

# Councillor Conduct Tribunal: Summary of Decision and Reasons for Department's website

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

Note that the Tribunal is prohibited from giving another entity information that is part of a Public Interest Disclosure unless required or permitted under another Act; or including in this summary the name of the person who made the complaint or information that could reasonably be expected to result in identification of the person: S150AS(5)(a) and (b).

## 1. Application details:

<b>Reference No.</b>	F21/2527
<b>Subject Councillor</b>	Former Councillor Bill Ludwig (the Councillor)
<b>Council</b>	Livingstone Shire Council (the Council)

## 2. Decision (s150AQ):

<b>Date:</b>	11 November 2022
<b>Decision (Allegation One):</b>	The Tribunal has determined, on the balance of probabilities, that the allegation that on 2 May 2017, Councillor Bill Ludwig, the Mayor and a Councillor of Livingstone Shire Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the Local Government Act 2009 (the Act), in that his conduct involved a breach of the trust placed in the councillor in that his conduct was inconsistent with the local government principles in section 4(2)(a) 'transparent and effective processes, and decision-making in the public interest' and section 4(2)(e) 'ethical and legal behaviour of councillors and local government employees' in that Councillor Bill Ludwig did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act <b>has been sustained.</b>
<b>Decision (Allegation Two):</b>	The Tribunal has determined, on the balance of probabilities, that the allegation that on 1 May 2018, Councillor Bill Ludwig, the Mayor and a councillor of Livingstone Shire Council, engaged in misconduct as defined in 176(3)(b)(ii) of the <i>Local Government Act 2009</i> (the Act), in that his involved a breach of the trust placed in the councillor in that his conduct

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	<p>was inconsistent with the local government principles in section 4(2)(a) ‘transparent and effective processes, and decision-making in the public interest’ and section 4(2)(e) ‘ethical and legal behaviour of councillors and local employees’ in that Councillor Bill Ludwig did not deal with a real or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Act <b>has not been sustained.</b></p>
<p><b>Reasons (Allegation One):</b></p>	<ol style="list-style-type: none"> <li>1. Allegation One alleged that during a Council meeting on 2 May 2017, the Councillor failed to declare a conflict of interest. This conflict involved a donation the Councillor received from Company A, and a later Council agenda item involving Mr X (where Mr X was the CEO of Company A).</li> <li>2. Though the Councillor admitted to engaging in the conduct in his communications with the Office of the Independent Assessor, it is a matter for the Tribunal to determine whether the conduct engaged in by the Councillor amounts to misconduct.</li> <li>3. The Councillor did not contest any of the following facts: <ol style="list-style-type: none"> <li>a. He received an electoral donation of \$1,000 from Company A during the lead up to the bi-election for the Council held on 9 November 2013;</li> <li>b. On 2 May 2017, the Council held an Ordinary meeting. Agenda item 12.1 of that meeting referred to Mr X, CEO of Company A;</li> <li>c. The Councillor had been in telephone contact with Mr X prior to the Council meeting;</li> <li>d. The Councillor sought support to pass the agenda item from at least two of his fellow Councillors; and</li> <li>e. The Councillor moved the motion and voted on its acceptance.</li> </ol> </li> <li>4. On the information and evidence presented before it, the Tribunal finds: <ol style="list-style-type: none"> <li>a. That the Councillor had a personal interest for the purposes of the Act, as the Respondent’s personal interest was a clear financial benefit (consisting of \$1,000 of electoral funding);</li> <li>b. The public interest requires all Councillors and local government employees to participate in ‘transparent and effective processes, and decision-making in the public interest’ as well as ‘ethical and legal behaviour’;</li> <li>c. The Councillor’s personal interest – an electoral donation – was clearly in conflict with this public interest;</li> <li>d. The Councillor could also have had a perceived conflict of interest, as a reasonable and fair-minded observer aware of the matter would have concluded there existed a real possibility of the Respondent not bringing a fair and impartial mind to the decision;</li> </ol> </li> </ol>

	<p>e. The Councillor took no action to declare any conflict of interest or do anything to notify the meeting of the conflict.</p> <p>5. This failure to notify the meeting was a breach of the trust reposed in him as a Councillor. As the Mayor, the Councillor was required by the Act to set a high standard of personal probity and honesty in “leading and managing meetings of the local government at which the mayor is the chairperson”.</p>
<p><b>Reasons (Allegation Two):</b></p>	<ol style="list-style-type: none"> <li>1. Allegation Two involved an allegation that during a Council meeting on 1 May 2018, the Councillor failed to declare a conflict of interest. This conflict involved a donation the Councillor received from Mr M, who was one of the directors of Company B (Mr M was one of several directors and shareholders of Company B).</li> <li>2. As part of its hearing, the Tribunal received submissions from the Councillor which raised some questions about Council’s decision on 1 May 2018. These involved questions about the notetaking by Council during the meeting. The submissions were very persuasive, and the Office of the Independent Assessor did not contest or object to those claims.</li> <li>3. The Councillor also claimed that he was asked to simply approve the resolution (even with the incorrect purchaser) to allow negotiations between Council and the purchaser to continue.</li> <li>4. The evidence filed by the IA does not rebut the Councillor’s submissions, nor did the IA take the opportunity to file further evidence or submissions.</li> <li>5. The IA’s submissions also do not take the Tribunal sufficiently far on the point of how and on what basis the Councillor’s conduct is said to breach the trust reposed in him. Not all breaches of the Act will be breaches of trust.</li> <li>6. As the IA carries the onus of proof, the Tribunal was left in the position where the IA has neither sufficiently proven its case nor rebutted submissions by the Councillor that advance a reasonable excuse or justification for the relevant conduct.</li> </ol>

**3. Orders and/or recommendations (s150AR - disciplinary action):**

<p><b>Date of orders:</b></p>	<p>11 November 2022</p>
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<p><b>Order/s and/or recommendations:</b></p>	<p>Having found that the Councillor engaged in misconduct, pursuant to section 150AR(1) of the Act, the Tribunal orders that pursuant to section 150AR(1)(b)(ii) of the Act, Cr Ludwig is reprimanded.</p>
<p><b>Reasons:</b></p>	<ol style="list-style-type: none"> <li>1. As Allegation Two was not sustained, section 150AR is not enlivened and so no orders are required.</li> <li>2. Regarding Allegation One, the Tribunal may consider both the Councillor’s prior misconduct and allegations which the Councillor admitted.</li> <li>3. On those grounds, the Tribunal accepts the evidence of the Councillor’s prior misconduct, though notes that the conduct occurred in 2008 and a decision was handed down in 2011. Not only was this some six years prior to the conduct alleged in this matter, but also no penalty was issued in that case.</li> <li>4. The Tribunal notes the Councillor admitted to the conduct at the earliest possible stage of the Applicant’s investigation, saving the Applicant, the Tribunal and therefore the Council the costs involved in a lengthy investigation and disputed Tribunal proceeding.</li> <li>5. However, the Tribunal wishes to sound a note of caution with one aspect of the Councillor’s submissions where he said:  <i>By virtue of the fact <b>all Councillors, including the complainant... had previously been made aware of the electoral gift including the quantum of same and the reasons I stated as to why I believed I could deal with the perceived COI impartially, objectively and with the community’s best interest in mind...</b> (emphasis added)</i></li> <li>6. The Tribunal has been at pains to remind Councillors in other matters that their belief in what other Councillors might or might not know about their personal interests is of absolutely no relevance in determining whether a conflict of interest exists, or whether the Councillor has dealt with it in a transparent and accountable way.</li> <li>7. The Tribunal wishes to reiterate that point here. Councillors may not rely on the notion that their personal interests are such “<i>common knowledge</i>” amongst their peers on the Council that they are then freed from having to declare those interests where they may amount to a conflict with the public interest.</li> <li>8. The Respondent received a payment from a company and was then involved in Council deliberations regarding a decision that would have benefited an individual with direct connections to that company.</li> <li>9. The Tribunal also notes that the prior misconduct finding in 2011 also involved failures of the Councillor to properly deal with conflicts of interest. This raises the possibility that he did not adequately</li> </ol>

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	<p>appreciate the seriousness of the earlier misconduct findings against him.</p> <p>10. Therefore, the Tribunal issued an order that the Councillor is reprimanded. This finding should drive home the importance of dealing with conflicts of interest in a transparent and accountable way in a manner that educates the Respondent and all other Councillors in similar circumstances.</p>
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