

Councillor Conduct Tribunal:

Decision and Reasons

Misconduct Application

Local Government Act 2009: Sections 150AQ and 150AS

Application details:

Reference No.	F21/13081
Date of Application from the IA	1 November 2021
Applicant:	Independent Assessor
Respondent:	Mayor Tom Tate (the Councillor)
Council:	Gold Coast City Council (the Council)
Complainant:	The Tribunal is not permitted to publish the name or identifying details of the Complainant in the publication notice to be published on the Tribunal's webpage (section 150AS(7)).
Public Interest Disclosure:	No
Allegations:	<p>Allegation One (amended)</p> <p>It is alleged that on 11 December 2015, Councillor Tom Tate, the Mayor and a Councillor of Gold Coast City Council, engaged in misconduct as defined in section 176(3)(b)(ii) 176(3)(d) of the <i>Local Government Act 2009</i> (the Act), in that his conduct involved a breach of the trust placed in him as a councillor in that the conduct was inconsistent with the local government principles in section 4(2)(a) 'transparent and effective processes, and decision-making in the public interest' and section 4(2)(e) 'ethical and legal behaviour of councillors and local government employees' in that Councillor Tom Tate did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act.</p> <p>Particulars of the alleged conduct which could amount to misconduct are as follows:</p> <ol style="list-style-type: none"> a. On 11 December 2015, Gold Coast City Council (GCCC) held a Council Meeting. Item 9.4 of the Agenda was the reception and consideration of the Governance, Administration & Finance Committee Report, from the Governance, Administration & Finance Committee Meeting that was held on 8 December 2015.

	<p>b. Item 4 from the Governance, Administration & Finance Committee Report was considered separately within Agenda Item 9.4 at the Council Meeting.</p> <p>c. Item 4 related to Contract No. LG314/411/15/025 – Provision of Legal and Related Services and sought approval to establish a contractual arrangement to provide legal and related services to GCCC for a period of five years with three one-year extension options. The contract was awarded by way of a tender process.</p> <p>d. [REDACTED]¹ were one of the 57 entities that responded to the tender and were identified in Attachment 1 – Tenders Received within the Governance, Administration & Finance Committee Report.</p> <p>e. Councillor Tate attended the Council Meeting on 11 December 2015.</p> <p>f. At Agenda Item 9.4 of the Council Meeting on 11 December 2015, a motion was moved with respect to Item 4 of the Governance, Administration and & Finance Committee Report, that Committee Recommendation GA15.1208.004 be adopted with minor additions.</p> <p>g. The matter was not an ordinary business matter.</p> <p>h. Councillor Tate failed to inform the meeting of his interest in the matter, namely:</p> <p>i. As at the date this matter was considered Councillor Tate had an extensive history of engaging [REDACTED] as a legal representative for a range of business and or personal matters. Specifically, between January 2002 and January 2015, Councillor Tate, or entities of which Councillor Tate is a director, engaged [REDACTED] on 33 separate occasions equating to a total of \$326,474.05 in fees billed to Councillor Tate or his associated entities; and</p> <p>ii. As at the date this matter was considered [REDACTED] the founder and a managing partner of [REDACTED] had also been a [REDACTED] since [REDACTED].</p> <p>i. Councillor Tate voted on the matter and the motion was carried unanimously.</p> <p>j. Councillor Tate's conflict of interest in the matter did not arise merely because of the circumstances specified in section 173(3)(a) of the Act.</p> <p>k. Councillor Tate's personal interest in the matter could be deemed as being a real conflict of interest or a perceived conflict of interest due both to the nature and duration of his association with [REDACTED] and the fact that [REDACTED] was also a [REDACTED].</p>
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¹ The Tribunal is not permitted to publish the name of any other person or information that could reasonably be expected to result in identifying a person mentioned in section 150AS(7)(b) or (c) of the *Local Government Act 2009*.

Allegation Two (amended)

It is alleged that on 6 September 2016, Councillor Tom Tate, the Mayor and a Councillor of Gold Coast City Council, engaged in misconduct as defined in section ~~176(3)(b)(ii)~~ 176(3)(d) of the *Local Government Act 2009* (the Act), ~~in that his conduct involved a breach of the trust placed in him as a councillor in that the conduct was inconsistent with the local government principles in section 4(2)(a) 'transparent and effective processes, and decision making in the public interest' and section 4(2)(e) 'ethical and legal behaviour of councillors and local government employees'~~ in that Councillor Tom Tate did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act.

Particulars of the alleged conduct which could amount to misconduct are as follows:

- a. On 6 September 2016, Gold Coast City Council (GCCC) held a Council Meeting. Item 9.3 of the Agenda was the reception and consideration of the City Planning Committee Report, from the City Planning Committee Meeting that was held on 31 August 2016.
- b. A number of items from the City Planning Committee Report were considered separately within Agenda Item 9.3. This included [REDACTED], which related to a development application for a material change of use for multiple dwellings (479 dwellings) at [REDACTED], Surfers Paradise, being the main development application for the proposed [REDACTED] development. With respect to Item 7:
 - i. The applicant and landowner in the matter was [REDACTED].
 - ii. The officer's report for [REDACTED] of the City Planning Committee Meeting recommended that the application be approved. At the City Planning Committee Meeting, a Committee Recommendation was moved and carried in line with the recommendation of officers [REDACTED].
- c. Councillor Tate attended the Council Meeting on 6 September 2016 and was Chair of the meeting.
- d. At Agenda Item 9.3 of the Council Meeting on 6 September 2016, a motion was moved with respect to [REDACTED] of the City Planning Committee Report, [REDACTED].
- e. The matter was not an ordinary business matter.
- f. Councillor Tate voted on the matter and the motion was carried unanimously.
- g. As at the date of the meeting, [REDACTED], of which [REDACTED] was the founder and director, was the project manager and authorised representative for the applicant in this matter, with respect to the acquisition and development of the [REDACTED] site at [REDACTED], Surfers Paradise. [REDACTED] was also a spokesperson for the development.

h. Councillor Tate failed to inform the meeting of his following interests in this matter:

i. [REDACTED] was also the founder and a managing partner of [REDACTED] who Councillor Tate had an extensive history of engaging dating back to 2002. Specifically, between January 2002 and January 2015, Councillor Tate, or entities of which Councillor Tate is a director, engaged [REDACTED] on 33 separate occasions equating to a total of \$326,474.05 in fees billed to Councillor Tate or his associated entities.

ii. [REDACTED] had also been a [REDACTED].

i. Councillor Tate's conflict of interest in the matter did not arise merely because of the circumstances specified in section 173(3)(a) of the Act.

j. Councillor Tate's personal interest in the matter could be deemed as being a real conflict of interest or a perceived conflict of interest due both to the nature and duration of his association with [REDACTED] and [REDACTED], and their connection to the [REDACTED] development and [REDACTED].

Allegation Three (amended)

It is alleged that on 8 December 2017, Councillor Tom Tate, the Mayor and a Councillor of Gold Coast City Council, engaged in misconduct as defined in section ~~176(3)(b)(ii)~~ 176(3)(d) of the *Local Government Act 2009* (the Act), ~~in that his conduct involved a breach of the trust placed in him as a councillor in that the conduct was inconsistent with the local government principles in section 4(2)(a) 'transparent and effective processes, and decision-making in the public interest' and section 4(2)(e) 'ethical and legal behaviour of councillors and local government employees'~~ in that Councillor Tom Tate did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act.

Particulars of the alleged conduct which could amount to misconduct are as follows:

a. On 8 December 2017, Gold Coast City Council (GCCC) held a Council Meeting. Item 9.5 of the Agenda was the reception and consideration of the Governance & Administration Committee Report, from the Governance & Administration Committee Meeting that was held on 6 December 2017.

b. A number of items from the Governance & Administration Committee Report were considered separately within Agenda Item 9.5. This included Item [REDACTED]:

i. The matter related to a request for the permanent relocation of [REDACTED] to [REDACTED], Surfers Paradise, which is an area development site.

- ii. To allow for development of the [REDACTED] to occur, the [REDACTED] had been relocated from the [REDACTED] into [REDACTED] on a temporary basis, such that when the development was complete, the [REDACTED] would be relocated into a basement area of the [REDACTED]. However, in November 2016, consultants for the [REDACTED] requested consideration for the permanent retention of [REDACTED].
- iii. The officer's report identified that the permanent retention of the [REDACTED] would have benefits for the [REDACTED]. The report further identified that this would require that Council grant an easement in favour of [REDACTED], however, [REDACTED] had advised that the grant of such an easement would need to be at no cost. Accordingly, negotiations had occurred such that for an upfront one-off payment of \$125,000 (from [REDACTED]), the Council would, upon Council resolution, grant an easement in favour of [REDACTED] for the relocation site.
- iv. The officer's report for Item 6 of the Governance & Administration Committee Meeting recommended that the easement be granted in favour for [REDACTED] at the [REDACTED] site, subject to [REDACTED] payment of \$125,000 to the Council. At the Governance & Administration Committee Meeting, a Committee Recommendation was moved and carried in line with the recommendation of officers [REDACTED].
- c. Councillor Tate attended the Council Meeting on 8 December 2017 and was Chair of the meeting.
- d. At Agenda Item 9.5 of the Council Meeting on 8 December 2017, a motion was moved with respect to Item [REDACTED], that Committee Recommendation [REDACTED] be adopted as printed.
- e. The matter was not an ordinary business matter.
- f. Councillor Tate voted on the matter and the motion was carried unanimously.
- g. As at the date of the meeting, [REDACTED], of which [REDACTED] is the founder and director, was the project manager and authorised representative for [REDACTED], with respect to the acquisition and development of [REDACTED] Surfers Paradise. [REDACTED] was also a spokesperson for the development.
- h. Councillor Tate failed to inform the meeting of the following interests in the matter:
 - i. In addition to being the founder and director of [REDACTED], [REDACTED] was the founder and managing partner of [REDACTED].
 - ii. Councillor Tate has an extensive history of engaging [REDACTED] as a legal representative for personal matters. Specifically, between January 2002 and January 2015, Councillor Tate, or entities of which Councillor Tate is a director, engaged [REDACTED] on 33 separate occasions equating to a total of 33

separate occasions equating to a total of \$326,474.05 in fees billed to Councillor Tate or his associated entities.

- iii. [REDACTED] had also been a [REDACTED].
- iv. On 16 August 2017, Councillor Tate attended the [REDACTED] launch in [REDACTED] as a guest of [REDACTED].
- v. Councillor Tate's attendance at the [REDACTED] launch in [REDACTED] was organised by [REDACTED] and ultimately paid for by [REDACTED] and included flights, airport transfers and accommodation to the value of approximately \$9,091 to attend the launch between 14 August 2017 and 18 August 2017. His attendance at the launch was not considered a formal Council business trip.
- i. Councillor Tate's conflict of interest in the matter did not arise merely because of the circumstances specified in section 173(3)(a) of the Act.
- j. Councillor Tate's personal interest in the matter could be deemed as being a real conflict of interest or a perceived conflict of interest because of the nature, duration and significance of his relationship with [REDACTED], [REDACTED] and [REDACTED], and their connection to the [REDACTED] development; [REDACTED] directorship [REDACTED]; the receipt of approximately \$9,091 in hospitality from [REDACTED]; and his attendance as a guest at the [REDACTED] launch in [REDACTED] organised by [REDACTED].

Allegation Four (amended)

It is alleged that on 13 February 2018, Councillor Tom Tate, the Mayor and a Councillor of Gold Coast City Council, engaged in misconduct as defined in section 176(3)(b)(ii) 176(3)(d) of the *Local Government Act 2009* (the Act), ~~in that his conduct involved a breach of the trust placed in him as a councillor in that the conduct was inconsistent with the local government principles in section 4(2)(a) 'transparent and effective processes, and decision-making in the public interest' and section 4(2)(c) 'ethical and legal behaviour of councillors and local government employees'~~ in that Councillor Tom Tate did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act.

Particulars of the alleged conduct which could amount to misconduct are as follows:

- a. On 13 February 2018, Gold Coast City Council (GCCC) held a Council Meeting. Item 9.3 of the Agenda was the reception and consideration of the Economy, Planning & Environment Committee Report, from the Economy, Planning & Environment Committee Meeting that was held on 7 February 2018.

- b. A number of items from the Economy, Planning & Environment Committee Report were considered separately within Agenda Item 9.3. This included Item [REDACTED], which related to [REDACTED] at [REDACTED], Surfers Paradise. With respect to Item 5:
- i. The applicant in the matter was [REDACTED].
 - ii. The officer's report for Item [REDACTED] recommended a permissible change to the development permit subject to various conditions and further permits. At the Economy, Planning & Environment Committee, a Committee Recommendation was moved and carried in line with the recommendation of officers [REDACTED].
- c. Councillor Tate attended the Council Meeting on 13 February 2018 and was Chair of the meeting.
- d. At Agenda Item 9.3 of the Council Meeting on 13 February 2018, a motion was moved with respect to Item [REDACTED], that Committee Recommendation [REDACTED] be adopted as printed in the Economy, Planning & Environment Committee Report.
- e. The matter was not an ordinary business matter.
- f. Councillor Tate voted on the matter and the motion was carried unanimously.
- g. As at the date of the meeting, [REDACTED], of which [REDACTED] is the founder and director, was the project manager and authorised representative for [REDACTED], with respect to the acquisition and development of the [REDACTED], Surfers Paradise. [REDACTED] was also a spokesperson for the development.
- h. Councillor Tate failed to inform the meeting of the following interests in the matter:
- i. In addition to being the founder and director of [REDACTED] was the founder and managing partner of [REDACTED].
 - ii. Councillor Tate has an extensive history of engaging [REDACTED] as a legal representative for personal matters. Specifically, between January 2002 and January 2015, Councillor Tate, or entities of which Councillor Tate is a director, engaged [REDACTED] on 33 separate occasions equating to a total of \$326,474.05 in fees billed to Councillor Tate or his associated entities.
 - iii. [REDACTED] had also been a Director [REDACTED].
 - iv. On 16 August 2017, Councillor Tate attended the [REDACTED] launch in [REDACTED] as a guest of [REDACTED].
 - v. Councillor Tate's attendance at the [REDACTED] launch was organised by [REDACTED] and ultimately at the expense of [REDACTED] and included flights, airport transfers and accommodation to the value of approximately \$9,091 to attend the launch [REDACTED]. His attendance at the launch was not considered a formal Council business trip.

	<p>i. Councillor Tate's conflict of interest in the matter did not arise merely because of the circumstances specified in section 173(3)(a) of the Act.</p> <p>j. Councillor Tate's personal interest in the matter could be deemed as being a real conflict of interest or a perceived conflict of interest because of the nature, duration and significance of his relationship with [REDACTED], and their connection to the [REDACTED] development; [REDACTED] directorship [REDACTED] the receipt of approximately \$9,091 in hospitality from [REDACTED]; and his attendance as a guest at the [REDACTED] launch in [REDACTED] organised by [REDACTED].</p>
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Decision (section 150AQ):

Date:	24 April 2024
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Decision:	<p>Allegation One:</p> <p>The Tribunal has determined, on the balance of probabilities, that the allegation that on 11 December 2015, Councillor Tom Tate, the Mayor and a Councillor of Gold Coast City Council, engaged in misconduct as defined in section 176(3)(d) of the <i>Local Government Act 2009</i> (the Act), in that Councillor Tom Tate did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act, has been sustained.</p> <p>Allegation Two:</p> <p>The Tribunal has determined, on the balance of probabilities, that the allegation that on 6 September 2016, Councillor Tom Tate, the Mayor and a Councillor of Gold Coast City Council, engaged in misconduct as defined in section 176(3)(d) of the <i>Local Government Act 2009</i> (the Act), in that Councillor Tom Tate did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act, has been sustained.</p> <p>Allegation Three:</p> <p>The Tribunal has determined, on the balance of probabilities, that the allegation that on 8 December 2017, Councillor Tom Tate, the Mayor and a Councillor of Gold Coast City Council, engaged in misconduct as defined in section 176(3)(d) of the <i>Local Government Act 2009</i> (the Act), in that Councillor Tom Tate did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act, has been sustained.</p> <p>Allegation Four:</p> <p>The Tribunal has determined, on the balance of probabilities, that the allegation that on 13 February 2018, Councillor Tom Tate, the Mayor and a Councillor of Gold Coast City Council, engaged in misconduct as defined in section 176(3)(d) of the <i>Local Government Act 2009</i> (the Act), in that Councillor Tom Tate did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act, has been sustained.</p>
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Orders and/or recommendations (section 150AR - disciplinary action):

Date of orders:	24 April 2024
Order/s and/or recommendations:	1. The Tribunal orders that, for Allegation 1, within 60 days of the date that a copy of this decision and orders are given to him by the Registrar:

	<ul style="list-style-type: none"> Pursuant to s 150AR(1)(b)(ii) of the Act, Councillor Tate is reprimanded;
	<p>2. The Tribunal orders that, for Allegation 2, within 60 days of the date that a copy of this decision and orders are given to him by the Registrar:</p> <ul style="list-style-type: none"> Pursuant to s 150AR(1)(b)(ii) of the Act, Councillor Tate is reprimanded; Pursuant to s 150AR(1)(b)(v) of the Act, that Councillor Tate reimburse the local government for \$500 representing some of the costs arising from the councillor's misconduct.
	<p>3. The Tribunal orders that, for Allegation 3, within 60 days of the date that a copy of this decision and orders are given to him by the Registrar:</p> <ul style="list-style-type: none"> Pursuant to s 150AR(1)(b)(ii) of the Act, Councillor Tate is reprimanded; Pursuant to s 150AR(1)(b)(v) of the Act, that Councillor Tate reimburse the local government for \$1,250 representing some of the costs arising from the councillor's misconduct.
	<p>4. The Tribunal orders that, for Allegation 4, within 60 days of the date that a copy of this decision and orders are given to him by the Registrar:</p> <ul style="list-style-type: none"> Pursuant to s 150AR(1)(b)(ii) of the Act, Councillor Tate is reprimanded; Pursuant to s 150AR(1)(b)(v) of the Act, that Councillor Tate reimburse the local government for \$1,250 representing some of the costs arising from the councillor's misconduct.

Tribunal:

Chairperson:	Troy Newman
Member:	Gabe Bednarek
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 application.

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

Time and Date:	1pm, 30 November 2023
Heard at:	By telephone conference with all 3 members in attendance
Appearances:	<p>This matter was heard and determined on the documents pursuant to section 150AP(2) of the <i>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 private².</p>

Reasons for decision:

Abbreviations

The following abbreviations have been used in this determination:

the Act	the <i>Local Government Act 2009</i> (Qld)
the Regulation	the <i>Local Government Regulation 2012</i> (Qld)
the complainant	the person who lodged the complaint
the Council	Gold Coast City Council
the Councillor	Tom Tate (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 as Mayor of the Council in 2012. He was re-elected in 2016 and again in 2020.
 - b. On 13 August 2021 the Independent Assessor served the Councillor with a section 150AA Notice and Opportunity to Respond to the alleged misconduct.

² 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.

- c. On 13 August 2021 the Councillor requested an extension to respond to the matters, which was granted by the Independent Assessor.
- d. On 13 September 2021 the Councillor requested a further extension to respond to the matters, which was again granted by the Independent Assessor.
- e. On 1 October 2021 the Councillor provided a response to the Section 150AA Notice and disputed the alleged misconducts.
- f. On 2 November 2021, the Applicant filed an application with the Tribunal.
- g. On 18 September 2023, the Tribunal President constituted the Tribunal panel for this matter.
- h. Directions were issued by the Tribunal on 28 September 2023.
- i. On 5 October 2023 the Applicant, with the consent of the Respondent, sought amendments to the allegations contained in the application.
- j. On 6 October 2023 the Tribunal allowed the amendments.

Conduct of hearing

- 3. The hearing was conducted on the documents.

Standard of Proof

- 4. 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 state of 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 proved to the reasonable satisfaction of the tribunal".

- 5. 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

- 6. 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, the Tribunal is obliged

to decide, in terms of sections 150AL, 150AP and 150AQ of the Act, whether or not Mayor Tate engaged in misconduct.

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 – Brief of Evidence;
- Relevant training undertaken by the Councillor;
- Disciplinary history of the Councillor;
- Witness Statements;
 - Affidavit of [REDACTED].
 - Affidavit of [REDACTED].
 - Affidavit of Thomas Richard Tate affirmed on 18 October 2023.

Additional material considered including:

- Submissions from the parties;
 - Submissions for the Applicant dated 3 November 2023.
 - Submissions for the Respondent dated 17 November 2023.
 - Submissions in Reply for the Applicant dated 24 November 2023.

Discussion and findings

7. The Applicant alleges that the Respondent engaged in four instances of misconduct. At the time of the alleged conduct councillors were required to comply with the obligation contained in section 173(4) of the Act.

Legislation

8. The definition of misconduct at the time of these allegations was:

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...

(3) Misconduct is conduct, or a conspiracy or attempt to engage in conduct, of or by a councillor –

...

(d) that contravenes section 171(1) or 173(4).

...

9. Section 173 of the Act was as follows:

173 Councillor's conflict of interest at a meeting

(1) *This section applies if –*

- a. *a matter is to be discussed at a meeting of a 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 (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**).*

(2) *a **conflict of interest** is a conflict between –*

- a. *a councillor's personal interests; and*
- b. *the public interest;*

that might lead to a decision that is contrary to the public interest.

(3) *However, a councillor does not have a conflict of interest in a matter –*

- a. *merely because of –*
 - i. *an engagement with a community group, sporting club or similar organisation undertaken by the councillor in his or her capacity as a councillor; or*
 - ii. *membership of a political party; or*
 - iii. *membership of a community group, sporting club or similar organisation if the councillor is not an office holder for the group, club or organisation; or*
 - iv. *the councillor's religious beliefs; or*
 - v. *the councillor having been a student of a particular school or the councillor's involvement with a school as parent of a student at the school; or*
- b. *if the councillor has no greater personal interest in the matter than that of other persons in the local government area.*

(4) *The councillor must deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way.*

(5) *Without limiting subsection (4), the councillor must inform the meeting of –*

- a. *the councillor's personal interests in the matter; and*
- b. *if the councillor participates in the meeting in relation to the matter, how the councillor intends to deal with the real or perceived conflict of interest.*

...

Applicant's submissions

10. The Applicant alleges that the Respondent, having a real or perceived conflict of interest in the matters that are the subject of the allegations, did not comply with section 173(4) of the Act on any of the relevant occasions.³

Respondent's submissions

11. The Respondent submitted that:⁴

³ Applicant's submission dated 3 November 2023 at paragraph [25].

⁴ Respondent's submission dated 17 November 2023 at paragraph [1.1].

- a. he did not have a personal interest in each of the four 'recommendations' on which he voted;
- b. the allegations were trivial and could never amount to a real or perceived conflict of interest;
- c. his conduct could not lead to a decision contrary to the public interest.

Tribunal's Decision

12. The allegations do not relate to recent conduct of the Respondent, rather they relate to council meetings held on 11 December 2015, 6 September 2016, 8 December 2017 and 13 February 2018, prior to the enactment of the new Chapter 5A of the Act.
13. The Tribunal considered the central issue here (in relation to all four allegations) was a determination of any conflict of interest between the Respondent due to his relationship with the following entities:
 - a. [REDACTED], and/or
 - b. [REDACTED] and/or,
 - c. [REDACTED] and/or,
 - d. [REDACTED] Pty Ltd and/or,
 - e. The development of the [REDACTED], Surfers Paradise.
14. The evidence provided to the Tribunal reveals [REDACTED] established [REDACTED]. He retired from legal practice and sold his interest in [REDACTED]. He continued working as a director of [REDACTED], which he established about 2 years before selling [REDACTED]. He coordinated a professional and independent team of consultants for the [REDACTED]. He was further a director and advisor with respect to the establishment of the [REDACTED] following a personal request from the [REDACTED].⁵
15. [REDACTED] provided an affidavit and inter alia stated that, *"I describe my working relationship with Councillor Tate as cordial, friendly and respectable."*⁶
16. The Respondent provided his own Affidavit in this matter and with remarkable similarity inter alia stated, *"I describe my working relationship with [REDACTED] as cordial, friendly and respectable."*⁷
17. 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 Council.

⁵ Affidavit of [REDACTED] at [1] – [4], [11] & [13].

⁶ Affidavit of [REDACTED] at [8].

⁷ Affidavit of Thomas Richard Tate, dated 18 October 2023 at [6].

18. The Applicant referred this Tribunal panel to a previous decision of the Tribunal.⁸ It is relevant to this decision to refer to the previous decision.
19. In the previous decision, the issue of, *'Did this Respondent have a personal interest with [REDACTED]'* was examined and determined.
20. It was argued then that the Respondent's relationship with [REDACTED] was merely as 'a consumer of legal services'.⁹ It was argued that no evidence was presented of a 'personal relationship' with individuals associated with [REDACTED].¹⁰
21. The previous Tribunal panel nonetheless concluded that the long and extensive relationship between the Respondent and [REDACTED] may give rise to a perception of a personal interest in the eyes of a reasonable and fair-minded observer.¹¹
22. Specifically, the previous Tribunal panel determined that:
- a. a perceived personal interest did exist for Cr Tate due to the length and extensiveness of his professional association with [REDACTED].¹²
 - b. a *'public interest'* did exist for Cr Tate, in that he was required to objectively contribute to council's integrity based decision making on this issue.¹³
 - c. the Tribunal accepted that when applying *'the reasonable and fair-minded observer'* Ebner Test, one might conclude that a perceived conflict of interest existed for Cr Tate.¹⁴
23. Notwithstanding a determination that a conflict of interest existed for the Respondent, the previous Tribunal ultimately determined that Cr Tate had provided a sufficient declaration of his interest in that previous matter, albeit *'occurring in the context of obtuse discussion and internally conflicted statements'*.¹⁵ The allegation of misconduct was not sustained.
24. The previous decision occurred on 14 August 2019 which postdates any conduct of the Respondent for these allegations. This Tribunal panel notes that the Respondent did not have the benefit of that Tribunal decision at the time of these allegations.
25. This Tribunal accepts, as did the previous Tribunal¹⁶ that *"where a conflict of interest is based on association, the question for the Tribunal is whether having regard to the nature, extent, significance, duration, frequency, proximity and intensity of the relationship/association; a conflict of interest arises. The existence of close associations between elected representatives and the private sector,*

⁸ Note – not the same members.

⁹ [REDACTED] at [42].

¹⁰ Ibid at [43].

¹¹ Ibid at [55].

¹² Ibid at [78(i)].

¹³ Ibid at [78(ii)].

¹⁴ Ibid at [78(iii)].

¹⁵ Ibid at [78(iv)].

¹⁶ [REDACTED] at [44-45].

particularly in the context of property development, involves risks of favoritism and an obligation of reciprocity between the parties involved or perceptions of the same".

26. The Tribunal accepts that the figure of \$326,474.05 alleged by the Applicant to have been paid by the Respondent to [REDACTED]¹⁷ does not detail a breakdown of professional fees, barrister's fees, reports and other possible disbursements. Whilst the amount of the professional fees therefore is uncertain, the Tribunal considers that the evidence demonstrates considerable fees for a number of professional interactions.
27. Following the same reasoning as the previous Tribunal panel, when applying '*the reasonable and fair-minded observer*' Ebner Test¹⁸, this Tribunal panel has determined that one might conclude that a perceived conflict of interest exists between the Respondent and [REDACTED], due to the Respondent's long and extensive relationship with [REDACTED].
28. The Tribunal considered the volunteer work performed by [REDACTED] for the [REDACTED]. The Tribunal does not accept that [REDACTED] directorship of the [REDACTED] between [REDACTED] is irrelevant. The Tribunal does not accept submissions that volunteer work by [REDACTED] for the [REDACTED] has no connection with the Respondent. Conflict of interest provisions deal with 'perception'. It would be reasonable for any layperson to perceive that a businessperson volunteering their time to assist the [REDACTED] could be perceived to also be obtaining favour with the Mayor. The Tribunal considered this added complexity further distinguished 'any perception' of a purely professional relationship between the Respondent and [REDACTED]. The Tribunal therefore finds at least a perceived conflict of interest existed between the Respondent and [REDACTED].
29. The Tribunal does not accept that the Respondent had no greater personal interest in the matter than that of other persons in the local government area due to his connection with the interested parties.
30. The Tribunal has determined that the Respondent can reasonably be taken to have a conflict of interest in the matters the subject of all four allegations.

Allegation One

31. It is not contested that the Respondent participated in a decision at the 11 December 2015 Ordinary meeting of council about the awarding of council contracts for the provision of legal services to council.
32. [REDACTED] was an interested party in the matter, having submitted a tender for one of those contracts.
33. The Tribunal has determined above that the Respondent had at least a perceived conflict of interest with regard to [REDACTED].

¹⁷ Applicant's statement of facts at paragraph [38] and [39].

¹⁸ *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337.

34. The Respondent, having a conflict of interest in the matter, failed to inform the meeting of his interest as required.
35. Transparent practices do increase public confidence in Council decision-making. The Tribunal did not find this matter trivial.
36. Considering all the evidence received, the Tribunal has determined that on the balance of probabilities this allegation has been sustained.

Allegation Two

37. It is not contested that [REDACTED] made a development application that was considered by Council on 6 September 2016.
38. The Respondent attended the Council meeting on 6 September 2016 and was Chair of the meeting. He voted on the matter which was carried unanimously.
39. The Tribunal has determined that the Respondent had a conflict of interest in the matter and failed to inform the meeting of his interest as required.
40. Considering all the evidence received, the Tribunal has determined that on the balance of probabilities this allegation has been sustained.

Allegation Three

41. The Tribunal accepts that in regard to the Council meeting held 8 December 2017 that Item [REDACTED] would have benefits for the [REDACTED]. Further the Tribunal accepts that [REDACTED] was a spokesperson for the development, and [REDACTED] was the project manager and authorised representative of [REDACTED], with respect to the acquisition and development of [REDACTED], Surfers Paradise.
42. The Respondent attended the Council meeting on 8 December 2017 and was Chair of the meeting. He voted on the matter which was carried unanimously.
43. The Tribunal has determined that the Respondent had a conflict of interest in the matter and failed to inform the meeting of his interest as required.
44. Considering all the evidence received, the Tribunal has determined that on the balance of probabilities this allegation has been sustained.

Allegation Four

45. The Tribunal accepts that at the Council meeting held 13 February 2018 Item 5, within Agenda Item 9.3, related to a request to change an existing approval for a material change of use for multiple dwellings at [REDACTED], Surfers Paradise. The applicant being [REDACTED]. Further the Tribunal accepts that [REDACTED] was a spokesperson for the development, and [REDACTED] was the project manager and authorised representative of [REDACTED], with respect to the acquisition and development of [REDACTED], Surfers Paradise.
46. The Respondent attended the Council meeting on 13 February 2018 and was Chair of the meeting. He voted on the matter and the motion was carried unanimously.
47. The Tribunal has determined that the Respondent had a conflict of interest in the matter and failed to inform the meeting of his interest as required.
48. Considering all the evidence received, the Tribunal has determined that on the balance of probabilities this allegation has been sustained.

Discussion on orders/recommendations to be made:

49. Having sustained the four allegations of misconduct the Tribunal must then consider the appropriate orders to be made under section 150AR of the Act.
50. The Tribunal observed that the Respondent did not contest the factual basis of the allegations, but denied he engaged in misconduct.
51. The Tribunal also considered the Respondent's prior disciplinary history. Inter alia, the Respondent has previously had a finding of misconduct for failing to declare a real or perceived conflict of interest.¹⁹ However the Tribunal places no weight on that finding as the Respondent did not have the benefit of the previous decision at the time of the conduct subject to the present allegations.
52. Under section 322 of the Act, for conduct that occurred prior to 3 December 2018, the Tribunal must make an order from the list contained in section 150AR, but can only make an order that is substantially the same as an order that could have been made under the former section 180 of the Act.
53. The Tribunal finds the following aggravating circumstances in the present matter:
- a. the Respondent was, at all material times, the Mayor of the Council and an experienced councillor;
 - b. the Respondent has received training on his obligations around conflicts of interest;

¹⁹ *Independent Assessor v Councillor Tom Tate* (CCT reference F20/7781, 25 May 2022).

Allegation One

54. The Tribunal took into account that [REDACTED] was only one of 40 entities that responded to the tender regarding the council awarding council contracts for the provision of legal services to the council. [REDACTED] was ranked [REDACTED] out of 40 tendered and only the 10 highest ranked legal firms were awarded a contract.
55. The Tribunal notes however that two other councillors did declare personal interests (and remained in the room) [REDACTED], yet this did not prompt the Respondent [REDACTED].²⁰
56. Given the length of time since this conduct, and the findings and training which have occurred since, the Tribunal deems a finding of misconduct and a reprimand sufficient for this allegation.

Allegation Two

57. Here the Tribunal notes again that a councillor declared a personal interest (and remained in the room) based on [REDACTED]. This even led to a discussion [REDACTED] and the matter under consideration, and that [REDACTED].²¹ Notwithstanding, this did not prompt the Respondent [REDACTED].
58. The Tribunal deems a reprimand and minor reimbursement to the local government of \$500 representing some of the costs arising from the councillor's misconduct is sufficient for this allegation.

Allegations Three and Four

59. Between the date of Allegation Two and Allegation Three the Respondent attended [REDACTED] launch of the [REDACTED] in [REDACTED], in which his attendance was paid for by [REDACTED] and arranged by [REDACTED]. This trip was declared [REDACTED] as a gift from [REDACTED] prior to the matter the subject of Allegation Three being considered by Council.
60. The Tribunal finds the conduct the subject of Allegations Three and Four as more serious than the conduct the subject of Allegations One and Two, due to the Respondent's continued lack of insight and perception. Consequently, the Tribunal deems a reprimand and reimbursement to the local government of \$1250 for each allegation appropriate for these allegations.

Orders

61. The Tribunal orders that, for Allegation 1, within 60 days of the date that a copy of this decision and orders are given to him by the Registrar:

²⁰ Annexure D – Brief of Evidence, Document 3.1, page 82.

²¹ Annexure D – Brief of Evidence, Document 3.5 from 31:40 – 32:45.

- Pursuant to s 150AR(1)(b)(ii) of the Act, Councillor Tate is reprimanded;
62. The Tribunal orders that, for Allegation 2, within 60 days of the date that a copy of this decision and orders are given to him by the Registrar:
- Pursuant to s 150AR(1)(b)(ii) of the Act, Councillor Tate is reprimanded;
 - Pursuant to s 150AR(1)(b)(v) of the Act, that Councillor Tate reimburse the local government for \$500 representing some of the costs arising from the councillor's misconduct.
63. The Tribunal orders that, for Allegation 3, within 60 days of the date that a copy of this decision and orders are given to him by the Registrar:
- Pursuant to s 150AR(1)(b)(ii) of the Act, Councillor Tate is reprimanded;
 - Pursuant to s 150AR(1)(b)(v) of the Act, that Councillor Tate reimburse the local government for \$1,250 representing some of the costs arising from the councillor's misconduct.
64. The Tribunal orders that, for Allegation 4, within 90 days of the date that a copy of this decision and orders are given to him by the Registrar:
- Pursuant to s 150AR(1)(b)(ii) of the Act, Councillor Tate is reprimanded;
 - Pursuant to s 150AR(1)(b)(v) of the Act, that Councillor Tate reimburse the local government for \$1,250 representing some of the costs arising from the councillor's misconduct.

Considerations pursuant to the Human Rights Act 2019 (Qld) (the HRA)

65. 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), 24 (property rights) and 25 (privacy and reputation) of the *Human Rights Act* to be potentially engaged.
66. 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.
67. 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*".
68. Section 31 of the HRA is engaged because the Tribunal conducted a hearing in relation to the Applicant's application of 1 November 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”*.

69. 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.

70. 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 HRA.

71. 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 his interests.

72. The Tribunal noted various items of procedural compliance required prior to conducting a hearing.²²

Notices

73. Following the finalisation of this Decision and Reasons, the Tribunal will arrange for notices to be sent to relevant parties as required by section 150AS of the Act.

Troy Newman	Gabe Bednarek	Carolyn Ashcroft
Chairperson	Tribunal Member	Tribunal Member
Signed:	Authorised ²³	Signed:
Date: 24 April 2024		

²² See paragraph 2 (c)(d)(e)&(f) of this report.

²³ Member Bednarek authorised the release of this decision and reasons by an email to the Chair dated 24 April 2024.