

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

Local Government Act 2009: Sections 150AQ and 150AS

Application details:

Reference No:	F22/32135
Date of Application from the IA:	14 December 2022
Applicant:	Independent Assessor
Respondent:	Councillor Anthony (Tony) Latter Pursuant to section 150AS(6) of the <i>Local Government Act 2009</i> (Qld), the conduct tribunal must include the councillor's name in a publication notice if, for an application that relates to alleged misconduct, the tribunal decided the councillor engaged in misconduct.
Council:	Moreton Bay Regional Council
Complainants:	The Complainants' names and identifying information are withheld pursuant to sections 150AS(7)(b) and 150AS(7)(d) of the <i>Local Government Act 2009</i> (Qld), respectively.
Public Interest Disclosure:¹	No
Allegations:	<p>Allegation One</p> <p>It is alleged that between 24 August 2021 and 27 August 2021, Councillor Tony Latter, a Councillor of Moreton Bay Regional Council, engaged in misconduct as defined in section 150L(1)(b)(ii) of the <i>Local Government Act 2009</i> (the Act), in that his conduct involved a misuse of information or material acquired in, or in connection with, the performance of the councillor's functions, whether the misuse was for the benefit of the councillor or for the benefit, or to the detriment, of another person.</p> <p>Particulars</p> <p>Particulars of the alleged conduct which could amount to misconduct are as follows:</p> <p>a. Councillor Tony Latter was at all material times a councillor of MBRC.</p>

¹ Section 150AS(5) of the *Local Government Act 2009* (Qld): '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.'

	<p>b. On 14 July 2021, Councillor Latter submitted a Form 3 — Register of Interest update. Councillor Latter listed a family company, Company BNM² for which he is a director as a beneficial interest in a nominee corporation.</p> <p>c. On 24 August 2021, a Council briefing was held for councillors.</p> <p>i. Councillor Latter attended this Council briefing.</p> <p>ii. The Agenda for the briefing listed seven separate Briefings.</p> <p>iii. The last Briefing was titled "Briefing 7 Councillor Workshop — Future Moreton: Developing Our Vision". This briefing was led by council officers and its purpose was, through discussion with the councillors, to develop a vision for the future which would contribute to Councils Corporate Plan.</p> <p>iv. Councillors discussed and generally expressed support for an initiative to seek government approval to rebrand the Council from a 'regional' council to a 'city' council.</p> <p>v. Specifically, they wanted to rebrand the Moreton Bay Region to the Moreton Bay City.</p> <p>vi. The Agenda papers prepared for this briefing, and the documents produced from it, were all clearly identified as confidential. Council briefings are conducted in closed session and Councillors understand that they are confidential.</p> <p>d. On or about 26 August 2021, Councillor Latter moved to secure the domain name ZXC³ and ASD⁴ through the registrar YUI⁵ in the name Company BNM.</p> <p>e. The domain name "ASD" cost \$19.70 and "ZXC" cost \$16.32. The licence term was for one year.</p> <p>f. Once a domain is registered, the domain name is property that can be bought or sold. A good domain name is valuable. Because a domain name is unique and may be valuable investors and</p>
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² The company name has been anonymised to comply with section 150AS(7)(c) of the *Local Government Act 2009* (Qld). See also the definition of '**person**' in schedule 1 of the *Acts Interpretation Act 1957* (Qld), which '*includes an individual and a corporation.*'

³ The domain name has been anonymised to comply with section 150AS(7)(d) of the *Local Government Act 2009* (Qld). The Tribunal formed the view that the domain name was '*information that could reasonably be expected to result in identifying a person mentioned in paragraph [...] (c)*' and for the purposes of paragraph c, that person is '*any other person*' who is not a complainant.

⁴ The domain name has been anonymised to comply with section 150AS(7)(d) of the *Local Government Act 2009* (Qld). The Tribunal formed the view that the domain name was '*information that could reasonably be expected to result in identifying a person mentioned in paragraph [...] (c)*' and for the purposes of paragraph c, that person is '*any other person*' who is not a complainant.

⁵ The company name of the registrar has been anonymised to comply with section 150AS(7)(c) of the *Local Government Act 2009* (Qld). See also the definition of '**person**' in schedule 1 of the *Acts Interpretation Act 1957* (Qld), which '*includes an individual and a corporation.*'

	<p>speculators may buy domain names with the intent of selling them for profit.</p> <p>g. On 10 December 2021, a member of the public posted on social media screenshots depicting that "Tony Latter Company BNM" had registered the domain name "ZXC" in August 2021.</p> <p>h. Also on 10 December 2021, Councillor Latter deleted the domain names ZXC and ASD from his YUI account.</p> <p>i. In communications with the relevant Council employee⁶ on 10 and 11 December 2021 Councillor Latter later stated:</p> <ul style="list-style-type: none"> i. he had acquired the domain of moretonbaycity some time ago; ii. that he had acquired both ASD and ZXC; iii. he saw that the domain names were available and grabbed it for a just in case someone (community group or council) would use it. <p>j. Councillor Latter did not inform MBRC that he had purchased a domain name/s on or about 26 August 2021 or at any later date until this information was made public via a Facebook post.</p> <p>k. Councillor Latter's actions in purchasing and registering the domain names for ZXC and ASD was a misuse of confidential information that had been acquired in the performance of his functions as a councillor in circumstances where the misuse:</p> <ul style="list-style-type: none"> i. benefited the councillor by allowing him to secure the registration of the domain names ZXC and ASD at a time before any decision to formally change the councils name was made or announced; and/or ii. caused a detriment to MBRC by preventing them from securing the domain name for ASD. <p>Allegation Two</p> <p>It is alleged that on 8 December 2021, Councillor Tony Latter, a councillor of Moreton Bay Regional Council engaged in misconduct as defined in section 150L(1)(c)(iv) of the <i>Local Government Act 2009</i> (the Act), in that his conduct contravened section 150EZ of the Act, in that he influenced, attempted to influence and or discussed a matter with another person who was participating in a decision of the local government, in a matter which he had a declarable conflict of interest.</p> <p>Particulars</p>
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⁶ The person's identifying information has been removed to comply with section 150AS(7)(d) of the *Local Government Act 2009* (Qld).

	<p>Particulars of the alleged conduct which could amount to misconduct are as follows:</p> <p>a. Councillor Tony Latter was at all material times a councillor of MBRC.</p> <p>b. On 8 December 2021, MBRC held a General Council Meeting. During the meeting, Councillor GHJ⁷ introduced a proposal⁸ titled "Moreton Bay: A city with its sights on the future". The proposal had not been made available to councillors or the public prior to it being presented by Councillor GHJ. Councillor GHJ tabled a proposal and made a statement which relevantly included the following:</p> <p>....</p> <p><i>We are one of only two of the seven largest councils in SEQ not deemed to be a city.</i></p> <p><i>Given our location in close proximity to the capital of Queensland, the inclusion of "regional" in our council's name does not reflect the broader, future vision we have for Moreton Bay and how it will evolve, or the increasingly large role we will play as home to a significant proportion of the south east's population.</i></p> <p>....</p> <p><i>There is opportunity now to outline our evolution, sensitive to the distinct personalities of our towns and suburbs and set the stage for becoming the best future version of ourselves. That journey needs to start now, and we need to evolve to become Moreton Bay City.</i></p> <p>.....</p> <p><i>Motion:</i></p> <p><i>I move:</i></p> <ol style="list-style-type: none"> 1. <i>That [the relevant Council employee] be authorised to commence the process to change the Council's official title from 'Moreton Bay Regional Council' to 'Moreton Bay City' to be known and marketed as 'Moreton Bay City'.</i> 2. <i>To support this process, that Council be briefed early in 2022 on the economic and social opportunities for the entire local government area of becoming a city and to position the area for both the 2032 Olympic and Paralympic Games and the decades beyond.</i>
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⁷ The person's identifying information has been removed to comply with section 150AS(7)(d) of the *Local Government Act 2009* (Qld).

⁸ The identifying information has been removed to comply with section 150AS(7)(d) of the *Local Government Act 2009* (Qld).

	<p>c. Once Councillor GHJ moved the motion, Councillor GHJ then opened the floor for debate. A number of councillors spoke in support of the motion including Councillor Latter.</p> <p>d. Councillor Latter said the following in support of the motion during the debate:</p> <p style="padding-left: 40px;"><i>"Thanks [Councillor GHJ], like [Councillor WER]⁹ I do support this motion especially exploring it more and getting more information on it I think it's important to position ourselves on the global market to cater for the growth we have seen previously, and we will continue to see into the future. Cause while we see the growth, we need to supply the jobs and the markets and industries to cater for the population we are seeing. I'm glad to see a report coming back to council in early 2022 cause I do think it's important to consider the full financial costs as well as the regional benefits and make sure that we are fully informed before progressing further as well."</i></p> <p style="padding-left: 40px;"><i>I have immense support for the motion."</i></p> <p>e. The motion was put to a vote and unanimously carried.</p> <p>f. Councillor Latter had a declarable interest in the matter, as follows:</p> <p style="padding-left: 40px;">i. Councillor Latter is one of the directors of Company BNM which was registered on 30 June 2021;</p> <p style="padding-left: 40px;">ii. Prior to the 8 December 2021, Councillor Latter via Company BNM purchased and registered the following domain names:</p> <p style="padding-left: 80px;">A. ZXC</p> <p style="padding-left: 80px;">B. ASD</p> <p>g. As at the time of the MBRC General Council meeting on 8 December 2021, Councillor Latter had not notified the relevant Council employee of a declarable conflict of interest in relation to the matter.</p> <p>h. By discussing and supporting the motion that the relevant Council employee be authorised to commence the process to change the Council's official title from 'Moreton Bay Regional Council' to 'Moreton Bay City' to be known and marketed as 'Moreton Bay City', Councillor Latter, having a declarable conflict of interest in relation to the matter; influenced, attempted to influence and or discussed the matter with another person who was participating in a decision of the local government in relation to the matter, within the meaning of section 150EE.</p>
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⁹ The person's name has been anonymised to comply with section 150AS(7)(c) of the *Local Government Act 2009* (Qld).

Decision (section 150AQ):

Date:	26 August 2024
Decision:	<p>Allegation One</p> <p>The Tribunal has determined, on the balance of probabilities, that the allegation that between 24 August 2021 and 27 August 2021, Councillor Tony Latter, a Councillor of Moreton Bay Regional Council, engaged in misconduct as defined in section 150L(1)(b)(ii) of the <i>Local Government Act 2009</i> (the Act), in that his conduct involved a misuse of information or material acquired in, or in connection with, the performance of the councillor's functions, whether the misuse was for the benefit of the councillor or for the benefit, or to the detriment, of another person has not been sustained.</p> <p>Allegation Two</p> <p>The Tribunal has determined, on the balance of probabilities, that the allegation that on 8 December 2021, Councillor Tony Latter, a councillor of Moreton Bay Regional Council engaged in misconduct as defined in section 150L(1)(c)(iv) of the <i>Local Government Act 2009</i> (the Act), in that his conduct contravened section 150EZ of the Act, in that he influenced, attempted to influence and or discussed a matter with another person who was participating in a decision of the local government, in a matter which he had a declarable conflict of interest has been sustained.</p>

Orders and/or recommendations (section 150AR – disciplinary action):

Date of orders:	26 August 2024
Orders and/or recommendations:	<p>On Allegation Two, the Tribunal orders that pursuant to section 150AR(1)(b)(i) of the Act, Councillor Anthony (Tony) Latter make a public apology, in the way decided by the Tribunal, for the conduct.</p> <p>The Tribunal orders that the public apology is to be made within 60 days of the date of this decision and reasons/publication notice (26 August 2024) at a general meeting of the City of Moreton Bay Council (as it is now known) open to the public, at which Councillor Latter must state the following:</p> <p><i>'I engaged in misconduct when I discussed a Council matter with other Councillors who were deciding the matter, and I had a declarable conflict of interest in the matter.</i></p> <p><i>Specifically, at a general Council meeting on 8 December 2021, the Council was deciding whether it should become 'Moreton Bay City'. At that time, I had registered two internet domain names through my family company that were relevant to the Council becoming 'Moreton Bay City'. My registration of the domain names created a declarable conflict of interest with the matter of the Council becoming 'Moreton Bay City'. I did not inform the Council of my registration of the domain names before or during that Council meeting. I discussed the matter in front of the other Councillors at that meeting. I apologise for this.'</i></p>

Tribunal:

Chairperson:	Gabe Bednarek
Member:	Carolyn Ashcroft
Member:	Rod Ferguson

Conflict of interest disclaimer/declaration (section 150DT):

The Chair declared that he had previously conducted another Tribunal matter in which NJI¹⁰ was a Panel Member. Prior to being appointed to the Tribunal, NJI worked for the Council and is a witness in this present Tribunal matter. The Chair confirmed that he was not aware about this current matter or anything to do with it prior to being appointed to it and therefore did not discuss this current Tribunal matter with NJI during the previous Tribunal matter. The Chair confirmed that he has had no contact or correspondence with NJI since the conclusion of the previous Tribunal matter a few months ago and does not foresee any contact or correspondence in the future. The Chair confirmed that he has had no contact or correspondence with NJI since being appointed to this current matter. The Chair confirmed he does not and will not have any further matters with NJI. Neither of the other Tribunal Members considered this constituted a real or perceived conflict of interest, noting that NJI is not a Panel Member in this matter.

The Chair then confirmed that having reviewed the material provided, he did not have a real or perceived conflict of interest in proceeding to decide the application. The other Tribunal Members confirmed the same.

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

Time and Date:	10:00am on 5 August 2024
Heard at:	By telephone conference with all three members in attendance.
Appearances:	<p>This matter was heard and determined on the documents pursuant to section 150AP(2) of the <i>Local Government Act 2009</i> (Qld) with no parties appearing.</p> <p>The Tribunal considered the provisions of section 298 of the <i>Local Government Regulation 2012</i> (Qld) 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.¹¹</p>

Reasons for decision:**Abbreviations**

The following abbreviations have been used in this document:

¹⁰ The Tribunal has anonymised the names of all persons who are referred to in this decision and reasons/publication notice to comply with section 150AS(7)(c) of the *Local Government Act 2009* (Qld).

¹¹ Section 298 of the *Local Government Regulation 2012* (Qld) requires that a hearing must be held in public unless the decision-maker directs the hearing is to be held in private.

the Act	the <i>Local Government Act 2009</i> (Qld)
the Applicant	the Independent Assessor
the Complainants	the persons who made the complaint
the Council	Moreton Bay Regional Council
the DSDILGP	the Department of State Development, Infrastructure, Local Government and Planning
the HRA	the <i>Human Rights Act 2019</i> (Qld)
the Regulation	the <i>Local Government Regulation 2012</i> (Qld)
the Respondent	Councillor Anthony (Tony) Latter
the Tribunal	the Councillor Conduct Tribunal constituted to hear and determine the allegations made by the Independent Assessor concerning the Councillor's conduct

Background

1. On 14 December 2022, the Applicant made an application to the Tribunal containing two allegations of misconduct against the Respondent. The factual background regarding the allegations is set out in the **Allegations** section of the table above.
2. The conduct the subject of Allegation One is alleged to have occurred between 24 and 27 August 2021. The conduct the subject of Allegation Two is alleged to have occurred on 8 December 2021. At that time, the Respondent was serving his first term as a Councillor, having been elected at the 2020 Queensland local government elections.¹²
3. Regarding Councillor training, the Council confirmed that the Respondent completed the following relevant training:
 - (a) *'Councillor Induction program held on 28 April 2020'*;
 - (b) *'LGAQ Elected Member update held in August 2020'*; and
 - (c) *'LGAQ Elected Member update held on in July 2021'*.¹³
4. The DSDILGP¹⁴ confirmed that the Respondent completed the following additional training:
 - (a) *'So you want to be a councillor on 31 October 2019'*.¹⁵
5. The Applicant submitted that the Respondent *'does not have a disciplinary history for misconduct'*.¹⁶ The Respondent agreed with this, adding that *'as far as I know, the complaints, the subject of these proceedings, are the first made against me.'*¹⁷

Conduct of hearing

6. On 30 April 2024, the Tribunal President constituted the Tribunal Panel for this matter.
7. On 13 June 2024, the Tribunal President reallocated Member Bednarek as the Chair for

¹² Annexure A – Statement of Facts [1]; Respondent's affidavit [1].

¹³ Annexure A – Statement of Facts [3].

¹⁴ This was the name of the relevant Department at the time of receiving the information. At the decision date, the relevant Department is called the Department of Housing, Local Government, Planning and Public Works.

¹⁵ Annexure A – Statement of Facts [4].

¹⁶ Annexure A – Statement of Facts [5].

¹⁷ Respondent's affidavit [2].

this matter. No other changes to the Panel were made.

8. On 14 June 2024, the Chair issued written directions. The directions provided dates by which the parties needed to provide evidence, information and written submissions. The directions also set a time and date for the hearing of the matter. The parties sought no amendments to the directions and complied with the directions absolutely.
9. At 10:00am on 5 August 2024, the Tribunal conducted the hearing of the matter on the documents. The Tribunal considered the matter to be one that could be heard on the documents.
10. The Tribunal noted the evidence and material before it and was satisfied that all procedural steps required by the Act had been complied with. The specific evidence and material the Tribunal considered in this matter is outlined in the ***Evidence and material considered*** section below.

Standard of proof

11. The standard of proof in the hearing is the balance of probabilities.¹⁸ The Applicant bears the onus of proof.¹⁹ 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 state of 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 proved to the reasonable satisfaction of the tribunal.

12. In *Qantas Airways Limited v Gama* [2008] FCAFC 69 at [126], Branson J commented on the above statement 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 and material provided to it by the parties, although it has not found it necessary to refer to, or comment on, each item of that evidence and material. In considering an allegation, the Tribunal is obliged to decide whether the Respondent engaged in misconduct as defined in the Act in force at the time of the alleged conduct.²⁰
14. The Tribunal has considered the following evidence and material in this matter:
 - (a) The Applicant’s application to the Tribunal about alleged misconduct pursuant to section 150AJ of the Act dated 14 December 2022;
 - (b) Annexure A – Statement of Facts, undated;
 - (c) Annexure B – The Applicant’s letter and Section 150AA Notice and Opportunity to Respond provided to the Respondent, both dated 21 October 2022 (as well as an attached draft Statement of Facts for comment by the Respondent, all sent through

¹⁸ Section 150AP(4) of the Act.

¹⁹ Section 150AN(2)(a) of the Act.

²⁰ *Independent Assessor v FJS* [2023] QCAT 244, [38]-[39].

- in an email also dated 21 October 2022);
- (d) Annexure C – The Respondent’s Response to the Section 150AA Notice dated 15 November 2022 (as well as an attachment, all sent through in an email also dated 15 November 2022);
 - (e) Annexure D – The Applicant’s Brief of Evidence, which contains documents such as:
 - (i) The initial complaints and documents relevant to those complaints;
 - (ii) The affidavit of NJI, a Council employee, affirmed on 29 November 2022 containing various exhibits, including a video extract;
 - (iii) The affidavit of POL, an expert in the law of domain name registration, affirmed on 5 December 2022 containing various exhibits;
 - (iv) The affidavit of UHB, an investigator at the Applicant’s office, affirmed on 14 December 2022 containing various exhibits including Councillor training materials relevant to the matter;
 - (v) Statement of witness RTY, a data and policy compliance analyst, dated 3 August 2022 including attachments;
 - (vi) Council meeting minutes;
 - (vii) Australian Securities and Investment Commission (ASIC) company extracts;
 - (viii) Correspondence between UHB and the DSDILGP regarding and containing the Respondent’s record of relevant Councillor training undertaken, plus Councillor training materials;
 - (f) Written directions issued by the Tribunal dated 14 June 2024;
 - (g) Email from the Applicant dated 21 June 2024 stating *‘that all evidence to be relied upon by the Independent Assessor has been filed.’*
 - (h) The affidavit of the Respondent affirmed on 27 June 2024 containing various exhibits;
 - (i) The Applicant’s written submissions dated 12 July 2024;
 - (j) The Respondent’s written submissions, undated but filed by email on 26 July 2024;
 - (k) The Applicant’s written submissions in reply dated 1 August 2024.

Discussion and findings

Introduction

15. At all times alleged in the allegations, the relevant definition of misconduct was found in the 1 July 2021 reprint of the Act and was as follows:

150L What is misconduct

- (1) *The conduct of a councillor is **misconduct** if the conduct— [...]*
 - (b) *is or involves— [...]*
 - (ii) *a misuse of information or material acquired in, or in connection with, the performance of the councillor’s functions, whether the misuse is for the benefit of the councillor or for the benefit, or to the detriment, of another person; or [...]*
 - (c) *contravenes any of the following— [...]*
 - (iv) *section 150R(2), 150EK, 150EL, 150EQ, 150EW, 150EZ, 170(3), 171(3), 201A, 201B or 201C; [...]*

16. In summary, the Applicant’s case regarding Allegation One is that the Respondent engaged in misconduct because he registered domain names ASD and ZXC through a domain registrar and purchased the domain names through Company BNM at a time when the Council was considering a rebrand from ‘Moreton Bay Regional Council’ to ‘Moreton Bay City Council’, which involved a misuse of information in connection with the performance of the Respondent’s functions as a Councillor. As a result, the Respondent’s conduct benefitted the Respondent and caused detriment to the Council.²¹ The

²¹ Applicant’s submissions [5].

Applicant's case regarding Allegation Two is that the Respondent engaged in misconduct because the Respondent spoke in support of a motion, and subsequently voted on the motion, to change the Council's official title from 'Moreton Bay Regional Council' to 'Moreton Bay City' despite having a declarable conflict of interest.²²

17. The Respondent admits to registering the domain names on 26 August 2021.²³ In summary, the Respondent's case regarding Allegation One is that he:
- (a) did not misuse information acquired in the performance of his functions as a councillor; and
 - (b) did not use any such information for the benefit of himself, or to the detriment of Council, as alleged;
 - (c) did not engage in misconduct for the purposes of section 150L(1)(b)(ii) of the Act.²⁴

In summary regarding Allegation Two, *'[t]he Respondent concedes that he unwittingly contravened section 150EZ of the Act'²⁵* and ultimately *'[t]he Respondent concedes Allegation Two.'²⁶*

18. In the Tribunal's view, the most appropriate way in which to deal with the application is to consider each allegation in turn.
19. At the outset, the Tribunal notes that neither the ASD nor the ZXC domain names affect the Council's official Queensland Government provided website.

Allegation One

20. In the Tribunal's view, Allegation One consists of three elements:
- (i) Information or material acquired in, or in connection with, the performance of the councillor's functions; and
 - (ii) Misuse of that information or material; and
 - (iii) The misuse is for the benefit of the councillor or for the benefit, or to the detriment, of another person.²⁷

The Tribunal will examine each element in turn.

Element 1: Did the Respondent acquire information or material in, or in connection with, the performance of the Respondent's councillor functions?

21. In the application, the Applicant particularises that the information the Respondent acquired (being that the Council was looking at becoming a 'City' Council), was *'confidential information'²⁸* which was acquired *'[o]n 24 August 2021, [when] a Council briefing was held for councillors.'²⁹* The Applicant then sets out the details of that 24 August 2021 Council briefing in the application. The Applicant alleges Allegation One occurred *'between 24 August 2021 and 27 August 2021'*. However, in its written submissions, the Applicant alleges the confidential information was also acquired at a

²² Applicant's submissions [6].

²³ Respondent's affidavit [5] and exhibit TL-1 to the Respondent's affidavit.

²⁴ Respondent's submissions [35].

²⁵ Respondent's submissions [36].

²⁶ Respondent's submissions [43].

²⁷ This wording is taken from section 150L(1)(b)(ii) of the Act.

²⁸ The Applicant's application, Allegation One, particular k.

²⁹ The Applicant's application, Allegation One, particular c.

Council retreat in April 2021³⁰ as well as the 24 August 2021 Council briefing. The Tribunal is of the view that the Applicant is raising allegations and particulars in its written submissions that were not raised in its application. The Applicant cannot do this – it is unfair to the Respondent and contrary to the principles discussed by the High Court in *Aon Risk Services Australia Ltd v Australian National University* (2009) 239 CLR 175. Therefore, in fairness to the Respondent, the Tribunal will only consider what the Applicant alleged in its application i.e. Allegation One is alleged to have occurred ‘*between 24 August and 27 August*’ and the Respondent is alleged to have acquired the ‘*confidential information*’ at the 24 August 2021 Council briefing (henceforth simply ‘**the briefing**’). In fairness to the Applicant, the evidence of the April 2021 Council retreat would not have affected the Tribunal’s consideration of Allegation One because in the Tribunal’s view, the briefing was the critical event in Allegation One.

22. Regarding the briefing, the Applicant submits that ‘*the Respondent’s attendance and participation at the Briefing was a requirement in performing his councillor functions.*’³¹ The Tribunal agrees with this submission and sees this as an uncontroversial point.
23. The evidence indicates that the briefing was split up into seven sessions, the relevant session being the final session titled ‘*BRIEFING 7 COUNCILLOR WORKSHOP - FUTURE MORETON: DEVELOPING OUR VISION*’.³² The evidence indicates the Respondent attended the briefing that day.³³
24. The Tribunal notes that the footer of every page in the ‘*COUNCIL BRIEFINGS*’ document from Tuesday 24 August 2021 states:

All discussion and documentation produced from or incidental to the conduct of this Council Briefing is deemed strictly confidential

*Unauthorised release of confidential reports or information may be an offence under the Local Government Act 2009 and other legislation and could result in disqualification from office and a penalty of up to 100 units.*³⁴

The PowerPoint slides from the briefing contain the same wording.³⁵ The Tribunal also notes a document titled ‘*Outcomes - Councillor Visioning Workshop 24 August 2021*’, which under the heading ‘*Looking Ahead to 2033 - Strategic Goal Grid Outcomes*’ in a section labelled ‘*ACHIEVE*’ contains a dot point ‘*Moreton Bay city leads the nation in competitiveness and labour participation and has leading institutions to support it*’³⁶ and in a section labelled ‘*PRESERVE*’ contains a dot point ‘*Be a City Council*’.³⁷ On a page headed ‘*Looking Ahead to 2042 - Five Senses Outcomes*’, the column ‘*See*’ includes the dot point ‘*Moreton Bay City*’.³⁸ Ultimately, the Tribunal is satisfied that the prospect of a Moreton Bay City was discussed at the briefing.

25. The Respondent submits that ‘*the Respondent did not consider the notion as confidential information, or information unknown to the community.*’³⁹ In his affidavit of 27 June 2024, the Respondent expands on this point:

³⁰ Applicant’s submissions [16]-[19].

³¹ Applicant’s submissions [21].

³² Annexure D – Brief of Evidence, Document 3.1, pages 202-205 (affidavit of NJI, exhibit 2).

³³ Annexure D – Brief of Evidence, Document 3.1, page 204 (affidavit of NJI, exhibit 2).

³⁴ Annexure D – Brief of Evidence, Document 3.1, pages 202-205 (affidavit of NJI, exhibit 2).

³⁵ Annexure D – Brief of Evidence, Document 3.1, pages 111-122 (affidavit of NJI, exhibit 1).

³⁶ Annexure D – Brief of Evidence, Document 3.1, page 123 (affidavit of NJI, exhibit 1).

³⁷ Annexure D – Brief of Evidence, Document 3.1, page 125 (affidavit of NJI, exhibit 1).

³⁸ Annexure D – Brief of Evidence, Document 3.1, page 126 (affidavit of NJI, exhibit 1).

³⁹ Respondent’s submissions [21].

I acknowledge that since being elected the issue of Council becoming known and recognised as a city has arisen from time to time. However, given that other local government areas of similar size to Moreton Bay, such as Redlands City Council, Logan City Council and Ipswich City Council, had moved to be recognised as cities, from before I even ran for election in 2020 I knew of the possibility that one day Moreton Bay would also consider being recognised as a 'city'. I therefore did not think it was confidential or information not known in the community.⁴⁰

The Respondent's affidavit evidence above is largely consistent with the Respondent's previous statements. For example, on 15 November 2022 in Annexure C – The Respondent's Response to the Section 150AA Notice, the Respondent stated:

As far as the allegation concerning the misuse of information acquired in, or in connection with, the performance of his functions as a councillor, Cr Latter confirms that he was aware before he ran for Council in 2020 of the possibility that one day Moreton Bay would consider being a city, particularly when comparing the region and its size to other local government areas and therefore did not consider it confidential information.

Accordingly, prior to Cr Latter being elected, Cr Latter was well aware of the likely prospect of Council striving to be recognised and considered a city at some stage. Such a prospect was not inside information or confidential, rather an awareness of this prospect was present in the community, especially given that part of the region was previously classed a city prior to amalgamation.⁴¹

The Tribunal also notes what the Respondent stated in a text message to NJI on 12 December 2021:

Hi [NJI], just a couple points that you raised that I wouldn't mind clarifying.

I was aware before I ran for Council of the possibility that one day Moreton Bay would consider being a city especially from comparing it to other council areas and I was aware that it had been discussed previously, this was also based on my own views and others from the community. [...]⁴²

26. In contrast to the Respondent's evidence and submissions above, the affidavit of NJI states:

[...] I was not aware of any discussions in relation to the possibility Moreton Bay was to become a 'city' prior to being raised by the [Councillor GHJ] in 2021. I am further not aware of any record of any Council discussion on the potential to become a 'city' before 2021, nor has any councillor or employee of Council ever advised me there has been any prior discussions.⁴³

27. Ultimately in relation to this point, the Applicant:

[...] rejects the Respondent's contention that the information was not confidential and was not unknown to the public. The information the Respondent elucidates in his evidence is just speculation, of some years. There is nothing tangible in that information. The Applicant, however, submits that the confidential information arising from [...] the Briefing which is credible and tangible information, unequivocally demonstrates [the Council's] consideration and possible progression to rebranding from 'Moreton Bay Regional Council' to 'Moreton Bay City'.⁴⁴

⁴⁰ Respondent's affidavit [8].

⁴¹ Appendix C – The Respondent's Response to the Section 150AA Notice [21]-[22].

⁴² Annexure D – Brief of Evidence, Document 3.1, page 187 (affidavit of NJI, exhibit 1).

⁴³ Annexure D – Brief of Evidence, Document 3.1, page 57 (affidavit of NJI [8]).

⁴⁴ Applicant's submissions [28].

28. The Tribunal notes that one of the exhibits to NJI's affidavit forming part of the Applicant's Annexure D – Brief of Evidence is a video described as '*Video Extract - Council Ordinary Meeting - 8 December 2021.mp4*'.⁴⁵ This evidence was unchallenged by the Respondent. The video shows a Council meeting at which Councillor GHJ introduced a motion for the Council to change to a 'City' Council. The Tribunal also has the actual text of what Councillor GHJ's said at that meeting.⁴⁶ The video extract shows several Councillors, including the Respondent, speaking about the change. Councillor WER was the first to speak after the motion was introduced and relevantly said the following:

*Thank you [Councillor GHJ]. Extremely pleased to see this coming to the table today and I applaud you for doing it. As you know, I've raised this concept and this motion, this idea for a number of years and I think first back around the ten-year anniversary of the amalgamation. [...]*⁴⁷

After Councillor WER, the Respondent spoke, followed by another Councillor. The final Councillor who spoke on the motion said the following:

*Yeah look, I too support the motion put forward by [Councillor GHJ], as Councillor [WER] says before, you know, this is a good opportunity for our economic benefit and following up from our REDS strategy at the moment for our Council and I just want to assure residents there has been some concern over the chitter chatter over the years of the word 'city' becoming a Brisbane City with skyscrapers, changing from a region to a city is no different, as Councillor [WER] says the Brisbane City Council, Gold Coast City Council, and many residents might not even realise that places like Redlands and Logans are city councils and so was Redcliffe back in the day, so there you go. So it doesn't matter on the size, it's not about the region, the wording around 'city' or 'region', our planning scheme protects our rural parts and our hinterland regions of our, of our region and those planning schemes go from ten to thirty years into the future so just wanted to reassure anyone that might be listening and wondering why we'd want to be changing from region – it's not about skyscrapers, it's not about overpopulation, it's more around the economic developments and supporting our REDS strategy. Thank you.*⁴⁸

29. The Tribunal prefers the Respondent's evidence and submissions on this point and on balance is satisfied that the prospect of the Council becoming a 'City' Council was not confidential information and was information known in the community for some years. The Respondent's evidence and submissions on this point are corroborated by the statements of the other Councillors at the 8 December 2021 General Meeting of the Council. In the Tribunal's view, the other Councillors' speeches in the video are critical evidence on this point, yet neither the Applicant nor the Respondent made any submissions about this evidence.
30. Further, the Tribunal is also persuaded by the Respondent's contention that it was apparent that other Councils in Queensland had become 'City' Councils and whether the Council followed suit does not have '*the necessary quality of confidence about it*'.⁴⁹ In *Corrs Pavey Whiting and Byrne v Collector of Customs of Victoria and Alphapharm Pty Ltd* [1987] FCA 266, the Federal Court of Australia at [14] relevantly stated that in order to demonstrate an equitable action for breach of confidence:

⁴⁵ Annexure D – Brief of Evidence, Document 3.1, page 170 (affidavit of NJI, exhibit 1).

⁴⁶ Annexure D – Brief of Evidence, Document 3.1, page 171-174 (affidavit of NJI, exhibit 1).

⁴⁷ Annexure D – Brief of Evidence, Document 3.1, page 170 (affidavit of NJI, exhibit 1) at 6:22 – 6:40 of the video extract.

⁴⁸ Annexure D – Brief of Evidence, Document 3.1, page 170 (affidavit of NJI, exhibit 1) at 10:00 – 11:03 of the video extract.

⁴⁹ *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41 at 47-48 (Megarry J), a case on the equitable action of breach of confidence. It has been applied by the High Court of Australia in cases such as *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) 208 CLR 199 at page 222 (Gleeson CJ) and more recently *Farm Transparency International Ltd v New South Wales* [2022] HCA 23 at [161] (Gordon J).

[...] The plaintiff (i) must be able to identify with specificity, and not merely in global terms, that which is said to be the information in question, and must also be able to show that (ii) the information has the necessary quality of confidentiality (and is not, for example, common or public knowledge) [...].

The Tribunal also notes that there is a specific definition of **confidential information** in section 150EA of the Act, but it only applies to that particular section and that section is irrelevant for present purposes. However, that definition relevantly states ‘*In this section— confidential information means information, other than information that is publicly available [...].*’⁵⁰ All of these definitions are consistent with the ordinary meaning of ‘confidential’, being ‘*secret or private, often in a formal, business or military situation*’.⁵¹

31. In the Tribunal’s view, the substance of the information must be examined to determine if it is in fact confidential – simply labelling information ‘confidential’ does not make it confidential because, as the definitions above indicate, it might already be information that is public knowledge.
32. Ultimately, the Tribunal finds that the information that the Council was contemplating changing its name to Moreton Bay City was information known in the community and it was not information that had the necessary quality of confidence about it. Therefore, in contrast to the factual circumstances of previous Tribunal decisions involving misconduct by way of section 150L(1)(b)(ii) of the Act, namely *Independent Assessor v Councillor Tracey Huges, Redland City Council*, 4 February 2022, CCT reference F20/4772 (henceforth simply ‘**Huges**’) and *Independent Assessor v Councillor Kate Frances Hastie, Charters Towers Regional Council*, 21 November 2023, CCT reference F21/13585 (henceforth simply ‘**Hastie**’), the Tribunal in the present matter finds that the Respondent did not acquire confidential information in, or in connection with, the performance of the councillor’s functions.
33. There is also contention between the parties about the closeness of the briefing to the Respondent’s registration of the domain names and that this indicates that the Respondent acquired information in, or in connection with, the performance of the councillor’s functions. The Respondent’s evidence on this point is that:

On 26 August 2021, I was on the internet and went to go to Council’s website. I accidentally typed in “[QWE]”⁵² instead of Council’s proper address. I was forwarded to an electrician or electrical website. I have since tried to find that website (domain name) but it has expired for that business and is now registered by another. After seeing that other businesses could pass their websites off as Council, via the “[QWE]” domain name, I checked whether the Domain Names had been registered. They had not. The city idea was conceptual at the time and was extremely up in the air, so I registered the Domain Names on the spur of the moment with the thought that if anything came of it, I would transfer it to Council for no fee. It was a flippant purchase with the aim to benefit Council.⁵³

34. In addressing this evidence, the Applicant:

[R]ejects that the aforementioned event was the reason for the purchase of the domain names. The Applicant accepts, in part, that the circumstance the Respondent was in was a ‘spur of the moment’, though contends that without the

⁵⁰ Section 150EA(4) of the Act.

⁵¹ *Cambridge Dictionary* accessible at <https://dictionary.cambridge.org/>.

⁵² The domain name has been anonymised to comply with section 150AS(7)(d) of the *Local Government Act 2009* (Qld). The Tribunal formed the view that the domain name was ‘information that could reasonably be expected to result in identifying a person mentioned in paragraph [...] (c)’ and for the purposes of paragraph c, that person is ‘any other person’ who is not a complainant.

⁵³ Respondent’s affidavit [5].

*information conveyed at [...] the Briefing the Respondent would not have acted to secure the domain names, notably within 48 hours of the Briefing. This information being the driving force, and as such the primary reason for the purchase of the domain names, not the spur of the moment circumstance.*⁵⁴

The Applicant's ultimate submission is:

*[I]t is the credible and tangible information, both acquired in, and in connection with the performance of the councillor's functions at [...] the Briefing, that provided the Respondent with the impetus to take the actions he took to purchase the domain names.*⁵⁵

35. In the Tribunal's view, there does appear to be an inference available on the evidence that the briefing triggered the Respondent to register the domain names because he did so within 48 hours of the briefing. This makes it appear as though the information about the Council becoming a 'City' Council was information the Respondent acquired in the performance of his councillor functions. However, the Respondent has provided an exhibit to his affidavit that shows he registered an unrelated domain name on 16 August 2021,⁵⁶ just a few days before the briefing. The Tribunal is satisfied that purchasing/registering domain names was just something the Respondent did and where his mind was at in mid to late August 2021.
36. On this point, the Applicant also submits that the Respondent '*did not at any time prior to 26 August 2021 take action to secure the domain names, despite his knowledge of some years that [the Council] would likely become a city at some stage.*'⁵⁷ The Tribunal notes that the Council also did not take any action to secure the domain names prior to 26 August 2021 and is persuaded by the Respondent's submission that '*Council took no such steps and there is no evidence of such foresight or inclination until the evening of 10 December 2021, despite having knowledge of the notion of Council becoming a city as early as April 2021.*'⁵⁸
37. Ultimately regarding element 1, the Tribunal is of the view that on the balance of probabilities, the Respondent did not acquire '*confidential information*' or simply information or material (being the prospect of the Council becoming a 'City' Council) in, or in connection with, the performance of the Respondent's councillor functions.

Element 2: Did the Respondent misuse information or material acquired in, or in connection with, the performance of the Respondent's councillor functions?

38. If the Tribunal found element 1 was established on the balance of probabilities, the Tribunal would then have to consider element 2. While not strictly necessary because the Tribunal found element 1 was not established in the present matter, the Tribunal considers it appropriate to discuss element 2.
39. In Allegation One at particular k, the Applicant alleges that the Respondent's '*actions in purchasing and registering the domain names for [ZXC] and [ASD] was a misuse of confidential information that had been acquired in the performance of his functions as a councillor [...]*'. The Tribunal notes the Applicant does not allege anything about '*misuse*' by way of the Respondent deleting the domain names. Therefore, the Tribunal sees the Applicant's case regarding '*misuse*' as being confined to the Respondent's '*actions in purchasing and registering*' domains ASD and ZXC.

⁵⁴ Applicant's submissions [30].

⁵⁵ Applicant's submissions [32].

⁵⁶ Respondent's affidavit, exhibit TL-5.

⁵⁷ Applicant's submissions [31].

⁵⁸ Respondent's submissions [30].

40. The Applicant submits that as ‘misuse’ is not defined in the Act:

[G]uidance may be drawn from the ordinary meaning of ‘misuse’, which is defined [in the online Macquarie Dictionary] as ‘wrong or improper use; misapplication’, or [as defined in the online Cambridge Dictionary] ‘to use something in an unsuitable way or in a way that was not intended.’⁵⁹

Further, the Applicant referred to the matter of *Huges* to assist with the interpretation of ‘misuse’. *Huges* also involved an allegation of misconduct by way of section 150L(1)(b)(ii) of the Act. The Tribunal notes that the Tribunal Panel in *Huges* also ‘found guidance in the ordinary meaning of misuse as ‘wrong or improper use; misapplication’ [the online Macquarie Dictionary definition].⁶⁰ In the matter of *Hastie*, the Tribunal Panel followed *Huges* and was also guided by the ordinary meaning of ‘misuse’ to assist in its interpretation. The Respondent agrees with this approach⁶¹ and submits that the ordinary meaning of misuse in the online Macquarie Dictionary is ‘3. to use wrongly or improperly; misapply. 4. to ill-use; maltreat’.⁶²

41. The Applicant submits that ultimately in *Huges*, the Tribunal ‘concluded, that the councillor had misused information because she had “used the information in a way that was inconsistent with the purpose for which it was acquired.”⁶³ The Respondent also adopted this particular definition in its submissions.⁶⁴
42. Ultimately regarding ‘misuse’, the Applicant submits that:

The confidential information the Respondent was privy to, [...] from [...] the Briefing, was not conveyed for the purpose of the Respondent, or any other person, to purchase domain names for if, or when, [the Council] decided to rebrand to a city council.

The Applicant submits that the Respondent’s use of the information to purchase the domain names was inconsistent with the purpose for which it was acquired. Therefore, the Respondent’s use of the information was a misuse of the information.⁶⁵

43. Ultimately regarding ‘misuse’, the Respondent submits:

[...] [T]hat in any event the registration of the Domain Names is not wholly inconsistent with the purpose for which the information was received in his capacity as councillor. The Respondent respectfully submits that he did not ‘misuse’ the information for the purposes of section 150L(1)(b)(ii) in circumstances where:

- (a) registration of the Domain Names was related to Council being recognised as a city;*
- (b) it was an action he took, as a councillor representing the interests of his constituents and Council as a whole, in furtherance and for the purposes of the issue of Council being recognised as a city;*
- (c) it was an action that had no effect other than to effectively reserve the Domain Names for 12 months; and*
- (d) it was an action he took for the benefit of Council and not himself, or another.⁶⁶*

⁵⁹ Applicant’s submissions [33].

⁶⁰ *Independent Assessor v Councillor Tracey Huges, Redland City Council*, 4 February 2022, CCT reference F20/4772, publicly available decision summary on the Department’s website, page 4, [6] (under the heading **Misuse**).

⁶¹ Respondent’s submissions [17].

⁶² Respondent’s submissions [18].

⁶³ Applicant’s submissions [34] (citing the full text *Huges* decision at [49]). On this point, see also the publicly available decision summary of *Huges* on the Department’s website at page 4, [8] (under the heading **Misuse**) and page 5, [10]-[11].

⁶⁴ Respondent’s submissions [22].

⁶⁵ Applicant’s submissions [35]-[36].

⁶⁶ Respondent’s submissions [22].

44. At this point, the parties' submissions become complicated, confusing and difficult to follow. For example, the Applicant turns to submissions on whether the Respondent's misuse of the information was for the Respondent's 'benefit',⁶⁷ but fails to make any substantive submissions on 'detriment' despite alleging 'detriment' in particular k(ii) of Allegation One. Similarly, the Respondent's submissions turn to whether any misuse was for the benefit of the Respondent. Using the Respondent's affidavit evidence, the Respondent submits there was no misuse of information because there was no intent to benefit himself, only the Council. This led to a convoluted dispute between the parties about the relevance of intent to section 150L(1)(b)(ii) of the Act. Specifically, the Respondent submits that:

[...] The deliberate insertion of the word "to" before "detriment" reveals a different emphasis, the emphasis being on the effect of the action. The deliberate use of the word "for" before the word "benefit" denotes an emphasis on the purpose of the action, being the purpose of the misuse. On that basis, the Respondent submits that intent is relevant when assessing whether an alleged misuse of information is 'for the benefit' of the councillor or another.⁶⁸

45. The Applicant submits that:

[...] [T]he Respondent's intention as to whom the benefit of the purchase of the domain names would be conferred is irrelevant to the determination of misconduct, as section 150L(1)(b)(ii) does not require intent, though it may assist the Tribunal with the consideration of sanction if the allegation is sustained.⁶⁹

In submissions in reply, the Applicant continued to disagree with the Respondent on this point,⁷⁰ and submitted that '*intention is not relevant [...] for the purposes of section 150L(1)(b)(ii)*'⁷¹ and '*[i]ntent is not an element for any of the other misconduct provisions in section 150L of the Act, nor others within the Act, such as sections 150EK, 150EQ and 150EZ.*'⁷²

46. On this point, the Tribunal prefers the Applicant's submissions. In the Tribunal's view, there is no element or relevance of intention in section 150L(1)(b)(ii) of the Act. The Tribunal affirms the Tribunal Panel's comments in *Huges*: '*Intent by the Councillor to cause a detriment to another person was irrelevant to the Tribunal's considerations in so far as determining if misconduct had occurred, as section 150L(1)(b)(ii) does not require intent.*'⁷³
47. '*Misuse*' must be determined first before turning to issues of '*benefit*' and/or '*detriment*'. Returning to the issue of whether there was '*misuse*', the Tribunal considers the Respondent's submissions about '*the purpose of the action, being the purpose of the misuse*' in relation to '*benefit*' are actually relevant to determining whether there was misuse in the first place because this wording goes to the test the Tribunal proposed in *Huges*: did the Respondent use the information in a way that was inconsistent with the purpose for which the information was acquired? This is assessed objectively on the evidence. Subjective intention (or what the Respondent intended in his mind) is irrelevant.

48. The evidence indicates that the Respondent purchased domain names for various

⁶⁷ Applicant's submissions [37]-[47].

⁶⁸ Respondent's submissions [19].

⁶⁹ Applicant's submissions [46].

⁷⁰ Applicant's submissions in reply [14]-[22].

⁷¹ Applicant's submissions in reply [18].

⁷² Applicant's submissions in reply [19].

⁷³ *Independent Assessor v Councillor Tracey Huges, Redland City Council*, 4 February 2022, CCT reference F20/4772, publicly available decision summary on the Department's website, page 6, [19].

charitable purposes:

Over the years I have registered other domain names for charity or when I have an idea. I do this because domain names are very cheap but can be beneficial. So from time to time I will register a domain name to "hold" or "reserve" it for 12 months in case there is a use for it. If it ends up that there is no use for it, I will allow the registration to lapse (for little cost). It has never been my intention to register domain names for personal financial gain. I have never sold a domain name and I do not have the capacity to sell on my account as you have to sign up for that and I have never signed up for it.⁷⁴

The Respondent provided evidence that he purchased domain names for charitable purposes on 25 January 2021⁷⁵ and 16 August 2021.⁷⁶ Those domain names are unrelated to domains ASD and ZXC.

49. The Respondent's evidence regarding registering domain names for charitable purposes is consistent with his evidence regarding domains ASD and ZXC: *'I had no intention to sell the licences for the Domain Names to Council or anyone else.'*⁷⁷ Disregarding the references to the Respondent's intentions, the value of this evidence is that objectively, it confirms that the Respondent did register various domains for charitable purposes, never sold a domain name and does not have the capacity to do so. Further, there is no evidence that the Respondent registered domains ASD and ZXC for the purpose of asking for money from the Council or making a profit. Also in the Tribunal's view, the Respondent would not be able to sell the domains to the Council for a profit, as this would be a breach of the Act. The Tribunal is satisfied that the only things that could have happened with domains ASD and ZXC were they not deleted by the Respondent, were that they would either be transferred to the Council for free or the registrations would lapse.⁷⁸ The Tribunal also notes the Respondent's evidence that *'[e]ven though I could have hidden the fact that I had registered the Domain Names, I did not do so, or attempt to do so, because I never thought that I was doing anything wrong and that it was something that I should hide.'*⁷⁹ The Tribunal is persuaded by the Respondent's submissions that *'the registration of the Domain Names is not wholly inconsistent with the purpose for which the information was received in his capacity as councillor'* and that the Respondent did not *'misuse'* the information for the reasons provided by the Respondent at [22] of its written submissions (extracted above at [43] of this document).
50. One Tribunal Member was particularly sceptical about the Respondent's motives for registering/purchasing domains ASD and ZXC. But ultimately, the Tribunal reached the unanimous view that in the absence of any evidence to the contrary, the Tribunal would accept the Respondent's evidence that the registration of domains ASD and ZXC was for benevolent purposes. The Council wanted to become a 'City' Council and the Respondent used the information consistently with the purpose for which the information was acquired i.e. to register/purchase appropriately themed domain names for the Council.
51. If the Respondent had an idea about the Council registering/purchasing domain names, he should have raised this idea with Council officers at the outset. As the Applicant submits in its submissions in reply *'the Respondent got involved in an operational matter which is not within the remit of his councillor role and its responsibilities'*.⁸⁰ The Tribunal is somewhat reassured by the Respondent's evidence that *'I now see the process issue*

⁷⁴ Respondent's affidavit [13].

⁷⁵ Respondent's affidavit [14] and exhibit TL-4 to the Respondent's affidavit.

⁷⁶ Respondent's affidavit [15] and exhibit TL-5 to the Respondent's affidavit.

⁷⁷ Respondent's affidavit [6].

⁷⁸ Respondent's affidavit [7].

⁷⁹ Respondent's affidavit [17].

⁸⁰ Applicant's submissions in reply [6].

and know that I should have first contacted officers with the comment that “hey, we should look at purchasing these Domain Names”.⁸¹ Had the Respondent done this in the first place, the Tribunal would not be considering this matter.

52. The Tribunal finds that on the balance of probabilities, the Respondent did not use the information in a way that was inconsistent with the purpose for which it was acquired. Also applying the ordinary meaning of ‘*misuse*’, the Tribunal is satisfied that on balance, there was no ‘*wrong or improper use; misapplication*’ of the information and that the information was not used ‘*in an unsuitable way or in a way that was not intended.*’ Ultimately, the Tribunal finds that the Respondent did not misuse the information.

Element 3: Was the misuse for the benefit of the Respondent or for the benefit, or to the detriment, of another person?

53. If the Tribunal found that elements 1 and 2 had been proven on the balance of probabilities, it would then need to consider element 3. The key phrases in this element are ‘*benefit*’ and ‘*detriment*’.
54. The parties disagreed on how to interpret ‘*benefit*’ in section 150L(1)(b)(ii) of the Act. The Applicant submits it should be interpreted in accordance with the definition of **benefit** in section 201D(2) of the Act⁸² and relies on the principle stated in *Registrar of Titles (WA) v Franzon* (1975) 132 CLR 611 at 618 by Mason J that ‘*[i]t is a sound rule of construction to give the same meaning to the same words appearing in different parts of a statute unless there is reason to do otherwise.*’⁸³ The Respondent ‘*disagrees with the Applicant’s contention that the term ‘benefit’ should be interpreted in alignment with how it is defined in section 201D*’⁸⁴ and that in the matter of *Hastie*, ‘*the Tribunal formed a view that in the absence of specific definitions of ‘misuse’ and ‘benefit’ in section 150L of the Act, the most appropriate way to define those terms was to use their ordinary meaning*’, an approach with which the Respondent ‘*respectfully agrees*’.⁸⁵ The Respondent notes the difference in phrasing between sections 201D and 150L(1)(b)(ii) of the Act, with the former referring to ‘**a benefit for the person or someone else**’ and the latter referring to “**for the benefit of the councillor or for the benefit, or to the detriment, of another person**” (emphasis as per the Respondent’s submissions).⁸⁶
55. Ultimately, the Tribunal agrees with the Respondent’s submissions on this point because the different wording used in the sections indicates an intention by the legislature to use the terms slightly differently. The Tribunal also notes that ‘*[a]n offence against section 201D of the Act is a misdemeanour*’,⁸⁷ which is a criminal offence⁸⁸ punishable by a maximum of ‘*200 penalty units or 2 years imprisonment*’,⁸⁹ whereas section 150L(1)(b)(ii) does not carry criminal penalties. The Tribunal takes issue with applying the exact definition of **benefit** in section 201D(2) to section 150L(1)(b)(ii), when a breach of section 150L(1)(b)(ii) can only result in misconduct and there are no possible criminal penalties that can be imposed. If the legislature intended the definition of **benefit** in section 201D to apply in the whole Act, it would have put it in the dictionary section of the Act, not in one specific section.

⁸¹ Respondent’s affidavit [23].

⁸² Section 201D(2) of the Act states ‘**benefit** includes property, advantage, service, entertainment, the use of or access to property or facilities, and anything of benefit to a person whether or not it has any inherent or tangible value, purpose or attribute.’

⁸³ Applicant’s submissions [37]-[41].

⁸⁴ Respondent’s submissions [16].

⁸⁵ Respondent’s submissions [17].

⁸⁶ Respondent’s submissions [16].

⁸⁷ Section 201E(1) of the Act.

⁸⁸ Section 3(2) of the *Criminal Code* (Qld).

⁸⁹ Section 201D(1) of the Act.

56. The Tribunal agrees with the Applicant's submission 'that the term 'benefit' should be interpreted broadly for the purposes of section 150L(1)(b)(ii) of the Act [...]'.⁹⁰ Consistent with this approach, the Tribunal considers the ordinary meaning of the relevant words should be used. The ordinary meaning of 'benefit' is 'noun (ADVANTAGE) [...] a helpful or good effect, or something intended to help' and 'detriment' is 'noun [...] harm or damage'.⁹¹ The Tribunal notes that the ordinary meaning of 'benefit' is broader than the definition in section 201D(2) of the Act but in terms of this matter, it would get the Tribunal to the same place.

57. On the ordinary meaning of 'benefit' above, the Tribunal is of the view that the Respondent's registration/purchase of domains ASD and ZXC was a benefit and accepts the Applicant's submissions that:

*The Respondent owned the domain names whilst under licence, and as such held the property in the domain names, that could therefore be bought, sold or transferred at his/his company's sole discretion. [...] Therefore, the Applicant submits that the Respondent held a benefit in purchasing the two domain names and becoming the subsequent owner of those domain names.*⁹²

58. Regarding 'detriment', the Tribunal again notes the Applicant's phrasing of particular k of Allegation One: 'Councillor Latter's actions in purchasing and registering the domain names for ZXC and ASD was a misuse of confidential information [...] where the misuse: [...] caused a detriment to [the Council] by preventing them from securing the domain name for ASD.' The Tribunal struggles with this phrasing because as already discussed, it was open to the Council to register relevant domain names at any point prior to 26 August 2021 and it simply did not do so. The Tribunal also notes POL's evidence that effectively anybody could register domain ASD.⁹³ According to the Respondent's evidence, someone had already registered the QWE domain, which the Respondent came across accidentally on 26 August 2021.⁹⁴

59. In the Tribunal's view, perhaps what the Applicant could have done instead is allege that the Respondent's deletion of domains ASD and ZXC was a misuse of information to the detriment of the Council. The evidence regarding this point is that on 10 December 2021, after seeing negative social media posts from constituents who had discovered his registration/purchase of domains ASD and ZXC, the Respondent deleted those domains. The Respondent's evidence is that:

*[...] I was shocked and horrified that the public viewed my purchase of the Domain Names in that way so in panic, I immediately deleted them. I did not buy the Domain Names as part of any "scam", as the social media read, so I deleted them immediately so there could be no perception by the public that I was seeking to personally gain from their registration. In my head, I did what I had to do to make it right and stop any such perception. That's all I was thinking at the time and unfortunately did not think to transfer them to Council.'*⁹⁵

60. The Respondent should not have deleted the ASD and ZXC domains. He should have contacted Council officers, explained what happened and arranged for the transfer of the domains to the Council. Instead, he deleted the domain registrations, meaning they could be registered/purchased by other people. The evidence indicates that the Council ultimately secured the ZXC domain name as well as nine other domain names relevant to the Council.⁹⁶ However, the Council was unable to secure the ASD domain. On this point, in the statement dated 25 July 2022 attached to the affidavit of NJI, NJI states:

⁹⁰ Applicant's submissions [41].

⁹¹ Cambridge Dictionary accessible at <https://dictionary.cambridge.org/>.

⁹² Applicant's submissions [45].

⁹³ Annexure D – Brief of Evidence, Document 3.2, page 211 (affidavit of POL, exhibit 1, statement of witness [34]).

⁹⁴ Respondent's affidavit [5].

⁹⁵ Respondent's affidavit [9].

⁹⁶ Annexure D – Brief of Evidence, Document 3.1, page 201 (affidavit of NJI, exhibit 1).

I can confirm at the time of providing this statement, Council was unable to secure the [ASD] domain name as it appears to have been purchased by another party.

Failing to secure this domain name will be an inconvenience for Council and has the potential to impact on international web traffic being diverted to another URL (uniform resource locator) instead of going to Council web sites.⁹⁷

Subsequently, the affidavit of NJI affirmed on 29 November 2022 states:

By way of update and in furtherance of the information I provided in my statement at paragraph 121, Council has not been able to secure all domain names related to Moreton Bay City. Whilst we have acquired a few relevant domain names, Council does not own [ASD]. That name has been unavailable for purchase since our first attempt in December 2021 and remains unavailable today.⁹⁸

61. While the Tribunal accepts that the inability to secure the ASD domain is an inconvenience for the Council, the Tribunal notes POL's evidence that there are various methods to obtaining an already registered domain name, such as contacting the registered owner and purchasing it from them.⁹⁹ The Tribunal was not provided with any further up-to-date evidence as to the situation regarding the ASD domain or if the Council still wants to secure it. Both parties had the opportunity to file further evidence/material in the matter but neither party provided anything further on this point. Ultimately on the evidence before the Tribunal, the Tribunal would struggle to quantify the 'detriment', 'harm' or 'damage' to the Council and would not be able to find this aspect of element 3 proven on the balance of probabilities.
62. Ultimately regarding Allegation One, the Tribunal is not satisfied that elements 1 and 2 are proven on the balance of probabilities. Regarding element 3, while the Tribunal sees how the ASD and ZXC domains could be regarded as a benefit in the ordinary meaning of the word, this does not matter if elements 1 and 2 are not proven. Therefore, the Tribunal finds that on the balance of probabilities, Allegation One is not sustained.

Allegation Two

63. Allegation Two is alleged to be misconduct by way of a contravention of section 150EZ of the Act. At the time of the alleged conduct, being 8 December 2021, section 150EZ of the Act stated:

150EZ 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.*
- (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.*

Note—

Contravention of this section is misconduct that could result in disciplinary action being taken against a councillor—see section 150L(1)(c)(iv). Also, this section is a relevant integrity provision for the offence against section 201D—see section 201D(2), definition relevant integrity provision.

- (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—*

⁹⁷ Annexure D – Brief of Evidence, Document 3.1, page 72 (affidavit of NJI, exhibit 1, statement of witness [121]-[122]).

⁹⁸ Annexure D – Brief of Evidence, Document 3.1, page 57 (affidavit of NJI [9]).

⁹⁹ Annexure D – Brief of Evidence, Document 3.2, pages 213-215 (affidavit of POL, exhibit 1, statement of witness [46]-[60]).

- (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 chief executive officer 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.

Section 150EN of the Act defines ‘*declarable conflict of interest*’:

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 between the councillor’s personal interests, 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 the matter might lead to a decision that is contrary to the public interest.

Also relevant to Allegation Two is section 150EE of the Act:

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
- (b) considering or making the decision under—
 - (i) an Act; or
 - (ii) a delegation; or
 - (iii) another authority.

64. In its submissions, the Applicant states that it was the domain names ASD and ZXC purchased through Company BNM, of which the Respondent was a director and shareholder, that created the Councillor’s relevant ‘*personal interest*’: ‘*By virtue of the Respondent’s purchase and subsequent ownership of the domain names, the Applicant submits that the Respondent had a personal interest in the matter.*’¹⁰⁰
65. Regarding ‘*public interest*’, the Applicant submits that ‘*The Tribunal has consistently adopted the view that the ‘public interest’ is in councillors performing their decision-making roles free from inappropriate influence and in an accountable and transparent way*’¹⁰¹ and cites *Independent Assessor v Councillor Jason O’Pray, Sunshine Coast Regional Council*, 10 November 2021, CCT reference F20/2743 (henceforth simply ‘*O’Pray*’) and *Independent Assessor v Mayor Gregory Campbell, Cloncurry Shire Council*, 30 October 2023, CCT reference F21/4161. Ultimately, the Applicant ‘*submits that the Respondent’s personal interest in the matter was, or at least could have reasonably been presumed to have been, in conflict with the public interest*’¹⁰² and ‘*[a]ccordingly, [...] the Respondent had a declarable conflict of interest in the matter within the meaning of section 150EN.*’¹⁰³

¹⁰⁰ Applicant’s submissions [55].

¹⁰¹ Applicant’s submissions [56].

¹⁰² Applicant’s submissions [58].

¹⁰³ Applicant’s submissions [63].

66. Regarding ‘*might lead to a decision contrary to the public interest*’ in section 150EN(b) of the Act, the Applicant cites the *Ebner* test¹⁰⁴ and ultimately submits that ‘*a reasonable fair-minded member of the community would, or at least, might perceive that the Respondent may not bring an impartial mind to the matter, which might lead to a decision that is contrary to the public interest.*’¹⁰⁵
67. The Applicant submits that none of the exemptions in sections 150EF, 150EO and 150EZ of the Act apply.¹⁰⁶
68. Regarding whether the Respondent ‘*participated in a decision*’ for the purposes of section 150EE, section 150EE(a) applies to a person who is ‘*considering, discussing or voting on the decision in a local government meeting*’. The Applicant submits that ‘*[a]ll councillors at the Meeting were participating in a decision at a local government meeting.*’¹⁰⁷
69. Ultimately:

*The Applicant submits, the Respondent in making the aforementioned statement [...] and subsequently voting on the matter, influenced or attempted to influence, and also discussed the matter with the other councillors at the meeting, who were participating in a decision of the council.*¹⁰⁸

70. In the Respondent’s submissions:

The Respondent accepts that:

- (a) *registration of the Domain Names created a declarable conflict of interest for him at the Council meeting of 8 December 2021 (the “Meeting”);*
- (b) *he participated in a decision of the matter for the purposes of section 150EE of the Act.*

That said, the Respondent states:

- (a) *He did not realise he had a declarable conflict of interest, particularly because he registered the Domain Names for the benefit of Council, not himself.*
- (b) ***“It was never my intention to influence any Councillor or other person on whether Council became a city because I had something to gain as I simply did not believe that I had anything to gain” [this is taken from [21] of the Respondent’s affidavit].***
- (c) *He attended and participated in the Meeting “believing I was performing my duties as a Councillor”. [...]*

*The Respondent concedes that he unwittingly contravened section 150EZ of the Act.*¹⁰⁹

71. In the Tribunal’s view, the Respondent’s subjective intentions and beliefs are irrelevant to section 150EZ. The Tribunal finds that the Respondent had a declarable conflict of interest at the 8 December 2021 Council meeting due to his registration of domains ASD and ZXC, which the Tribunal is satisfied are relevant to the matter of the Council becoming a ‘City’ Council. The registration/purchase of the domain names created personal interests which conflicted with the public interest that might have led to a decision contrary to the public interest as described by the Applicant above. The Tribunal finds

¹⁰⁴ *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337; [2000] HCA 63, [6] (Gleeson CJ, McHugh, Gummow and Hayne JJ).

¹⁰⁵ Applicant’s submissions [62].

¹⁰⁶ Applicant’s submissions [64].

¹⁰⁷ Applicant’s submissions [73].

¹⁰⁸ Applicant’s submission [74].

¹⁰⁹ Respondent’s submissions [33]-[34], [36].

that every Councillor present at the 8 December 2021 Council meeting was *'another person who is participating in a decision of the local government relating to the matter'*.

72. The video extract provided by the Applicant indicates that the Respondent made a statement at the 8 December 2021 Council meeting in support of the Council becoming a 'City' Council.¹¹⁰ The text of what the Respondent said is provided in the **Allegations** section of the table above. Having reviewed the video extract, the Tribunal generally accepts that the Respondent said what the Applicant alleges but notes that the Respondent's final sentence was not *'I have immense support for the motion'* – it was *'I am in support of the motion'*. The Tribunal finds that by making his statement, the Respondent at the very least discussed the matter with the other people (the other Councillors in the room) who were participating in a decision of the Council relating to the Council becoming a 'City' Council.
73. The Tribunal finds that none of the exemptions in sections 150EF, 150EO or 150EZ(3) or (4) of the Act apply. There is no evidence that the Respondent declared his conflict of interest at the meeting and was given permission to stay and vote on the matter.
74. Therefore, the Tribunal finds that on the balance of probabilities, the Respondent had a declarable conflict of interest in a matter and at the very least discussed the matter with, another person who was participating in a decision of the local government relating to the matter in contravention of section 150EZ of the Act. Therefore, Allegation Two is sustained.

Conclusion

75. Considering all the evidence and material received in the matter, the Tribunal has determined that on the balance of probabilities, Allegation One **has not been sustained** and Allegation Two **has been sustained**.

Discussion on orders/recommendations to be made:

76. As the Tribunal has not sustained Allegation One, there is no need to consider any orders/recommendations in relation to that allegation. However, as the Tribunal has sustained Allegation Two, the Tribunal must consider the appropriate orders/recommendations under section 150AR of the Act in relation to that allegation.
77. The Tribunal notes the parties' submissions about mitigating and aggravating factors regarding disciplinary action but does not agree with all the factors as submitted by the parties. Ultimately, the Tribunal formed its own view as to what were the relevant mitigating and aggravating factors regarding disciplinary action in this matter.
78. The Tribunal notes that in deciding what action to take to discipline the Respondent, the Tribunal may consider:
- (a) *any previous misconduct of the councillor; and*
 - (b) *if the application relates to a conduct breach [formerly 'inappropriate conduct']—any previous conduct breach of the councillor; and*
 - (c) *any allegation made in the hearing that—*
 - (i) *was admitted, or not challenged; and*
 - (ii) *the conduct tribunal is reasonably satisfied is true.*¹¹¹

79. Regarding mitigating factors, the Respondent to his credit has no previous findings of

¹¹⁰ Annexure D – Brief of Evidence, Document 3.1, page 170 (affidavit of NJI, exhibit 1) at 8:09 – 8:55 of the video extract.

¹¹¹ Section 150AQ(2) of the Act.

misconduct against him. In terms of any allegation made in the hearing that was admitted, or not challenged and the Tribunal is reasonably satisfied is true, the Respondent ‘concedes Allegation Two’¹¹² but stressed that he ‘unwittingly contravened section 150EZ of the Act’¹¹³ for the reasons already canvassed above. The Tribunal accepts that the Respondent is remorseful and is ‘devastated by the complaints’.¹¹⁴

80. Regarding aggravating factors, the Tribunal is of the view that although the Respondent was a first term Councillor and gives evidence that he ‘was naïve. It was my inexperience as a councillor. I was early in my term and I have learnt from this mistake’,¹¹⁵ he was a fair way into his four year term (one year and eight months, calculated from signing his Declaration of Office on 22 April 2020¹¹⁶ to the date of the misconduct on 8 December 2021). By December 2021, he had undertaken multiple instances of Councillor training, at which conflict of interest obligations were covered extensively.¹¹⁷ The Tribunal is satisfied the training predated the conduct the subject of Allegation Two.
81. Regarding disciplinary action, the Applicant cited *O’Pray, Huges and Hastie* as comparable decisions and submitted that ‘the current matter is far more serious than the aforementioned precedents [...]’.¹¹⁸ The Applicant submitted that the Tribunal order that:
- i. the Respondent make a public admission that he has engaged in misconduct, pursuant to section 150AR(1)(b)(i); and
 - ii. the Respondent pay to the local government an amount of \$2,500, pursuant to section 150AR(1)(b)(iv).¹¹⁹

The Respondent disagreed with the Applicant and submitted ‘that a fine of \$2,500 is extraordinarily excessive’.¹²⁰ The Tribunal notes that the Applicant’s submissions on disciplinary action are made on the basis that Allegation One would be sustained and was the more serious of the two allegations.¹²¹ Had the Tribunal sustained Allegation One, it would be taking much more severe disciplinary action.

82. Ultimately regarding disciplinary action, the Respondent submitted that ‘[s]hould the Tribunal make a finding of misconduct, the Respondent submits that the finding together with an order to make a public apology at a Council meeting, would achieve the appropriate protective purpose of the disciplinary proceedings’.¹²²
83. While the Tribunal attaches weight to the fact that the Respondent has no previous findings of misconduct against him, the Tribunal is concerned that at the time of the misconduct on Allegation Two, the Respondent was almost one year and eight months into his Councillor term and received ample Councillor training on conflicts of interest. As a result, the Tribunal strongly considered ordering the Respondent to pay an amount to the local government and to undertake further training but ultimately decided against making such orders. Regarding a monetary order, the Tribunal considered this would be tokenistic and ultimately unnecessary in the circumstances. Regarding an order requiring further training, the Tribunal questioned what utility this would have, given that the Respondent had undertaken ample amounts of Councillor training in the past.

¹¹² Respondent’s submissions [43].

¹¹³ Respondent’s submissions [36].

¹¹⁴ Respondent’s affidavit [22].

¹¹⁵ Respondent’s affidavit [22].

¹¹⁶ Annexure D – Brief of Evidence, Document 3.1, page 73 (affidavit of NJI, exhibit 1).

¹¹⁷ The Applicant makes a submission to this effect at [82] of its written submissions.

¹¹⁸ Applicant’s submissions [87].

¹¹⁹ Applicant’s submissions [88].

¹²⁰ Respondent’s submissions [40].

¹²¹ Applicant’s submissions [87].

¹²² Respondent’s submissions [41].

84. Balancing the mitigating and aggravating factors, and bearing in mind *'that the purpose of disciplinary proceedings and orders are protective rather than punitive'*,¹²³ the Tribunal concluded that the key ways in which to deal with the Respondent's misconduct and appropriately resolve the matter are firstly, to make a finding that the Respondent has engaged in misconduct on Allegation Two and secondly, to order the Respondent to make a public apology for the conduct in the way decided by the Tribunal at an upcoming general meeting of the Council that is open to the public.
85. The Tribunal notes that at the time of the Respondent's conduct, section 150AR(1)(b)(i) of the Act stated *'an order that the councillor make a public admission that the councillor has engaged in misconduct or inappropriate conduct (or both)'*. Currently, section 150AR(1)(b)(i) of the Act states *'an order that the councillor make a public apology, in the way decided by the conduct tribunal, for the conduct'*. In terms of disciplinary action, the Tribunal considers the applicable section to be the one in force when the Tribunal makes its orders. The Tribunal also considers that a *'public admission'* and *'public apology'* are orders that are substantially the same, so there is no injustice to the Respondent in making an order using the wording of the section in the current Act. While not applicable in this matter, the Tribunal considers this approach is consistent with the approach described in section 322(2) of the Act, which requires the Tribunal when *'deciding how to deal with [pre-3 December 2018] conduct'* in the present, to *'only make an order that is substantially the same as an order that could have been made under former section 180'*.
86. In light of the above, the Tribunal makes the orders as set out in the **Orders and/or recommendations** section on page 6 of this document.

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

Preliminary

87. The Tribunal considered its obligations to protect the Respondent's human rights under the HRA.
88. In relation to any misconduct application made by the Applicant under section 150AJ(1)(a) of the Act, the Tribunal *'must conduct a hearing about the application'* under section 150AL(1) of the Act. The Act does not provide the Tribunal with any discretion regarding the hearing of the application. This is relevant to section 58 of the HRA. Section 58(1) of the HRA states that *'[i]t is unlawful for a public entity [...] to act or make a decision in a way that is not compatible with human rights; or [...] in making a decision, to fail to give proper consideration to a human right relevant to the decision.'* Section 58(2) of the HRA provides an exemption to the Tribunal as a public entity from complying with section 58(1) of the HRA *'if the entity could not reasonably have acted differently or made a different decision because of a statutory provision.'*

The right to a fair hearing (section 31 of the HRA)

89. The Tribunal considered that the right to a fair hearing was engaged by the hearing of the misconduct application regarding the Respondent.
90. Section 213 of the Act requires the decision-maker when it conducts a hearing (in this case,

¹²³ Applicant's submissions [83]. The Respondent agreed with this principle at [38] of its submissions. For this proposition, the Applicant cited *Walter v Council of the Queensland Law Society Incorporated* (1988) 77 ALR 228 (which was applied in *Legal Services Commissioner v Madden (No 2)* [2009] 1 Qd R 149) as well as *Harvey v Law Society of New South Wales* (1975) 7 ALR 227.

the Tribunal) to ‘*observe natural justice*’ and ‘*act as quickly and informally as is consistent with a fair and proper consideration of the issues raised in the hearing.*’ The hearing was conducted on the documents, which is permitted by section 150AP(2) of the Act. The Respondent sought and received legal advice and did not dispute the hearing being conducted on the documents. The Tribunal considered it appropriate in the circumstances to direct that the hearing of the application be conducted in private under section 298 of the Regulation, which in the Tribunal’s view is consistent with section 31(2) of the HRA. The Tribunal considered it complied with all the hearing requirements of the Act and provided the Respondent with natural justice and a fair hearing. This decision and reasons/publication notice will be made publicly available as required by section 150AS(2)(c) of the Act, which the Tribunal considers is consistent with section 31(3) of the HRA. Therefore, the Tribunal considered the Respondent’s human right to a fair hearing under section 31 of the HRA was engaged but was not limited by the hearing process.

Freedom of expression (section 21 of the HRA)

91. The Tribunal formed the view that the Respondent’s freedom of expression was engaged and limited by this decision and reasons/publication notice. This is because the Tribunal found that the Respondent’s conduct regarding Allegation Two in not declaring his conflict of interest in a matter and subsequently discussing the matter in which he had a conflict of interest with other Councillors who were participating in a decision regarding that matter was a breach of section 150EZ of the Act and misconduct. However, any limitations imposed by the Tribunal on the Respondent’s freedom of expression are justified because while ‘*[e]very person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds whether within or outside Queensland and whether [...] orally; or [...] in writing [...]*’, the context in which the Respondent did so in Allegation Two was within his role as a Councillor. The role of a Councillor carries many proscriptive obligations under the Act due to the nature of such a role, such as the proscriptions in section 150EZ of the Act.
92. Further, ordering the Councillor to make a public apology regarding his misconduct on Allegation Two is a further limitation of his right to freedom of expression. However, given that the Tribunal has found the Respondent engaged in misconduct, such an order is warranted, and the Tribunal considered a public apology was the most appropriate manner in which to deal with the Respondent’s misconduct.
93. Therefore, the Tribunal considered that the limitations on the Respondent’s freedom of expression in this decision and reasons/publication notice are justified.

The right to not have one’s privacy unlawfully or arbitrarily interfered with (section 25(a) of the HRA)

94. The Tribunal noted that this right extended to ‘*not to have the person’s privacy, family, home or correspondence unlawfully or arbitrarily interfered with*’. The Tribunal considered that it has not unlawfully or arbitrarily interfered with the Respondent’s privacy, family, home or correspondence because at all times, the Tribunal was acting in accordance with and performing its functions under the Act. Therefore, the Tribunal formed the view that this right was not engaged or limited.

The right to not have one’s reputation unlawfully attacked (section 25(b) of the HRA)

95. In the Tribunal’s view, the right to not have the Respondent’s reputation unlawfully attacked was not engaged or limited by this decision and reasons/publication notice because there was no unlawful attack on the Respondent’s reputation. The Tribunal has included the Respondent’s name in the decision and reasons/publication notice because pursuant to

section 150AS(6) of the Act, it is required to do so if it decides a Councillor has engaged in misconduct. Further, the Tribunal has removed the names of all persons and their identifying particulars relevant to this matter as required by section 150AS(7) of the Act. In conducting this matter and arriving at its decision and reasons/publication notice, the Tribunal considered it has decided the matter on the evidence before it, has acted lawfully and has complied with the provisions of the Act. The Tribunal notes the Respondent conceded Allegation Two.¹²⁴

Justification and conclusion

96. In the Tribunal’s view, any limitations on the Respondent’s human rights in this matter are justifiable and are not disproportionate for the following reasons:

- (a) Decisions and orders of the Tribunal are authorised by the Act;
- (b) The Tribunal has a proper purpose which is to maintain public confidence in and ensure the integrity of the system of local government in Queensland;
- (c) The Tribunal holding Councillors to account and setting clear expectations for Councillors helps achieve the proper purpose of the Tribunal;
- (d) The Tribunal considered the range of orders in section 150AR(1)(b) of the Act and made the least restrictive orders it could to appropriately deal with the Respondent’s misconduct, hold the Respondent to account, set clear expectations of Councillors and achieve the proper purpose of the Tribunal. In the Tribunal’s view, any less restrictive orders would not have achieved these goals;
- (e) A fair balance of, on the one hand, any negative impacts on the Respondent (the Tribunal notes that the Respondent ‘*is devastated by the complaints*’),¹²⁵ while, on the other hand, maintaining public confidence in and ensuring the integrity of the system of local government in Queensland.

97. Ultimately, the Tribunal is satisfied that the disciplinary action it has taken in this matter is reasonable, just, lawful, proportionate and not arbitrary. The disciplinary action ordered by the Tribunal in this matter holds the Respondent to account while maintaining public confidence in and ensuring the integrity of the system of local government in Queensland. In the Tribunal’s view, the balance struck is fair and the consequences for the Respondent are not disproportionate to the nature and gravity of the misconduct.

Notices:

98. Following the finalisation of this decision and reasons/publication notice, the Tribunal will arrange for notices to be sent to relevant parties as required by section 150AS of the Act.

Gabe Bednarek ¹²⁶	Carolyn Ashcroft ¹²⁷	Rod Ferguson ¹²⁸
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¹²⁴ Respondent’s submissions [43].

¹²⁵ Respondent’s affidavit [22].

¹²⁶ The Chairperson sent through his authorisation of this document to the Tribunal Registry in an email dated 26 August 2024.

¹²⁷ The Member sent through her authorisation of this document to the Chairperson in an email dated 25 August 2024.

¹²⁸ The Member sent through his authorisation of this document to the Chairperson in an email dated 26 August 2024.