

# Councillor Conduct Tribunal: Expedited misconduct application Summary of decision and reasons.

*Local Government Act 2009: Sections 150DV, Practice Direction #1 of 2022 and section 150AS(2)(c) and 150AS(5).*

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## 1. Misconduct Application: 15 March 2022

<b>CCT Reference</b>	F22/1868
<b>Subject councillor:</b>	Councillor Joe Natoli (the Councillor)
<b>Council</b>	Sunshine Coast Regional Council (the Council)

## 2. “The Agreement” for the Expedited hearing: 13 September 2022

The Councillor and the Independent Assessor formed the agreement with respect to the allegation of misconduct, the particulars of the conduct and the associated facts. An application was made for the matter to be heard pursuant to the Tribunal’s expedited hearing procedures.

The Agreement is provided below (refer to page 2).

Office of the **Independent Assessor**



## Agreement of parties for matter to be expedited

*Practice Direction #1 of 2022 – General Hearing Protocol – Expedited Misconduct Applications, effective 18 July 2022 (section 150DV Local Government Act 2009)*

### Application Details:

CCT Matter Reference Number	CCT Ref: F22/1868
Application filed on	15 March 2022
Subject Councillor	Joe Natoli, Councillor
Council	Sunshine Coast Regional Council


### Compliance with Practice Direction #1 of 2022

1. The Councillor agrees that the conduct subject to the Application constitutes misconduct.
2. The Councillor agrees to the facts as set out in "Annexure A – Statement of Facts".
3. The Councillor agrees to the evidence filed by the Independent Assessor.
4. The allegation/s, facts and evidence filed by the Independent Assessor, as outlined below, are not contested and the parties agree for this matter to be expedited pursuant to Practice Direction #1 of 2022 – General Hearing Protocol – Expedited Misconduct Applications<sup>1</sup>:
  - a. Application to the Councillor Conduct Tribunal about alleged misconduct – Councillor Joe Natoli
  - b. Annexure A – Statement of Facts
  - c. Annexure B – Section 150AA Notice and Opportunity to Respond
  - d. Annexure C – Response to section 150AA Notice
  - e. Annexure D – Brief of Evidence

Signature:

  
Councillor Joe Natoli  
Sunshine Coast Regional Council  
Dated: 13/9/2022

Signature:

  
Kathleen Florian  
Independent Assessor  
Dated: 13/09/2022

<sup>1</sup> [https://www.statedevelopment.qld.gov.au/\\_data/assets/pdf\\_file/0031/73777/practice-direction-1-hearing-protocol-expedited-misconduct-applications.pdf](https://www.statedevelopment.qld.gov.au/_data/assets/pdf_file/0031/73777/practice-direction-1-hearing-protocol-expedited-misconduct-applications.pdf) -direction-1-hearing-protocol-expedited-misconduct-applications.pdf

### 3. Decision (section 150AQ *Local Government Act 2009*)

<b>Date:</b>	7 November 2022
<b>Decision:</b>	<p>The Tribunal determined on the balance of probabilities, the allegation that on 2 July 2020 Councillor Joe Natoli a Councillor of the Sunshine Coast Regional Council, engaged in misconduct as defined in section 150L(1)(c)(iv) of the <i>Local Government Act 2009</i> (the Act) by releasing confidential information to the Sunshine Coast Daily; namely, information relating to the Brisbane Road Car Park Project at Mooloolaba that he knew or should have reasonably known was information confidential to local government <b>has been sustained</b>.</p>
<b>Particulars:</b>	<p><b>The Particulars of the alleged conduct are:</b></p> <p>a. On 25 June 2020, at an Ordinary meeting of the Sunshine Coast Regional Council (the Meeting), a report (the Report) was considered under Agenda Item 8.9 Brisbane Road Car Park-Update Expression of Interest process.</p> <p>b. The Report included Appendices A and B and Attachment 3 which were all identified as containing confidential information, as follows:</p> <p>i. Under the heading "Purpose", the Report stated:</p> <p><i>A "Appendices A and B and Attachment 3 are confidential as they contain information relating to the terms of a confidential agreement or a current site valuation which if made publicly available at this point in time, could prejudice the ability of Council to finalise Agreements; and</i></p> <p><i>B "The recommendations in this report provides for (subject to agreement by Council) the public release of some of the information in the confidential Appendices once certain milestones are reached."</i></p> <p>ii. Under the heading "Proposal", the Report stated:</p> <p><i>A "Details of the Agreements may be executed by the Chief Executive Officer within two weeks of the Council decision on this matter. Following execution, relevant agreement details including sale price for the land and details of the valuations (referred to later) maybe publicly released."</i></p> <p><i>B. "Details of the valuation are contained in Confidential <b>Appendix B</b>"; and</i></p> <p><i>C. "The complete valuation report is contained in Confidential <b>Attachment 3</b>".</i></p>

	<p>iii. Appendices A and B and Attachment 3, were contained in an Attachment Folder marked “Confidential”.</p> <p>iv. Appendices A and B and Attachment 3 were watermarked “Confidential”.</p> <p>c. Appendices A and B disclosed the sale price of \$7.2 million (the Sale Price).</p> <p>d. At the Meeting, Council resolved as follows in relation to the Item (Resolution OM 20/65):</p> <p><i>“That Council:</i></p> <p>...</p> <p><i>authorise the Chief Executive Officer to, following execution of the Agreements, make public the sale price for the land as identified in Appendix A and the valuation data in Appendix B.”</i></p> <p>e. On or about 2 July 2020, Councillor Natoli effectively disclosed the Sale Price in a telephone conversation to the Sunshine Coast Daily, by way of disclosing that Council had overlooked an offer of \$9.5 million which was worth \$2.3 million more than the deal Council had accepted.</p> <p>f. On July 3 2020, the Sunshine Coast Daily published an article (the Article) which included the following comments of Councillor Natoli:</p> <p><i>i. “Sunshine Coast Council accepted a deal worth \$2.3 million less than the highest offer it received to develop the Brisbane Road hotel site, according to Councillor Joe Natoli”.</i></p> <p><i>ii. “Cr Natoli said council had overlooked a “reputable” local builder’s \$9.5 million offer to develop a hotel-office building and that if successful payment would have been made within 30 days of settling the prime Mooloolaba land”.</i></p> <p><i>iii. “He said this was worth \$2.3 million more than the deal council has accepted”.</i></p> <p>g. The Sale Price, or the difference between the offer of \$9.5 million and the Sale Price, had not been publicly released during the Council’s Meeting on 25 June 2020.</p> <p>h. The Agreement under Resolution OM20/65 had not been executed by the Chief Executive Officer of Council at the time the Article was published in order for the Sale Price to have been made public.</p>
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<b>Reasons:</b>	<ol style="list-style-type: none"> <li>1. The Independent Assessor (the Applicant) alleged the Councillor had engaged in misconduct when he disclosed confidential information, in contravention of <b>section 171(3)</b> of the Act that provides –  <b>“Use of information by councillors</b>  ...  (3) A councillor must not release information that the councillor knows, or should reasonably know, is information that is confidential to the local government”.</li> <li>2. The information disclosed by the Councillor to the Sunshine Coast Daily concerned the Brisbane Road Mooloolaba Car Park Project.</li> <li>3. The particulars of the alleged conduct are not disputed by the Councillor and are outlined above.</li> <li>4. The Councillor did not contest the misconduct application and by email on 20 February 2022 notified the Applicant that he did not dispute the allegation or the particulars and that he accepted the facts outlined in the application.</li> </ol> <p><b>The Agreement</b></p> <ol style="list-style-type: none"> <li>5. On 13 September 2022 the Councillor and the Applicant signed The Agreement (refer above page 1) and provided this to the registry to conduct an expedited hearing in accordance with Tribunal Practice Direction No 1 of 2022, effective 18 July 2022.</li> <li>6. Tribunal Directions were consequently issued on 5 October 2022.</li> <li>7. The Councillor provided a Statutory Declaration on 12 October 2022 in compliance with the Tribunal directions and confirmed his acceptance of the alleged conduct, the surrounding facts and the circumstances contained in the Brief of Evidence provided by the Applicant.</li> </ol> <p><b>The Hearing – 28 October 2022.</b></p> <ol style="list-style-type: none"> <li>8. The Tribunal conducted the hearing on the papers and in reaching its decision and orders considered the evidence and the submissions provided by the Applicant and the Councillor.</li> <li>9. Although the matter was not disputed the Tribunal in reaching its decision and findings must be satisfied there is sufficient evidence before it to establish the allegation is made out to the required civil standard of proof, being the balance of probabilities, and that the conduct amounts to misconduct by section 150L(1)(c)(iv) of the <i>Local Government Act</i> (2009) (the Act).</li> <li>10. The Tribunal considered all documents and submissions in the context of the relevant councillor conduct provisions in the Act together with the Principles that underpin the Act.</li> </ol>
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	<p>11. The Tribunal was satisfied 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 Act.<sup>1</sup> As an administrative Tribunal the provisions of the Human Rights Act 2019 (Qld)(HRA) are acknowledged, considered and applied to the decision- making process by the Tribunal.</p> <p>12. The Tribunal was satisfied that any potential limitations on the Councillor’s human rights during the hearing process and because of the Tribunal’s decision, are reasonable and lawful under the HRA.</p> <p><b>Tribunal findings</b></p> <p>13. Section 171(3) of the Act only requires the Applicant to establish on the balance of probabilities by the evidence and submissions that the Councillor did release information that <b>“he knew or should have reasonably known”</b> was deemed confidential to Council.</p> <p>14. The undisputed evidence before the Tribunal was the Councillor attended the Ordinary meeting of the Council on 25 June 2020 where confidential information concerning the Mooloolaba Car Park project negotiations (the Report) were discussed under Agenda Item 8.9.</p> <p>15. During these Council discussions the Councillor had access to the Report that included the Expression of Interests documents and the details of the Sale Price offered to Council. The Tribunal noted these documents were placed in folders marked as Confidential including the marked Annexures A and B containing the details of the offer price.</p> <p>16. It was also not disputed by the Councillor that he did participate in an interview with a reporter from the Sunshine Coast Daily and made statements that caused confidential information concerning the Mooloolaba Road Car Park project to be publicly released.</p> <p>17. The confidential information was published by the Sunshine Coast Daily on 3 July 2020 and the Article contained comments made by the Councillor relating to the details of the Sale Price offered to the Council. At the date of publication the Tribunal noted that the information remained confidential to the Council.</p> <p>18. The Tribunal considered and accepted the Councillor’s explanation that he “...did not intentionally seek to disclose, nor allude to the confidential information”<sup>2</sup> and that he</p> <p style="padding-left: 40px;">...”mistakenly believed this information was already made public during the Council Ordinary Meeting of 25 June 2020”.<sup>3</sup></p>
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<sup>1</sup> Section 213(1) and 213 (3) of the Act; section 213 of the Local Government Regulation 2012 permits a decision-maker to direct the matter be heard in private.

<sup>2</sup> Statutory Declaration of Councillor Joe Antonio Natoli declared 11 October 2022 at [3 d].

<sup>3</sup> Ibid at [3 f].

	<p>19. However, there is no exemption for inadvertent error. The Councillor did not abide by the relevant obligations imposed by the Act including section 171(3). Consequently the ‘public interest’ considerations and integrity based conduct required by councillors and provided by section 4(2)( e) and section 171(3) of the Act was undermined.</p> <p>20. The Tribunal is satisfied on the evidence before it, the Councillor was aware of the confidentiality of the documents and that “<i>he knew or should have reasonably known</i>” that the information was confidential at the time he participated in the interview with the Sunshine Coast Daily.</p> <p>21. This finding is consistent with the Councillor’s admission to the conduct, facts, evidence and allegation contained in his Statutory Declaration of 11 October 2022 and The Agreement of the parties outlined above (page 1).</p> <p>22. Accordingly it was determined on the balance of probabilities the Councillor engaged in misconduct as defined by section 150L(1)(c)(iv) of the Act when he disclosed confidential Council information in contravention of section 171(3) of the Act.</p>
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#### **4. Sanctions/Disciplinary Orders and/or recommendations (s150AR):**

<p><b>Discussion:</b></p> <p><b>Reasons for the Disciplinary Orders</b></p>	<p>23. Having sustained the allegation of misconduct the Tribunal is required by section 150AQ of the Act to consider appropriate orders to be made pursuant to section 150AR of the Act.</p> <p>24. In making the orders the Tribunal took into account certain mitigating factors including:</p> <ol style="list-style-type: none"> <li>a. The Councillors co-operation with the Tribunal and the investigation process;</li> <li>b. The Agreement reached between the Applicant and the Councillor on 13 September 2022;</li> <li>c. The application for an Expedited hearing that reduced the resources needed by the Tribunal to finalise this matter;</li> <li>d. The Councillor’s submissions regarding sanctions dated 11 October 2022 provided in compliance with Tribunal directions; and</li> <li>e. That the Councilor has no previous disciplinary history.</li> </ol> <p>25. The Applicant submitted and the Tribunal accepts, that the purpose of disciplinary proceedings and orders is protective rather than punitive.<sup>4</sup> The Applicant submitted also that the Councillor had prior extensive experience as a former councillor between 1997 – 2008</p>
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<sup>4</sup> Submission of the Applicant 26 October 2022 at [15]; *Legal Services Commissioner v Madden* [2009] 1 Qld R 149 at[82].

	<p>and supported an order for further training by the Councillor to address the conduct.<sup>5</sup></p> <p>26. The Tribunal accepts the purpose of local government disciplinary proceedings is generally not punitive, but protective. However the sanctions made must also reflect the expectations of the community and, when considered appropriate, may also be directed to deterrence or be compensatory.<sup>6</sup></p> <p>27. In determining the orders to impose the Tribunal gave weight to the protective nature of the orders and took into account the following considerations:</p> <ol style="list-style-type: none"> <li>a. It is important that councillors generally be provided with appropriate assistance and training relevant to their functions and duties pursuant to the Act when a need has been demonstrated.</li> <li>b. Councillor Natoli had been recently elected, in March 2020, approximately three months before the misconduct occurred between 25 June 2020 to 2 July 2020.</li> <li>c. Information provided by the Applicant confirmed the Councillor had completed the “New Councillor Commencement/Orientation Program, between 20 April and 29 June 2020.”<sup>7</sup></li> <li>d. The nature and extent to which such training undertaken by the Councillor specifically addressed the requirements and application of section 171(3) including the management of voluminous documents was not clear from the submissions and material before the Tribunal.</li> <li>e. Although the Councillor had previous experience as a councillor it was noted that such experience was not recent and related to a distant period between 1997 – 2008 and when a previous Act was applicable.</li> <li>f. The Councillor’s submission that the documents and details he received from Council officers, he found to be of an “overwhelming nature” and that his disclosure of the information was “inadvertent”. The documents discussed under Agenda Item 8.9 at the Meeting on 25 June 2020, became the basis of the disclosure to the Sunshine Coast Daily and the resulting misconduct allegation.</li> </ol>
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<sup>5</sup> Applicant’s submissions 26 October 2022 at [24].

<sup>6</sup> For local government councillor regulation see *Office of Local Government v Campbell* [2016] NSWCATDOD 8 at [14 (2)].

<sup>7</sup> Applicants Statement of Facts at [5].



	<p>g. The Councillor did not dispute the alleged conduct, co-operated at all stages of the investigation process and elected to participate in the expedited hearing process.</p> <p>28. Taking into account all the mitigating and aggravating circumstances, the Tribunal considers a punitive penalty order would not protect the Council or the community or assist the Councillor.</p> <p>29. However it is considered sanctions should apply to the conduct and be at the lower end of the disciplinary scale. The Tribunal formed the view that suitable measures should be implemented to ensure that such conduct is not inadvertently repeated.</p> <p>30. Accordingly it is determined the Councillor attend training pursuant to section 150AR(b)(iii) of the Act “including at the expense of the Councillor”, to address the conduct and to receive assistance regarding the management of voluminous and confidential documents.</p>
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**5. Orders and/or recommendations (s150AR - disciplinary action):**

<b>Date of orders:</b>	7 November 2022
<b>Orders and/or recommendations:</b>	<p>Having found the allegation of misconduct to be sustained, the Tribunal orders pursuant to section 150AR(1)( b)(iii) that:</p> <p>a) Councillor Natoli attend training addressing the misconduct and the management of voluminous confidential documents, the subject of this allegation.</p> <p>b) The in-service training is to be undertaken at the expense of the Councillor (section 150AR (1)(b)(iii).</p> <p>c) The training to take place within 120 days of the date a copy of the order and report is provided to the Councillor by the Registrar.</p>