

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	F20/3551
Subject Councillor	Councillor Adam Belot (the councillor)
Council	Livingstone Shire Council

2. Decision (s150AQ):

Date:	8 October 2021
Decision:	<p>The Tribunal has determined, on the balance of probabilities, that:</p> <p>The allegation that on 29 August 2019, Councillor Adam Belot, 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> (Act), in that his conduct involved a breach of the trust placed in him as a 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 he, 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.</p>
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. 5. The Respondent admitted attending the meeting but denied it was misconduct. Though the Tribunal accepted he was motivated by an intention to gain further information about the development application, the Tribunal found that the perception of a meeting between a select group of Councillors and a development applicant (without informing any of the other Councillors or the Mayor) did not encourage a view that the meeting allowed for “transparent” or “accountable” decision-making in the public interest. 6. In particular, the Tribunal considered that Councillors must ensure that their legal obligations remain in the forefront of their minds in their dealings not just with development applicants, but constituents and ratepayers more generally. 7. The Tribunal considered Council Policy regarding development applications. However, the Respondent stated that he was unaware that the Policy even existed prior to his visit. 8. The Tribunal considered that the Respondent could have considered asking the Mayor or CEO about the visit, requesting the presence of a Council officer, or attending as part of a wider Council deputation, but took no steps to further any of these reasonable alternatives. 9. The Tribunal found that the Respondent behaved recklessly, as the meeting was not transparent, was against Council policy, and the Respondent undertook no enquiries nor availed himself of any alternatives to conducting a meeting with Mr & Mrs X without a Council officer present.
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	8 October 2021
Order/s and/or recommendations:	The Tribunal orders that within 60 days of the date that a copy of this decision and orders are given to him by the Registrar:

	<ul style="list-style-type: none"> a. Pursuant to s 150AR(1)(b)(i) of the Act, that Cr Belot make a public admission that he engaged in misconduct, at a meeting of Council that is open to the public; b. Pursuant to s 150AR(1)(b)(iii) of the Act, that Cr Belot attend counselling with the CEO of Council to address the councillor’s conduct (at the Councillor’s expense), where such counselling must include the proper application of the Policy to meetings with applicants for development applications.
<p>Reasons:</p>	<ul style="list-style-type: none"> 1. The Respondent had no prior misconduct and demonstrated some insight into the conduct that brought him before the Tribunal. 2. The Council Policy was ambiguous, however as the Respondent was not aware it existed prior to his visit this was not a persuasive consideration. 3. The Respondent also assisted the Applicant’s investigators and admitted to the facts early on in the proceedings, and did not vigorously defend an unreasonable position. 4. The issue of orders for training as well as making a public admission will not only serve to demonstrate to the Respondent that select delegations of Council meeting with development applicants or property developers – in the absence of oversight and governance – is inappropriate, but will also remind all Councillors to ensure they place the local government principles at the forefront of their decisions.