

5.14. INVESTIGATION OF INAPPROPRIATE CONDUCT REFERRAL FROM THE OFFICE OF INDEPENDENT ASSESSOR (C/20/00486)

REPORT AUTHOR Michael Kerr, Mayor

RECOMMENDATION

That my recommendation is that Cr Zammataro has not engaged in inappropriate conduct, however, an apology is forthcoming and the further training is attended.

PURPOSE OF REPORT

Chapter 5A of the Local Government Act 2009 (the Act) outlines the process for investigating and dealing with complaints about the conduct of Councillors. In accordance with section 150AE of the Act, Council is required to adopt, by resolution, an Investigation Policy about how it deals with the suspected inappropriate conduct of Councillors referred by the Independent Assessor (the Assessor) to Council to be dealt with.

On the 3 August 2020, the Assessor referred a complaint it had received regarding the alleged conduct of Cr Zammataro to the Chief Executive Officer for investigation on the basis of a reasonable suspicion that Cr Zammataro had engaged in inappropriate conduct.

Details of the complaint and other relevant facts and documents pertaining to this matter, including a copy of the complaint are attached to this report.

Table 1.

Date	Relevant Details	Attachment
06 July 2020	Complainant writes to the CEO outing a complaint against Cr Zammataro regarding an alleged incident on 5 July 2020	Copy of Complaint
07 July 2020	CEO refers complaint to the OIA	Copy of referral
13 July 2020	OIA notice to Cr Zammataro under S150AA of the Act providing Cr Zammataro with an opportunity to respond to the allegations made against him	Copy of OIA Notice
17 July 2020	Cr Zammataro's response to the Notice from OIA	Copy of Cr Zammataro's response
3 August 2020	Deputy Independent Assessor writes to the CEO, the complainant and Cr Zammataro advising of the reasonable suspicion that Cr Zammataro had engaged in inappropriate conduct	Copy of the OIA referral to CEO
19/08/2020	Mayor/Manager Governance meeting with Cr Zammataro. Discussion on the process for the Investigation. Consideration for Early Resolution prior to investigation	

Date	Relevant Details	Attachment
08/10/2020	Meeting with Manager Governance for outcome of Investigation	
08/10/20250	Mayors response to investigation	Copy of Response

On balance, after reviewing the relevant information, speaking to the complainant and receiving a submission from Cr Zammataro, the OIA determined that there was a reasonable suspicion that Cr Zammataro's actions amounted to inappropriate conduct and they forwarded the matter to Council for investigation as per the requirements of the Act.

The investigator (Mayor Kerr) has met all statutory and policy requirements in completing this investigation.

Whilst this matter has not been finalised within the ten week timeframe suggested under the Policy, it is noted that there was additional complexity in determining the relevant facts of this matter and the need to wait some weeks for the Complainant to consider an early resolution.

Should Council find Cr Zammataro guilty of inappropriate conduct it will be necessary to determine what disciplinary action should be taken as per section 150AH of the Act. The options under section 150AH are as follows:

- (a) Order that no action be taken against the councillor; or
- (b) Make 1 or more of the following orders –
 - (i) An order that the councillor make a public admission that the councillor has engaged in inappropriate conduct;
 - (ii) An order reprimanding the councillor for the conduct;
 - (iii) An order that the councillor attend training or counselling to address the councillor's conduct, including at the councillor's expense;
 - (iv) An order that the councillor be excluded from a stated local government meeting;
 - (v) An order that the councillor is removed, or must resign, from a position representing the local government, other than the office of councillor;
 - (vi) An order that if the councillor engages in the same type of conduct again, it will be treated as misconduct;
 - (vii) An order that the councillor reimburse the local government for all or some of the costs arising from the councillor's inappropriate conduct.

My recommendation is that Cr Zammataro has not engaged in inappropriate conduct, however, an apology is forthcoming and the further training is attended.

ATTACHMENTS

1. Notice of Referral to Council CEO of Inappropriate Conduct [5.14.1 - 11 pages]



Our ref: C/20/00486

3 August 2020

Mr Mark Stoermer
Chief Executive Officer
Douglas Shire Council
PO Box 723
MOSSMAN QLD 4873

By Email: mark.stoermer@douglas.qld.gov.au

Dear Mr Stoermer

On 7 July 2020, the Office of the Independent Assessor (OIA) received the referral of a complaint from [REDACTED] about the conduct of Councillor Roy Zammataro of the Douglas Shire Council.

It is alleged that Councillor Zammataro breached Section 150K(1)(a) of the Local Government Act (the Act) in that the conduct may involve a breach of the behavioural standards of the Code of Conduct for Councillors in Queensland.

On 17 July 2020 Councillor Zammataro provided a response to the complaint (copy attached)

Notice of Decision to Refer

Having considered all the information involved, including the response from the subject councillor, I reasonably suspect, pursuant to Section 150W(b), that the complaint involves inappropriate conduct and to refer the conduct to local government to be dealt with under Chapter 5A, Part 2, Division 5 of the Act.

Relevant Facts and Circumstances

It was alleged on Sunday 5 July 2020 after a community meeting to discuss the micro grid for the Daintree Project, Councillor Zammataro was involved in an altercation with a media person in the presence of other witnesses.

Reasons for Referral

I reasonably suspect that Councillor Zammataro has engaged in inappropriate conduct for the following reasons:

Councillor Zammataro's conduct is a breach of Section 150K(1)(a) of the Local Government Act (the Act) in that the conduct may involve a breach of Behavioural Standards of the Code of Conduct for Councillors for Queensland, namely:

2.1 Treat fellow councillors, council employees and members of the public with courtesy, honesty and fairness

2.2 Not Use abusive, obscene or threatening language (either oral or written) or behaviour towards other councillors, council employees and members of the public

The investigation must be conducted in accordance with the Council's investigation policy adopted pursuant to Section 150AE. Section 150AG prescribes that after conducting the investigation, the Council must decide whether the councillor has engaged in inappropriate conduct and what action, if any the Council will take to discipline the councillor.

I have asked Michael Beckers in the OIA to assist you with any further queries. You may wish to contact Mr Beckers on 3334 2616 or by email at michael.beckers@oia.qld.gov.au.

In due course, I would be grateful if you could advise both the complainant and the OIA of the outcome of this complaint.

Yours sincerely



Charles Kohn

Deputy Independent Assessor
Office of the Independent Assessor

Enclosures:

1. Original complaint dated 7 July 2020
2. Copy of 150AA notice to Councillor Zammataro dated 13 July 2020
3. Copy of Councillor Zammataro's response to 150AA dated 17 July 2020

From: [Charlie Kohn](#)
To: [OIA Complaints](#)
Subject: [REDACTED]
Date: Tuesday, 7 July 2020 6:57:37 AM
Attachments: [image001.png](#)
[REDACTED]

Hi Deb

This is a new referral.

Thanks

Charlie
Get [Outlook for iOS](#)

From: Mark Stoermer <Mark.Stoermer@douglas.qld.gov.au>
Sent: Tuesday, July 7, 2020 6:02:48 AM
To: [REDACTED] oia.qld.gov.au>
Subject: [REDACTED]

Hello Charlie

[REDACTED]

[REDACTED]

Kind regards
Mark

Dear Mark

[REDACTED] the 'Power Grid' meeting at Diwan on Saturday where many concerned parties were present including the Federal MP Warren Enscht.

Local Councillors Lisa Scommazon, Peter McKeown and Roy Zammataro were also in the crowd. It was a well run meeting and for the most part it was very respectful.

I recorded the speakers at the meeting [REDACTED] and afterwards caught up with Mayor Michael Kerr who gave me an interview to be used as part of that.

I was aware Councillor Roy Zammataro has in the past voiced his lone objection to the Grid so I sought him out after the meeting to see if that position had changed.

I did wait some 10 minutes while he chatted with locals so as to not interrupt him.

But as he made his way from the meeting I identified myself and asked him in a polite way if he had changed his mind as the meeting had thrown up a lot more information.

But his response can only be described as aggressive.

He raised both arms in a fighting stance and struck the microphone after he said the words "You've poked that mic"

It wasn't a hard strike but enough for me to back off and for a moment I thought he was going to

hit me.

He eventually turned away and walked back to his car.

Mark a simple 'No Comment' would have sufficed.

The whole thing was witnessed by Warren Entsch and many others at the meeting some of whom asked me why he got so angry.

Not a way for a seasoned Councillor to conduct himself in my opinion.

I'm not a babe in the woods when it comes to this sort of thing but I do feel that Councillors, who let's face it, are representing their organisation should conduct themselves in a more appropriate manner.

news outlet should be treated with respect when it comes to providing the community with up to date information.

Below is a transcript of the incident and I've included the audio in question as an attachment at the bottom.

I leave it in your capable hands.

Mark Stoermer | Chief Executive Officer

Douglas Shire Council

P: 07 4099 9438 | **M:** 0448 043 116 | **F:** 07 4098 2902

E: mark.stoermer@douglas.qld.gov.au | **W:** douglas.qld.gov.au

Mail: PO Box 723, Mossman Q 4873 | **Office:** 64-66 Front St, Mossman Q 4873

Ensuring Excellence in Governance



Notice and opportunity to respond

(s150AA of the *Local Government Act 2009*)

Referral information:

Matter Reference Number	OIA Ref: C/20/00486		
Subject Councillor	Roy Zammataro	Mayor	<input type="checkbox"/>
		Deputy Mayor	<input type="checkbox"/>
		Councillor	<input checked="" type="checkbox"/>
Council	Douglas Shire		
Complainant	[REDACTED]		
Conduct the subject of this Notice	<p>It is alleged that on Saturday 4 July 2020, at Diwan, you attended a Power Grid meeting with other councillors Lisa Scomazzon and Peter McKeown, along with the Federal MP Warren Enscht. It is alleged that in the past you had previously objected to the power grid project relevant to that meeting.</p> <p>It is alleged that after the meeting, when you were leaving, the complainant who is [REDACTED] identified [REDACTED] to you and asked you, "if you had changed your mind" as the meeting had thrown up a lot more information about the Power Grid.</p> <p>It was then alleged that you raised both your arms in a fighting stance and struck the microphone held by the complainant saying, "you poke that mic". You then turned away and walked back to your car.</p> <p>It is alleged the incident was witnessed by Warren Entsch and others that attended the meeting.</p> <p>If proven, the conduct could be a breach of section 150K(1)(a) in that the conduct breaches the Code of Conduct for Councillors in Queensland - Standards of Behaviour outlined in parts 2 Treat people in a reasonable, just, respectful and non discriminatory way specifically -</p> <p>2.1 Treat fellow councillors, council employees and members of the public with courtesy, honesty and fairness</p> <p>2.2 Not Use abusive, obscene or threatening language (either oral or written) or behaviour towards other councillors, council employees and members of the public</p>		

Decision being considered by the Independent Assessor pursuant to s150AA

Having considered this complaint, I am notifying you that, pursuant to section 150W(b) of the Local Government Act 2009 (the Act) I reasonably suspect that the conduct the subject of the complaint is inappropriate conduct and I consider that this complaint should be referred to the Douglas Shire Council to be dealt with.

Opportunity to respond

Pursuant to section 150AA(2)(d) of the Act, you may give a statement or information to the Office of the Independent Assessor about the conduct and why the Independent Assessor should not make the decision (being considered above).

If there is additional information relevant to this allegation which is not known to the Office of the Independent Assessor and which may have a bearing on the decision whether to refer this matter to the Douglas Shire Council, then please particularise this information in your response and include any documents or other material that ground this.

How your response will be used:

You are under no legal obligation to provide a response to this Notice. However, I must consider any information or statement you provide before I decide whether this matter should be referred to the Council under section 150W. Should you provide a response in which you admit some or all of the allegation/s, your response may be used in further investigations and/or subsequent proceedings.

Should you choose to provide a response, please do so via email to the email address provided below by **close of business 20 July 2020**. If I do not hear from you by this date and time I will infer that you do not wish to make a statement or provide further information as to why this referral should not take place.

If you would like to speak to someone about this notice, or the process generally, please contact [REDACTED] Assessment Officer on 3334 2616 or by emailing [REDACTED]@oia.qld.gov.au



Charles Kohn

Deputy Independent Assessor

As delegate of the Independent Assessor

Dated this 13th day of July 2020

Councillor Roy Zammataro
Douglas Shire Council
PO Box 723
MOSSMAN QLD 4873

Friday, July 17, 2020

██████████
██████████@oia.qld.gov.au
Assessment Officer
Office of the Independent Assessor

Dear ██████████,

I am writing to you in response to an email I received on Monday, July 13, 2020, containing allegations of misconduct against me.

On Sunday, July 5, 2020, I was invited to a discussion regarding the proposal for a micro-grid in the Daintree by the president of Daintree Renewable Energy Inc, ██████████.

At the conclusion of the meeting, I began talking with some of the local residents when one of these people requested my business card.

As I was walking out of the venue talking to the man who had requested my card, I noticed something coming over my shoulder. I did not as claimed raise my arms in a "fighting stance" but did react with fear by instinctively moving my arm to prevent being injured by the unknown object. At this stage I realised it was ██████████, who was aggressively pushing a microphone on a stick into my face and asking me if I had changed my mind.

I then said to ██████████, "Go away from me. You poke that mic. Go away".

I have in the past expressed to ██████████ that I would not like to be interviewed by ██████████ following an interview I had with ██████████ on July 31, 2019.

In the course of this interview in July 2019, ██████████ asked me, "Council doesn't always get it right, does it?"

My reply was, "I like to think we do".

At the conclusion of the interview on ██████████ said "Roy Zammataro said he never gets it wrong".

I clearly had not stated that I always get it right, but regardless, ██████████ reported it that way which sparked criticism of me on various social media outlets.

Due to that experience I have since denied any offer of conversation with ██████████.

██████████ through ██████████ has shown bias against myself and the former council on numerous occasions so much so that I stopped ██████████.

It is evident from [REDACTED] behaviour that [REDACTED] becomes aggressive when a request for an interview is denied, a trait [REDACTED] has displayed on numerous occasions particularly against the former mayor of the Douglas Shire.

My wife, who was standing directly beside me, was witness to [REDACTED] aggressive approach on me on Sunday, July 5, and was left quite distraught by the incident.

As stated in this allegation I have objected to this power grid and that was made evident by the negative comments that were being made about me within earshot.

I am appalled by the allegation that I; a sixty-year-old man, with various health issues, would have raised my arms in a "fighting stance." [REDACTED]

[REDACTED] In saying this, I am acutely aware of my physical surroundings and given the heated nature of the topic I am in a position that aggression might be shown towards me. I acted instinctively and cautiously keeping my personal safety in mind.

This accusation is unfounded.

Kind regards,

Councillor Roy Zammataro
0447 020 246

Office of the Mayor

Administration Office
64 - 66 Front St Mossman
P 07 4099 9444
F 07 4098 2902

YOUR REF:
OUR REF:

E-mail: Michael.Kerr@douglas.qld.gov.au
Mobile: 0447 019 647

27/10/2020

RE: Investigation Report OIA Complaint REF:C/20/00486

Douglas Shire Councillors
64-66 Front Street
Mossman, QLD 4873

After careful consideration, I have come to the following conclusion in regards to the investigation of this matter.

I have no doubt that on the day in question the complainant approached Councillor Zammataro for a comment on the matter that was being discussed at the Diwan sporting facility being the Daintree Micro Grid.

I can conclude from the audio recording provided, that a reporter approached Councillor Zammataro after the meeting. He introduced himself by name to Councillor Zammataro and then greeted him with "how are you mate" at which time Councillor Zammataro told him to "go away from me". The reporter then asked, "Have you changed your mind?" Councillor Zammataro responded with "You poke that mic.... Go away." At this point you can hear a thud on the microphone and Councillor Zammataro repeats, "Go away."

The complainant claimed that Councillor Zammataro took a defensive and threatening stance and pushed the microphone away. Councillor Zammataro claimed he was surprised by the microphone and raised his arms in an impulsive reactionary way. Witnesses were offered by both parties who I was advised would verify each person's story.

It was noted that at the time due to COVID19, the reporter was using a metal stick so the microphone could reach the person being interviewed with the reporter being able to stand the appropriate distance away.

In reaching my conclusion I have taken into account that the reporter and Cr Zammataro have had political differences in the past and whether intentional or not have appeared to antagonise each other previously with their political opinions.

I believe that the complainant was performing their duty as a reporter. They had interviewed other present members of Council, Warren Entch and those involved in the Micro Grid Project. I believe that in the instance of performing a balanced

interview, asking an elected Councillor who had publically objected to this project previously would be appropriate and balanced reporting.

As an elected representative, we are often put in circumstances that we may find we are uncomfortable with. This can come from facing disgruntled members of the public, blog writers that you have difference of opinions with or journalists that you have disagreed with in the past.

However when in a public role, as a Councillor and representing Council it is important that Councillors act in a way that presents council to an appropriate standard regardless of who we are dealing with and our personal opinions of them. We must at all times portray a higher standard, which the public expects.

Inappropriate conduct under the legislation is any conduct by a Councillor that is contrary to the standards of behaviour in the Code of Conduct or a policy, procedure or resolution of a Council, and is not unsuitable meeting conduct; misconduct or corrupt conduct.

In coming to a conclusion, I have used the following paragraphs from the Code of Conduct for Councillors in Queensland.

Local Government Principles and Values Section 3

In representing and meaningfully engaging with the community, Councillors will:

- show respect to all persons
- clearly and accurately explain Council's decisions
- accept and value differences of opinion.

Standards of Behaviour, section 2

"Treat people in a reasonable, just, RESPECTFUL and non-discriminatory way. For example, Councillors will, at a minimum, act in the following ways:

2.1 Treat fellow Councillors, Council employees and members of the public with courtesy, honesty and fairness.

2.2 Not use abusive, obscene or threatening language (either oral or written) or behaviour towards other Councillors, Council employees or members of the public.

2.3 Have proper regard for other people's rights, obligations, cultural differences, safety, health and welfare.

Using the terminology of the statements above one could conclude that Councillor Zammataro's actions were indeed inappropriate. The actions that Councillor Zammataro presented I believe may fulfil these descriptions. Saying that, I have battled concerns on whether Cr Zammataro's actions were intentional and in malice or a simple result of the previous history between Cr Zammataro and the reporter, multiplied with the confrontation presented on the day which was then heightened by the onset of COVID19.

I believe that whilst Councillor Zammataro may not have intentionally acted inappropriately, the reporter who was acting in a media role at the time most certainly believed Cr Zammataro's actions were offensive. Regardless of any personal opinions of this reporters work, the behaviour of Cr Zammataro I believe was not at a standard of behaviour that would portray the best image of this council.

As such, I do believe that the complainant is owed an apology from Councillor Zammataro and that it would be appropriate for Councillor Zammataro to attend a further council presented media-training to learn the techniques required in dealing with situations such as this.

In conclusion, the complainant was offended by the actions that resulted from his approach to Councillors Zammataro for an interview statement. However I have conflict to believe that it was Cr Zammataro's intention to on purposely be offensive, but rather his actions where to avoid an

interview that he believed would antagonise him and place him in a situation where he could have been found to act inappropriately during the interview.

Therefore, an agreement of an apology in writing and the attendance of Councillor media training by Cr Zammataro would be sufficient to show that there was no intent by Cr Zammataro to offend the reporter on the day in question, so the action would not be considered inappropriate conduct.

I would however, believe that if Cr Zammataro was to refuse to apologise for the offence that was caused, it would add weight to the argument that the action was intentional and it would be appropriate for this council to find that his actions were inappropriate and an order be made to enforce the apology and media training.

The IOC is to be advised as such.



Cr Michael Kerr
MAYOR
DOUGLAS SHIRE COUNCIL



A 2018 Top 100 Global Sustainable Destination.

