

COUNCILLOR CONDUCT TRIBUNAL

CITATION: *Independent Assessor v Wharton* [2026] CCT 5

PARTIES: **INDEPENDENT ASSESSOR**
(applicant)

v

JOHN WHARTON
(respondent)

FILE NO/S: F26/479

DELIVERED ON: 7 August 2026

HEARING DATE: 26 June 2026

HEARD AT: Brisbane

DECISION OF: President Russell Hood

ORDERS: **IT IS THE DECISION OF THE TRIBUNAL THAT:**

1. Pursuant to s 150L(1)(c)(iii) of the *Local Government Act 2009* (Qld), the conduct the subject of the allegation in the application constitutes misconduct.
2. Pursuant to s 150AR(1)(b)(i) of the *Local Government Act 2009* (Qld), the respondent make a public admission to the conduct at a general meeting of Council open to the public within 60 days of the publication of this decision.
3. Pursuant to s 150AR(1)(b)(iii) of the *Local Government Act 2009* (Qld), the respondent attend training to address the respondent's conduct, at the expense of the respondent.
4. Pursuant to s 150AR(1)(b)(iv) of the *Local Government Act 2009* (Qld), the respondent pay to Richmond Shire Council an amount equal to 5 penalty units.

CATCHWORDS: LOCAL GOVERNMENT — COUNCILLOR CONDUCT — MISCONDUCT — declarable conflict of interest – conflict between personal interests of respondent and the public interest – where respondent failed to declare conflict of interest in a matter – where respondent discussed the matter with other councillors – where respondent admits misconduct — where respondent cooperated with proceedings – where parties agreed as to facts, evidence and sanction – whether sanction sought is appropriate sanction

Local Government Act 2009 (Qld) s 150AA, s 150EE, s 150EZ(1) & (2), s 150EN, s 150L(1)(c)(iii), s 150AQ(1) & (2), s 150AR(1)(b)(i), (iii) & (iv)

Local Government Regulation 2012 (Qld) s 298

APPEARANCES &
REPRESENTATION

This matter was heard and determined on the papers pursuant to s 298 of the *Local Government Regulation 2012* (Qld)

REASONS FOR DECISION

- [1] This proceeding is brought by the Independent Assessor ('applicant') against John Wharton ('respondent'). At all material times the respondent was a councillor and mayor of Richmond Shire Council ('council'). The respondent was first elected to council at the 1991 local government elections and was subsequently elected as mayor of council at the 1997 elections. The applicant alleges that:

... on 19 November 2024, Mayor John Wharton (Mayor Wharton), a councillor of the Richmond Shire Council (Council), engaged in misconduct as defined in section 150L(1)(c)(iii) of the Local Government Act 2009 (the Act), in that his conduct contravened section 150EZ of the Act when he directed, influenced, attempted to influence, or discussed a matter with another person who was participating in a decision of the local government relating to a matter for which Mayor Wharton held a declarable conflict of interest.

- [2] The allegation made by the applicant is admitted by the respondent, therefore the only issue that remains to be determined by the Tribunal is the question of disciplinary action. Following are the reasons underpinning the Tribunal's findings and orders made on 26 June 2026.

Background & Agreed Facts

- [3] In late 2024 the applicant received information about an alleged declarable conflict of interest held by the respondent in connection with an agenda item considered by council on 19 November 2024. At all relevant times the respondent was both the mayor of council and the owner and operator of the only real estate agency located in Richmond (the agency).
- [4] Pursuant to clause 3.2 of council's staff housing policy at the time (the policy), council employees were ineligible for council supplied housing if they owned a private dwelling within the council area. In September 2024 a council employee who was residing in council supplied housing observed an agency 'for sale' sign in front of a residential property in Richmond (the property). On 27 September 2024 the employee sent an email to the respondent and a council senior executive seeking advice about whether purchasing the property for the use of an extended family member would affect their eligibility to continue living in council supplied housing. On the same day the employee submitted a formal offer to the agency to purchase the property, and on 17 October 2024 the employee paid a deposit into the agency's trust account. In his role as the principal of the agency, the respondent was directly involved in the formation of this contract and stood to gain a financial benefit from completion of the contract by way of a commission.
- [5] At the instigation of the respondent, the policy came before council as an agenda item on 19 November 2024. The agenda papers did not specifically identify removal of clause 3.2 as the issue for consideration. The respondent actively participated in discussions about the policy, spoke at length about the need to support long-term commitments and investment in the local community, and advocated for the removal of clause 3.2 from the policy. It was only after making these comments that the respondent declared a conflict of interest in relation to the matter and left the chamber. The

respondent identified his involvement in the real estate industry as the source of his conflict of interest; the respondent did not disclose that he was (a) the agent for a vendor selling a residential property to a council employee who was subject to the terms of clause 3.2 or (b) that he stood to benefit financially if the contract of sale for the property was completed.

- [6] After the respondent left the chamber the other councillors present were unable to reach a decision regarding the policy and resolved to defer consideration of the matter pending further investigations and discussion. When the agenda for the ordinary meeting was dealt with, the respondent requested that the other councillors remain in the chamber for an informal discussion that was later referred to as a 'sub-committee meeting.' During this meeting the respondent revealed to the other councillors that a council employee impacted by the operation of clause 3.2 was about to purchase a residential property in town for an extended family member, and that a decision on removing clause 3.2 needed to be made promptly. However, the respondent still did not disclose to the other councillors present that he had a pecuniary interest in the transaction as the selling agent for the vendor of the property.
- [7] Following a discussion among the councillors the respondent informed a council senior executive that the councillors present needed to make a decision about amending the policy. As a result of this direction by the respondent the senior executive arranged for a 'flying minute' process to be initiated, and an email was sent to councillors (including the respondent) requesting approval to remove section 3.2 from the policy. The respondent indicated in his reply to the email that he would not vote because he had a possible conflict of interest; a majority of the other councillors indicated their support for amending the policy. The decision to amend the policy by removing clause 3.2 was formally ratified at an ordinary meeting of council on 10 December 2024 by a majority of councillors present.

Statutory Framework

- [8] The relevant legislative provisions that apply to the allegation are as follows. Section 150L states that:

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

...
(c) contravenes any of the following:

...
*(iii) section 150R(2), 150EK, 150EL, 150EPA, 150EQ, 150EW, **150EZ**, 170(4), 171(3), 201A, 201B or 201C*

- [9] Sections 150EZ and 150EE relevantly provide as follows:

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.*

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.*

[10] Regarding the question of what a declarable conflict of interest is, section 150EN states that:

*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.*

[11] The respondent accepts that he participated in discussions about the proposed amendment to the policy with other councillors during the ordinary meeting and during the subsequent ‘subcommittee’ meeting. It should be noted that at no stage did the respondent disclose the full nature of his declarable conflict of interest in the matter to his fellow councillors, namely, his involvement as a paid agent in the sale of the property to a council employee whose personal circumstances gave rise to the respondent’s proposal to change the policy.

Procedural History

[12] On 16 April 2025 the applicant notified the respondent of the allegation and invited him to make a submission; on 23 May 2025 the respondent provided a submission in response to the allegation. On 22 January 2026 the respondent was provided with a formal notice and opportunity to respond ¹ along with a draft statement of facts, and the applicant filed an application with the Tribunal pursuant to section 150AJ of the Act on 2 March 2026.

[13] On 13 May 2026 the parties executed an *Agreement for Expedited Misconduct Application* pursuant to paragraphs 9(a) and (b) of the *Councillor Conduct Tribunal Practice Direction No. 1 of 2023* which provides for a signed and dated agreement formed between the parties confirming that the allegations, facts and evidence are not in dispute. The applicant filed an amended application with the Tribunal on

¹ *Local Government Act 2009 (Qld)*, s 150AA (LG Act).

13 May 2026 and the following day the Tribunal issued directions to the parties, inviting submissions on the issue of sanction and listing the matter for a hearing on the papers on 26 June 2026.

Disciplinary Action

[14] Where it has been established that a councillor has engaged in misconduct, the Tribunal must decide what action it will take under s 150AR of the Act to discipline the councillor.² In deciding what action to take, the Tribunal may consider any previous misconduct of the councillor and any allegation made in the hearing that was admitted or not challenged.³ The Tribunal is required to consider the whole of the councillor's conduct, and what order or combination of orders would best serve the objectives of the councillor conduct framework. The Tribunal's power to sanction misconduct is intended to be protective of the public and the local government sector, rather than punitive towards the councillor being disciplined. The Tribunal's protective function includes deterring a repeat of the impugned conduct and deterring others who might be tempted to behave in a similar way.

[15] The respondent has a relevant history of misconduct under the previous councillor conduct framework, namely, that the respondent:

Allegation 1:	Failed to record details of a company on his Register of Interests (ROI);
Allegations 2 & 3:	Failed to remove an interest from his ROI;
Allegation 4:	Failed to record a change of interest on his ROI;
Allegation 5:	Arranged for the sale of two tractors owned by council outside the regulated process, amounting to a breach of trust placed in him as councillor;
Allegation 7:	Gave directions to a local government employee, amounting to a breach of trust placed in him as a councillor.

By way of sanction, the Regional Conduct Review Panel made the following orders:

Allegations 1-4:	Apologise and pay a \$1000 fine;
Allegation 5:	Apologise and pay a \$2500 fine;
Allegation 7:	Apologise and pay a \$2000 fine.

[16] Under the current councillor conduct framework, the respondent had received the following training as a councillor at the relevant time:

- "So You Want To Be A Councillor?" completed 1 November 2019.

[17] The findings and orders to be made were agreed between the parties. The applicant highlighted the following considerations as relevant to the issue of sanction, namely, that the respondent:

- is an experienced councillor and mayor, who was aware of the standards of conduct and behaviour expected of a mayor in the performance of their duties;
- has a dated but relevant history of misconduct for dissimilar conduct;
- cooperated during the investigation stage of the proceedings;
- made a timely admission in relation to the conduct, which avoided the need for a contested hearing;

² LG Act, s 150AQ(1).

³ Ibid s 150AQ(2).

- is entitled to an appropriate reduction or mitigation of penalty to recognise the public interest in the making of admissions and cooperation with the administration of the councillor conduct framework.

[18] Balancing the serious nature of the conduct against the acknowledged mitigating features, the applicant submitted that the appropriate sanction would be for the respondent to:

- (a) make a public apology, pursuant to section 150AR(1)(b)(i) of the Act;
- (b) attend training or counselling to address the respondent's conduct, at the respondent's own expense, pursuant to section 150AR(1)(b)(iii) of the Act; and
- (c) pay to council an amount equal to 5 penalty units, pursuant to s 150AR(1)(b)(iv) of the Act.

[19] The respondent's submissions in reply note that the respondent has a lengthy history of service as a councillor and mayor, highlighting that the respondent is the recipient of a Member of the Order of Australia Award for his service and dedication to the North-West Queensland community through his involvement in local government sector. It was submitted that after receiving legal advice, the respondent now understands and accepts that his conduct failed to comply with the statutory obligations of transparency and accountability required by the Act, and that the breach of trust involved in the conduct is sufficiently serious to warrant a finding of misconduct.

[20] In the context of the well-established principle that the purpose of disciplinary proceedings and orders are protective rather than punitive, and balancing the respondent's ready concession of the allegation against his prior history of misconduct (albeit dated, and of a different nature) the respondent accepts it would be appropriate for orders to be made that the respondent:

- (a) make a public apology;
- (b) attend appropriate training to address the conduct; and
- (c) pay a monetary amount the Tribunal considers appropriate.

[21] Deterrence is an important consideration given the respondent's history of misconduct, even allowing for the age and dissimilar nature of conduct in those previous findings. On the other hand, the respondent has readily admitted the gravamen of his conduct in this matter at an early stage and the parties have reached agreement on the facts and sanction, obviating the need for a contested hearing. The fact that the parties have largely agreed to the appropriate orders is a significant factor to be taken into account by the Tribunal, particularly where both parties are legally represented. It is ultimately a matter for the Tribunal to determine the appropriate outcome, however, having regard to all the relevant facts and circumstances the Tribunal agrees that the sanctions proposed by the parties ought to be adopted.

Orders

[22] The Tribunal makes the following orders:

1. Pursuant to ss 150L(1)(c)(iii) of the Act, the respondent has behaved in a way that constitutes misconduct.
2. Pursuant to s 150AR(1)(b)(i) of the Act, the respondent make a public admission to the conduct at a general meeting of Council open to the public within 60 days of the publication of this decision.

3. Pursuant to s 150AR(1)(b)(iii) of the Act, the respondent attend training to address the respondent's conduct, at the expense of the respondent.
4. Pursuant to s 150AR(1)(b)(iv) of the Act, the respondent pay to Richmond Shire Council an amount equal to 5 penalty units.