

Councillor Conduct Tribunal: Decision and Reasons Misconduct Application

Local Government Act 2009: Sections 150AQ and 150AS

Application details:

Reference No.	F21/5800
Date of Application from the IA	30 July 2021
Applicant:	Independent Assessor
Respondent:	The Tribunal is not permitted to publish the name or identifying details of the Respondent in the Summary of this decision to be published on the Tribunal's webpage (section 150AS(7)(a)).
Council:	The Tribunal is not permitted to publish information that could reasonably be expected to result in identifying the councillor or the name of any other person in this decision to be published on the Tribunal's webpage (section 150AS(7)(d)).
Complainant¹:	The Tribunal is not permitted to publish the name or identifying details of the Complainant in the Summary of this decision to be published on the Tribunal's webpage (section 150AS(5)(b)(ii)).
Public Interest Disclosure:	No
Allegation:	<p>It is alleged that at a Council meeting on [REDACTED], Councillor [REDACTED], a Councillor of [REDACTED], engaged in misconduct as defined in section 150L(1)(i) of the <i>Local Government Act 2009</i> in that their conduct in misinforming the meeting about their personal interest in a matter, involved a breach of the trust placed in the councillor, in that it was inconsistent with the local government principles in sections 4(2)(a) and/or 4(2)(e) of the Act.</p> <p>Particulars</p> <p>a) On [REDACTED], a Council meeting was held. [REDACTED] of Council's agenda involved the reception and consideration of a report of the Economy, Planning and Environment Committee. [REDACTED] of the</p>

¹ Section 150AS(5)(a): The conduct tribunal must not give another entity any information that is part of a public interest disclosure under the *Public Interest Disclosure Act 2010*, unless giving the information is required or permitted by another Act.

² The Tribunal is not permitted to publish information that could reasonably be expected to result in identifying the councillor or the name of any other person in this decision to be published on the Tribunal's webpage (section 150AS(7)(d)).

Committee report concerned a Development Application [REDACTED].

- b) [REDACTED] was listed in the Committee report as Planning Consultant in the Applicant's consultancy team for the development application.
- c) The matter was not an ordinary business matter.
- d) The Councillor attended the council meeting.
- e) During the discussion of agenda item [REDACTED] stated, "In the list of consultants on the agenda on page 51, I note there's [REDACTED] councillors. I've had advice from them from time to time, never lodged a DA using [REDACTED]. I thought I'd bring it to your attention. I don't perceive there's any conflict, too far removed, but I thought I'd bring it to your attention, should anyone want to consider it and move anything. Leave it to you."
- f) Following clarification by councillors on the process, the Councillor made a declaration, as required by section 175E of the Act in the following terms:
- "... pursuant to section 175E of the Local Government Act 2009, I'd like to inform the meeting that I have a personal interest in this matter which I recognise may be a perceived or real conflict of interest, the particulars of which as follows:*
- *The nature of the interest: engaged [REDACTED].*
 - *Name of person in this entity: [REDACTED]*
 - *Nature of relationship: consultant*
 - *Value of gift: Nil*
 - *Date received: Not applicable*
 - *Nature of other person's interest in this matter: that's myself seeking consultant's advice. I have considered my position and my interest in this matter and as just described and am firmly of the view that I may participate in the meeting and vote in respect of this matter in the public interest for the reason that it is minor and far removed...."*
- g) In response to questions from Councillor [REDACTED], Councillor [REDACTED] further disclosed that they:
- (i) had not received any discount from [REDACTED] or from [REDACTED] for the services provided;
 - (ii) had used [REDACTED] "from time to time" with the first time being about five years ago and the last time was "probably two years ago";
 - (iii) had probably used them twice but had never submitted a development application using [REDACTED]; and
 - (iv) had paid "probably less than \$2,000 in consultancy fees".

	<p>h) Councillor ██████ then asked Councillor ██████ if the record could reflect their statement that Councillor ██████ had never engaged ██████ to submit an application. Councillor ██████ agreed to this particular being added to their disclosure in the minutes.</p> <p>i) On the basis of this information, the other councillors decided that Councillor ██████ did not have a conflict of interest in the matter.</p> <p>j) Councillor ██████ misinformed the Council meeting about their personal interest when they stated that:</p> <p>(i) they had paid “probably less than \$2,000” to ██████ in consultancy fees</p> <p>(ii) they had never submitted a development application using ██████.</p> <p>k) The statement made by Councillor ██████ in particular (j)(i) was incorrect as the total value of work performed by ██████ for Councillor ██████, either as an individual or in their capacity as ██████, was over \$12,000. This work was undertaken between February 2017 and June 2018.</p> <p>l) The statement made by Councillor ██████ in particular (j)(ii) was incorrect as ██████ had been engaged by ██████ to lodge a RiskSmart development application in ██████. The development application sought approval for ██████.</p> <p>m) The statements made by Councillor ██████, as referred to in particulars (j)(i) and (ii), were inconsistent with the local government principle in section 4(2)(a) in that Councillor ██████ was not transparent when they stated in their initial disclosure that they had never lodged a DA using ██████ and further, when they responded to questions of other councillors about their interest and/or the local government principle in section 4(2)(e) in that it was not ethical behaviour of a councillor to provide information that was incorrect.</p>
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Decision (section 150AQ):

Date:	23 March 2024
Decision:	The Tribunal has determined, on the balance of probabilities, that the allegation that on ██████, Councillor ██████ a Councillor of ██████ Council, engaged in misconduct as defined in section 150L(1)(i) of the <i>Local Government Act 2009</i> in that their conduct in misinforming the meeting about their personal interest in a matter, involved a breach of the trust placed in the councillor, in that it was inconsistent with the local government principles in sections 4(2)(a) and/or 4(2)(e) of the Act, has not been sustained.

Tribunal:

Chairperson:	Troy Newman
Member:	Carolyn Ashcroft

Conflict of interest disclaimer/declaration (section 150DT)

1. Having reviewed the material provided, all Tribunal members confirmed that they did not have a real or perceived conflict of interest in proceeding to decide the complaint.

Hearing (section 150AP & Chapter 7, Part 1):

Time and Date:	10:00 am 24 November 2023
Heard at:	By telephone conference with all members in attendance.
Appearances: (where applicable)	<p>This matter was heard and determined on the documents pursuant to section 150AP(2) of <i>the Local Government Act 2009</i> with no parties appearing.</p> <p>The Tribunal considered the provisions of section 298 of the Regulation and determined that it was appropriate in the circumstances of this matter to conduct the hearing in private. Accordingly the Tribunal directed that the hearing be held in private³.</p>

Reasons for decision:

Abbreviations

The following abbreviations have been used in this determination:

the Act	the <i>Local Government Act 2009</i>
the Department	the Department of State Development, Infrastructure, Local Government and Planning
the Regulation	the <i>Local Government Regulation 2012</i>
the CEO	the Chief Executive Officer of the Council
the complainant	the person who lodged the complaint
the Council	██████████

³ Section 298 of the *Local Government Regulation 2012* requires that a hearing must be held in public unless the decision-maker directs the hearing is to be held in private.

the Councillor	██████████ (the Respondent)
the IA	The Independent Assessor (the Applicant)
the Tribunal	the Councillor Conduct Tribunal constituted to hear and determine the allegations made by the IA concerning the Councillor’s conduct.

Background

2. From the material received by the Tribunal, the Tribunal noted that:
 - a. The Councillor was first elected ██████████.
 - b. There is a record of previous disciplinary history from ██████████.
 - c. On 7 May 2021 the Independent Assessor served the Councillor with a section 150AA Notice and Opportunity to Respond to the alleged misconduct.
 - d. On 30 June 2021 the Councillor provided a response to the Section 150AA Notice and disputed the alleged misconduct.
 - e. On 30 July 2021, the Applicant filed an application with the Tribunal.
 - f. Directions were issued by the Tribunal on 27 September 2023.

Conduct of hearing

3. The hearing was conducted on the documents.

Considerations pursuant to the Human Rights Act 2019 (Qld)

4. In the circumstances of this matter, the Tribunal considers it has discharged its obligation to observe and protect the Councillor’s human rights by conducting a procedurally fair hearing pursuant to the provisions of the *Local Government Act*. Furthermore, the Tribunal considered these human rights in the context of sections 21 (freedom of expression), 23 (taking part in public life) and 25 (privacy and reputation) of the *Human Rights Act* to be potentially engaged.
5. The Tribunal was satisfied during the hearing process that in dealing with the matter before it that any limitation of rights protected and applicable by the provisions are reasonable and lawful in the context of the empowering statute which prescribes the Tribunal’s powers and role.
6. The Tribunal also has a statutory duty, imposed by section 58 of the HRA, to act compatibly and make decisions compatibly with human rights. In making a decision as a “*decision maker*” under the Act, the Tribunal is also bound to give “*proper consideration to a human right relevant to the decision*”.
7. Section 31 of the HRA is engaged because the Tribunal conducted a hearing in relation to the Applicant’s application of 30 July 2021. Although the Tribunal is not a criminal or civil proceeding in the strict sense, the Respondent has the right to “*have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing*”.
8. The Hearing of this application was not in public; however, section 31(2) of the HRA permits a court or tribunal to “*exclude...the general public from all or part of a hearing in the public interest or the interests of justice*”. The Tribunal is empowered by section 150AP(2)(a) of the Act and section 298 of

the *Local Government Regulations 2012* (Qld) to hold private hearings if “*the conduct tribunal considers it appropriate in all the circumstances*”, which was the case in the present matter.

9. Further, the decision of this proceeding will be made publicly available in accordance with the provisions of the Act and consistent with section 31(3) of the Act.
10. The Respondent equally has a right to be treated as a person before the law under section 15(1) of the HRA and has been treated as such throughout this hearing. The Tribunal is satisfied, on the basis of the above procedural history, that it has offered the Respondent sufficient opportunity to be heard and take part in the hearing that may result in a decision adverse to their interests.
11. The Tribunal noted various items of procedural compliance required prior to conducting a hearing.⁴

Standard of Proof

12. The standard of proof in the hearing is the balance of probabilities (section 150AP(4) of the Act). In making its decision the Tribunal considered *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361-362 where it was said by Dixon J as he then was:

"Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a mind that is attained or established independently of the nature and consequence of the fact or facts to be proved.

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proven to the reasonable satisfaction of the tribunal".

13. In *Qantas Airways Limited v Gama* (2008) FCAFC 69, Branson J commented on the above statements and said:

"His Honour made plain that before accepting the truth of evidence of a particular allegation, the tribunal should give consideration to the nature of the allegation and the likely consequences which will follow should it be accepted".

Evidence and material considered

14. The Tribunal has considered the evidence provided to it although it has not found it necessary to refer to, or comment on, each item of that evidence. In considering any allegation of complaint, the Tribunal is obliged to decide, in terms of sections 150AL & 150AP of the Act, whether or not [REDACTED] engaged in misconduct as defined in section 150(L)(i) of the Act.

A. Documentary Evidence

Initial documentation provided to the Tribunal including:

- Section 150AJ Application to the Tribunal about alleged misconduct;
- Annexure A – Statement of Facts;
- Annexure B – Section 150AA Notice and Opportunity to Respond;
- Annexure C – Response to section 150AA Notice;
- Annexure D (Parts 1 & 2) – Brief of Evidence;

⁴ See paragraph 2 (c)(d)(e)&(f) of this report.

- Relevant training undertaken by the Councillor;
- Disciplinary history of the Councillor;
- Witness Statement;
 - Affidavit of ██████ affirmed on 30 July 2021.

Additional material considered including:

- Video recording of the Ordinary Meeting of Council on ██████;
- Submission from the parties;
 - Submission from the Applicant dated 27 October 2023.
 - Submission from the Respondent dated 10 November 2023.
 - Applicant’s submission in reply dated 20 November 2023.

Discussion and findings

15. It appears uncontroversial that at a general Council meeting on ██████, Council was asked to receive and consider a report concerning a development Application for a Material Change of Use. Within the report, ██████ was listed as a Planning Consultant in the applicant’s consultancy team for the development application. The Respondent attended the meeting and declared a personal interest.

16. The Applicant contends however that the Respondent did not accurately inform the meeting of their personal interest in this matter. Consequently, the Applicant alleges that the Respondent’s statements regarding their personal interest with respect to ██████ did not accurately disclose the breadth of their interest to the meeting as required by section 175E(2) of the Act.⁵

Definition of Misconduct

17. The applicable definition of misconduct is contained in section 150L(1)(b)(i) of the Act, which relevantly provides:

150L What is misconduct

*(1) The conduct of a councillor is **misconduct** if the conduct—*

(a) adversely affects, directly or indirectly, the honest and impartial performance of the councillor’s functions, or the exercise of the councillor’s powers; or

(b) is or involves—

(i) a breach of the trust placed in the councillor, either knowingly or recklessly; ...⁶

18. At the time of the alleged conduct, Councillors were required to comply with the conflict of interest provisions set out in section 175E of the Act.⁷

⁵ Applicant’s submission dated 27 October 2023 at paragraph [8].

⁶ The remainder of section 150L(1)(b)(i) of the Act is not relevant to this matter and has been omitted.

⁷ s 175E inserted 2018 No. 9 s 24, omitted 2020 No. 20 s 113.

175E Councillor's conflict of interest at a meeting

(1) *This section applies if—*

(a) a matter is to be discussed at a meeting of the local government or any of its committees; and

(b) the matter is not an ordinary business matter; and

(c) a councillor at the meeting—

*(i) has a conflict of interest in the matter (a **real conflict of interest**); or*

*(ii) could reasonably be taken to have a conflict of interest in the matter (a **perceived conflict of interest**).*

(2) *The councillor must inform the meeting about the councillor's personal interests in the matter, including the following particulars about the interests—*

(a) the nature of the interests;

(b) if the councillor's personal interests arise because of the councillor's relationship with, or receipt of a gift from, another person—

(i) the name of the other person; and

(ii) the nature of the relationship or value and date of receipt of the gift; and

(iii) the nature of the other person's interests in the matter.

Maximum penalty—100 penalty units or 1 year's imprisonment.

(3) *Subsection (4) applies if—*

(a) the other councillors who are entitled to vote at the meeting are informed about a councillor's personal interests in a matter by the councillor or another person; and

(b) the councillor has not voluntarily left, and stayed away from, the place where the meeting is being held while the matter is discussed and voted on.

(4) *Subject to subsection (6), the other councillors must decide—*

(a) whether the councillor has a real conflict of interest or perceived conflict of interest in the matter; and

(b) if they decide the councillor has a real conflict of interest or perceived conflict of interest in the matter—whether the councillor—

(i) must leave the place at which the meeting is being held, including any area set aside for the public, and stay away from the place while the matter is discussed and voted on; or

(ii) may participate in the meeting in relation to the matter, including by voting on the matter.

(5) *The councillor must comply with a decision under subsection (4) that the councillor must leave and stay away from the place.*

Maximum penalty—100 penalty units or 1 year's imprisonment.

(6) If a majority of the councillors at a meeting of the local government inform the meeting about personal interests in the matter under subsection (2), the local government must delegate deciding the matter under section 257, unless deciding the matter can not be delegated under that section.

(7) A councillor does not contravene subsection (5) by participating in the meeting, or being present while the matter is discussed and voted on, if the councillor's participation or presence—

(a) is for the purpose of delegating deciding the matter under subsection (6); or

(b) is approved under section 175F and the councillor complies with the conditions of the approval.

(8) In this section—

gift means a gift that is required, under a regulation, to be recorded in a register of interests.

19. The meaning of a conflict of interest was contained in section 175D of the Act.

175D Meaning of conflict of interest

*(1) A **conflict of interest** is a conflict that –*

(a) Is between –

i. A councillor's personal interests; and

ii. The public interest; and

(b) Might lead to a decision that is contrary to the public interest

(2) however a councillor does not have a conflict of interest in a matter

...

(b) If the councillor has no greater personal interest in the matter than that of other persons in the local government

20. The responsibilities of councillors is set out in section 12 of the Act, which relevantly provides:

12 Responsibilities of councillors

(1) A councillor must represent the current and future interests of the residents of the local government area

...

(3) All councillors have the following responsibilities—

(a) ensuring the local government—

(i) discharges its responsibilities under this Act; and

(ii) achieves its corporate plan; and

(iii) complies with all laws that apply to local governments;

(b) providing high quality leadership to the local government and the community;

(c) participating in council meetings, policy development, and decision making, for the benefit of the local government area;

(d) being accountable to the community for the local government's performance.

...

(6) When performing a responsibility, a councillor must serve the overall public interest of the whole local government area.

21. The Local Government Principles are set out in section 4 of the Act and relevantly provide:

4 Local government principles underpin this Act

(1) To ensure the system of local government is accountable, effective, efficient and sustainable, Parliament requires—

(a) anyone who is performing a responsibility under this Act to do so in accordance with the local government principles; and

(b) any action that is taken under this Act to be taken in a way that—

(i) is consistent with the local government principles; and

(ii) provides results that are consistent with the local government principles, in as far as the results are within the control of the person who is taking the action.

(2) The local government principles are—

(a) transparent and effective principles, and decision-making in the public interest; and

(e) ethical and legal behaviour of councillors....

Applicant's submissions

22. The Applicant submits that, as the Respondent declared a personal interest in the matter under consideration by the Council at the relevant Council meeting on [REDACTED], the Tribunal should have no difficulty finding that the Respondent had a personal interest in the matter for the purposes of section 175E of the Act.⁸

23. The Applicant submitted the key issues for determination were therefore:

- a. Did the Respondent misinform the meeting about their personal interest in the context of s175E of the Act, and
- b. If they did, did that conduct amount to a breach of trust placed in the Respondent, either knowingly or recklessly.

Respondent's submissions

⁸ Applicant's submission dated 27 October 2023 at paragraph [15].

24. The Respondent submitted that they sought to follow all the relevant provisions of the Act and at worst made inaccurate statements about an otherwise competent declaration.⁹
25. The Respondent also submitted that they had no greater personal interest in the matter than that of other persons in the local government because [REDACTED] was not the applicant for the code assessable development application and its role was as a member of the applicant's consultancy team. Accordingly, the Respondent submitted that there was no conflict of interest between the Respondent's personal interest and the public interest and the Respondent's participation in the Council meeting could not lead to a decision that was contrary to the public interest.¹⁰
26. The Respondent challenged the accuracy of the Applicant's particulars.¹¹
27. The Respondent conceded [REDACTED] paid professional fees to [REDACTED] of \$2,000 plus GST and the Respondent and their spouse paid professional fees of \$6,520.00 plus GST and outlays, totaling \$10,483.75.¹²

Applicant's submissions in reply

28. The Applicant submitted that the particulars provided were sufficiently detailed for the Respondent to understand the case against them and that they identified the essential factual ingredients of the alleged misconduct.
29. The Applicant submitted the Respondent did not seek to rely upon section 175D when they made their statements during consideration of agenda item 9.3. The Applicant further submitted that the Respondent's personal interest in the matter was not an interest common to a significant number of electors or ratepayers.¹³

Tribunal's decision

30. The particulars (a) – (f) found on page 1 and 2 of this report are not controversial as they are corroborated in the evidential recording of the council meeting.
31. The evidence demonstrates that the Respondent did not think that they had any conflict to declare, however they decided to bring it to the council's attention (in any event) that they had used [REDACTED] to obtain advice 'from time to time'. They stated that they had never lodged a development application using [REDACTED]. The Respondent said, *"I don't perceive there's any conflict, too far removed, but I thought I'd bring it to your attention, should anyone want to consider it and move anything. Leave it to you."*

⁹ Respondent's submission dated 10 November 2023 at paragraph [1.2].

¹⁰ Respondent's submission dated 10 November 2023 at paragraph [1.3].

¹¹ Respondent's submission dated 10 November 2023 at paragraph [2].

¹² Respondent's submission dated 10 November 2023 at paragraph [2.3].

¹³ Applicant's submission in reply dated 20 November 2023 at paragraph [26].

32. Under the Act, the burden of deciding if a Councillor has a material personal interest remains with the Councillor. If Councillors are uncertain, they should declare a personal interest at a council meeting so that the Council can consider the interest and have the decision recorded. When this occurs, a Councillor can show they have taken all reasonable steps to declare and manage their interest. Here the Tribunal considered that the Respondent attempted to act cautiously, advising the council they determined they did not have a conflict, but was happy to hear views in the alternative.
33. Not every personal interest will give rise to a conflict of interest, however transparent practices do increase public confidence in Council decision-making. The Tribunal considered the Respondent was trying to adhere to this notion.
34. The meaning of personal interest is quite broad and is not limited to tangible interests, such as a Councillor's financial interests. It can also include intangible interests such as relationships, associations, roles and responsibilities, and even reputational concerns. It is expected that councillors, as active members of their communities, may from time to time, have personal interests which could be associated with matters that come before the Council.
35. Section 175E of the Act uses the terms 'real' or 'perceived' to describe the two types of conflicts of interest. For the purposes of this framework, and in providing guidance about best practice standards, the term 'conflict of interest' is used to describe all conflicts including those that arise from very direct interests ('real'), and those that arise from less direct or obvious interests ('perceived').
36. Following clarification by two other councillors on the process, the Respondent made a declaration in the following terms:
- "... pursuant to section 175E of the Local Government Act 2009, I'd like to inform the meeting that I have a personal interest in this matter which I recognise may be a perceived or real conflict of interest, the particulars of which as follows:*
- *The nature of the interest: engaged [REDACTED].*
 - *Name of person in this entity: [REDACTED]*
 - *Nature of relationship: consultant*
 - *Value of gift: Nil*
 - *Date received: Not applicable*
 - *Nature of other person's interest in this matter: that's myself seeking consultant's advice. I have considered my position and my interest in this matter and as just described and am firmly of the view that I may participate in the meeting and vote in respect of this matter in the public interest for the reason that it is minor and far removed...."*
37. Section 175E of the Act requires councillors who may have a conflict of interest to inform the Council meeting about the 'nature of the interest'. More generally, in disclosing a personal interest, the Tribunal considers the Councillor must provide enough information to enable the non-conflicted councillors to make an informed decision under the Act about whether a conflict of interest exists and, if so, how it should be managed.

38. Following the Respondent's formal disclosure, they were subjected to a series of follow-up questions from their fellow councillors.

39. The exchange between the Respondent and Councillor [REDACTED] was as follows:

Councillor: *And at what time did your relationship with [REDACTED] start and finish, would you estimate?*

Respondent: *I used them from time to time, so its first start probably five years ago and last*

Councillor: *most recent?*

Respondent: *last time I used them probably two years ago*

Councillor: *Okay*

Respondent: *And I've probably used them twice but never submitted any (inaudible) application*

Councillor: *Could you quantify the substance of the relationship financially with [REDACTED]?*

Respondent: *Less than \$2,000 of consultancy fee.*

40. Following the above exchange, Councillor [REDACTED] then asked the Respondent the following:

Councillor: *Thanks [REDACTED]. Do you mind if the record reflects your statement that you haven't actually engaged them to submit an application, you mentioned it.*

Respondent: *Yeah, should've.*

Councillor: *I think that would be worthwhile.*

Respondent: *Okay. That nature of the personal interest in this matter, [REDACTED] provided advice full stop, and then add to that I never have lodged a development approval...sorry...development application utilising [REDACTED].*

41. The Applicant submitted that the Tribunal would determine that the Respondent did not accurately inform the council meeting as to the true extent of their association with [REDACTED]. The Applicant refers to:

- [REDACTED] engaging [REDACTED] in February 2017 to lodge a RiskSmart Development Application for a material change of use for [REDACTED] to the Council. [REDACTED] was paid \$2,200 incl GST.
- The Respondent and their spouse engaging [REDACTED] to provide town planning advice in April 2018 for a subdivision of land. [REDACTED] being paid \$9,811.75 incl GST.
 - With a further request to amend a covenant (not completed) for \$572 incl GST.

42. The Applicant submitted the Tribunal would consider the total amount paid to [REDACTED] by either the Respondent and their spouse as individuals, or on behalf of [REDACTED], being \$12,583.75 between February 2017 and June 2018.¹⁴
43. The Applicant submitted the Tribunal would determine that the Respondent's declaration was not accurate and fulsome to ensure the Council had sufficient information to fulfil its obligation under section 175E(4).¹⁵ The Applicant referred to the fact that Councillors are given advance notice of matters on the agenda for Council meetings, therefore it is expected that they would give consideration about the nature and extent of their interests prior to the meeting.¹⁶
44. Even on the Respondent's evidence the professional fees paid by the Respondent and their spouse to [REDACTED] was at least \$6,520 plus GST and outlays.¹⁷
45. The Tribunal is satisfied therefore that the Respondent did make inaccurate statements to the Council committee regarding the actual extent of their involvement with [REDACTED].

Breach of Trust

46. The term 'breach of trust' is not defined in the Act.
47. The allegation of misconduct is premised on a breach of trust by the Respondent. The concept of trust in a councillor has been referred to in previous Tribunal decisions¹⁸ and has been more broadly considered by the Queensland Court of Appeal in the case of *Flori*.¹⁹ It is sufficient to establish the conduct has the potential to undermine the public confidence and trust in the integrity of the person, in the role they hold.²⁰
48. Notwithstanding, the Tribunal considers that not every breach of a provision of the Act will necessarily amount to misconduct. It is necessary to have regard to the circumstances and any exculpatory considerations. The Tribunal recognises that Councillors are required to engage in high volume, high frequency, and high value decision-making and that a finding of misconduct alone is a serious consequence.
49. For this allegation of misconduct to be sustained the Tribunal must be satisfied that the Respondent breached the trust placed in him, either knowingly or recklessly.

¹⁴ Applicant's submission dated 27 October 2023 at paragraph [35].

¹⁵ Applicant's submission dated 27 October 2023 at paragraph [37].

¹⁶ Applicant's submission dated 27 October 2023 at paragraph [38].

¹⁷ Respondent's submission dated 10 November 2023 at paragraph [6.14 (b)].

¹⁸ *Independent Assessor v Gleeson* CCT F19/6508; *IA v Gregory Campbell* CCT F20 /2923 (website summary).

¹⁹ *Flori v Winter & Ors* [2019] QCA 281].


²⁰ *Ibid* at [59].

50. The Applicant does not seek to persuade the Tribunal that the Respondent knowingly breached the trust placed in them.²¹ The Tribunal accepts that the inaccurate statements made by the Respondent to the council were not made by the Respondent knowing them to be false.
51. The Applicant submits however that the Respondent's conduct was at least reckless. The phrase "recklessly" is not expressly defined in the Act.
52. The Tribunal has determined that the figure of \$2,000 provided by the Respondent was an estimate only. The Respondent notably used the word 'probably'. The Tribunal also noted that Councillor [REDACTED], when asking their first question (clarifying about the Respondent's relationship with [REDACTED]), originally asked for an 'estimate'. The Tribunal considered that the council wanted the Respondent's best honest guess without demanding complete accuracy.
53. The Tribunal has determined that the Respondent's statement made to the council was their best attempt at telling the truth of the questions asked of them. The Tribunal considered the statements may have been careless, however given the gravity of a finding of misconduct, on the balance of probabilities the Tribunal does not deem the Respondent's comments in these circumstances rise to the level of recklessness. That is, the Tribunal does not consider the Respondent's statements here to be said with reckless indifference as to caring whether the comments were or were not a contravention of the Act.
54. Instead, the Tribunal accepts that the Respondent's comments were more likely honest to the best of their recollection in an attempt to comply with the Act. Consequently, the Tribunal finds the Respondent's actions were less than reckless. The Tribunal acknowledges the Respondent would not have sought to gather comprehensive and correct information regarding [REDACTED] prior to the meeting, as they initially did not think they had any conflict to declare. The Tribunal accepts that only when pressed by other councillors, the Respondent did their best to provide accurate and fulsome information.
55. If the Tribunal is wrong on the statement being made recklessly, it is still of the opinion that the information provided by the Respondent overall about [REDACTED] was sufficient to enable the non-conflicted councillors to make an informed decision under the Act about whether a conflict of interest existed and, if so, how it should be managed. The Tribunal notes that the Respondent's relationship with [REDACTED] was purely professional with relatively modest fees paid for limited professional interactions at commercial rates. Furthermore, there is no evidence that, had the Respondent made a more accurate declaration to the council, that it would have changed the outcome of their declaration.
56. Therefore, the Tribunal has determined that the Respondent did not breach the trust placed in them.
57. Considering all the evidence received, the Tribunal has determined that on the balance of probabilities this allegation has not been sustained.

²¹ Applicant's submission dated 27 October 2023 at paragraph [56].

Notices

58. Following the finalisation of this Decisions and Reasons, the Tribunal will arrange for notices to be sent to relevant parties as required by sections 150AS(3) and (4) of the Act.

Troy Newman²²	Carolyn Ashcroft
Chairperson	Tribunal Member
Signed: 	
Date: 23 March 2024	

²² Authorised to sign this determination on behalf of the Tribunal by email from Carolyn Ashcroft dated 23/03/2024.