Councillor Conduct Tribunal:
Decision and Reasons/Publication Notice
Misconduct Application

Local Government Act 2009: Sections 150AQ and 150AS

Application details:

Reference No.	F22/4286
Date of Application from the IA	28/06/2022
Applicant:	Independent Assessor
Respondent:	Councillor Annette Haydon (the Councillor)
Council:	Tablelands Regional Council (the Council)
Complainant[1]:	The Tribunal is not permitted to publish the name or identifying details of the Complainant in the Summary of this decision to be published on the Tribunal's webpage (section 150AS(5)(b)(ii)).
Public Interest Disclosure:	No
Allegation:	It is alleged that between 21 October 2020 and 24 October 2020, Councillor Annette Haydon, a councillor of Tablelands Regional Council ('Council'), engaged in misconduct pursuant to section 150L(1)(c)(iv) and 150EZ(2) of the Local Government Act 2009 ('the Act') when having a prescribed conflict of interest in agenda items 12.7-12.9 at the Ordinary Meeting of Council on 29 October 2020 ('the matters'), the Councillor influenced, attempted to influence or discussed the matters with one or more persons who were participants in a decision (within the meaning of section 150EE) in relation to the matters. The particulars of the conduct that amount to the alleged breach are as follows: a. At all material times, Councillor Annette Haydon was a councillor of Tablelands Regional Council. b. On 22 October 2020, Councillor Haydon and other councillors were sent a copy of the agenda for the Ordinary Meeting of Council scheduled for 29 October 2020.

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

	c. Relevantly, that agenda included three items and relevant reports relating to the awarding of contracts for Council's annual gravel re-sheeting program: i. 12.7 tender report T-TRC2020-21 Gravel Re-Sheet – Northern Package (valued at $345,953.01); ii. 12.8 tender report T-TRC2020-22 Gravel Re-Sheet – Southern Package (valued at $553,058.00); and iii. 12.9 tender report T-TRC2020-23 Gravel Re-Sheet – Western Package (valued at $849,038.72). d. Council had put these contracts to tender and the purpose of the agenda items was for Council to consider the reports and recommendations of Council officers as to the successful tenderers. e. The reports by the Council officers recommended that ……. be awarded the contract for the Northern Package (agenda item 12.7) but not the Southern or Western Packages (agenda items 12.8 and 12.9). f. Councillor Haydon had a prescribed conflict of interest in agenda items 12.7, 12.8, and 12.9, in that: i. Mr ……. had submitted tenders for each of the gravel re-sheet packages; ii. Pursuant to section 150EJ(1)(b) of the Act, Mr ……. is a 'close associate' of Councillor Haydon, in that he is …….; and iii. Pursuant to section 150EI(a)(i) of the Act, a councillor has a prescribed conflict of interest in a matter if the matter relates to a contract between the local government and a close associate of the councillor for the supply of goods or services to the local government. g. On 22 October 2020, after receiving the agenda papers, Councillor Haydon made a telephone call to "first Council officer"……. h. During that telephone call, Councillor Haydon expressed discontent with the recommendation of Council officers, particularly in relation to how ……. tenders had been scored and how a competitor of ……..tenders (……..) had been scored. i. Pursuant to section 150EE of the Act, "first Council officer" was participating in a decision of the local government in relation to the matters, in that: i. He had been involved in the preparation of the Council officer's reports; ii. …….; iii. He would be present at the Ordinary Meeting where the matters were to be considered by Council and could potentially be called upon to provide information or to further discuss the matters;

iv. There was potential for Council to refuse to award one or more of the tenders and send the report/s back to Council officers for further consideration; and

v. It was likely that "first Council officer" would be participating in future decisions to award Council contracts and/or consider future tenders submitted by ……. and/or …….

j. On 22 October 2020, after receiving the agenda papers, Councillor Haydon made a telephone call to "another Councillor" ……..

k. During that telephone call, Councillor Haydon relevantly:

i. Explained that she had just spoken to "first Council officer";

ii. Advised that she had a complaint about at least 2 of the 3 re-sheet tenders; and

iii. Articulated specific concerns about potential successful tenderer, ……..

l. Pursuant to section 150EE of the Act, "another Councillor" was participating in a decision of the local government in relation to the matters, in that he would be considering the Council officer's reports at the upcoming Ordinary Meeting of Council and voting on who the contracts should be awarded to.

m. On 23 October 2020, Councillor Haydon further discussed the matters with "second Council officer", referring to inconsistencies and bias in the reports that had been prepared by Council officers and advising that she would be making a complaint about the outcome.

n. Pursuant to section 150EE of the Act, "second Council officer" was participating in a decision of the local government in relation to the matters, in that:

i. …….;

ii. He would be present at the Ordinary Meeting where the matters were to be considered by Council and could potentially be called upon to provide information or discuss the matters;

iii. There was potential for Council to refuse to award one or more of the tenders and send the report/s back to Council officers for further consideration; and

iv. "second Council officer" would have ongoing oversight and responsibility for future matters where Councillor Haydon's …….tendered for Council work.

o. By influencing, attempting to influence and/or discussing matters in which she had a prescribed conflict of interest with one or more other persons who were participating in a decision of the local government relating to those matters, Councillor Haydon's conduct contravened section 150EZ(2) of the Act.

p. A contravention of section 150EZ(2) of the Act is misconduct, pursuant to section 150L(1)(c)(iv) of the Act.

Conduct of hearing	This Application is made on the basis that the allegation is contested.

Decision (section 150AQ):

Date:	15 November 2024
Decision:	The Tribunal has determined, on the balance of probabilities, that the allegation that, Councillor Annette Haydon, a councillor of Tablelands Regional Council, engaged in misconduct pursuant to section 150L(1)(c)(iv) and 150EZ(2) of the *Local Government Act 2009* (Qld) ('the Act') when having a prescribed conflict of interest in agenda items 12.7-12.9 at the Ordinary Meeting of Council on 29 October 2020 ('the matters'), the Councillor influenced, attempted to influence or discussed the matters with "first Council officer" and "another Councillor" on 22 October 2020 and "second Council officer" on 23 October 2020, who were all participants in a decision (within the meaning of section 150EE) in relation to these agenda items, **has been sustained.**

Orders (section 150AR - disciplinary action):

Date of orders:	15 November 2024
Orders	The Tribunal orders that: (a) pursuant to Section 150AR(1)(b)(i) of the Act, Councillor Annette Haydon make a public admission that the councillor has engaged in misconduct, and (b) pursuant to Section 150AR(1)(b)(ii) of the Act, Councillor Annette Haydon be reprimanded.

Tribunal:

Chairperson:	Russell Faulkner
Member:	Robert Olding
Member:	Rod Ferguson

Conflict of interest disclaimer/declaration (section 150DT)

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

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

Time and Date:	10.00am, 1 October 2024
Heard at:	By telephone conference with all members in attendance.

Appearances:	This matter was heard and determined on the documents pursuant to section 150AP(2) of *the Local Government Act 2009* (Qld) with no parties appearing. The Tribunal considered the provisions of section 298 of the Local Government Regulation 2012 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 private[2].

Abbreviations

The following abbreviations have been used in this determination:

the Act	the *Local Government Act 2009*
the Department	the Department of Housing, Local Government, Planning and Public Works
the Regulation	the *Local Government Regulation 2012*
the CEO	the Chief Executive Officer of the Council
the complainant	the person who lodged the complaint
the Council	Tablelands Regional Council
the councillor	Councillor Annette Haydon (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[3] as a councillor of Tablelands Regional Council at the 2016 Queensland Local Government election. She was re-elected at the 2020 Queensland Local Government election.

[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.

[3] Annexure A - Statement of Facts submitted by the Applicant at paragraph 3.

b. The Councillor[4] does not have any previous disciplinary history.

c. On 2 June 2022, the IA sent the Councillor a Notice and Opportunity to Respond pursuant to section 150AA of the Act, enclosing a draft statement of facts and requesting that she respond by 23 June 2022.

d. On 23 June 2022, the IA was advised of the Councillor's section 150AA response.[5]

e. On 28 June 2022, the Applicant filed an application with the Tribunal pursuant to section 150W(1)(c) and section 150AJ of the Act.

f. Directions were issued by the Tribunal on 1 July 2024.

Conduct of hearing

3. The hearing was conducted on the documents.

Considerations pursuant to the Human Rights Act 2019 (Qld)

4. In the circumstances of this matter, the Tribunal considers it has discharged its obligation to observe and protect the Councillor's human rights by conducting a procedurally fair hearing pursuant to the provisions of the Act. Furthermore, the Tribunal considered these human rights in the context of sections 21 (freedom of expression), 23 (taking part in public life) and 25 (privacy and reputation) of the *Human Rights Act 2019* (Qld) to be potentially engaged.

   The Tribunal was satisfied during the hearing process that in dealing with the matter before it any limitations 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.

5. The Tribunal also has a statutory duty, imposed by section 58 of the *Human Rights Act 2019* (Qld), to act compatibly and make decisions compatibly with human rights. In making a decision as a "*decision maker*" under that Act, the Tribunal is also bound to give "*proper consideration to a human right relevant to the decision*".

6. Section 31 of the *Human Rights Act 2019* (Qld) is engaged because the Tribunal conducted a hearing in relation to the Applicant's application of 28 June 2022. Although the Tribunal is not a criminal or civil proceeding in the strict sense, the Councillor has the right to "*have the charge or*

[4] Ibid at paragraph 5.

[5] Annexure C - Respondent's submission dated 23 June 2022.

proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing".

7. The Hearing of this application was not in public; however, section 31(2) of the *Human Rights Act 2019* (Qld) 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 Regulation 2012 to hold private hearings if "*the conduct tribunal considers it appropriate in all the circumstances*", which was the case in the present matter.

8. Further, the decision of this proceeding will be made publicly available in accordance with the provisions of the Act and consistent with section 31(3) of the Act.

9. The Councillor has a right to be treated as a person before the law under section 15(1) of the *Human Rights Act 2019* (Qld) 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 Councillor sufficient opportunity to be heard and take part in the hearing that may result in a decision adverse to her interests.

10. The Tribunal noted various items of procedural compliance required prior to conducting a hearing, that included:

    - the IA section 150AA(1)(b) Notice to the Councillor dated 2 June 2022.
    - The section 150AJ referral by the IA to the Tribunal dated 28 June 2022 and received on 29 June 2022.
    - Tribunal Directions issued to the parties on 1 July 2024 advising of the date and time for the hearing.

Standard of Proof

11. 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 his Honour then was:

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

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

12. 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

13. The Tribunal has considered the evidence provided to it although it has not found it necessary to refer to, or comment on, each item of that evidence. In considering any allegation of complaint, the Tribunal is obliged to decide, in terms of sections 150AL & 150AP of the Act, whether or not the Councillor engaged in misconduct as defined in section 150(L)(1)(c)(iv) of the Act.

A. Documentary Evidence

Initial documentation provided to the Tribunal including:

- Relevant Documents
    - Annexure A – Statement of Facts
    - Annexure B – 150AA Notice and Opportunity to Respond
    - Annexure C – Response to 150AA Notice
    - Annexure D – Brief of Evidence;
- Statutory Declarations by the Respondent dated 8 July 2024 and 14 July 2024;
- Submissions by the Applicant dated 30 July 2024 and 5 August 2024;
- Submission by the Respondent attached to an email dated 19 August 2024;
- Relevant training undertaken by the Councillor; and
- Disciplinary history of the Councillor.

Discussion and findings

14. The particulars of the alleged conduct are set out on pages 1 - 3 of this report and the Statement of Facts.[6]

15. To provide chronological context to the allegation, the evidence[7] provided to the Tribunal by the Applicant identifies the following relevant dates:

22 October 2020	Agenda sent to the Councillor
22 October 2020	Respondent's call to "first Council officer "
Followed by	
22 October 2020	Respondent's call to "another Councillor" – about 6pm.
Followed by	
23 October 2020	Respondent's call to "second Council officer"
29 October 2020	Ordinary Meeting of Council.

Definition of Misconduct

16. The applicable definition of misconduct is contained in section 150L(1)(c)(iv) of the Act,[8] which relevantly provides:

s150L What is misconduct

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

(c) contravenes any of the following—

(iv) …. 150EZ, ….

s150EZ - Councillor with prescribed conflict of interest or declarable conflict of interest must not influence others

(1) This section applies to a councillor of a local government who has a prescribed conflict of interest or declarable conflict of interest in a matter.

[6] Annexure A - Statement of Facts submitted by the Applicant.

[7] Applicants' Submission dated 30 July 2024.

[8] The definition of 'misconduct' applicable at the relevant time, contained in the Reprint of the Act dated 12 October 2020.

(2) The councillor must not direct, influence, attempt to influence, or discuss the matter with, another person who is participating in a decision of the local government relating to the matter.

Definition of prescribed conflict of interest

s150EI - When councillor has prescribed conflict of interest—other

*A councillor has a **prescribed conflict of interest** in a matter if—*

(a) the matter is or relates to a contract between the local government and the councillor, or a close associate of the councillor, for—

(i) the supply of goods or services to the local government; or

s150EJ - Who is a close associate of a councillor

*(1) A person is a **close associate** of a councillor if the person is any of the following in relation to the councillor—*

(a) a spouse;

(b) a parent, child or sibling;

(c) a partner in a partnership;

…….

(2) However, a parent, child or sibling is a close associate of the councillor in relation to a matter only if the councillor knows, or ought reasonably to know, about the parent's, child's or sibling's involvement in the matter.

Allegation - Applicant's submission

17. The Applicant submits[9] that on 22 October 2020, the Councillor was sent a copy of the agenda for the Ordinary Meeting of Council, scheduled for 29 October 2020. Relevantly, that agenda included three items and relevant reports relating to the awarding of contracts for Council's annual gravel re-sheeting program identified as agenda items 12.7, 12.8 and 12.9. This is not disputed by the Councillor.

18. The Applicant's submission[10] contains a single allegation of misconduct against the Councillor. The allegation concerns three separate telephone conversations made by the Councillor on 22

[9] Annexure A - Statement of Facts submitted by the Applicant at paragraph 14b.

[10] Applicant's submission dated 30 July 2024 at paragraphs 1, 2 and 3.

October 2020 to "first Council officer" and "another Councillor", and 23 October 2020 to "second Council officer".

19. During these conversations, the Councillor is alleged to have discussed agenda items 12.7, 12.8, and 12.9 of the upcoming 29 October 2020 Council Meeting in circumstances where she had a prescribed conflict of interest, and it is further alleged that these conversations contravened section 150EZ(2) of the Act.

20. The Applicant submits[11] that the evidence establishes that "first Council officer", "another Councillor" and "second Council officer" were all participating in a decision relating to the matters for the purpose of section 150EZ(2), noting the exceptionally broad meaning that section 150EE gives to "participating in a decision".

21. The Applicant further submits[12] that "*Although three phone calls are particularised in the allegation, ……. it will be sufficient to sustain the allegation of misconduct if the Tribunal finds, on the balance of probabilities, that section 150EZ was contravened in respect of at least one of the relevant phone conversations*."

"When does a person participate in a decision" considered by the Tribunal

> *"**s150EE - When does a person participate in a decision***
>
> *Without limiting when a person participates in a decision, in this chapter, a reference to a councillor of a local government, or other person, participating in a decision includes a reference to the councillor or other person—*
>
> *(aa) if the councillor or other person is wholly or partly responsible for making the decision—considering or discussing the matter to which the decision relates before the decision is made; and*
>
> *(a) considering, discussing or voting on the decision in a local government meeting;"*

22. The Tribunal notes that section 150EE is contained in Chapter 5B of the Act.

23. The Tribunal notes further that the purpose of Chapter 5B is as follows:

> *"**s150ED - Purpose of chapter***

[11] Ibid at paragraph 36.
[12] Ibid.

The purpose of this chapter is to ensure that if a councillor has a personal interest in a matter, the local government deals with the matter in an accountable and transparent way that meets community expectations."

24. The Tribunal considered the application of section 150EE of the Act, in relation the allegation (paragraphs 19 and 20), and having regard to the purpose stated in section 150ED of the Act.

25. The Tribunal is, of course aware, that it is the Council (the councillors), who are the ultimate decision makers for agenda items (which contain reports and recommendations of Council officers) to be considered by the Council, in a Council Meeting.

26. The Tribunal is of the view however, that the following words in section 150EE of the Act, "*Without limiting when a person participates in a decision, in this chapter, a reference to ……., or other person,*" (emphasis added) are sufficiently broad to include as "*a person*" or as an "*other person*", Council officers who are responsible for the preparation of reports and associated recommendations that become/are agenda items of an Ordinary Meeting of Council, and/or who may also be in attendance at such meetings, where they may be asked to give advice and answer questions that may arise from councillors at that meeting.

27. The Tribunal has determined accordingly, for the reasons expressed in paragraphs 25 and 26 of this report, that "first Council officer", "another Councillor" and "second Council officer" were all participants in a decision for the purposes of section 150EE of the Act.

28. The Tribunal has noted that the evidence[13] submitted by the Applicant, is supported by comprehensive contemporaneous notes by the "first Council officer" and "second Council officer" and is further supported by affidavits by "first Council officer" and "another Councillor".

Respondent's Submissions

29. The Councillor in her Response[14] to the section 150AA Notice stated as follows:

Extract A

"I saw that …….business had been awarded the contract for the Northern package. At the time, I was not aware that ……. had tendered for other packages. In hindsight, I should have checked with …….before taking the action I took."

[13] Annexure D - Brief of Evidence submitted by the Applicant.

[14] Annexure C - Respondents Response to the S 150AA Notice dated 23 June 2022 at page 5.

Extract B

"Telephone call[15] to "first Council officer"

"I admit that I called……. to try to delay publishing the council agenda and to point out errors in the methodology used to assess the tender criteria. Unfortunately, I used …….tender as a comparison or an example as I had personal knowledge of ……. civil construction experience. I was wrong to refer to ……. business. At the time, I was not aware that …….had also tendered for the other contact packages. My conversation with ……. became quite heated as I have often been frustrated by the way I have been treated by some fellow Councillors. I let my frustration get to me and whilst I don't remember the specifics, admit that I may have become angry. ……. suggested that I raise my concerns with ……. During our conversation, …….mentioned that ……. had tendered for the other packages, and I immediately realised that I had made a mistake in calling him."

Extract C

"Telephone call[16]to "another Councillor"

"Upon realising I should not have contacted "first Council officer", I phoned "another Councillor" and asked him for advice on how I should proceed. I have a good relationship with "another Councillor" and I trust his advice. I explained to "another Councillor" that I had a conflict of interest because of ……. involvement and that I had already improperly taken the matter up with "first Council officer"…….

Extract D

"Telephone call[17]to second Council officer"

"Telephone call to ……."second Council officer" …….when I contacted "second Council officer". I gave him the background to the matter and advised him of the problem with my conflict of interest and that I had already spoken to "first Council officer". He said he would be referring the matter to the Office of the Independent Assessor……."

Extract E

"Conclusion[18]

[15] Ibid page 6.
[16] Ibid page 7.
[17] Ibid page 7.
[18] Ibid page 7.

2. *I admit that I contacted "another Councillor" and ……. to confess my transgression and seek their advice on the matter.*

4. *I am willing to provide a formal apology to council for my actions".*

30. The Respondent in her Statutory Declaration[19] dated 8 July 2024 stated:

Extract

"3. At the time when the 12.8 and 12.9 contracts were being determined, the procedure was that Council was not aware of the identity of the tenderers but were provided only with the reviews and recommendations from the Roads Department in Council;

5. I called "first council officer" to raise my concerns and he then advised that ……. had also tendered;

6. I was unaware of this but I immediately ended the call and rang "another Councillor" to ask his advice. ……..;

7. I called "second Council officer" the next day and he advised that he was going to report the matter to the OIA;

9. I was aware that ……. had tendered for the 12.7 contract and at no time did I discuss or raise any issue in relation to this contract".

31. The Tribunal has determined, that it is satisfied from the Councillor's evidence (at paragraphs 29 and 30 of this report), that she was aware or ought reasonably have been aware, that she was subject to the provisions of s150EI of the Act, in relation to agenda items 12.7, 12.8 and 12.9, when she had the telephone conversations with "first Council officer" and "another Councillor" on 22 October 2020 and "second Council officer" on 23 October 2020.

32. The Tribunal has noted relevantly that the Applicant reported[20] that the confirmed minutes of the Ordinary Meeting of Council on 29 October 2020, show that the Councillor made the following relevant declarations:

"***Cr Haydon*** *declared that she has a* ***Prescribed Conflict of Interest*** *(as defined in 150EN of the Local Government Act 2009), in relation to:*

ITEM-12.7 T-TRC-2020-21 Gravel Resheet Northern Package

ITEM-12.8 T-TRC-2020-22 Gravel Resheet Southern Package

[19] Statutory Declaration by the Respondent dated 8 July 2024.
[20] Annexure A - Statement of Facts submitted by the Applicant at paragraph 39.

ITEM-12.9 T-TRC-2020-23 Gravel Resheet Western Package

The minutes record that Councillor Haydon left the meeting and took no part in the discussion or vote in relation to items 12.7, 12.8 and 12.9."

Tribunal's decision

33. The evidence provided to the Tribunal by the Applicant and the Councillor, has demonstrated that the Councillor engaged in misconduct pursuant to section 150L(1)(c)(iv) and 150EZ(2) of the Local Government Act 2009 ('the Act') when, having a prescribed conflict of interest in agenda items 12.7-12.9 at the Ordinary Meeting of Council on 29 October 2020 ('the matters'), the Councillor influenced, attempted to influence or discussed the matters with "first Council officer" and "another Councillor" on 22 October 2020 and "second Council officer" on 23 October 2020, who were all participants in a decision (within the meaning of section 150EE) in relation to the agenda items mentioned above.

34. Accordingly, after considering all of the evidence received, the Tribunal has determined that on the balance of probabilities, the allegation that the Councillor influenced, attempted to influence or discussed the matters with "first Council officer", "another Councillor" and "second Council officer", who were all participants in a decision in relation to the agenda items 12.7-12.9 at the Ordinary Meeting of Council on 29 October 2020, has been sustained.

Discussion on orders to be made:

Applicant's submission on penalty

35. The Applicant submits that the following are aggravating circumstances:

a. the Respondent has received a significant amount of training,[21] including within a few weeks prior to the conduct,[22] and had been sent reminders about her obligations in the week leading up to her conduct;

b. the Respondent's interest was not remote and she had demonstrated her knowledge of the requirement to declare a conflict in matters involving …….tendering for council contracts previously;[23]

c. the matters involved substantial council contracts (the value of the contracts ultimately awarded by council for items 12.7, 12.8, and 12.9 amounted to $1,676,321.22); and

[21] Annexure D - Brief of Evidence submitted by the Applicant at pages 72 - 137.
[22] Ibid at pages 72 – 78.
[23] Ibid at page 189.

d. the Respondent's conduct continued even after being explicitly advised by …….that she had a conflict of interest.

36. The Applicant submits that the following are mitigating circumstances:

a. the Respondent is a long-serving councillor with no prior disciplinary history; and

b. the conduct occurred several years ago and there is no evidence of a repeated breach.

37. The Applicant notes that the Respondent has expressed remorse for her conduct.[24]

38. Taking into account the circumstances of this matter, the Applicant respectfully submits that the Tribunal consider making the following orders:

a. that the Respondent make a public apology, pursuant to section 150AR(1)(b)(i); and

b. that the Respondent reimburse the local government for some of the costs arising from her misconduct, pursuant to section 150AR(1)(b)(v).

39. With respect to an order under section 150AR(1)(b)(v), the Applicant submits that $2,000.00 would be an appropriate amount.

Respondent's submission on penalty

40. The Councillor made the following submission[25]:

Extract

"I respectfully request the Tribunal to consider the following. I am willing to apologize for bring disgrace on ……. and the embarrassment and shame I bare each day. I get upset even thinking about my stupidity. I don't have …….for my misjudgement. If I could pay off the money over a year I could contribute a lesser amount."

Tribunal decision

41. Having sustained the allegation of misconduct against the Councillor as stated at paragraphs 33 and 34, the Tribunal then considered the appropriate order to be made under section 150AR of the Act.

42. In determining the appropriate order, the Tribunal must consider what order, or combination of orders, would best serve the objects of the disciplinary regime for councillors having regard to the range of orders and recommendations available. It is uncontroversial that the purpose of disciplinary proceedings and orders are protective rather than punitive.

[24] Statutory Declaration by the Respondent dated 8 July 2024 at paragraph 10.
[25] Submission by the Respondent attached to an email 19 August 2024.

43. The Tribunal considered that a public admission by the Councillor that she has engaged in misconduct, and a reprimand were appropriate in the circumstances.

Notices

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

Russell Faulkner[26]	**Robert Olding**	**Rod Ferguson**
Chairperson	Tribunal Member	Tribunal Member
Signed: 		
Date: 15 November 2024		

[26] Authorised to sign this determination on behalf of the Tribunal by email from Robert Olding dated 8 November 2024 and Rod Ferguson dated 15 November 2024.