, however don't think it is necessary to provide this to anyone else, other than Mayor Tate (for information).

thanks
Dale

From: Mayoral CoS
Sent: Tuesday, 21 January 2014 5:18 PM
To: DICKSON Dale Private
Cc: MAYOR; GATES Donna; [REDACTED]
Subject: RE: Managing Conflicts of Interest and Related Matters

Hello Dale,

Noted and thanks.

Kind regards,



Wayne Moran
Chief of Staff
Office of the Mayor Tom Tate

Memorandum

To: Chief of Staff, Office of the Mayor

Copy: Mayor Tate
Deputy Mayor – Cr Gates
Chief Operating Officer
Director Planning, Environment & Transport
City Solicitor
Manager Executive Services

From: Chief Executive Officer

Action by:

Subject: Managing Conflicts of Interest and Related Matters

Date: 21 January 2014

File no: Personal File **Doc #:** 41750218

Wayne,

I refer to our recent written and verbal communications on the matter of conflicts of interest. I now provide the following advice.

▪ Previous 'Employment'

I have advised that your previous 'employment' that is, paid work, results in, as a minimum, a perceived conflict of interest. This advice stands.

- Being required to declare conflicts of interest does not automatically mean that you cannot continue to be involved in a matter. What is required is that the conflict be declared, so that the circumstances can be assessed and a decision can be made about your involvement, if appropriate.

▪ Mayor's Conflicts of Interest or Material Personal Interest

From time to time, matters may come before a Standing Committee or the Council in which the Mayor will declare a Conflict of Interest (and decides to leave the meeting room or Chamber) or a Material Personal Interest. In these circumstances, even where you don't have any conflict of interest yourself, I consider it prudent (on Mayor Tate's behalf) that you absent yourself from the meeting room or Chamber.

▪ Declaring Conflicts of Interest (Development Matters)

You can make declarations of conflicts of interest relating to development matters to the Director Planning Environment and Transport, or myself. Such conflict declarations must be in written form (e.g. email). A decision can then be made by the Director, or myself, as to the appropriate manner in which to manage the declared conflict, which will occur on a case by case basis.

Working for our future - today

▪ Declaring Conflicts of Interest (Non-Development Matters)

For conflicts of interest not related to development matters it is acceptable that these be declared to either the Mayor or me. These declarations can be made by email or verbally, depending on the circumstances.

▪ Manner of Declaration

In declaring conflicts of interest as described above, it is advisable for you to use a form of words on which the person receiving the declaration can rely in making an assessment and forming a decision on how best the conflict is to be managed. The following is suggested:

For a declaration in which you believe it is appropriate that no further involvement is appropriate:

"I declare that I believe I have an actual, perceived or potential conflict of interest in the matter of _____, on the grounds that _____.

Having considered my position, I believe it is not appropriate that I have further involvement in the matter".

For a declaration in which you believe that an actual, perceived or potential conflict of interest exists, but that you are of the belief you can continue involvement, the following wording is suggested:

"I declare that I believe I have a conflict of interest in the matter of _____, on the grounds that _____.

Having considered my position in the light of the Conflict of Interest for Employees Policy, I believe that this conflict is not of a nature that would preclude my further involvement".

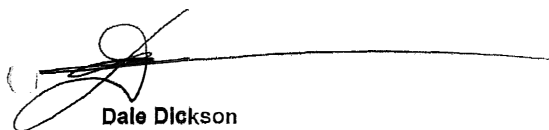
▪ Where a conflict of interest has been declared, the approach to then take is:

- In dealing with Councillors and Council officers (apart from the staff of the Office of the Mayor), you must avoid actions or communications which may be interpreted as giving directions, advice or otherwise encouraging officers to take action one way or another on that matter.
- Care must be taken in drafting or sending letters or sending emails such that the recipient cannot interpret the communication from you as advocating a position, or seeking to influence the outcome of a proposal. Such communications should be neutral and seek to inform or communicate information only.

▪ Requests for Information Relating to Planning or Development Matters

When requesting information in relation to planning or development matters, I ask that such requests be restricted to myself, the Director of PET, PET Managers (preferable) and Executive Coordinators. Restricting requests for information to officers at this level will enhance consistency and quality of advice provided and assist the efficient and prompt management of such requests.

I trust the above is of assistance to you.



Dale Dickson
CHIEF EXECUTIVE OFFICER

Working for our future - today

⑦

DICKSON Dale**From:** DICKSON Dale on behalf of DICKSON Dale Private**Sent:** Tuesday, 21 January 2014 2:29 PM**To:** Mayoral CoS**Cc:** Tom Tate Private**Subject:** Conflicts of interest

Wayne, good afternoon again

The following is my response to various aspects of your 30th November email, which I believe is necessary for a number of reasons.

Whilst its been appropriate to give you a full and fair opportunity to state your case on this issue, it is now time to move forward.

Regards

Dale

1) You state:

"Leaving aside the fundamental error that I have never been directly employed by a developer or consultant associated with development or planning, my legal advice is that your assertion is plain wrong."

There is no fundamental error. You've now used the term 'directly employed'. I haven't used that term, you have. My reference to previous employment by or with developers or consultants associated with development is clear – employment is the state of having paid work.

2) You state:

"Simply put, my previous employment does not constitute a 'personal interest' as no financial gain nor avoidance of loss in the present results from 'previous employment'. Without a 'personal interest' there can be no conflict between my private interests and my role for the city."

I note that you appear to have waived legal privilege in relation to this opinion you refer to and your assertion is wrong.

You have again misunderstood or ignored my advice of 3 September. Again, to quote this in part:

"I refer you to the definition of 'non-pecuniary interests' in the Conflict of Interest for Employees Policy (emphasis mine):

"Non-pecuniary interests" do not have a financial component. They may arise from personal or family relationships, or involvement in sporting, social or cultural activities. They include any tendency toward favour or prejudice resulting from friendship, animosity, or other personal involvement with another person or group. These are not limited to pecuniary interests or to interests that can bring direct personal gain or help avoid personal loss. They also include many social and professional activities and interests, etc."

3) You state:

"The legal opinion I've received advises that your test of 'personal interest' is even far more draconian than that faced by the Councillors."

Your claim is unsubstantiated and irrelevant. A Conflict of Interest for Councillors includes a perceived conflict of interest. I refer to section 173 of the Local Government Act 2009 (the Act), which states:

Section 173(1) (c)

21/01/2014



- (i) a Councillor at a meeting has a conflict of interest in the matter (the real conflict of interest); or
- (ii) could reasonably be taken to have a conflict of interest in the matter (the perceived conflict of interest).

The Act provides a number of specific exemptions which are not taken to be a conflict of interest and previous employment is not an exemption.

Regular declaration of conflicts of interest by Councillors is occurring; a number of which are relatively minor in comparison to the issues I have raised with you.

4) You state:

"Alas, the ruling in your memo is set in black and white and I therefore can not deal with any matters involving your 'previous employment' definition of conflict of interest"

"While you set out all sorts of actions and procedures for 'dealing with such conflicts of interest', the text of your memo is clear in indicating the conflict of interest exists for me. My lawyer however has advised that unless that fundamental statement is withdrawn and the error in assessment in this regard admitted, the procedures outlined still leave me personally exposed for further action by the organisation and other authorities over failures in dealing with conflicts of interest as defined by you."

In the draft memo on which you were asked you to comment, I advised:

"Being required to declare conflicts of interest does not automatically mean that you cannot continue to be involved in a matter. What is required is that the conflict be declared, so that the circumstances can be assessed and a decision can be made about your involvement, if appropriate".

And from my email of 16 August:

"A key point in my advice is that you must in future disclose conflicts of interest - this does not mean that you can't deal with related issues, which seems to be your interpretation of my advice. With all due respect, such an interpretation is not correct".

Your comment does not change my consistent advice that you must declare conflicts of interest, but are not necessarily or automatically obliged to not deal with them as Chief of Staff.

5) You further write:

"I also note that the instructions and procedures outlined have not been applied to other staff members in the organisation. Given that almost every one of the 3500 staff would have previous employment in one form or another, many in the developments sectors at the centre of this matter, the lack of this being specifically mentioned in existing Council employee guidance policy documents indicates that I am clearly being singled out."

This assertion is simply a red herring.

6) You state:

"I note that my conflict of interest matter has been raised and documented by the city solicitor in the latest audit committee agenda as a reportable item in the fraud report. To be mentioned in such a context absolutely floors me as I am led to believe such reports are provided to the CMC and other external agencies."

This was part of a confidential report provided to the Audit Advisory Committee, which included a list of some 40 "notable incidents". The report did not identify any officers.

Your comment is irrelevant. I would of course be happy to explain to you the strong corporate governance framework which I have put in place, which includes reporting directly to the Audit Advisory Committee independently of myself as CEO.

7) You state:

"I also note your statement in proving the 'common man perceived conflict of interest test' that a number of unnamed people have made an 'issue' about my previous employment constituting a conflict of interest to you. It disgusts me in that I have, to date, received no detail of whom nor the details of the"

21/01/2014



'specific issues raised' against me in this regard. Working in such a politically charged environment, I can't help but wonder about the independence of such 'approaches' and the lack of due process of the handling of such complaints against me."

You wrongly refer to complaints. This is not what was stated. The relevant extract is below:

"I would add that the perception of a conflict of interest on your part due to your previous work for other parties (particularly those associated with the development industry) is not mine alone – it has been expressed to me by a number of people without such views being solicited. "

There is no reference to allegations, or complaints.

8) You state:

"I believe the pursuit of me has more to do with an effort in reducing my perceived advisory capacity for the Mayor than any true conflict of interest avoidance or resolution by the organisation."

This assertion is plainly wrong.

21/01/2014



On 1 Oct 2015, at 4:02 PM, DICKSON Dale Private [REDACTED] wrote:

Wayne

Has it been necessary to for you to declare a conflict of interest in the [REDACTED] matter as per my memo of 21 January 2014?

If so, have you done so as per that advice?

This obviously requires advice from you as to the relevant planning consultant or consultants involved, and the paid work question which is addressed in that memo.

Thanks
Dale

Dale Dickson PSM
<image001.png>
Chief Executive Officer
City of Gold Coast



On 2 Oct 2015, at 6:23 am, Mayoral CoS [REDACTED] wrote:

Hello Mr CEO,

I can confirm I have complied with all State laws in regards to my disclosure requirements.

Regards,

Wayne Moran
Chief of Staff
Office of the Mayor Tom Tate
City of Gold Coast

From: DICKSON Dale Private
Sent: Sunday, October 04, 2015 3:52:40 PM
To: Mayoral CoS
Cc: [REDACTED]
Subject: Re: [REDACTED]
Auto forwarded by a Rule

Wayne

You need to answer my question/s thanks.

Your response below clearly doesn't.

Please do so by COB next Thursday. This should provide you with ample time to do so.

Regards
Dale

From: Mayora lCoS
Sent: Tuesday, 6 October 2015 12:40 PM
To: DICKSON Dale Private l
Cc: Tom Tate Private l MAYOR
Subject: RE: [REDACTED]

Good Afternoon Mr CEO,

I reviewed my answer of the 2nd of October to you with the Mayor prior to issuing it to you. The Mayor and I concluded it was the correct and complete answer thus it was provided to you.

I have therefore answered your "questions" raised. To repeat, the answer is that I have complied with all conflict of interest disclosures as required under Queensland Law.

I am always ready to discuss with you in person, one on one, and encourage this happens before the end of the week however timing is up to you given you have a far more complicated schedule than I.

Kind regards,



<image011.png>
Wayne Moran
Chief of Staff
Office of the Mayor Tom Tate

From: DICKSON Dale **On Behalf Of** DICKSON Dale Private
Sent: Thursday, 22 October 2015 10:12 AM
To: Mayoral CoS
Cc: [REDACTED] MAYOR
Subject: RE: [REDACTED]

Thanks Wayne

Just a note to advise that I am yet to come back to you on this, however will do so in the next week or two when time permits.
It will be necessary for me to, inter alia, make it very clear that the Mayor cannot and should not be implicated in this issue.
Aside from this aspect, I believe the issue is a simple one and can be addressed in a straightforward manner.

Thanks
Dale

Dale Dickson PSM

Chief Executive Officer
City of Gold Coast

From: Mayoral CoS
Sent: Thursday, 22 October 2015 6:03 PM
To: DICKSON Dale
Cc: MAYOR; [REDACTED]
Subject: RE: [REDACTED]

Hello Mr CEO,

I have just finished with a phone call with the Mayor where your email was one of the topics.

I'm not sure about your term 'implicate' but I can assure you that the Mayor is front and centre of all my activities as I serve at his pleasure.

I am surprised you didn't take up the offer to discuss this face to face, an offer made back on the 6th of October.

However I stand to discuss with you at any time.

Kind regards,
|
Wayne Moran.



From: DICKSON Dale **On Behalf Of** DICKSON Dale Private
Sent: Wednesday, 4 November 2015 9:03 AM
To: Mayoral CoS
Cc: MAYOR: [REDACTED]
Subject: [REDACTED]

Wayne

In considering your response to my email of 1 October, you chose to involve the Mayor.

Further, in actually responding on 6 October, you clearly implicated the Mayor. This was inappropriate and unnecessary.

You are personally responsible for the content of your responses to my questions on this issue.

Further, as is the case with all Councillors and Council officers, you are personally responsible for any conflict of interest disclosure relating to yourself (should this be necessary).

Also, my January 2014 memo stated that being required to declare conflicts of interest did not automatically mean that you could not continue to be involved in a matter. This was relevant to the [REDACTED] issue if you have declared a conflict of interest in accordance with the terms of my January 2014 memo (if this was indeed necessary).

Finally, any request or directive from the Mayor to you to be involved in any matter, not be involved in any matter, or cease being involved in any matter is separate and distinct from your responsibilities as detailed in my January 2014 memo. Put differently, any request or directive from the Mayor which gives rise to a necessary conflict of interest disclosure by you, does not absolve you of that personal responsibility.

With the above said, I will separately and directly communicate with you as to my questions.

Dale

Dale Dickson PSM

Chief Executive Officer
City of Gold Coast

From: DICKSON Dale
Sent: Wednesday, 4 November 2015 9:32 AM
To: Mayoral CoS
Cc: [REDACTED]
Subject: FW: [REDACTED]

Wayne

I refer to my memo to you of 21 January 2014 regarding conflicts of interest and related matters, the questions contained in my email to you of 1 October 2015, and your responses of 2 and 6 October 2015.

As was stated in my email of 4 October 2015, you need to answer my questions. Your responses to date have not. They have been statements.

I don't consider it necessary to re-state my questions, however am prepared to do so if your next response is unsatisfactory, that is, avoids answering the questions.

Further, I don't consider it necessary or appropriate to discuss the matter with you at this stage.



Could I have your response by COB, Friday 6 October please.

Thanks
Dale

Dale Dickson PSM

Chief Executive Officer
City of Gold Coast

From: DICKSON Dale
Sent: Wednesday, 4 November 2015 9:38 AM
To: Mayoral CoS
Cc: [REDACTED]
Subject: FW: [REDACTED]

Wayne

I refer to my email below.

Could I have your response by COB Friday 6 November 2015, thanks.

Dale

Dale Dickson PSM

Chief Executive Officer
City of Gold Coast

From: Mayoral CoS
Sent: Wednesday, 4 November 2015 10:52 AM
To: DICKSON Dale
Cc: [REDACTED]
Subject: RE: [REDACTED]

Hello,

I'm sorry Mr Dickson but that does not provide sufficient time for me to consult with my lawyer on the matter now that you are escalating matter with three emails in short succession.

I also note that, despite repeated suggestions over the preceding weeks, you have declined to meet face to face on the matter.

Kind regards,

<image011.png>
Wayne Moran
Chief of Staff
Office of the Mayor Tom Tate



From: DICKSON Dale On Behalf Of DICKSON Dale Private
Sent: Wednesday, 4 November 2015 4:41 PM
To: Mayoral CoS
Cc: [REDACTED]
Subject: FW: [REDACTED]

Wayne

I believe that COB on Friday 6 November is sufficient time for you to answer the questions, thanks.

Dale

Dale Dickson PSM

Chief Executive Officer
City of Gold Coast

From: Mayoral CoS
Sent: Wednesday, 4 November 2015 5:06 PM
To: DICKSON Dale Private
Cc: [REDACTED]
Subject: RE: [REDACTED]

Hello,

Since time now is of the essence can you please restate the question you have for me to answer by COB Friday so there are no misunderstandings.

Kind regards,

<image011.png>
Wayne Moran
Chief of Staff
Office of the Mayor Tom Tate

Wayne

My questions are clearly stated in my email to you dated 1 October 2015, a copy of which is set out in full below.

I await your response.

Regards
Dale

Dale Dickson PSM

Chief Executive Officer

City of Gold Coast

From: Mayoral CoS
Sent: Thursday, 5 November 2015 12:45 PM
To: DICKSON Dale Private
Cc: MAYOR
Subject: Re: [REDACTED]

Hello,

I can confirm I never have done paid work for [a Co.A Director] who is the planner on this project. I didn't know the proponent of [REDACTED] prior to my time at council.

Cheers,

Wayne Moran
Chief of staff
Office of the Mayor

From: DICKSON Dale
Sent: Sunday, 8 November 2015 12:06 PM
To: Mayoral CoS
Cc: [REDACTED]
Subject: FW: [REDACTED]

Thanks Wayne

As you may appreciate, in my role as CEO I have a range of responsibilities.

Having regard to these, and given the information which has been conveyed to me in relation to this matter (which predated my actions), I must ask you to clarify whether your reference to [a Co.A Director] applies to [Co.A].

Similarly, whilst I don't see it as necessary or appropriate for me to identify all individual companies that may be engaged in relation to the [REDACTED] submission, I am aware there may be a number. They potentially include the likes of [REDACTED] and [REDACTED].

Subject to your response on the above questions, I believe that I can finalise this matter.

Whilst there are valid reasons for its timely finalisation, I appreciate you may need some more time to respond – I suggest therefore COB next Thursday.

Dale

Dale Dickson PSM

Chief Executive Officer
City of Gold Coast



From: Mayoral CoS
Sent: Monday, 9 November 2015 10:49 AM
To: DICKSON Dale
Cc: [REDACTED]
Subject: RE: [REDACTED]

Hello Mr CEO,

Firstly, I recognise and respect your role as CEO.

I have had no previous nor current knowledge of [REDACTED] nor [REDACTED] so whomever is providing information that I am in some way connected with those outfits, in the past or presently, is feeding you false information. This is baseless allegation of a conflict of interest that doesn't exist.

With respect to your statement "finalise this matter" I was not aware there was a 'matter' to be finalised. I have offered on multiple occasions to meet face to face but you have preferred to put everything legalistically in writing. When I have then requested more time to provide written answers so as to consult legal counsel you have denied this reasonable request.

Let me be very clear. I do not have a conflict of interest in [REDACTED]. My company has provided paid work for one of [REDACTED] consultants, [Co.A] in the distant past, primarily with [Co.A] director [a Co.A Director] whom I understand is not the director dealing with [REDACTED]. But that service provision has long since finished prior to taking up my position with the Mayor. I have had no private professional association with [Co.A] since joining the city of Gold Coast.

It is clear that this issue has been reignited as a direct result of my full and frank email from me to the Mayor on [REDACTED]. This email was formed at the Mayor's request and after the Mayor stated to the last [REDACTED] meeting with the Mayor, proponent and Council Planning staff, that I provide a watching brief on the matter. That the Mayor chose to forward my Mayoral briefing note onto you, unedited, was the Mayor's decision not mine.

Dispute the constraint of the Local Government Act the Mayor has had an expectation that my daily reporting is to him and that has successfully been the case for over three and a half years.

I maintain that I have no greater perceived conflict of interest than any other person that has worked in this city over their lifetime, therefore none at all.

Mr CEO, I can assure you I act on behalf of the Mayor on all matters regardless of other self-serving rumour mongering to the contrary. You and I may differ on the actions I may take in satisfying or even interpreting his wishes,

however I am completely 100% convinced of this position. I am firmly an Australian patriot and very proud of this 'public service'. I am currently undertaking after a long business career on the Gold Coast. First and foremost I am a lover, defender and champion of this city: the city where I grew up, the city where I found and married my love and the city where I am bringing up my two children. This city is my life and forever will be. I think this Mayor is the perfect fellow for our city in this age and I will continue to do everything to see his policies and vision implemented. My aim is to be a strong and competent Chief of Staff for the Mayor as he strives to improve the performance of Council through reform and implement his vision for a better city. This was the guideline the Mayor elected at the time set for me prior to my appointment as his Chief of Staff.

I feel this email closes off your current line of questioning.

Kind regards,



Wayne Moran
Chief of Staff
Office of the Mayor Tom Tate

T: [REDACTED] M: [REDACTED]
P: PO Box 5042 Gold Coast Mail Centre Qld 9729
A: 135 Bundall Road Bundall Qld 4217
W: cityofgoldcoast.com.au

CITY OF
GOLD COAST.

From: DICKSON Dale
Sent: Sunday, 8 November 2015 12:06 PM
To: Mayoral CoS
Cc: [REDACTED]
Subject: FW: [REDACTED]

Thanks Wayne

As you may appreciate, in my role as CEO I have a range of responsibilities.

Having regard to these, and given the information which has been conveyed to me in relation to this matter (which precipitated my actions), I must ask you to clarify whether your reference to [a Co.A Director] applies to [Co.A] [REDACTED].

Similarly, whilst I don't see it as necessary or appropriate for me to identify all individual companies that may be engaged in relation to the [REDACTED], I am aware there may be a number. They potentially include the likes of [REDACTED] and [REDACTED].

Subject to your response on the above questions, I believe that I can finalise this matter.

Whilst there are valid reasons for its timely finalisation, I appreciate you may need some more time to respond – I suggest therefore COB next Thursday.

Dale

Dale Dickson PSM

Chief Executive Officer

2

Memorandum

To: Chief of Staff, Office of the Mayor
Copy: Manager People and Culture
From: Chief Executive Officer
Subject: Show Cause Notice - Conflict of Interest
Date: 16 November 2015
File No: **Doc #:** 52075205

Wayne

I write to provide you with notice of intention to take disciplinary action against you in accordance with the terms of Council's Disciplinary Policy and Guidelines. You are offered the opportunity to show cause why such action should not be taken.

I have formed the preliminary view, on the evidence available to me, that you have breached the terms of Council's Code of Conduct with regard to your obligation to manage Conflicts of Interest in dealing with development matters.

I refer to my memorandum to you of 21 January 2014 in which the following matters were raised:

- *Previous 'Employment'*

I have advised that your previous 'employment' that is, paid work, results in, as a minimum, a perceived conflict of interest. This advice stands.

- *Being required to declare conflicts of interest does not automatically mean that you cannot continue to be involved in a matter. What is required is that the conflict be declared, so that the circumstances can be assessed and a decision can be made about your involvement, if appropriate.*

- *Declaring Conflicts of Interest (Development Matters)*

You can make declarations of conflicts of interest relating to development matters to the Director Planning Environment and Transport, or myself. Such conflict declarations must be in written form (e.g. email). A decision can then be made by the Director, or myself, as to the appropriate manner in which to manage the declared conflict, which will occur on a case by case basis.

Furthermore, you were given advice as to how such conflicts could be declared, and to whom.

You have been involved in a range of planning matters since this advice and instruction was given to you. On the evidence before me, it is clear that you have engaged in a planning matter without declaring a potential conflict of interest.

I refer specifically to your involvement in the [REDACTED] matter. Despite repeated attempts from me to have you respond directly to my question as to whether you have a perceived conflict of interest in this matter, you provided responses that were equivocal and avoided the direct question. However, in your email of 9 November you advised:

"My company has provided paid work for one of [REDACTED] consultants, [Co.A] in the distant past, primarily with [a Co.A Director], whom I understand is not the director dealing with [REDACTED]. But that service provision has long since finished prior to taking up my position with the Mayor. I have had no private professional association with [Co.A] since joining the city of Gold Coast."

Based upon the admission of a previous employment relationship with [Co.A], a perceived conflict of interest is established. While, the perceived conflict of interest does not necessarily preclude your involvement in the matter, your failure to report the conflict to the Director or myself, as instructed, constitutes a breach of your obligations under the terms of Council's Code of Conduct for Employees. The breach is exacerbated by the fact that this issue has been previously brought to your attention, and unambiguous advice and instruction given to you with regard to your obligations, and how you should fulfil them. Further, you avoided answering questions on this matter in a direct and forthright manner.

You have made various assertions, including that you were acting at the instruction of the Mayor, and that the employment relationship with [Co.A] was a long time ago. Neither of those assertions are relevant, and they do not absolve you of your individual responsibility to declare a perceived conflict of interest. It is a matter for your manager (or in this case, being a development matter, the Director Planning and Environment) or me as CEO, to consider your perceived conflict. It is for the Director or I to then make a considered decision as to whether your involvement in a matter is prudent or reasonable. Clearly, the obligation is that this advice must be provided before any involvement in a matter commences.

I provide this Show Cause notice so that you may consider the matters raised and I invite you to respond as to why I should not take disciplinary action against you for breaching Council's Code of Conduct for Employees. Your response is required by November 26.

Dale Dickson PSM
CHIEF EXECUTIVE OFFICER

From: DICKSON Dale on behalf of DICKSON Dale Private
Sent: Monday, November 23, 2015 9:22:46 AM
To: Mayoral CoS
Cc: [REDACTED]
Subject: Confidential
Auto forwarded by a Rule

 Wayne

I write to address your 9 November email responding to my questions on the conflict of interest issue, dating back to 1 October.

I'll begin by responding to various of your peripheral comments.

You state:

"I have had no previous nor current knowledge of [REDACTED] nor [REDACTED] so whomever is providing information that I am in some way connected with those outfits, in the past or presently, is feeding you false information. This is baseless allegation of a conflict of interest that doesn't exist."

I'm not aware of any allegations of a conflict of interest relating to the above consultancies. The purpose of me referring to other consultants was explained in my email. It wasn't about putting specific allegations to you, it was about helping you to give me a complete and accurate answer to my questions, which had not been the case to that point.

You state:

"I have offered on multiple occasions to meet face to face but you have preferred to put everything legalistically in writing. When I have then requested more time to provide written answers so as to consult legal counsel you have denied this reasonable request."

My questions to you weren't legalistic. They were simple, and were expressed simply. They were capable of being answered simply. It was certainly appropriate to ask for and receive an answer to my questions in a timely manner, and for this to occur in writing. Unfortunately, despite repeated attempts from me to elicit a direct and accurate response from you, you provided responses which were equivocal and evasive. This took some time.

You state:

"It is clear that this issue has been reignited as a direct result of my full and frank email from me to the Mayor on [REDACTED]. This email was formed at the Mayor's request and after the Mayor stated to the last [REDACTED] meeting with the Mayor, proponent and Council Planning staff, that I provide a watching brief on the matter. That the Mayor chose to forward my Mayoral briefing note onto you, unedited, was the Mayor's decision not mine."

This statement is simply wrong, and not relevant in any event. The issue was not re-ignited (to use your words) as a result of your email from you to the Mayor.

Having addressed the above, I now refer to my memo to you of 21 January 2014 which stated, inter alia:

- *Previous 'Employment'*

I have advised that your previous 'employment' that is, paid work, results in, as a minimum, a perceived conflict of interest. This advice stands.

- *Being required to declare conflicts of interest does not automatically mean that you cannot continue to be involved in a matter. What is required is that the conflict be declared, so that the circumstances can be assessed and a decision can be made about your involvement, if appropriate.*

- *Declaring Conflicts of Interest (Development Matters)*

You can make declarations of conflicts of interest relating to development matters to the Director Planning Environment and Transport, or myself. Such conflict declarations must be in written form (e.g. email). A decision can then be made by the Director, or myself, as to the appropriate manner in which to manage the declared conflict, which will occur on a case by case basis.

In your email to me of 9 November, you stated:

"My company has provided paid work for one of [REDACTED] consultants, [Co.A] in the distant past, primarily with [a Co.A Director] whom I understand is not the director dealing with [REDACTED]. But that service provision has long since finished prior to taking up my position with the Mayor. I have had no private professional association with [Co.A] since joining the city of Gold Coast."

Based upon your eventual admission of a previous employment relationship with [Co.A] a perceived conflict of interest is established and I note you have not complied with my 21 January 2014 instruction – which was issued to you for good public interest reasons.

Further, you were evasive and equivocal in answering my simple questions.

Also, I had given you a considerable opportunity to put forward a position on this specific issue prior to my 21 January 2014 memo. Your argument that there is no perceived conflict of interest was not accepted then, and is not accepted now.

Also, your various answers have sought to implicate the Mayor in a number of ways, none of which are appropriate or relevant. Even if this was the case, in my experience not all of your day to day actions are based on the instructions of the Mayor (or with his prior knowledge), including potentially other dealings with [Co.A]

Finally, this is not a case of a mere oversight which, when brought to your attention, you acknowledged and sought to immediately rectify.

It is my decision that the appropriate action, taking into account all of the circumstances, is to issue you with a written warning.

I will give you the opportunity however to show cause as to why you should not be issued with a written warning in relation to the matter. You are invited to show cause via written submission to myself by COB on Wednesday 2nd December 2015.

I will also give you the opportunity to speak to me directly on the issue should you wish to.

Regards
Dale

Dale Dickson
Chief Executive Officer
City of Gold Coast.

From: Mayoral CoS
Sent: Wednesday, 2 December 2015 11:27 AM
To: DICKSON Dale Private
Cc: [REDACTED]
Subject: RE: Show cause

Thankyou.

Kind regards,



Wayne Moran
Chief of Staff
Office of the Mayor Tom Tate

T: 07 [REDACTED] **M:** [REDACTED]
P: PO Box 5042 Gold Coast Mail Centre Qld 9729
A: 135 Bundall Road Bundall Qld 4217
W: cityofgoldcoast.com.au

CITY OF
GOLDCOAST.

From: DICKSON Dale **On Behalf Of** DICKSON Dale Private
Sent: Wednesday, 2 December 2015 11:24 AM
To: Mayoral CoS
Cc: [REDACTED]
Subject: FW: Show cause

Wayne

I'll extend the deadline for your response to 10 am next Monday.

Regards
Dale

Dale Dickson PSM

Chief Executive Officer
City of Gold Coast

T: [REDACTED] F: [REDACTED]
PO Box 5042 Gold Coast Mail Centre Qld 9729
cityofgoldcoast.com.au

CITY OF
GOLDCOAST.

From: Mayoral CoS
Sent: Wednesday, 2 December 2015 10:14 AM
To: DICKSON Dale
Subject: Show cause

Good Morning,

I have only just received advice from my barrister yesterday afternoon on this matter.

Consequently I wish to fully consider the advice to then fully respond to your show cause notice.

I am therefore requesting that the deadline for the show cause response matter be extended to Monday the 7th of December.

Kind regards,



Wayne Moran
Chief of Staff
Office of the Mayor Tom Tate

T: [REDACTED] M: [REDACTED]
P: PO Box 5042 Gold Coast Mail Centre Qld 9729
A: 135 Bundall Road Bundall Qld 4217
W: cityofgoldcoast.com.au

CITY OF
GOLDCOAST.

Monday, 7 December 2015

Wayne Moran
Chief of Staff
Office of the Mayor Tom Tate

Dear Mr CEO,

I have not failed to comply with your instruction contained in the memo dated 21 January 2014.

The memo of the 21st clearly states that "You can make declarations of conflicts of interest relating to development matters to the Director of Planning Environment and Transport or myself. Such conflict declarations must be in written form (e.g. email). A decision can then be made by the Director, or myself, as to the appropriate manner in which to manage the declared conflict, which will occur on a case by case basis".

Mr CEO, I do not have a conflict of interest therefore no declaration is required.

I am not prepared to state I have a conflict of interest as you are requesting when I don't have such a conflict, as that would be a falsehood that I am not prepared to utter or write.

In your memo of the 21st you state "I have advised that your previous 'employment' that is, paid work, results in, as a minimum, a perceived conflict of interest'. This advice stands".

This declaration of 'Previous Employment' being a conflict of interest is simply an error in law on your part and thus all instructions flowing from that error are effectively fruit from the same poisonous tree.

While I have been relying on the Local Government Act (LGA), Public Sector Ethic Act 1994 called up by the LGA as well as numerous writings on the subject in Queensland, I have also, more recently and as alluded to in my email correspondence with you and as suggested by the Mayor, engaged the services of a barrister well versed and a leading jurist in this area of law, to review and advise further on my situation.

His advice to me, which relies on code as well as case law, confirms my position and the fundamental error on your part in asserting that such a conflict of interest exists for me stemming from employment long past.

It cannot be concluded that, in giving advice to the Mayor about development applications for which [CoA] is the planning consultant, a reasonable and objective observer would think that there is a "real sensible possibility" that I would be swayed away from performing my public duties under s 13(2) of the LGA by reason of some conflicting loyalty to [CoA].

It cannot be reasonably asserted that the mere fact that I have received remunerative work from [CoA] in the past, on factually unrelated matters, in circumstances where that has not occurred since I took up employment with the Council almost four years ago, and in circumstances where there is no subjective or objective expectation that I will receive such work in the future, leads to the conclusion that I have or should be taken to have some form of personal or commercial "loyalty" to [CoA] which is capable of coming into conflict with the duties imposed on me by s13(2) of the LGA.




While a perceived conflict of interest accusation may be levelled without evidence or proof of the actual existence of a countervailing private interest, the perception must be based on an inference of a reasonable possibility of conflicting loyalties from objective facts and not mere argumentative assertion. Your assertions in this regard are purely argumentative.

I am unable to identify a supportable reasoning process by which it can be said that the historic fact of past paid work for [Co.A], in which both sides dealt at arm's length and got commercially what they bargained for, creates a situation or reasonable perception of ongoing divided loyalties.

I therefore should not be issued with a written warning and reserve my rights with respect to any potential further action to be taken.

Kind regards,



Wayne Moran
Chief of Staff
Office of the Mayor Tom Tate
City of Gold Coast

#52292843



City of Gold Coast

Office of the Mayor

7 December 2015
Our ref : MS#52258415

PO Box 5042
Gold Coast MC QLD 9729
Australia

Telephone [REDACTED]
Facsimile [REDACTED]
Email [REDACTED]
www.goldcoast.qld.gov.au

Mr Dale Dickson
CEO
City of Gold Coast


Dear Dale,

Show Cause Action – Chief of Staff – Direction

I have reviewed the legal opinion obtained by my Chief of Staff on his situation and am satisfied by its content.

I therefore,
I direct that you accept the response from Mr Moran on this matter and that no further action be taken in regards to your 'show cause' on Mr Moran, bringing this matter to a close.

Yours sincerely


TOM TATE
MAYOR

cc - Deputy Mayor Cr. Donna - GTE

6



City of Gold Coast

Office of the Mayor

11 December 2015
Our ref : MS#52303032

PO Box 5042
Gold Coast MC QLD 9729
Australia

Telephone [REDACTED]
Facsimile [REDACTED]
Email [REDACTED]
www.goldcoast.qld.gov.au

Mr Dale Dickson
CEO
City of Gold Coast

Dear Dale,

Show Cause Action – Chief of Staff – Direction

I asked Wayne Moran today if he had received confirmation from you that the 'show cause' matter had been closed as I had directed you to do earlier this week. He reported that nothing had been received verbally or in writing.

If this is not the case then I request to receive evidence that my direction has been carried out by close of business Monday 14 of December 2015.

If my direction has not been carried out as yet, I request that it is carried out without delay, by end of business Monday 14 of December 2015.

I will be available only on email for the next week.

If my direction is not carried out by end of business today then I will take the next step afforded me under the Local Government Act 2009 in relation to your failure to following my direction.

Dale, I view this matter very seriously.

Yours sincerely

A handwritten signature in black ink, appearing to read "Tom Tate".

TOM TATE
MAYOR

Cc. Deputy Mayor Cr Donna Gates.

[REDACTED]

From: wayne@[REDACTED]
Sent: Saturday, 12 December 2015 11:50 AM
To: Tom Tate Private
Subject: Re: Directive

Hi,

Well he's trying to give you the finger.

Section 170 of the lgact gives you unconstrained power to direct, there is no constraint of "inline of policies of council" as mentioned elsewhere. And mayor is giving a direction in relation to a matter of discipline by the CEO under section



170 Giving dire

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Current as at 20 Novemb

I think it's a simple reply to this email: "I've given you a clear directive, carry it out without delay". Once that is done then DD can go on with discussions to try to convince you otherwise.

Regards,

Wayne Moran
Chief of Staff
Office of the Mayor Tom Tate
City of Gold Coast

P: (07) [REDACTED] F: (07) [REDACTED]
A: 135 Bundall Road Bundall Q 4217 Australia
P: PO Box 5042 Gold Coast MC Q 9729 Australia
E: [REDACTED]
W: www.goldcoast.qld.gov.au

On 12 Dec 2015, at 11:07 AM, Tom Tate Private [REDACTED] wrote:

Sent from my Samsung Galaxy smartphone.

----- Original message -----

From: DICKSON Dale [REDACTED]
Date: 11/12/2015 22:32 (GMT+10:00)
To: Tom Tate Private [REDACTED]
Cc: GATES Donna [REDACTED]
Subject: FW: Directive

Mr Mayor

In response to your letter that I've received this evening, as you may recall it was always my intention to come back to you with a properly formed advice on your directive of the 7th December.

My brief verbal comments to you earlier this week were conveyed out of courtesy to you, but also with the knowledge you would be absent next week.

It was not, and is not, my intention to ignore your directive and to proceed to finalise the matter without coming back to you first.

My concerns are that there are a number of potential reasons why I may not be able act on your directive. As discussed with you, I want to ensure I'm giving you the correct advice.

Given your follow up letter this evening, the following is my immediate advice:

Section 12 of the LGA sets out the responsibilities of Councillors, and as you know s12(4) sets out the extra responsibilities of the Mayor. Ss (4)(d) relates to the Mayor's powers to direct the CEO, in accordance with the Council's policies.

Section 13 of the LGA sets out the responsibilities of employees, and ss(3) sets out the extra responsibilities of the CEO.



The taking of disciplinary action is prescribed in section 197 of the Act. This section provides that the CEO may take disciplinary action against a local government employee (but which importantly requires natural justice to apply to each and every Council employee).

My dilemma therefore is reconciling your directive with my legal obligations.

In closing, may I say again that it was not, and is not, my intention to ignore your directive.

I would appreciate being given the opportunity to provide you with a complete explanation of this issue when you return. I don't want my actions or motivations to be misrepresented.

Mr Mayor, I await your advice.

Dale

Chief Executive Officer

<image004.png>

Council of the City of Gold Coast - confidential communication

This email and any files transmitted with it are confidential and are intended solely for the use of the addressee. If you are not the intended recipient be advised that you have received this email in error and that any use, dissemination, forwarding, printing or copying of this email and any file attachments is strictly prohibited. If you have received this email in error, please immediately notify us. You must destroy the original transmission and its contents. Before opening or using attachments, check them for viruses and defects. The contents of this email and its attachments may become scrambled, truncated or altered in transmission. Please notify us of any anomalies. Our liability is limited to resupplying the email and attached files or the cost of having them resupplied.

<image004.png>

CITY OF
GOLDCOAST.

From: DICKSON Dale **On Behalf Of** DICKSON Dale Private
Sent: Friday, 18 December 2015 9:02 AM
To: Tom Tate Private
Subject: Show cause notice

Mr Mayor

The purpose of this email is to provide you with an updated advice on the above issue(s), given that I'm away for the 4 days of next week.

In simple terms, as verbally indicated last week, I have had to address a range of matters relating to the perceived conflict of interest question and the events and actions that have followed. A further set of considerations have arisen with your directive(s), which have also had to be addressed.

These have included such things as my various legal and contractual obligations, which I won't list, advice from the CCC regarding future research into risks relating to development assessment etc, review of potentially relevant policies, and more.

Whilst the Mayoral directive power is legally/generally clear, it was the unusual circumstances of this issue that have been at play.

It has taken some time to sort through things, however I can now advise that your directive effectively ends my dealing with the matter. I have not considered Mr Moran's response to the show cause notice.

There may be some related matters which require consideration in due course, however this is for another day, if necessary.

Thanks

Dale

CITY OF
GOLDCOAST.



Appendix 3

Recommendations made to the GCCC

The contract content of the position of Chief of Staff to the Mayor be re-drafted to provide more clarity and place a greater emphasis on the position's responsibilities, performance indicators and obligations to comply with policy.

A code of behaviour be developed for the position of chief of staff to the Mayor providing specific conduct guidance to ensure proper and transparent communications between the Chief of Staff, internal employees and external stakeholders.

Upon appointment, the Chief of Staff appointee undertake recorded face to face training with the Integrity Office on key areas of policy including but not limited to code of conduct, conflict of interest, corporate expenditure and information security and privacy.

The position of Chief of Staff be required to participate in the performance, development and assessment program of GCCC and this should be reflected in the position's contractual obligations.

While the requirement to declare a conflict should remain with the employee, the council should decide whether a proactive approach to conflict management is feasible for meetings with development consultants. This could require parties to declare they have no conflicts when attending high level meetings with planning consultants.

Greater detail of previous paid employment be obtained from staff who are appointed to positions where they are involved in planning for high level development applications.

Corporate expenditure policy be re-drafted to provide clear instructions on what expenditure cards cannot be used for when meeting with stakeholders.

Regular audits by the Integrity Office be conducted of corporate card expenditure to ensure acquittals are legible and cards have been used in compliance with policy.

Clearer direction be provided in GCCC Information Security Policy to prohibit Council email chains being forwarded to employees' private email accounts.





Crime and Corruption Commission

QUEENSLAND

Contact details

✉ Crime and Corruption Commission
GPO Box 3123, Brisbane QLD 4001

Level 2, North Tower Green Square
515 St Pauls Terrace,
Fortitude Valley QLD 4006

☎ 07 3360 6060 or
Toll-free 1800 061 611
(in Queensland outside Brisbane)

07 3360 6333

More information

🌐 www.ccc.qld.gov.au

@ mailbox@ccc.qld.gov.au

🐦 @CCC_QLD

f [CrimeandCorruptionCommission](#)

📢 CCC email updates
www.ccc.qld.gov.au/subscribe