

# Councillor Conduct Tribunal: Councillor misconduct complaint – Summary of decision and reasons for department’s website

*Local Government Act 2009: Sections 150AS(2)(c)*

Note that the Tribunal is prohibited from giving another entity information that is part of a Public Interest Disclosure unless required or permitted under another Act; or including in this summary the name of the person who made the complaint or information that could reasonably be expected to result in identification of the person: S150AS(5)(a) and (b).

## 1. Complaint:

<b>CCT Reference</b>	F22/1562
<b>Subject Councillor</b>	Councillor Michael Gillam (the councillor)  Note that the name of the councillor may be included on the register if the Tribunal decided the councillor engaged in misconduct. Where misconduct by the councillor has not been sustained the councillor needs to agree to their name being included (s150DY(3)). <sup>1</sup>
<b>Council</b>	Moreton Bay Regional Council

## 2. Decision (s150AQ):

<b>Date:</b>	20 November 2023
<b>Decision:</b>	<b>Allegation One</b>  It is alleged that between 13 January 2012 and 2 December 2018, Councillor Michael Gillam, a councillor of Moreton Bay Regional Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the Act in that his conduct involved a breach of the trust placed in him as a councillor.  <b>Particulars</b>  The particulars of the alleged misconduct are as follows:

<sup>1</sup> This notice should be delayed until 7 days after the date of the Tribunal letter advising the councillor of the decision and reasons in relation to the complaint, to enable the councillor time to indicate if they would like their name included in the publication or not.

**Councillor Conduct Tribunal**

GPO Box 10059, City East, Q 4002

- a. During his 2008, 2012 and 2016 terms on Council, Councillor Gillam signed and submitted numerous approved register of interest ('ROI') forms to Council.
- b. The ROI forms submitted by Councillor Gillam from 13 January 2012 to 17 October 2018 contained incorrect particulars in item 2.1 of his ROI about Jade Hut Enterprises Pty Ltd ('Jade Hut'), a company of which he was a director and sole shareholder.
- c. In the ROI forms submitted by the councillor, under the heading "*Shareholding or controlling interests in corporations*", Councillor Gillam described Jade Hut as a shareholder in West Trek Developments Pty Ltd and Lansynd Pty Ltd.
- d. These particulars were incorrect in that at no time was Jade Hut a shareholder in West Trek Developments Pty Ltd or Lansynd Pty Ltd.
- e. As a consequence, Councillor Gillam's ROI was inaccurate for the period from 12 January 2012 to 2 December 2018.
- f. The alleged conduct was not consistent with local government principle 4(2)(e) being 'ethical and legal behaviour of councillors and local government employees' in that Councillor Gillam did not inform the CEO of the particulars of his interest within 30 days of the interest arising as required by section 107 of the *Local Government (Operations) Regulation 2010*, section 292 of the *Local Government Regulation 2012* and section 171B of the *Local Government Act 2009* as was in place at the relevant times.

**Allegation Two**

It is alleged that between 3 December 2018 and 12 May 2020, Councillor Michael Gillam, a councillor of Moreton Bay Regional Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the Act in that his conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly.

**Particulars**

The particulars of the alleged misconduct are as follows:

- a. Prior to the 2008 council term, Councillor Gillam was issued 20 out of 100 ordinary shares in West Trek Developments Pty Ltd ('West Trek').
- b. During his 2016 term on Council, Councillor Gillam did not inform the Council's Chief Executive Officer ('CEO') of his shareholding in West Trek which should have appeared at item 2.1 of his register of interest.
- c. On 13 May 2020 – after his re-election at the 2020 local government elections – Councillor Gillam first informed the CEO of Council that he was a shareholder in West Trek by submitting an approved register of interest ('ROI') form with these particulars disclosed.

**Councillor Conduct Tribunal**

GPO Box 10059, City East, Q 4002

d. As a consequence, Councillor Gillam's ROI was inaccurate for the period from at least 3 December 2018 to 12 May 2020.

e. The alleged conduct was not consistent with local government principle 4(2)(e) being 'ethical and legal behaviour of councillors and local government employees' in that Councillor Gillam did not inform the CEO of the particulars of his interest within 30 days of the interest arising as required by section 171B of the *Local Government Act 2009*.

#### **Allegation Three**

It is alleged that between 8 April 2018 and 2 December 2018, Councillor Michael Gillam, a councillor of Moreton Bay Regional Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the Act in that his conduct involved a breach of the trust placed in him as a councillor.

#### **Particulars**

The particulars of the alleged misconduct are as follows:

a. Prior to the 2016 council term, Councillor Gillam was appointed as Director of Jade Hut Enterprises Pty Ltd ('Jade Hut') and was its sole shareholder.

b. On or around 8 March 2018, Jade Hut became the registered owner of 60 Spitfire Avenue, Strathpine.

c. Councillor Gillam did not inform the Council's Chief Executive Officer ('CEO') of his interest in 60 Spitfire Avenue, Strathpine within 30 days of Jade Hut becoming the registered owner of the land. The interest should have been recorded in item 2.2 of his register of interest.

d. Councillor Gillam first informed the CEO of his interest in 60 Spitfire Avenue, Strathpine, when he submitted an approved register of interest ('ROI') form on 22 November 2019. As a consequence, Councillor Gillam's ROI was inaccurate for the period from 8 April 2018 to 21 November 2019.

e. The alleged conduct was not consistent with local government principle 4(2)(e) being 'ethical and legal behaviour of councillors and local government employees' in that Councillor Gillam did not inform the CEO of the particulars of his interest within 30 days of the interest arising as required by section 171B of the *Local Government Act 2009*.

#### **Allegation Four**

It is alleged that between 3 December 2018 and 21 November 2019, Councillor Michael Gillam, a councillor of Moreton Bay Regional Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the Act in that his conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly.

#### **Particulars**

### **Councillor Conduct Tribunal**

GPO Box 10059, City East, Q 4002

	<p>The particulars of the alleged misconduct are as follows:</p> <ul style="list-style-type: none"> <li>a. Prior to the 2016 council term, Councillor Gillam was appointed as Director of Jade Hut Enterprises Pty Ltd ('Jade Hut') and was its sole shareholder.</li> <li>b. On or around 8 March 2018, Jade Hut became the registered owner of 60 Spitfire Avenue, Strathpine.</li> <li>c. Councillor Gillam did not inform the Council's Chief Executive Officer ('CEO') of his interest in 60 Spitfire Avenue, Strathpine within 30 days of Jade Hut becoming the registered owner of the land. The interest should have been recorded in item 2.2 of his register of interest.</li> <li>d. Councillor Gillam first informed the CEO of his interest in 60 Spitfire Avenue, Strathpine, when he submitted an approved register of interest ('ROI') form on 22 November 2019. As a consequence, Councillor Gillam's ROI was inaccurate for the period from 8 April 2018 to 21 November 2019.</li> <li>e. The alleged conduct was not consistent with local government principle 4(2)(e) being 'ethical and legal behaviour of councillors and local government employees' in that Councillor Gillam did not inform the CEO of the particulars of his interest within 30 days of the interest arising as required by section 171B of the <i>Local Government Act 2009</i>.</li> </ul> <p><b>Allegation Five</b></p> <p>It is alleged that between 3 December 2018 and 21 November 2019, Councillor Michael Gillam, a councillor of Moreton Bay Regional Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the Act in that his conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly.</p> <p><b>Particulars</b></p> <p>The particulars of the alleged misconduct are as follows:</p> <ul style="list-style-type: none"> <li>a. Prior to the 2016 council term, Councillor Gillam was appointed as Director of Jade Hut Enterprises Pty Ltd ('Jade Hut') and was its sole shareholder.</li> <li>b. On or around 8 May 2018, Jade Hut became the registered owner of 5/40 Ellis Street, Lawnton.</li> <li>c. Councillor Gillam did not inform the Council's Chief Executive Officer ('CEO') of his interest in 5/40 Ellis Street, Lawnton within 30 days of Jade Hut becoming the registered owner of the land. This interest should have been recorded at item 2.2 of his register of interest.</li> <li>d. Councillor Gillam first informed the CEO of the interest when he submitted an approved register of interest ('ROI') form on 22 November 2019. As a consequence, Councillor Gillam's ROI was inaccurate for the period from 8 June 2018 to 21 November 2019.</li> </ul>
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**Councillor Conduct Tribunal**

GPO Box 10059, City East, Q 4002

e. The alleged conduct was not consistent with local government principle 4(2)(e) being 'ethical and legal behaviour of councillors and local government employees' in that Councillor Gillam did not inform the CEO of the particulars of his interest within 30 days of the interest arising as required by section 171B of the *Local Government Act 2009*.

**Allegation Six**

It is alleged that between 24 July 2019 and 12 May 2020, Councillor Michael Gillam, a councillor of Moreton Bay Regional Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the Act in that his conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly.

**Particulars**

The particulars of the alleged misconduct are as follows:

a. Prior to the 2012 council term, Councillor Gillam was appointed as Director of West Trek Developments Pty Ltd ('West Trek'). He continued in that role until 11 October 2020.

b. In approved register of interest ('ROI') forms completed by Councillor Gillam during the 2012 and 2016 council terms, he informed the Council's Chief Executive Officer (CEO) of his Directorship of West Trek.

c. On 24 July 2019, Councillor Gillam informed the CEO, by completing an update to his ROI, that his directorship of West Trek should be removed from his ROI. As a consequence, Councillor Gillam's ROI from 24 July 2019 did not disclose his directorship in West Trek.

d. As at 24 July 2019 and until the company's deregistration on 11 October 2020, Councillor Gillam was a Director of West Trek. This was not disclosed in item 3 of his register of interest (Positions held as an officer of corporations).

e. On 13 May 2020, Councillor Gillam corrected his ROI by disclosing details of his directorship in West Trek.

f. As a consequence of Councillor Gillam updating his ROI incorrectly on 24 July 2019, his ROI was inaccurate for the period from 24 July 2019 to 12 May 2020.

g. The alleged conduct was not consistent with local government principle 4(2)(e) being 'ethical and legal behaviour of councillors and local government employees' in that Councillor Gillam did not inform the CEO of the particulars of his interest within 30 days of the interest arising as required by section 171B of the *Local Government Act 2009*.

**Allegation Seven**

It is alleged that between 19 October 2012 and 2 December 2018, Councillor Michael Gillam, a councillor of Moreton Bay Regional Council,

**Councillor Conduct Tribunal**

GPO Box 10059, City East, Q 4002

engaged in misconduct as defined in section 176(3)(b)(ii) of the Act in that his conduct involved a breach of the trust placed in him as a councillor.

**Particulars**

The particulars of the alleged misconduct are as follows:

- a. Prior to, and during, the 2012 council term, Councillor Gillam was the Director and a shareholder of West Trek Developments Pty Ltd ('West Trek').
- b. On 19 September 2012, a mortgage was registered on two properties owned by West Trek at 2/40 Ellis Street, Lawnton and 10/40 Ellis Street, Lawnton ('the Ellis Street properties').
- c. Councillor Gillam was required to inform the Council's Chief Executive Officer (CEO) of the liability within 30 days of the interest arising.
- d. Councillor Gillam did not inform the CEO of the interest, namely a mortgage over the Ellis Street properties, by disclosing the relevant particulars in item 9 of the approved form within 30 days of the interest arising. As a consequence, Councillor Gillam's register of interest was inaccurate for the period from at least 19 October 2012 to 20 July 2020.
- e. The alleged conduct was not consistent with local government principle 4(2)(e) being 'ethical and legal behaviour of councillors and local government employees' in that Councillor Gillam did not inform the CEO of the particulars of his interest within 30 days of the interest arising as required by section 107 of the *Local Government (Operations) Regulation 2010*, section 292 of the *Local Government Regulation 2012* and section 171B of the *Local Government Act 2009* as was in place at the relevant times.

**Allegation Eight**

It is alleged that between 8 April 2018 and 2 December 2018, Councillor Michael Gillam, a councillor of Moreton Bay Regional Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the Act in that his conduct involved a breach of the trust placed in him as a councillor.

**Particulars**

The particulars of the alleged misconduct are as follows:

- a. Prior to, and during, the 2016 council term, Councillor Gillam was the Director and sole shareholder of Jade Hut Enterprises Pty Ltd ('Jade Hut').
- b. On 8 March 2018, a mortgage was registered over 60 Spitfire Avenue, Strathpine, a property owned by Jade Hut.
- c. Councillor Gillam did not inform the Chief Executive Officer (CEO) of Council of the interest, namely a mortgage over 60 Spitfire Avenue,

**Councillor Conduct Tribunal**

GPO Box 10059, City East, Q 4002

	<p>Strathpine, by disclosing the relevant particulars in item 9 of the approved form within 30 days of the interest arising.</p> <p>d. On 13 May 2020, Councillor Gillam informed the CEO of Council of a mortgage held by Jade Hut by providing the relevant particulars in the approved form.</p> <p>e. As a consequence of Councillor Gillam failing to inform the CEO of the interest within the required timeframe, the councillor’s register of interest was inaccurate for the period from 8 April 2018 to 13 May 2020.</p> <p>f. The alleged conduct was not consistent with local government principle 4(2)(e) being ‘ethical and legal behaviour of councillors and local government employees’ in that Councillor Gillam did not inform the CEO of the particulars of his interest within 30 days of the interest arising as required by section 171B of the <i>Local Government Act 2009</i>.</p> <p><b>Allegation Nine</b></p> <p>It is alleged that between 3 December 2018 and 12 May 2020, Councillor Michael Gillam, a councillor of Moreton Bay Regional Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the Act in that his conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly.</p> <p><b>Particulars</b></p> <p>The particulars of the alleged misconduct are as follows:</p> <p>a. Prior to, and during, the 2016 council term, Councillor Gillam was the Director and sole shareholder of Jade Hut Enterprises Pty Ltd (‘Jade Hut’).</p> <p>b. On 8 March 2018, a mortgage was registered over 60 Spitfire Avenue, Strathpine, a property owned by Jade Hut.</p> <p>c. Councillor Gillam did not inform the Chief Executive Officer (CEO) of Council of the interest, namely a mortgage over 60 Spitfire Avenue, Strathpine, by disclosing the relevant particulars in item 9 of the approved form within 30 days of the interest arising.</p> <p>d. On 13 May 2020, Councillor Gillam informed the CEO of Council of a mortgage held by Jade Hut by providing the relevant particulars in the approved form.</p> <p>e. As a consequence of Councillor Gillam failing to inform the CEO of the interest within the required timeframe, the councillor’s register of interest was inaccurate for the period from 8 April 2018 to 12 May 2020.</p> <p>f. The alleged conduct was not consistent with local government principle 4(2)(e) being ‘ethical and legal behaviour of councillors and local government employees’ in that Councillor Gillam did not inform the CEO of the particulars of his interest within 30 days of the interest arising as required by section 171B of the <i>Local Government Act 2009</i>.</p>
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**Councillor Conduct Tribunal**

GPO Box 10059, City East, Q 4002

**Allegation Ten**

It is alleged that between 19 May 2018 and 2 December 2018, Councillor Michael Gillam, a councillor of Moreton Bay Regional Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the Act in that his conduct involved a breach of the trust placed in him as a councillor.

**Particulars**

The particulars of the alleged misconduct are as follows:

- a. Pine Central Developments Pty Ltd ('Pine Central') was registered on 8 February 2018. On the same date, Councillor Gillam was appointed a Director of Pine Central.
- b. Pine Central was established for the purpose of a land subdivision in the suburb of Warner, Queensland.
- c. Through the company Jade Hut Enterprises Pty Ltd ('Jade Hut'), Councillor Gillam was also one of five equal shareholders in Pine Central. Councillor Gillam is a Director and the sole shareholder of Jade Hut.
- d. On 19 April 2018, Pine Central purchased 367 Samsonvale Road, Warner, for the purpose of subdividing the land. Pine Central entered into a mortgage with National Australia Bank to purchase 367 Samsonvale Road, Warner.
- e. The mortgage over 367 Samsonvale Road, Warner, was released on 25 September 2020.
- f. Councillor Gillam did not inform the Chief Executive Officer ('CEO') of Council of the interest, namely the mortgage over 367 Samsonvale Road, Warner, by disclosing the particulars in item 9 of the approved form within 30 days of the interests arising.
- g. As a consequence of Councillor Gillam failing to inform the CEO of the interest within the required timeframe, the councillor's register of interest was inaccurate for the period from 19 May 2018 to 25 September 2020.
- h. The alleged conduct was not consistent with local government principle 4(2)(e) being 'ethical and legal behaviour of councillors and local government employees' in that Councillor Gillam did not inform the CEO of the particulars of his interest within 30 days of the interest arising as required by section 171B of the *Local Government Act 2009*.

**Allegation Eleven**

It is alleged that between 3 December 2018 and 25 September 2020, Councillor Michael Gillam, a councillor of Moreton Bay Regional Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the Act in that his conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly.

**Councillor Conduct Tribunal**

GPO Box 10059, City East, Q 4002



	<p><b>Particulars</b></p> <p>The particulars of the alleged misconduct are as follows:</p> <p>a. Pine Central Developments Pty Ltd ('Pine Central') was registered on 8 February 2018. On the same date, Councillor Gillam was appointed a Director of Pine Central.</p> <p>b. Pine Central was established for the purpose of a land subdivision in the suburb of Warner, Queensland.</p> <p>c. Through the company Jade Hut Enterprises Pty Ltd ('Jade Hut'), Councillor Gillam was also one of five equal shareholders in Pine Central. Councillor Gillam is a Director and the sole shareholder of Jade Hut.</p> <p>d. On 19 April 2018, Pine Central purchased 367 Samsonvale Road, Warner, for the purpose of subdividing the land. Pine Central entered into a mortgage with National Australia Bank to purchase 367 Samsonvale Road, Warner.</p> <p>e. The mortgage over 367 Samsonvale Road, Warner, was released on 25 September 2020.</p> <p>f. Councillor Gillam did not inform the Chief Executive Officer ('CEO') of Council of the interest, namely the mortgage over 367 Samsonvale Road, Warner, by disclosing the particulars in item 9 of the approved form within 30 days of the interests arising.</p> <p>g. As a consequence of Councillor Gillam failing to inform the CEO of the interest within the required timeframe, the councillor's register of interest was inaccurate for the period from 19 May 2018 to 25 September 2020.</p> <p>h. The alleged conduct was not consistent with local government principle 4(2)(e) being 'ethical and legal behaviour of councillors and local government employees' in that Councillor Gillam did not inform the CEO of the particulars of his interest within 30 days of the interest arising as required by section 171B of the <i>Local Government Act 2009</i>.</p> <p><b>Allegation Twelve</b></p> <p>It is alleged that between 29 July 2018 and 2 December 2018, Councillor Michael Gillam, a councillor of Moreton Bay Regional Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the Act in that his conduct involved a breach of the trust placed in him as a councillor.</p> <p><b>Particulars</b></p> <p>The particulars of the alleged misconduct are as follows:</p> <p>a. On or around 29 June 2018, Councillor Gillam and his wife, Maree Ann Gillam became the registered owners of 6/24 Ebert Parade, Lawnton.</p> <p>b. Councillor Gillam was required to inform the Council's Chief Executive Officer (CEO) of this interest within 30 days of the interest arising.</p>
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**Councillor Conduct Tribunal**

GPO Box 10059, City East, Q 4002

c. Councillor Gillam did not inform the CEO of his interest in 6/24 Ebert Parade, Lawnton, by disclosing the relevant particulars in item 8 of an approved form, within 30 days of him and his wife becoming the registered tenants.

d. As a consequence of Councillor Gillam failing to inform the CEO of the interest within the required timeframe, the councillor's register of interest was inaccurate for the period from at least 29 July 2018 to 20 July 2020.

e. The alleged conduct was not consistent with local government principle 4(2)(e) being 'ethical and legal behaviour of councillors and local government employees' in that Councillor Gillam did not inform the CEO of the particulars of his interest within 30 days of the interest arising as required by section 171B of the *Local Government Act 2009*.

#### **Allegation Thirteen**

It is alleged that between 3 December 2018 and 20 July 2020, Councillor Michael Gillam, a councillor of Moreton Bay Regional Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the Act in that his conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly.

#### **Particulars**

The particulars of the alleged misconduct are as follows:

a. On or around 29 June 2018, Councillor Gillam and his wife, Maree Ann Gillam became the registered owners of 6/24 Ebert Parade, Lawnton.

b. Councillor Gillam was required to inform the Council's Chief Executive Officer (CEO) of this interest within 30 days of the interest arising.

c. Councillor Gillam did not inform the CEO of his interest in 6/24 Ebert Parade, Lawnton, by disclosing the relevant particulars in item 8 of an approved form, within 30 days of him and his wife becoming the registered tenants.

d. As a consequence of Councillor Gillam failing to inform the CEO of the interest within the required timeframe, the councillor's register of interest was inaccurate for the period from at least 29 July 2018 to 20 July 2020.

e. The alleged conduct was not consistent with local government principle 4(2)(e) being 'ethical and legal behaviour of councillors and local government employees' in that Councillor Gillam did not inform the CEO of the particulars of his interest within 30 days of the interest arising as required by section 171B of the *Local Government Act 2009*.

#### **Allegation Fourteen**

It is alleged that between 13 January 2012 and 15 March 2018, Councillor Michael Gillam, a councillor of Moreton Bay Regional Council, engaged in

### **Councillor Conduct Tribunal**

GPO Box 10059, City East, Q 4002

	<p>misconduct as defined in section 176(3)(b)(ii) of the Act in that his conduct involved a breach of the trust placed in him as a councillor.</p> <p><b>Particulars</b></p> <p>The particulars of the alleged misconduct are as follows:</p> <p>a. During the 2012 council term, a trust, known as the PR Development Trust No. 2, was established between West Trek Developments Pty Ltd ('West Trek') as trustee and eleven unit holders.</p> <p>b. Jade Hut Enterprises Pty Ltd ('Jade Hut') – a company in which Councillor Gillam is a Director and sole shareholder – was one of the eleven unit holders.</p> <p>c. On or around 15 March 2018, Jade Hut exited PR Development Trust No. 2.</p> <p>d. The ROI forms submitted by Councillor Gillam from 13 January 2012 to 15 March 2018 at item 4 did not disclose his beneficial interest in PR Development Trust No. 2, which he held by virtue of Jade Hut being a unit holder.</p> <p>e. As a consequence, Councillor Gillam's ROI was inaccurate for the period from at least 13 January 2012 to 15 March 2018.</p> <p>f. The alleged conduct was not consistent with local government principle 4(2)(e) being 'ethical and legal behaviour of councillors and local government employees' in that Councillor Gillam did not inform the CEO of the particulars of his interest within 30 days of the interest arising as required by section 107 of the <i>Local Government (Operations) Regulation 2010</i>, section 292 of the <i>Local Government Regulation 2012</i> and section 171B of the <i>Local Government Act 2009</i> as was in place at the relevant times.</p>
<p><b>Reasons:</b></p>	<ol style="list-style-type: none"> <li>1. The fourteen allegations brought before the Tribunal allege, on diverse dates and in various ways, that the Respondent failed to ensure his Register of Interests (ROI) was correct and accurate, an obligation arising at various times because of the <i>Local Government Act 2009</i> and the Regulations made under it.</li> <li>2. As a preliminary matter, the Tribunal found that the obligation to inform the CEO of a need to change or update their ROI arises on the 31<sup>st</sup> day after the interest or change occurs. It is on this date that the non-compliance "crystallises", or comes into being. The obligation does not grow any smaller or larger after that date, irrespective of whether it is detected on the 32<sup>nd</sup> day or the 365<sup>th</sup> day. A Councillor who fails to comply with this provision is not in compliance with the Act and as a result could be found to have acted in a way that is</li> </ol>

	<p>inconsistent with the local government principles, which could amount to a breach of the trust placed in them and consequently, misconduct.</p> <ol style="list-style-type: none"><li>3. For that reason, Allegations 4, 5, 9, 11 and 13 cannot be sustained. They were brought by the Applicant on the honest, but misguided, assumption that a failure to update the ROI continued in perpetuity until the Councillor took steps to update their ROI.</li><li>4. Nor can Allegations 1 and 14 be sustained. Allegation 1 involved an alleged failure to update the ROI to remove an interest which did not, in fact or in law, exist. Allegation 14 involved a misinterpretation of the “<i>approved form</i>” by the Respondent, where a unitholding was not disclosed (the form mentions “<i>shareholdings or controlling interest in corporations</i>”, but not unitholdings in unit trusts).</li><li>5. The non-compliance – such as there was – in these allegations was so minor as to be trivial, and cannot be considered a breach of the trust reposed in the Councillor when he held an honest but mistaken belief that his conduct had complied with the law.</li><li>6. Turning to Allegations 3, 7, 8, 10 and 12, these allegations were admitted to by the Respondent. Although he denied that they constituted a breach of trust, the Tribunal found that they were.</li><li>7. The Tribunal has no doubt, based on the Respondent’s unchallenged affidavit evidence, that his failure to update his ROI was not motivated by malice or a willingness to conceal assets. However, that is not the point of the provision – it is to ensure a complete and accurate record of a Councillor’s interests, so that decisions made by Council are transparent, accountable and defensible.</li><li>8. Allegations 2 and 6 were far more serious, as they involved conduct by the Respondent to remove directorships and shareholdings from his ROI in advance of a company being deregistered. However, the deregistration had not been finalised and was reliant solely on the Respondent (and his fellow directors) not paying the annual renewal fee to ASIC.</li><li>9. The Respondent’s statements demonstrate a stark ignorance of the Commonwealth laws regarding proper conduct of company officers. If the Respondent had, as his affidavit evidence suggests, formed an opinion that it was in the interests of the company that it be wound up, the <i>Corporations Act 2001</i> (Cth) provides pathways for that to occur in a proper, orderly and legal manner. The Respondent as a director should not have caused this requirement to be passed on to ASIC.</li></ol>
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	<p>10. At the time of updating his ROI, the Respondent could not have been absolutely sure that a change had occurred with respect to his interests – he merely believed that a change would occur eventually, once ASIC “got around” to deregistering the company. There was no reasonable basis for the Respondent to know, with any certainty at all, how long that process might actually take (and when his directorship would legally cease).</p> <p>11. In the Tribunal’s view, the Respondent’s conduct meets the very definition of “recklessness”. The Respondent was very aware of the fact that, as at 24 July 2019, the company was not deregistered but merely would be at some point in the future. Without knowing a precise date on which the company would be deregistered and when his directorship of same would come to an end, the Respondent has accepted the risk that the company might actually continue to be registered, and he has shut his eyes to the risk that such an outcome would bring.</p> <p>12. For the reasons outlined above, the Respondent’s conduct was clearly unethical and was not consistent with the relevant local government principle of “ethical and legal behaviour of councillors, local government employees and councillor advisors”.</p>
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**3. Orders and/or recommendations (s150AR - disciplinary action):**

<b>Date of orders:</b>	20 November 2023
<b>Order/s and/or recommendations:</b>	<p>In respect of Allegations 2, 3, 6, 7, 8, 10 and 12, the Tribunal orders that the Councillor must:</p> <ul style="list-style-type: none"> <li>• Within 90 days of the date of this decision and reasons make a public admission of misconduct at an ordinary General Council meeting (at a time when the public would normally be permitted to attend) in accordance with section 150AR(1)(b)(i) of the Act.<sup>2</sup></li> <li>• Within 90 days of the date of this decision and reasons, attend training or counselling, at his expense, to address the councillor’s conduct in accordance with section 150AR(1)(b)(iii) of the Act.<sup>3</sup></li> </ul>

<sup>2</sup> Being an order, as required by s 322(2)(c) of the Act, is “substantially the same as an order that could have been made” under the former s 180(5)(b) of the Act.

<sup>3</sup> Being an order, as required by s 322(2)(c) of the Act, is “substantially the same as an order that could have been made” under the former s 180(5)(a) of the Act.

	<ul style="list-style-type: none"> <li>• Within 90 days of the date of this decision and reasons, pay to the local government the amount of \$2,167.20 (being 14 penalty units) in accordance with section 150AR(1)(b)(iv) of the Act.<sup>4</sup></li> </ul>
<p><b>Reasons:</b></p>	<ol style="list-style-type: none"> <li>1. Disciplinary orders are protective, not punitive. They are designed to protect the system of local government, and that of the office of Councillor, such that both institutions maintain high standards of conduct and which, in turn, ensures public confidence in the system of local government.</li> <li>2. The Respondent’s affidavit – in which he admitted to the factual circumstances relating to the allegations – was of significant utility to the Tribunal in determining the issues, and his admissions confined the matters for determination to a relatively narrow scope.</li> <li>3. The Respondent further has no disciplinary history in almost 30 years of being a Councillor.</li> <li>4. The Tribunal notes that some of the allegations are quite old. In some cases, they date back as far as 2012. The Respondent has had time, both in his response to the section 150AA notice and the submissions to this Tribunal, to reflect on his failures to disclose relevant interests in his ROI. Also, the Tribunal has found that his failure to disclose was not motivated by malice or a desire to hide assets, which the Tribunal considers is a mitigating factor.</li> <li>5. The Tribunal will order that the Respondent make a public admission of misconduct and receive training on his obligations. Some might question the utility of such training given the Respondent’s intention to retire; however, the Tribunal accepts the submission that such training <i>“would achieve the objective of the disciplinary regime in preventing a repeat of the misconduct, should Councillor Gillam decide, sometime prior to the elections, that he will stand for re-election”</i>.</li> <li>6. With respect to pecuniary penalty, the Tribunal was motivated to impose a higher sanction regarding the Respondent’s conduct the subject of Allegations 2 and 6. This was because of the inexplicable willingness of the Respondent to completely abandon his ROI disclosure obligations on nothing more than the suggestion of a fellow company director that they would not pay the ASIC registration fee for their company.</li> </ol>

<sup>4</sup> Being an order, as required by s 322(2)(c) of the Act, is “substantially the same as an order that could have been made” under the former s 180(5)(j) of the Act.

	<p>7. The Respondent's recklessness regarding his ROI obligations in particularly Allegations 2 and 6 warrants denunciation and deterrence. For that reason, the Tribunal will order that the Respondent pay an amount to the local government of 7 penalty units on each of Allegations 2 and 6, for a total of 14 penalty units.</p> <p>8. At the time of this decision and reasons, the value of a penalty unit was \$154.80. Therefore, the Tribunal orders that the total amount payable by the Respondent to the local government in this matter is \$2,167.20.</p>
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