

Councillor Conduct Tribunal: Decision and Reasons Misconduct Application

Local Government Act 2009: Sections 150AQ and 150AS

Application details:

Reference No.	F23/3042
Date of Application/s from the IA	30 June 2023
Applicant:	Independent Assessor
Respondent:	Councillor Shane Latcham (the Councillor)
Council:	Rockhampton City Council (the Council)
Complainant:	The Tribunal is not permitted to publish the name or identifying details of the Complainant in the publication notice to be published on the Tribunal's webpage (section 150AS(7)(b)).
Public Interest Disclosure:	No
Allegation:	<p>It is alleged that on 27 September 2022 Councillor Shane Latcham, a councillor of Rockhampton Regional Council, engaged in misconduct as defined in section 150L(1)(c)(iv) of the <i>Local Government Act 2009</i> (Qld) ('the Act'), in that his conduct involved a contravention of section 150EZ of the Act.</p> <p>Particulars</p> <p>The particulars of the alleged conduct which could amount to misconduct are as follows:</p> <ol style="list-style-type: none"> a. At all material times, Councillor Shane Latcham was a councillor of Rockhampton Regional Council ('council'). b. As a result of the Queensland Floods Commission of Inquiry in 2012, council completed and/or updated a range of flood studies in the local government area. c. On 22 March 2022, council resolved to commence public consultation in relation to proposed amendments to the Rockhampton Regional Planning Scheme.

	<p>d. On 27 September 2022, council’s Coordinator of [REDACTED]¹ gave a briefing to councillors at a councillor briefing session (‘the briefing session’), providing a high-level summary of the outcomes from the public consultation on the matter and what actions were proposed to be taken in response to the submissions.</p> <p>e. During the briefing session, at the direction of the CEO and specifically to avoid any conflicts of interests arising for councillors with affected properties, the discussion did not deal with any specific properties or locations.</p> <p>f. Within the briefing documents was a slide showing recommended changes to the projected flooding in an area described as ‘Webber Park’. This slide showed projected flooding affecting an area corresponding with 420 Richardson Street, Norman Gardens, although the property was not expressly identified.</p> <p>g. Following the briefing session, Councillor Latcham approached [REDACTED] and queried why the updated flood mapping in the proposed amendments showed a particular property impacted by flooding and disagreed with the accuracy of the mapping.</p> <p>h. [REDACTED] asked Councillor Latcham to put a written request in an email to himself or the CEO if he had a query about the mapping.</p> <p>i. At 12:27pm on 27 September 2022, Councillor Latcham sent [REDACTED] an email containing the following relevant text:</p> <p style="padding-left: 40px;">Could I please request that SunCity Sports Club, 420 Richardson Road, Norman Gardens be reviewed for the small, isolated blue “puddle” on the flood mapping.</p> <p style="padding-left: 40px;">I am quite confident that this could possibly be an error and invite officers to inspect the said area for confirmation that this area will not flood; and adjust the proposed Flood Mapping accordingly.</p> <p>j. Councillor Latcham had a declarable conflict of interest in the application of the proposed amendments to the planning scheme to 420 Richardson Road, Norman Gardens, in that:</p> <p style="padding-left: 40px;">i. At all material times, Councillor Latcham was the trustee for the Shane Latcham Family Trust;</p> <p style="padding-left: 40px;">ii. The Shane Latcham Family Trust is listed as a source of income for Councillor Latcham in his register of interests dated 25 July 2022;</p> <p style="padding-left: 40px;">iii. As of 27 September 2022, the Shane Latcham Family Trust was the owner of a property located at 420 Richardson Road, Norman Gardens, Queensland (‘the relevant property’), which is within the local government area;</p> <p style="padding-left: 40px;">iv. As of 27 September 2022, the relevant property was listed as being for sale;</p>
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¹ The Tribunal is not permitted to publish the name of any other person or information that could reasonably be expected to result in identifying a person mentioned in section 150AS(7)(b) or (c) of the *Local Government Act 2009*.

	<ul style="list-style-type: none"> v. Councillor Latcham had been advised via council correspondence on 8 April 2022 that the relevant property was projected to be subject to flooding under certain conditions in the proposed amendments; and vi. Council officers had acknowledged that changes to the planning scheme and flood mapping could impact on the value of affected properties. k. [REDACTED] was participating in a decision about the proposed amendments to the planning scheme, in that: <ul style="list-style-type: none"> i. [REDACTED], along with his direct manager ([REDACTED]), exercised operational delegations from the Chief Executive Officer in relation to the proposed amendments to the planning scheme; ii. Council’s flood engineers were responsible for determining the flood hazard overlay mapping, which then was to be incorporated into the planning scheme through consultation between the flood engineers, [REDACTED], and [REDACTED] in respect of planning requirements such as codes and policies; and iii. The eventual determinations in respect of the contents of the proposed amendments to the planning scheme were arrived at after a number of meetings and workshops between [REDACTED], [REDACTED], council’s flood engineers, and other relevant parties. l. Councillor Latcham influenced a person participating in a decision relating to what properties would be captured by the flood mapping overlay and would therefore be impacted by proposed amendments to the planning scheme, before that decision was made, in that, as a result of Councillor Latcham’s actions: <ul style="list-style-type: none"> i. On or about 27 September 2022, [REDACTED] forwarded Councillor Latcham’s email to, [REDACTED]; ii. On or before 5 October 22, [REDACTED] reviewed (or caused to be reviewed) the flood mapping as it concerned the relevant property; and iii. On 5 October 2022, [REDACTED] advised [REDACTED] and [REDACTED] that council’s flood engineers were comfortable with removing the indicated flooding
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Decision (section 150AQ):

Date:	13 August 2024
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Decision:	The Tribunal has determined, on the balance of probabilities, that the allegation that on 27 September 2022 Councillor Shane Latcham, a Councillor of Rockhampton Regional Council, engaged in misconduct as defined in section 150L(1)(c)(iv) of the <i>Local Government Act 2009</i> (Qld) ('the Act'), in that his conduct involved a contravention of section 150EZ of the Act, has been sustained .
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Orders and/or recommendations (section 150AR - disciplinary action):

Date of orders:	13 August 2024
Order/s and/or recommendations:	<p>The Tribunal orders that, within 60 days of the date that a copy of this decision and orders are given to him by the Registrar:</p> <ol style="list-style-type: none"> 1. Pursuant to Section 150AR(1)(b)(i) of the Act, Councillor Shane Latcham make a public admission that he engaged in misconduct; and 2. Pursuant to s150AR(1)(b)(iii) of the Act, Councillor Shane Latcham attend training to address the councillor's conduct at the expense of the councillor.

Tribunal:

Chairperson:	Troy Newman
Member:	Greg Chemello
Member:	Grant Wilson

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:	10am 12 July 2024
Heard at:	By telephone conference with all 3 members in attendance
Appearances: (where applicable)	This matter was heard and determined on the documents pursuant to section 150AP(2) of the <i>Local Government Act 2009</i> with no parties appearing.

	The Tribunal considered the provisions of section 298 of the Regulation and determined that it was appropriate in the circumstances of this matter to conduct the hearing in private. Accordingly, the Tribunal directed that the hearing be held in private ² .
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Reasons for decision:

Abbreviations

The following abbreviations have been used in this determination:

the Act	the <i>Local Government Act 2009</i>
the Department	the Department of Housing, Local Government, Planning and Public Works
the Regulation	the <i>Local Government Regulation 2012</i>
the CEO	the Chief Executive Officer of the Council
the complainant	the person who lodged the complaint
the Council	Rockhampton City Council
the Councillor	Shane Latcham – 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 in the 2020 Queensland Local Government Election. At the time of the allegation, he was a serving first term Councillor. He was reelected to Council in 2024.
 - b. The Councillor has one previous finding of inappropriate conduct and no previous findings of misconduct.
 - c. The IA received a notification regarding the allegation on 12 October 2022. On 7 November 2022 the IA wrote to the Councillor to advise that the conduct, if proven, may amount to misconduct and that the IA would be investigating the conduct. The Councillor was invited to respond to the allegation. The Councillor did not respond to the IA.
 - d. On 18 April 2023 the IA wrote to the Councillor advising the investigation had been completed and that consideration was being made for referral to the Tribunal. The Councilor did not respond to that communication.

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.

- e. On 2 June 2023 the IA served the Councillor with a section 150AA notice and Opportunity to respond to the alleged misconduct.
- f. On 5 June 2023 the Councillor responded to the IA and disputed the alleged misconduct.
- g. On 30 June 2023, pursuant to section 150AJ of the Act the Applicant filed an Application in the Councillor Conduct Tribunal.
- h. On 10 May 2024 the Tribunal issued Directions for the conduct of this matter.

Conduct of hearing

- 3. The hearing was conducted on the documents.

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

- 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 *Local Government Act*. Furthermore, the Tribunal considered these human rights in the context of sections 21 (freedom of expression), 23 (taking part in public life) and 25 (privacy and reputation) of the HRA to be potentially engaged.
- 5. The Tribunal was satisfied during the hearing process that in dealing with the matter before it that any limitation of rights protected and applicable by the provisions are reasonable and lawful in the context of the empowering statute which prescribes the Tribunal's powers and role.
- 6. The Tribunal also has a statutory duty, imposed by section 58 of the HRA, to act compatibly and make decisions compatibly with human rights. In making a decision as a "*decision maker*" under the Act, the Tribunal is also bound to give "*proper consideration to a human right relevant to the decision*".
- 7. Section 31 of the HRA is engaged because the Tribunal conducted a hearing in relation to the Applicant's application of 30 June 2023. Although the Tribunal is not a criminal or civil proceeding in the strict sense, the Respondent has the right to "*have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing*".
- 8. The Hearing of this application was not in public; however, section 31(2) of the HRA permits a court or tribunal to "*exclude...the general public from all or part of a hearing in the public interest or the interests of justice*". The Tribunal is empowered by section 150AP(2)(a) of the Act and section 298 of the *Local Government Regulations 2012 (Qld)* to hold private hearings if "*the conduct tribunal considers it appropriate in all the circumstances*", which was the case in the present matter.
- 9. 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.
- 10. The Respondent equally has a right to be treated as a person before the law under section 15(1) of the HRA and has been treated as such throughout this hearing. The Tribunal is satisfied, on the basis

of the above procedural history, that it has offered the Respondent sufficient opportunity to be heard and take part in the hearing that may result in a decision adverse to his interests.

11. The Tribunal noted various items of procedural compliance required prior to conducting a hearing.³

Standard of Proof

12. The standard of proof in the hearing is the balance of probabilities (section 150AP(4) of the Act). In making its decision the Tribunal considered *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 361-362 where it was said by Dixon J as he then was:

"Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a 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".

13. 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

14. 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 Councillor Latcham engaged in misconduct as defined in section 150L(1)(c)(iv) of the Act.

A. Documentary Evidence

Initial documentation provided to the Tribunal including:

- Section 150AA Notice from the IA to the Councillor providing the opportunity to respond;
- The Councillor's response to the section 150AA Notice;
- Section 150AJ Application to the Tribunal about alleged misconduct;
- Brief of Evidence; including:
 - Affidavit of [REDACTED] dated 4 April 2023
 - Affidavit of [REDACTED] dated 21 April 2023
 - Affidavit of [REDACTED] dated 30 June 2023

³ See paragraph 2 (c)(d)(e)&(f) of this report.

Additional material considered including:

- Applicants Further Evidence;
 - Affidavit of [REDACTED] affirmed at Brisbane on 4 July 2024.
 - Affidavit of [REDACTED] affirmed at Brisbane on 17 May 2024.
- Respondent's Further Evidence;
 - Affidavit of Councillor Shane Latcham affirmed at Rockhampton on 31 May 2024,
 - Statutory Declaration of Councillor Shane Latcham sworn at Rockhampton on 20 November 2023.
 - Statutory Declaration of [REDACTED] dated 7 September 2023.
- Submissions for the Applicant dated 14 June 2024.
- Submissions for the Respondent dated 28 June 2024.
- Submissions in Reply for the Applicant dated 5 July 2024

Discussion and findings

15. The Application for the IA contained a single allegation of misconduct.

16. The definition of misconduct in force at the time of the alleged conduct included:

150L What is *misconduct*

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

.....

(c) contravenes any of the following –

....

(iv) section...150EZ;

17. Section 150EZ provided at the relevant time:

150EZ Councillor with prescribed conflict of interest or declarable conflict if 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.
- (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.
- (3) A councillor does not contravene subsection (2) solely by participating in a decision relating to the matter, including by voting on the matter, if the participation is –

- a. Permitted under a decision mentioned in section 150ES(3)(a)(i) or (b)(i); or
 - b. Approved under section 150EV.
- (4) A councillor does not contravene subsection (2) solely because the councillor gives the CEO the following information in compliance with this chapter –
- a. Factual information about a matter;
 - b. Information that is required to be given to the local government about a matter, including in an application, to enable the local government to decide the matter.
18. For there to be a contravention of section 150EZ, the Councillor must have a prescribed or declarable conflict of interest. The Applicant alleged a declarable conflict of interest existed for the Councillor.⁴
19. A declarable conflict of interest is defined in section 150EN as:

150EN What is a *declarable conflict of interest*

Subject to section 150EO, a councillor has a ***declarable conflict of interest*** in a matter if –

- a. The councillor has, or could reasonably be presumed to have, a conflict of interest between the councillor’s personal interest, or the personal interests of a related party of the councillor, and the public interest; and
 - b. Because of the conflict, the councillor’s participation in a decision about that matter might lead to a decision that is contrary to the public interest.
20. Section 150EO (referred to in section 150EN above), provides a number of exemptions to when a councillor’s conflict of interest in a matter is not a declarable conflict of interest. Neither party submitted any of the exemptions in section 150EO were relevant to this matter, and the Tribunal concurs.
21. It is pertinent to define what ‘participating in a decision’ means, as relevant to section 150EZ(2).
22. Section 150EE of the Act defines it as follows:

150EE 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; and

⁴ Submissions for the Applicant dated 14 June 2024 at paragraph [11].

(b) Considering or making the decision under –

- i. an Act; or
- ii. a delegation; or
- iii. another authority

The Councillor had a declarable conflict of interest in the matter

23. It is not in contention that the Respondent owned the property SunCity Sports Club, 420 Richardson Street, Norman Gardens at the relevant time.⁵ It is further uncontroversial that the Respondent's property was being projected as a flood affected area by the updated projected flood mapping.
24. The evidence demonstrates that at the time the Respondent's property was listed for sale.
25. The Tribunal had little difficulty in determining that the Respondent had a personal interest in the matter.
26. The Tribunal considers that the public interest resides in the transparent, honest, accountable and defensible actions of elected members of local government. Here, given the Respondent's personal interest in the projected flood mapping concerning his own property for sale, a fair-minded member of the community might easily perceive that the Respondent may not bring an impartial mind to the matter, which might lead to a decision contrary to the public interest. The Tribunal so finds that the Respondent had a declarable conflict of interest in the matter.

No exemptions applied

27. The Respondent has submitted that his questioning of the inaccuracy of the modeling data applied for flood mapping was not for his personal interest, but rather for the whole Rockhampton region community.
28. The Tribunal does not accept that the Respondent's conduct was captured by s150EZ(4) - on the grounds that he was providing factual information to ██████████ and his belief that it was important to inform ██████████ 'that many other landowners in the Rockhampton region may have been erroneously mapped by the proposed flood-hazard modelling'. The Tribunal places greater weight on the evidence that the Respondent did not refer to a broader issue with the mapping other than the impact on his own property, as was demonstrated by the email sent by the Respondent to ██████████.
29. The Tribunal notes that the Respondent had the opportunity to have input as a member of the community on the amendments by letter sent to his property in April 2022.
30. The Tribunal accepted the Respondent's evidence that the CEO verbally advised all councillors that they were able to approach ██████████ after the briefing session to ask questions.⁶ Whilst accepting

⁵ Respondents Statutory Declaration dated 20 November 2023 at [1].

⁶ Submission for the Respondent dated 28 June 2024 at paragraph [28].

this was likely true, the Tribunal considers that any generic 'permission' would not excuse a breach of section 150EZ. The Tribunal infers from the evidence that the CEO may have provided 'generic' permission for Councillors to approach [REDACTED] with general or nonspecific questions rather than giving individual councillors permission to ask questions carte blanche. The Tribunal does not accept the CEO provided permission for any councillor to potentially breach section 150EZ.

The Respondent influenced a person participating in a decision of the local government relating to the matter

31. It is uncontroversial that the Respondent attended the 27 September 2022 briefing session.
32. It is also not in dispute that the Respondent approached [REDACTED] after the briefing and followed up his approach with a written request for [REDACTED] to take particular action in relation to the matter.
33. The Tribunal does not accept the Respondent's submission⁷ that he did not influence any person 'as it was [REDACTED] who made the decision to take part in the decision-making process by forwarding the Respondent's question to Council Officers for further information about the inaccuracy of the modeling data applied to the flood-hazard mapping for the Rockhampton region'. The Tribunal accepts the evidence that, after the relevant briefing session, the Respondent approached [REDACTED] and queried why the updated flood mapping in the proposed amendments showed a particular property impacted by flooding and disagreed with the accuracy of the mapping. That Tribunal determined that at that point the Respondent had initiated 'influence' on [REDACTED], which led to the Respondent's email and further action by [REDACTED] on the Respondent's behalf.
34. The Tribunal is satisfied that [REDACTED] then caused further inquiries to be conducted [REDACTED]. It is apparent from the evidence that this request from [REDACTED] to [REDACTED] was given some urgency. As a result, the specific area of flooding that the Respondent had queried was removed from the planning overlay.
35. Given the broad definition of 'Participate in a decision' as expressed in section 150EE, the Tribunal has determined that [REDACTED] was involved in the relevant decision.

Decision

36. Considering all the evidence received, the Tribunal is satisfied that the Respondent, having a declarable conflict of interest in the matter, directly approached an individual council officer involved in the decision, and made a request for his own property to be flood-mapping re-assessed. Consequently, the Tribunal has determined that on the balance of probabilities this allegation has been sustained.

⁷ Submission for the Respondent dated 28 June 2024 at paragraph [13].

Discussion on orders/recommendations to be made:

37. Having sustained the allegation of misconduct against Councillor Latcham, in that his conduct involved a contravention of section 150EZ of the Act, the Tribunal then considered the appropriate order to be made under section 150AR of the Act.

Aggravating factors

38. The Respondent has a disciplinary history, albeit for inappropriate conduct only.

39. The Respondent has received previous relevant training.

Mitigating factors

40. The Respondent does not have any previous misconduct findings. He was a first term Councillor at the time.

41. The Respondent was ultimately correct in that the projected flooding on his property should have been removed.

42. The Respondent sold the property without follow up with Council officers regarding the projected puddle and in the circumstances, he disclosed the existence of that puddle to the buyer of the property.

Submissions

43. The purpose of disciplinary proceedings and orders are protective rather than punitive. Notwithstanding, another important objective is to maintain high standards of conduct by councillors, which in turn ensures public confidence in the system of local government.

44. The Applicant submits that this matter carries some seriousness because it involved the Respondent discussing a matter that related to his own property which was listed for sale at the relevant time.⁸

45. The Applicant submits for an order which includes; a public apology, training, and reimbursement of some of the costs arising from the misconduct.⁹

46. The Respondent made no practical submissions on potential orders.¹⁰

47. A finding of misconduct is a serious thing for a councillor with no previous findings of misconduct.

⁸ Submissions for the Applicant dated 14 June 2023 at paragraph [78].

⁹ Ibid at [79].

¹⁰ Submission for the Respondent dated 28 June 2024 at paragraph [40].

48. The Tribunal has weighed up the aggravating and mitigating circumstances of this particular matter and has decided that the Respondent, being a first-time councillor without previous misconduct findings, would benefit most from an order of a public apology and further training in the area of conflicts of interest, to be incurred at his own expense.

49. Given the Respondent was ultimately correct in his incorrect flood mapping assertions, although he went about raising his concerns in the wrong way, the Tribunal has decided that there is no requirement to order reimbursement of local government costs, noting also the Respondent is to fund his own further training in the area of conflicts of interest.

Order


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

1) Pursuant to Section 150AR(1)(b)(i) of the Act, Cr Shane Latcham make a public admission that he engaged in misconduct; and

2) Pursuant to s150AR(1)(b)(iii) of the Act, Cr Shane Latcham attend training to address the councillor's conduct at the expense of the councillor.

Notices

51. 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.

Troy Newman¹¹	Greg Chemello	Grant Wilson
Chairperson	Tribunal Member	Tribunal Member
Signed: 		
Date: 13 August 2024		

¹¹ Authorised to sign this determination on behalf of the Tribunal by email from Greg Chemello and Grant Wilson dated 13 August 2024.