

# 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. Application details:

- (i) Contested Misconduct Application filed 28 April 2022
- (ii) Non -contested Misconduct Application filed 14 November 2022.

<b>Tribunal Reference</b>	F22/31088
<b>Subject Councillor:</b>	Councillor Wayne William (Bill) Cahill (the Councillor)
<b>Council</b>	Toowoomba Regional Council (the Council)

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

The Expedited hearing took place pursuant to the Tribunal Practice Direction #1 of 2022 and the Agreement reached between the Councillor and the Independent Assessor and filed with the Tribunal on 14 November 2022.

This Agreement is attached - Annexure “A”.

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

<b>Date:</b>	13 February 2023
<b>Decision:</b>	The Tribunal determined on the balance of probabilities, the allegation that on 19 September 2017, Councillor Wayne William (Bill) Cahill, a councillor of the Toowoomba Regional Council engaged in misconduct, as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i> (Qld) (‘the Act’), in that his conduct involved a breach of the trust placed in him as a councillor, in that his 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) of the Act ‘ethical and legal behaviour’ of councillors and local government employees’, in that he failed to deal with a real or perceived conflict of

<p><b>Particulars:</b></p>	<p>interest in a transparent and accountable way as required by section 173(4) of the Act, <b>has been sustained.</b></p> <p><b>The Particulars of the alleged conduct are:</b></p> <ul style="list-style-type: none"> <li>a. On 19 September 2017, an Ordinary Meeting of the Toowoomba Council was held (the meeting) and agenda item 12.0- Confidential Report- Opportunity to Secure Strategic Land (the matter) was considered during a closed session.</li> <li>b. The matter was not an ordinary business matter.</li> <li>c. Councillor Cahill attended the meeting.</li> <li>d. The following motion was put without discussion or debate at the meeting in relation to the matter (the motion): <ul style="list-style-type: none"> <li>i. That Council authorise the Chief Executive Officer to negotiate the acquisition of land contained in the Council report titled “Confidential-Opportunity to Purchase Strategic Land” in accordance with the valuation.</li> <li>ii. That the Chief Executive Officer be authorised to negotiate a lower purchase price in return for naming rights for proposed public lands within the land acquisition.</li> <li>iii. That the land purchase be funded by drawing down the Development and Financing Reserves and be reflected in the next Budget Review.</li> </ul> </li> <li>e. Councillor Cahill had a real or perceived conflict of interests in the matter on the following basis: <ul style="list-style-type: none"> <li>i. Councillor Cahill’s wife owned residential land of approximately 1007 square metres in the Highfields locality(the property);</li> <li>ii. The property is located approximately 323.7metres from the boundary of the land the subject of agenda item 12.0; and</li> <li>iii. Mr and Mrs Cahill are likely to gain a benefit from the growth and development of the Highfields town centre, including improved road development, additional retail activities and vegetation reserves.</li> </ul> </li> <li>f. Councillor Cahill did not declare his real or perceived conflict of interest in the matter at the meeting.</li> <li>g. Councillor Cahill’s real or perceived conflict of interest did not arise because of a matter in section 173(3) of the Act.</li> </ul>
<p><b>Reasons:</b></p>	<ul style="list-style-type: none"> <li>1. The Independent Assessor (the Applicant) alleged a breach of trust and misconduct as the Councillor failed to disclose a conflict of interest at</li> </ul>

	<p>the Council meeting of 19 September 2017. The conflict was relevant to Agenda Item 12.0 and the Confidential report (Opportunity to Secure Strategic Land) under consideration.</p> <p>2. The relevant provisions of the legislation that led to the misconduct are contained in section 173 of the former Act (in force on 19 September 2017) that provides-</p> <p><b>“Councillors conflict of interest at a meeting –</b></p> <p>...</p> <p><b>S 173(2) A conflict of interest</b> is a conflict between –</p> <p style="padding-left: 40px;"><i>(a) A councillor’s personal interests ; and</i></p> <p style="padding-left: 40px;"><i>(b) The public interest;</i></p> <p style="padding-left: 40px;"><i>That might lead to a decision that is contrary to the public interest.</i></p> <p>...</p> <p><b>S 173(4) The councillor must deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way.”</b></p> <p>3. The Councillor had a conflict of interest in relation to Agenda item 12.0 regarding the proposal for the Council to purchase Strategic Land. The Strategic Land was located in the Highfields Locality within close proximity to the boundary of the Councillors residence (owned and registered in the name of his wife).</p> <p>4. The evidence confirmed that the acquisition of the Strategic Land could lead to the development of infrastructure services and other improvements in the Highfields locality including the growth and development of the Highfields Town Centre.</p> <p>5. These improvements may benefit primarily the immediate Highfields locality and its residents. The Applicant submitted that these benefits may not be equally shared with the wider Toowoomba region.</p> <p>6. The Councillor was obliged to declare his personal interest in this agenda item at the Council meeting in a “transparent and accountable way.” The evidence provided to the Tribunal and accepted by the Councillor established that this declaration was not provided and the Councillor participated and voted for the resolution to purchase the land. The resolution was unanimously approved by the Council.</p> <p>7. This conduct was contrary to the terms of section 173 of the Act and was inconsistent with the local government principles that require by section 4(2)(a)and 4(2)(e) “transparent and effective processes and decision-making in the public interest” and “ethical and legal behaviour of councillors...”</p> <p>8. The evidence confirmed the Councillor to have extensive experience as an elected Councillor between 2004 to 2022 and an unblemished disciplinary record.</p>
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	<p>9. The explanation provided for the conduct was noted to be that it was ‘inadvertent’ and not ‘intentional’.</p> <p><b>Conduct not disputed.</b></p> <p>10. <b>On 9 November 2022</b>, the Councillor’s legal representatives advised the Applicant by email that he was no longer contesting the misconduct application filed with the Tribunal on 28 April 2021.</p> <p>11. On 14 November 2022, the Applicant applied to the Tribunal to conduct a non-contested misconduct hearing on the basis of the Agreement reached with the Councillor that the allegation, facts and circumstances of the conduct are no longer disputed .</p> <p>12. Notwithstanding this acceptance of the allegation by the Councillor the Tribunal is required to hear and determine all misconduct matters pursuant to section 150AL of the Act.</p> <p>13. In reaching the final decision and findings the Tribunal must also be satisfied that sufficient evidence is before it to establish the allegation is made out to the required civil standard of proof, being the balance of probabilities.</p> <p><b>The Expedited (non-contested) Hearing – 20 January 2023.</b></p> <p>14. The Expedited hearing was conducted on the papers and all evidence and submissions provided by the Applicant and the Councillor was considered by the Tribunal without the parties appearing.</p> <p>15. As an administrative Tribunal the provisions of the Human Rights Act 2019 (Qld) are acknowledged, considered and applied to the decision- making process by the Tribunal.</p> <p>16. The Tribunal was satisfied in conducting a procedurally fair hearing pursuant to the provisions of the Act<sup>1</sup> the Councillor’s human rights were protected.</p> <p><b>Tribunal findings</b></p> <p>17. Section 150AN of the Act only requires the Applicant (the IA) to prove on the balance of probabilities the evidence did establish that the Councillor had a “personal interest” that may lead to a decision that is “contrary to the public interest” when he attended the Council meeting on 19 September 2017.</p> <p>18. The Tribunal found from the evidence that the Councillor’s interest arose from his place of residence (registered in the name of his wife) and located 323.7 metres from the boundary of the Strategic Land proposed for acquisition by the Council. The proposal was unanimously adopted at the meeting held on 19 September 2017 and</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.

	<p>the Councillor failed to identify or declare his conflict of interest in “a transparent and accountable way”.</p> <p>19. The Applicant submitted, and the Councillor agreed, that the acquisition of the Strategic Land may lead to potential Council improvements and infrastructure developments for the benefit of the residents of the immediate Highfields locality. The Tribunal accepted the evidence that such improvements may not extend equally to the remainder of the residents in the wider Toowoomba Regional Council area.</p> <p>20. The primary question considered in relation to the evidence was whether the Councillor’s failure to declare his personal interest which was found to be in contravention of section 173(4) of the Act, was sufficient to establish a “breach of trust” and consequently misconduct within the meaning of section 176(3)(b)(ii) of the former Act.</p> <p>21. Despite the Agreement by the Councillor not to contest the evidence, the Tribunal must be satisfied the conduct that took place was inconsistent with the local government principles and represented a breach of trust placed in the Councillor before the finding of misconduct can be confirmed.</p> <p>22. The Tribunal recognizes that the conflict of interest provisions are fundamental to the transparency of local government decision - making, and acknowledges that any contravention of these provisions have the potential to undermine public confidence in the integrity of elected representatives. Notwithstanding, the Tribunal has found in some circumstances and with regard to the legislation and the exculpatory considerations that not every breach of a provision will amount to misconduct.<sup>2</sup></p> <p>23. The Tribunal is satisfied from the evidence provided and on the balance of probabilities the conduct contravened section 173(4) of the Act and was inconsistent with the local government principles(s4(2)(a) and 4(2)(e)) requiring “<i>transparent and effective processes and decision- making in the public interest</i>” and “<i>ethical and legal behaviour by councillors</i>”.</p> <p>24. This failure constitutes a breach of trust placed in the Councillor and therefore is misconduct by section 176(3)(b)(ii) of the former Act.</p>
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<sup>2</sup> Deputy Commissioner Stewart v Dark[2012] QCA 228 at [18]; Independent Assessor v Williams, CCT reference F20/3926, 23 March 2022-CCT website Summary.

#### 4. Orders and/or recommendations (s150AR-Disciplinary action):

<b>Discussion:</b>	<p>25. Having sustained the allegation of misconduct the orders to be made are provided by section 150AR of the Act.</p> <p>26. The Tribunal accepts the purpose of local government disciplinary proceedings is generally not punitive, but protective.<sup>3</sup> 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. The Applicant submitted the orders or combination of orders must reflect ‘the objects of the disciplinary regime for councillors’.<sup>4</sup></p> <p>27. The circumstances of this matter involved the failure by the Councillor to adhere to the Conflict of interest requirements at a meeting of the local government. The Tribunal has considered in a number of previous matters a failure to declare a personal interest at a Council meeting. The Applicant has referred to some relevant cases<sup>5</sup> and in particular the matter of Councillor Ashley Gallagher.<sup>6</sup></p> <p>28. The Tribunal in that matter stated “conflicts of interest are of such importance that Queensland Parliament has dedicated an entire Part of the Act to dealing with them “... The orders required Councillor Gallagher make a public admission , pay a small pecuniary penalty and attend in-service training. The orders took into account a previous and similar disciplinary finding made by the former Regional Conduct Review Panel involving a failure to declare a conflict of interest.</p> <p>29. Although in both these cases the failure to declare a personal interest was the same, the antecedents of Councillor Gallagher can be distinguished from Councillor Cahill’s circumstances to the extent that Councillor Cahill had no previous misconduct findings and had since the date of the misconduct attended relevant conflict of interest training.</p> <p>30. In all matters that involve the failure to declare a conflict of interest, the Tribunal has formed the view “that such conduct is serious or potentially serious”. However the orders must also reflect the unique facts and circumstances of each case.</p> <p><b>Submissions on sanction</b></p> <p>31. The submissions of the Applicant and the Councillor regarding the proposed orders identified both mitigating and aggravating circumstances.</p>
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<sup>3</sup> *Legal Services Commissioner v Madden*[2009]1Qld R 149 at [82].

<sup>4</sup> Applicant’s submissions 13 January 2023 at [14].

<sup>5</sup> Applicant’s submissions 13 January 2023 referring to Tribunal decisions F 20/4386; F20/8290 at [17] &[18].

<sup>6</sup> Cr Ashley Gallagher , Carpentaria Council , 3 December 2021 F20/4386-CCT website Summary.

	<p>32. The submissions of the Applicant and the Councillor were consistent and proposed that the appropriate order be the Councillor make a public admission that he engaged in misconduct.</p> <p>33. In considering what orders to impose the Tribunal considered the mitigating and aggravating factors and in particular:</p> <ul style="list-style-type: none"><li>a. The Councillor’s co-operation with the investigation process from an early stage;</li><li>b. The Agreement reached between the Applicant and the Councillor regarding the alleged conduct, facts and circumstances;</li><li>c. The Councillor’s election to participate in the Expedited hearing process thereby reducing the Tribunal resources required, the Local Government costs and the resources of the Applicant that would have been expended had the matter remained contested.</li><li>d. The relevant in-service training undertaken by the Councillor concerning the amended conflict of interest provisions introduced in October 2020.<sup>7</sup></li><li>e. The lack of any previous disciplinary history.</li><li>f. The Councillor was a fifth term councillor and had received training regarding his obligations as a councillor.</li><li>g. The conduct was inadvertent and not deliberate or intentional.<sup>8</sup></li><li>h. The Applicant submitted the extensive experience of the Councillor to be an aggravating factor.<sup>9</sup></li></ul> <p>34. Taking into account all these factors, a punitive penalty order is not considered appropriate.</p> <p>35. The Tribunal recognizes the failure to declare a personal interest during a meeting of the local government is considered to be a serious breach of the councillor conduct standards and has the potential to undermine public confidence in the integrity of elected representatives.</p> <p>36. The Tribunal considers that a public admission at an Ordinary Council meeting is sufficient in the circumstances of the conduct in this matter and will assist the Councillor to reflect on the seriousness of the conduct.</p>
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<sup>7</sup> Applicant’s submissions 13 January 2023 at [27].

<sup>8</sup> Councillors submissions on sanctions 19 December 2022.

<sup>9</sup> Applicant’s submissions 13 January 2023.

## 5. Orders:

<b>Date of orders:</b>	13 February 2023
<b>Orders:</b>	The Tribunal orders pursuant to section 150AR(1)(b)(i) of the <i>Local Government Act</i> that Councillor Wayne William (Bill) Cahill make a public admission that he engaged in misconduct at an Ordinary meeting of the Toowoomba Regional Council within 60 days from the date of this order.



# Annexure "A" - Expedited Misconduct Application Filed 14 November 2022

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: F21/3088
Application filed on	28 April 2021
Subject Councillor	Wayne William (Bill) Cahill, councillor
Council	Toowoomba 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 Bill Cahill
  - 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:

**Kathleen Florian**  
Independent Assessor  
Dated: 2/11/22

Signature:

**Councillor Bill Cahill**  
Toowoomba Regional Council  
Dated:

<sup>1</sup> [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](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)