

Councillor Conduct Tribunal: Councillor misconduct complaint – Summary of decision and reasons for department’s website

Local Government Act 2009: Sections 150AS(2)(c)

1. Complaint:

CCT Reference	F20/3550
Subject Councillor	Councillor Glenda Mather (the councillor)
Council	Livingstone Shire Council

2. Decision (s150AQ):

Date:	5 October 2021
Decision:	The Tribunal has determined, on the balance of probabilities, that: The allegation that on 29 August 2019, Councillor Glenda Mather, a Councillor of Livingstone Shire Council (LSC), engaged in misconduct as defined in section 150L(1)(b)(i) of the <i>Local Government Act 2009</i> (the Act), in that her conduct involved a breach of the trust placed in the councillor, either knowingly or recklessly, in that it was inconsistent with local government principle 4(2)(a), ‘transparent and effective processes, and decision making in the public interest’, when she, without a Council Officer present, attended the property of an applicant for a development application with some other councillors only present, to discuss the application prior to it being voted on by the full council, has been sustained .
Reasons:	<ol style="list-style-type: none"> 1. The Tribunal found that, on 29 August 2019, the Respondent (together with two other Councillors) attended a meeting at a property that was subject to a live development application before Council. The applicants for that development application (Mr & Mrs X) were also present at this meeting. 2. In addition to the live development application, Mr & Mrs X were also involved in litigation against Council in the Planning and Environment

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	<p>Court regarding a previous development application which Council had refused.</p> <ol style="list-style-type: none"> 3. This meeting between the three Councillors and Mr & Mrs X was held in the absence of any employee of Council, the CEO, or the Mayor, or any other form of independent oversight. 4. Section 4(1) of the Act imposes an obligation on Councillors to abide by the local government principles, and section 4(2)(a) of the Act lists one of these principles is <i>'transparent and effective processes, and decision-making in the public interest'</i>. 5. Though the Tribunal accepted that the Respondent was acting with the best of intentions, the Tribunal found that the Respondent's meeting with Mr & Mrs X in this way was not transparent, nor was it conduct involving <i>'decision-making in the public interest.'</i> 6. The Tribunal found that the Respondent's claims that this meeting was <i>'neither premeditated nor expected'</i> and was <i>'spontaneous'</i> did not match email evidence which demonstrated that she had corresponded with Mr & Mrs X and coordinated the meeting over a period of three days prior. 7. The Tribunal also considered Council Policy regarding development applications. Though some of the Policy was vague and unclear, it still clearly communicated a <i>"public expectation that contact between developers and councillors occurs ethically and transparently"</i>. 8. The Tribunal considered that the Respondent could have made further enquiries of the Mayor or CEO about the appropriateness of this visit, conditionally accepted the invitation until a Council officer could be located to assist with the visit, or refused the invitation but raising a motion in Council regarding a deputation with other Council officers – but there was no evidence she did any of these things. 9. The Tribunal found that the Respondent had engaged in a breach of the trust reposed in her as Councillor. The Tribunal also accepted the Independent Assessor's definition of this conduct as <i>"utterly careless of the consequences of action; without caution"</i>, and found that the Respondent had acted recklessly by not turning her mind to the application of the local government principles.
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	5 October 2021
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<p>Order/s and/or recommendations:</p>	<p>The Tribunal orders that within 60 days of the date that a copy of this decision and orders are given to her by the Registrar:</p> <ul style="list-style-type: none"> a. Pursuant to s 150AR(1)(b)(ii) of the Act, Cr Mather is reprimanded by this Tribunal; b. Pursuant to s 150AR(1)(b)(iii) of the Act, Cr Mather attend training to address the councillor’s conduct (at her expense), where such training must include the proper consideration of how to deal with development applications and applicants as an elected Councillor, including by reference to: <ul style="list-style-type: none"> i. The proper processes for seeking further information; and ii. Applying the local government principles to her interactions and decision-making; c. Pursuant to s 150AR(1)(b)(v) of the Act, Cr Mather reimburse the local government \$1,000 of the costs arising from her misconduct.
<p>Reasons:</p>	<ol style="list-style-type: none"> 1. The Respondent is a very senior Councillor, having served multiple terms with Council over a period of more than thirty years. She has also received a large amount of training in her legal obligations and responsibilities. 2. The Respondent denied that the visit was misconduct and, although she cooperated with the investigation, did not appear to show any contrition or insight into her conduct. 3. The Respondent should have been very well aware of the general risk of conducting a meeting with the applicants for a development application in circumstances where independent Council officers were absent, especially where the Respondent was already aware of litigation involving the Council and Mr & Mrs X. 4. The Respondent’s conduct was found to be reckless rather than deliberate, and the Respondent made no submissions as to what orders (if any) might be imposed. 5. There was substantial evidence to suggest that the Respondent led and organised the visit, despite her suggestions that the visit was “spontaneous” and “unexpected”. 6. The Respondent also failed to give due attention to the Tribunal’s directions. As a result of her failure, both the Independent Assessor and this Tribunal incurred additional costs for a hearing that required rescheduling, as well as additional time for the Independent Assessor to file submissions. These costs were directly attributable to the Respondent’s misconduct, and so ought be repaid to the local government.