

Councillor Conduct Tribunal: Expedited Misconduct Application Summary of Decision and Reasons

Local Government Act 2009: Sections 150DV, Practice Direction #1 of 2022 and section 150AS(2)(c) and 150AS(5)

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

- (i) Contested Misconduct Application filed 13 February 2023
- (ii) Non-contested Misconduct Application filed 27 February 2023

Tribunal Reference	F23/1169
Subject Councillor	Councillor Andrew Ireland, Mayor (the Respondent)
Council	Livingstone Shire Council (the Council)

2. “The Agreement” for the Expedited hearing

The Expedited hearing took place pursuant to the Tribunal Practice Direction #1 of 2022 and pursuant to the terms of the Agreement reached between the Councillor and the Independent Assessor.

The Agreement is attached - Annexure A.

3. Decision (section 150AQ Local Government Act 2009)

Date:	25 August 2023
Decision:	The Tribunal has determined on the balance of probabilities that Allegation One, Allegation Two and Allegation Three, are sustained. Annexure C – Allegations and Particulars (attached) Annexure C provides the full details of Allegation One, Allegation Two and Allegation Three and the Particulars of each allegation.
Reasons:	The Agreement

	<p>1. The Agreement reached between the parties confirmed the Respondent admitted to the misconduct as alleged by Allegation One, Allegation Two and Allegation Three and the associated particulars. (see Annexure A and C).</p> <p>2. The Councillor elected by the Agreement to resolve this matter by the Tribunal’s expedited hearing process.</p> <p>The Expedited Hearing - 27 June 2023.</p> <p>3. The jurisdiction and the procedure for the Expedited hearing is provided by the Tribunal Practice Direction pursuant to section 150DV of the Act¹. The Practice Direction is publicly available on the Councillor Conduct Tribunal website. The hearing for expedited matters is conducted on the documents pursuant to section 150AP(2)(a) of the Act “if the Tribunal considers it appropriate in all the circumstances; or (b)” if the parties agree”.</p> <p>4. In conducting the hearing the Tribunal considered the terms of the Agreement, the evidence provided by the Applicant the written submissions provided by the Respondent’s legal representation together with the Applicant’s submissions.</p> <p>5. Notwithstanding the Councillors admission to the conduct as alleged, the Tribunal must be satisfied before reaching a final decision that the evidence is sufficient to prove to the civil standard of proof that the conduct did amount to misconduct and a breach of trust by the Respondent.</p> <p>What is misconduct?</p> <p>6. Section 150L(1)(b)(i) of the <i>Local Government Act 2009</i> (the Act), in force at the date of the alleged conduct, provides-</p> <p>(a) The conduct of a councillor is <i>misconduct</i> if the conduct-</p> <p>(b) is or involves –</p> <p style="padding-left: 40px;">(i) a breach of the trust placed in the councillor, <i>either knowingly or recklessly - (emphasis in the original).</i></p> <p>The Local Government principles</p> <p>7. It is alleged the Respondent’s conduct was inconsistent with the local government principles² that require –</p> <p style="padding-left: 40px;">i. (s4(2)(a))...“transparent, and effective processes, and decision-making in the public interest’; and...</p> <p style="padding-left: 40px;">ii. (s4(2)(e)) ‘ethical and legal behaviour of councillors’...</p> <p>8. The Misconduct application contained three separate allegations made against the Councillor. The allegations alleged the conduct represented a breach of the trust placed in the Councillor.</p>
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¹ Practice Direction No 1 of 2022 General Hearing protocol – Expedited misconduct applications -effective 18 July 2022 [replaced by Practice Direction No 1 2023 – Expedited misconduct applications effective 12 April 2023].

² LGA Section 4 (2)(a); s4(2)(e).

	<p>9. The Applicant placed reliance in all allegations on the <i>Local Government Principles</i>.³ The principles impose a general obligation on all councillors ... “performing a responsibility under this Act to do so in accordance with the local government principles”.⁴</p> <p>10. The Tribunal took into account the obligations and responsibilities of the Respondent, as provided by Section 12 of the Act. This provision provides in part —</p> <p style="padding-left: 40px;">12(3) “All councillors have the following responsibilities-</p> <p style="padding-left: 40px;">12(3)(a) ensuring the local government-</p> <p style="padding-left: 40px;">...</p> <p style="padding-left: 40px;">(iii) complies with all laws that apply to local governments;” ...</p> <p>Furthermore councillors are required by section 12(3)(b) to provide ... “high quality leadership to the local government and the community;...”</p> <p>The conduct-</p> <p>11. Allegations One, Two and Three and the associated particulars of the conduct have a high degree of similarity. The only significant difference is that each investigation concerned a different councillor, councillor A, councillor B, and councillor C.⁵</p> <p>12. The Respondent in his capacity as Mayor undertook three investigations of suspected inappropriate conduct about complaints made against councillors A, B and C. The Respondent finalised the investigations and made adverse findings and recommendations and implemented disciplinary sanctions against each councillor.</p> <p>13. The Applicant alleged the findings and sanctions, to have been formed in a in a “way” that was not authorised by the Council’s <i>investigation policy</i> and procedures.⁶ The disciplinary sanctions were also published to the Councillor Conduct register.</p> <p>14. The procedures implemented by the Respondent contravened the Act and the provisions of the Council’s <i>investigation policy</i>. As a consequence Councillor A, Councillor B and Councillor C were denied the opportunity required by the investigation policy to:</p> <ul style="list-style-type: none"> a. participate in a process to reach an “early resolution”, which may have resulted in the complaint being withdrawn; (section 5.6 <i>investigation policy</i>); and b. to be afforded procedural fairness by an investigation process governed by natural justice; (section 5.2 <i>investigation policy</i>); and
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³ LGA section 4(2)

⁴ LGA section 4(1)(a).

⁵ The identifying details of each has been redacted from this Summary.

⁶ Livingstone Shire Council investigation policy sections: s5.2 Natural Justice; s5.6 & s12 -Early Resolution & withdrawal of complaint; s5.10 Council to consider findings.

	<p>c. for the matter to be considered fully by Council (section 5.10 <i>investigation policy</i>).”⁷</p> <p>15. The Council administration was alerted to the errors made by the Respondent during the investigation process on 13 January 2022 following the receipt of a written request from Councillor B for a copy of the Council <i>investigation policy</i>.⁸</p> <p>The Council’s <i>Investigation</i> policy</p> <p>16. The Council <i>investigation</i> policy was adopted by resolution of Council in November 2018. The policy governed the process for all inappropriate conduct investigations and was adopted in compliance with the requirements of section 150AE of the Act that provides by s150AE(1)-</p> <p>“A local government must adopt by resolution, a policy (an investigation policy) about how it deals with suspected inappropriate conduct of councillors referred by the assessor, to the local government to be dealt with.”</p> <p>Section 150AE(2) provides –</p> <p>“The Policy must-</p> <p>“(a) include a procedure for investigating the suspected inappropriate conduct of councillors; and...</p> <p>...2(c) be consistent with the principles of natural justice;” ...</p> <p>The Respondent’s knowledge of the Council’s investigation policy</p> <p>15. The evidence and circumstances confirmed the Respondent was not aware of the relevant provisions of the Act and the Council policy when he undertook the first investigation regarding Councillor A in November 2021. The Respondent’s submissions confirmed he was not motivated by ill-will or malice towards the three councillors,⁹ and he applied redundant procedures applicable to investigations conducted prior to December 2018.</p> <p>16. The Respondent’s explanation for the conduct included that he ...“lacked knowledge of the current legislative requirements and the contents of the Councillor Complaints <i>Investigation</i> Policy... and [he] had not received specific training about his role in managing investigations of suspected councillor inappropriate conduct.”¹⁰</p> <p>17. Two further investigations were subsequently undertaken and finalised by the Respondent in January 2022 and again the Council</p>
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⁷ Particular g Allegation One; Particular i Allegation Two; Particular i Allegation Three.

⁸ Agreed Statement of Facts at [88].

⁹ Respondent’s submissions on sanctions 16 June 2023 at [4] and [8].

¹⁰ Respondent’s submissions on sanctions 16 June 2023 at [8].

investigation policy and the provisions of the Act were not considered and applied.

24 November 2021 Meeting Council Officer and the Respondent regarding the Investigation policy and procedures.

The Statement of Agreed facts confirmed the Respondent was alerted to the existence of the Council investigation policy when he met with the Council Governance co-ordinator. A follow -up email was provided from the Governance co-ordinator to the Respondent on the same day, 24 November 2021, that specifically referred to the provisions contained in the “Councillor Complaints Investigation Policy.”¹¹

18. The Respondent having been alerted to the existence of the policy, was found by the Tribunal to have upon receiving this notification failed to take steps to obtain a copy of the policy and become familiar with its provisions before undertaking the further investigations, on 11 and 12 January 2023.
19. The Council policy was noted by the Tribunal to have clear procedures that *must* be applied by the investigator. The procedures to be applied by the Respondent included the principles of natural justice, considerations of a possible early resolution by mediation and withdrawal of the matter (s5.5), and upon finalisation of the investigation (s5.10) the report be provided to Council to decide by resolution and pursuant to section 150AG(1) of the Act, whether the councillor has engaged in inappropriate conduct.
20. Furthermore the policy provides the disciplinary sanctions arising from the investigations must be made by Council resolution pursuant to section 150AH of the Act.
21. The Respondent as the Mayor and investigator was not authorised to make disciplinary penalties and sanctions against councillors A, B and C.

Findings

22. The Agreement reached between the parties (Annexure A) and the agreed evidence confirmed to the satisfaction of the Tribunal the Respondent did contravene the provisions of the Council investigation policy and the Act, when he erroneously applied rescinded procedures contained in the former Act that had not been applicable since 3 December 2018.
23. The Tribunal considered the explanation for the conduct and provided by submissions on behalf of the Respondent that ‘he lacked knowledge of the *investigation policy* and had not received specific training regarding inappropriate conduct investigations.¹² The Tribunal noted the Respondent was elected as a councillor

¹¹ Agreed Statement of Facts at [59-61].

¹² Respondent’s submission 16 June 2023 at [4].

	<p>and Mayor at the March 2020 Local Government elections, and had been in his role as Mayor and councillor for approximately 20 months prior to conducting the first investigation into the conduct of councillor A. It was found a 20 month period was sufficient time for the Respondent to research and become familiar with the Council investigation policy and protocol before undertaking such investigations.</p> <p>24. The employment history and academic background of the Respondent was considered relevant to the explanation for his conduct arising from lack of training and occurring erroneously. The Respondent, as the Mayor and holding a leadership role, is required to undertake the necessary steps and personal research endeavours to acquire appropriate knowledge to fulfil his obligations and responsibilities required by sections 4 and 12 of the Act.</p> <p>25. The Respondent’s prior employment experience included working with Local Government in a consulting role and being “directly employed within in it” ...in roles such as Chief Operating Officer, Chief Executive Officer and General Manager.¹³ The Tribunal considered the employment history in the context of the Respondent’s extensive academic qualifications including postgraduate and undergraduate degrees in both accounting and management.¹⁴ The Tribunal found that any lack of knowledge of Council resolutions and the Council <i>investigation policy</i> could have been easily rectified by the research efforts and endeavours of the Respondent.</p> <p>26. Elected officials, including councillors and the Mayor, are tasked with many responsibilities and obligations and cannot at all times rely on the Local Government and the Department to provide dedicated training in relation to every legislative provision and every policy adopted and relevant to the exercise of their duties.</p> <p>Breach of trust</p> <p>27. The Act does not provide an exemption for errors caused by careless and reckless conduct. The Tribunal found the Respondent was sufficiently skilled and experienced to research the applicable provisions of the Act and the investigation policy and thereby ensure his actions as the Mayor and investigator were consistent with the provisions of the Act and the policy.</p> <p>28. Accordingly the Tribunal finds, in noting the Respondent’s admission to the conduct (Annexure A), that he contravened the Act and the investigation policy when he undertook three investigations and made adverse findings against three councillors, in a ‘way’ that was not authorised by the Act or the Council’s investigation policy.</p> <p>29. The Tribunal is satisfied on the balance of probabilities the conduct was sufficient to reach the threshold of at least a reckless</p>
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	<p>breach of the trust placed in the councillor. “The conduct was found to be inconsistent with the local government principles by section 4(2)(a) and 4(2)(e)) of the Act and constitutes misconduct as defined by section 150L(1)(b)(i) of the Act.</p> <p><i>Human Rights considerations</i></p> <p>30. The Tribunal was satisfied it had discharged its obligation to protect the Councillor’s human rights pursuant to the Human Rights Act 2019 (Qld) by conducting a procedurally fair hearing and decision -making process pursuant to the provisions of the Act.¹⁵ The Tribunal considered the provisions of the Human Rights Act 2019 (Qld) and the Local Government Act were compatible with respect to conducting a procedurally fair hearing.</p>
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4. “Orders and/or recommendations (s150AR - disciplinary action):

Reasons:	<p>31. The Tribunal’s jurisdiction to determine orders and recommendations is provided by sections 150AR and 150AQ(2)(a) and (2)(c) of the Act.</p> <p>32. The jurisdiction is not punitive and is considered to be protective with the focus of the orders directed towards achieving high standards of councillor conduct and reinforcing community expectations of integrity and ethical conduct by elected councillors. These standards may be upheld by orders that are directed to education, counselling, public admissions of misconduct, and can also be directed to deterrence or be compensatory.</p> <p>33. The Tribunal considered the submissions in mitigation of penalty received from both the Respondent and the Applicant’s representatives. The Respondent submitted that prior to 3 December 2018, a different procedure applied to the investigation of inappropriate conduct by the Mayor, that resembled the ‘way’ the Respondent managed the investigations concerning Councillors A, B and C. The explanation was that as he had previously worked in local government when this (now rescinded) provision applied he erroneously applied the same process.¹⁶ The Tribunal found this submission to be an aggravating circumstance as the Respondent failed to apply his current local government experience and knowledge, his academic skills of research obtained from postgraduate university studies, and his</p>
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¹³ Agreed Statement of Facts at [1-3].

¹⁴ *ibid* at [1-3].

¹⁵ LGA section 213(1-3); section 150AP.

¹⁶ Submissions King & Co Lawyers on behalf of the Respondent -16 June 2018 at [5].

	<p>personal endeavours to understand and read relevant policies and procedures.</p> <p>34. A further submission was that the Respondent relied on advice from Council administration and was misled as it was incorrect.¹⁷ The Tribunal accepts the evidence in part confirms some information provided by the Council administration was incorrect, however does not consider this submission to be a satisfactory explanation or excuse for the Respondent's failure to locate and read the policy having been advised of its existence by a Council officer on 24 November 2021.</p> <p>35. The Respondent as an elected local government official and holding a leadership position as Mayor and councillor, is required to demonstrate a sound understanding and detailed knowledge of the governing legislation and policies. To this end the Respondent cannot expect to rely solely on the support and information provided by the Council administration. This would not be a practical scenario on a daily basis, and the councillor must turn to his own resources to locate information, policies and relevant legislative provisions to supplement gaps or deficiencies in his own knowledge.</p> <p>36. In reaching the final orders and sanctions certain mitigating factors were considered by the Tribunal to be in the Respondent's favour including:</p> <ol style="list-style-type: none"> a. The early admission and acceptance of the conduct as alleged.¹⁸ b. That there was no motivation of malice or ill-feeling by the Respondent towards any of the three councillors involved in the investigations.¹⁹ c. The election to proceed by way of an Expedited hearing to fast track the Tribunal hearing process including the co-operation with the Applicant's investigation process.²⁰ d. The Respondent's voluntary attendance at an in-service session upon being informed of his errors, conducted in February 2022, concerning the provisions and procedures of the <i>investigation policy</i> and the relevant legislation.²¹ e. The Respondent has no previous disciplinary history and was serving in his first term as a councillor. <p>37. The Tribunal considered the Respondent demonstrated some insight into the nature of his conduct and of the adverse</p>
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¹⁷ Ibid at [8]; Respondent's submissions 16 June 2023 at [9].

¹⁸ Applicant's submissions 23 June at [23]; Respondent's submissions 16 June 2023 at [9].

¹⁹ Respondent's submissions 16 June 2023 at [8].

²⁰ Respondent's submission 16 June 2023 at [9].

²¹ Ibid at [11].

	<p>consequences that arose. A training order was not considered to be appropriate by the Tribunal as the Respondent has attended relevant in-service training.</p> <p>38. The Respondent submitted that no action be taken against him as his conduct was inadvertent and he has demonstrated honesty and integrity of office.²² The Applicant proposed by submissions that an appropriate order is the Respondent make a public admission at a Council meeting that he engaged in misconduct as alleged by the three allegations.</p> <p>39. The Tribunal considered the conduct was reckless and the adverse consequences to the three councillors at the time of the investigation was significant, and consequently suitable protective measures are required to prevent a recurrence of further “inadvertent conduct.” The conduct was also noted to be repetitive, occurring on three occasions between November 2021 and January 2022.</p> <p>40. The measures adopted are at the lower end of the disciplinary spectrum and require the Councillor to make an admission to the Council of the misconduct that occurred with respect to each allegation. It is further considered appropriate that the Councillor reimburse the Local Government for part of the costs incurred by these proceedings.</p> <p>41. On balance the Tribunal is satisfied the sanctions are a reasonable, appropriate and proportionate measure to hold the Councillor to account and uphold public confidence. The balance struck is fair and the consequences are not disproportionate to the nature and gravity of the conduct that led to the misconduct findings and sanctions in relation to Allegation One, Allegation Two and Allegation Three.</p>
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5. Tribunal Orders (section 150AR-disciplinary action):

Date of orders:	25 August 2023
Orders:	<p>The Tribunal orders pursuant to sections 150AR(1)(b)(i) and 150AR(1)(b)(v) of the Act Councillor Ireland is to:</p> <ul style="list-style-type: none"> a. Make a public admission at the next Council meeting that he engaged in misconduct; and b. Reimburse the local government for the amount of \$1200.00 representing a contribution to part of the costs incurred by the local government arising from these proceedings.

²² Respondent’s submissions at [12]

	<p><i>The public admission and the payment to be made within 90 days from the date these orders are provided to the Councillor by the Tribunal registry.</i></p>
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ANNEXURE A

AGREEMENT REACHED BETWEEN THE APPLICANT AND THE COUNCILLOR

Office of the **Independent Assessor**



Agreement of parties for matter to be expedited

Practice Direction #1 of 2022 – General Hearing Protocol – Expedited Misconduct Applications, effective 18 July 2022 (section 150DV Local Government Act 2009)

Application Details:

CCT Matter Reference Number	F23/1169
Application filed on	13 February 2023
Name of Subject Councillor	Andrew Ireland, Mayor
Council	Livingstone Shire Council

Compliance with Practice Direction #1 of 2022

1. Councillor Ireland accepts the allegations the subject of the Independent Assessor's Application dated 13 February 2023.
2. Councillor Ireland agrees that the allegations the subject of this Application constitute misconduct.
3. Councillor Ireland accepts the facts as set out in the Agreed Statement of Facts which is attached to that Application.
4. Councillor Ireland accepts the evidence contained in the Brief of Evidence which is attached to that Application.
5. The allegations, facts and evidence filed by the Independent Assessor, are not contested and the parties agree for this matter to be expedited to the Councillor Conduct Tribunal pursuant to Practice Direction #1 of 2022 – General Hearing Protocol – Expedited Misconduct Applications¹:

Signature:

Councillor Ireland
Livingstone Shire Council

Dated: 22 February 2023

Signature:

Kathleen Florian
Independent Assessor

Dated: 27/02/23

¹ https://www.statedevelopment.qld.gov.au/__data/assets/pdf_file/0031/73777/practice-direction-1-hearing-protocol-expedited-misconduct-applications.pdf -direction-1-hearing-protocol-expedited-misconduct-applications.pdf

ANNEXURE B
AFFIDAVIT OF THE COUNCILLOR

COUNCILLOR CONDUCT TRIBUNAL

FILE NUMBER: F23/1169

Applicant: **Independent Assessor**

AND
Respondent: **Councillor Andrew Ireland (Mayor)**

AFFIDAVIT OF ANDREW IRELAND


I, Andrew Ireland, of care of Livingstone Shire Council Chambers, Lagoon Place, Yeppoon in the State of Queensland state on oath:

1. I am the respondent in this matter.
2. I confirm that: -
 - a. The agreement reached with the Independent Assessor (the applicant) dated 27 February 2023 confirms the acceptance by me of the allegation and particulars and Statement of Facts as alleged; and
 - b. I was afforded a reasonable opportunity to obtain independent legal advice prior to signing the agreement.

All the facts and circumstances herein deposed to are within my own knowledge, save such as are deposed to from information only, and my means of knowledge and sources of information appear in this my affidavit.

Sworn by Andrew Ireland on the 15th day of June, 2023 at Yeppoon in the presence of:


.....
Deponent


.....
Solicitor/Commissioner for
Declarations/Justice of the Peace

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AFFIDAVIT
Filed on Behalf of Andrew Ireland, Respondent

King & Company
Level 7, 95 North Quay,
BRISBANE QLD 4001
Ph: (07) 3243 0000 Fax: (07) 3236 1885
Ref: TFC:AA25634



ANNEXURE C

ALLEGATIONS AND PARTICULARS

Particulars:	<p>Allegation One</p> <p>It is alleged that on or about 11 November 2021, Councillor Andrew Ireland, a councillor and Mayor of Livingstone Shire Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the Local Government Act 2009 (Qld) ('the 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 the local government principles of 'transparent, and effective processes, and decision-making in the public interest', as contained in section 4(2)(a) of the Act, and 'ethical and legal behaviour of councillors, local government employees and councillor advisors', as contained in section 4(2)(e) of the Act.</p> <p>The particulars of the alleged conduct which could amount to misconduct are as follows:</p> <ol style="list-style-type: none">a. Councillor Andrew Ireland was at all material times the Mayor of Livingstone Shire Council ('council').b. On 9 June 2021, the Office of the Independent Assessor ('OIA') referred the suspected inappropriate conduct of Councillor A to council to investigate ('the matter') pursuant to section 150W(1)(b) of the Local Government Act 2009 (Qld) ('the Act').c. The OIA's referral included a recommendation that the matter be considered for early resolution under section 150AC(3) of the Act.d. Consistent with section 150AE of the Act, council had in force at all material times a Councillor Complaints Investigation Policy, which:<ol style="list-style-type: none">i. provided that the Councillor Complaints Investigation Policy applies to investigations and determinations of complaints about alleged inappropriate councillor conduct referred to council by the OIA;ii. provided that the Mayor is the investigator for suspected inappropriate councillor conduct referred to council (except in circumstances not relevant to the present matter);iii. set out the steps for considering early resolution of a matter, including that:<ol style="list-style-type: none">A. before investigating a matter, the investigator must consider whether early resolution would be appropriate, taking into account any recommendation from the OIA;B. early resolution is only available if both parties agree; and
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	<p>C. if a matter is resolved by way of early resolution, the Councillor Conduct Register will reflect that the complaint was withdrawn.</p> <p>iv. Set out the requirements for finalising an investigation, including that:</p> <p>A. the subject councillor be afforded natural justice prior to any adverse formal findings or orders;</p> <p>B. the investigator must provide a report to council; and</p> <p>C. that council must then consider whether the councillor has engaged in inappropriate conduct and, if so, what action it will take.</p> <p>e. On or about 11 November 2021, Councillor Ireland finalised the matter by way of signing a letter of reprimand to Councillor A, which relevantly stated:</p> <p>... I support the reasonable suspicion of the OIA and find that your conduct is inappropriate and in breach of section 150(1)(a) of the Local Government Act 2009...</p> <p>This letter constitutes a written formal reprimand for inappropriate conduct.</p> <p>f. Council’s publicly available Councillor Conduct Register was subsequently updated to include a record stating that Councillor A had engaged in inappropriate conduct.</p> <p>g. By finding that Councillor A had engaged in inappropriate conduct, Councillor Ireland;</p> <p>i. acted inconsistently with section 150AG(1) of the Act, which required the local government, not the investigator, to decide whether Councillor A had engaged in inappropriate conduct and, if so, what disciplinary action to take;</p> <p>ii. failed to comply with council’s Councillor Complaints investigation Policy by:</p> <p>A. failing to follow the steps required for considering whether the matter could be resolved by early resolution as set out in sections 5.6 and 5.12 of the policy, when this was also a recommendation made by the assessor in accordance with section 150AC(3) and not varied by resolution of council;</p> <p>B. failing to provide Councillor A with natural justice, as required by section 5.2 of the policy; and</p> <p>C. finding that Councillor A had engaged in inappropriate conduct and deciding on a disciplinary order, without the matter being considered and decided by council, as required by section 5.10 of the policy.</p>
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- iii. failed to comply with the local government principles of ‘transparent, and effective processes, and decision-making in the public interest’, as contained in section 4(2)(a) of the Act, and ‘ethical and legal behaviour of councillors, local government employees and councillor advisors’, as contained in section 4(2)(e) of the Act.
- h. As a consequence, Councillor A was denied the opportunity for:
 - i. ‘early resolution’ which may have resulted in the complaint being withdrawn;
 - ii. natural justice; and
 - iii. the matter to be considered fully by council.
- i. As such the conduct is alleged to be a breach of the trust placed in Councillor Ireland as a councillor, either knowingly or recklessly.

Allegation Two

It is alleged that on 12 January 2022, Councillor Andrew Ireland, a councillor and Mayor of Livingstone Shire Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the Local Government Act 2009 (Qld) (‘the 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 the local government principles of ‘transparent, and effective processes, and decision-making in the public interest’, as contained in section 4(2)(a) of the Act, and ‘ethical and legal behaviour of councillors, local government employees and councillor advisors’, as contained in section 4(2)(e) of the Act.

The particulars of the conduct that amount to the alleged misconduct are as follows:

- a. Councillor Andrew Ireland was at all material times the Mayor of Livingstone Shire Council (‘council’).
- b. On 13 September 2021, the Office of the Independent Assessor (‘OIA’) referred the suspected inappropriate conduct of Councillor B to council to investigate (‘the matter’) pursuant to section 150W(1)(b) of the Local Government Act 2009 (Qld) (‘the Act’).
- c. Consistent with section 150AE of the Act, council had in force at all material times a Councillor Complaints Investigation Policy, which:
 - i. provided that the Councillor Complaints Investigation Policy applies to investigations and determinations of complaints about alleged inappropriate councillor conduct referred to council by the OIA;
 - ii. provided that the Mayor is the investigator for suspected inappropriate councillor conduct referred to council (except in circumstances not relevant to the present matter);

	<p>iii. set out the steps for considering early resolution of a matter, including that:</p> <ul style="list-style-type: none"> A. before investigating a matter, the investigator must consider whether early resolution would be appropriate, taking into account any recommendation from the OIA; B. early resolution is only available if both parties agree; and C. if a matter is resolved by way of early resolution, the Councillor Conduct Register will reflect that the complaint was withdrawn. <p>iv. set out the requirements for finalising an investigation, including that:</p> <ul style="list-style-type: none"> A. the subject councillor be afforded natural justice prior to any adverse formal findings or orders; B. the investigator must provide a report to council; and C. that council must then consider whether the councillor has engaged in inappropriate conduct and, if so, what action it will take. <p>d. On 24 November 2021, council’s Governance coordinator , met with Councillor Ireland to discuss the process.</p> <p>e. On that same day, following the meeting, the Governance coordinator sent an email to Councillor Ireland attaching relevant documents, including an email chain the Governance coordinator and council’s Chief Executive Officer (‘CEO’), in which she relevantly wrote:</p> <p>... upon completion of the investigation the Mayor will provide a report to the Council at a Council meeting, outlining the findings and any recommendations about dealing with the conduct. The Council will consider the finding and recommendation and decide whether the Councillor has engaged in inappropriate conduct, and if so, what action it will take under section 150AH of the LGA.</p> <p>f. On 12 January 2022, Councillor Ireland finalised the matter by way of signing a letter of reprimand to Councillor B, which relevantly stated:</p> <p>... I support the reasonable suspicion of the OIA and find that your conduct is inappropriate and in breach of section 150K(1)(a) of the Local Government Act 2009 ...</p> <p>Council Orders that, within 60 days of the date of this decision notice:</p> <ol style="list-style-type: none"> 1. A Letter of reprimand be issued to you, and 2. You make a public apology to the subject Officer(s) for your inappropriate conduct, at a meeting of Council that is open to the public.
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This letter constitutes a written formal reprimand for inappropriate conduct....

- g. Council's publicly available Councillor Conduct Register was subsequently updated to include a record stating that Councillor B had engaged in inappropriate conduct.
- h. By finding that Councillor B had engaged in inappropriate conduct and purporting to make orders on behalf of council, Councillor Ireland:
 - i. acted inconsistently with section 150AG(1) of the Act, which required the local government, not the investigator, to decide whether Councillor B had engaged in inappropriate conduct and, if so, what disciplinary action to take;
 - ii. failed to comply with council's Councillor Complaints Investigation Policy by:
 - A. failing to follow the steps required for considering whether the matter could be resolved by early resolution as set out in sections 5.6 and 5.12 of the policy;
 - B. failing to provide Councillor B with natural justice, as required by section 5.2 of the policy; and
 - C. finding that Councillor B had engaged in inappropriate conduct and deciding on sanction, without the matter being considered and decided by council, as required by section 5.10 of the policy.
 - iii. failed to comply with the local government principles of 'transparent, and effective processes, and decision-making in the public interest', as contained in section 4(2)(a) of the Act, and 'ethical and legal behaviour of councillors, local government employees and councillor advisors', as contained in section 4(2)(e) of the Act.
- i. As a consequence, Councillor B was denied the opportunity for:
 - i. 'early resolution' which may have resulted in the complaint being withdrawn;
 - ii. natural justice; and
 - iii. the matter to be considered fully by council.
- j. As such the conduct is alleged to be a breach of the trust placed in Councillor Ireland as a councillor, either knowingly or recklessly.

Allegation Three

It is alleged that on 11 January 2022, Councillor Andrew Ireland, a councillor and Mayor of Livingstone Shire Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the Local Government Act 2009 (Qld) ('the 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 the local government principles of 'transparent, and effective processes, and decision-making in the public interest', as contained in section 4(2)(a) of the Act, and 'ethical and legal behaviour of councillors, local government employees and councillor advisors', as contained in section 4(2)(e) of the Act.

The particulars of the conduct that amount to the alleged misconduct are as follows:

- a. Councillor Andrew Ireland was at all material times the Mayor of Livingstone Shire Council ('council').
- b. On 30 November 2021, the Office of the Independent Assessor ('OIA') referred the suspected inappropriate conduct of Councillor C to council to investigate ('the matter') pursuant to section 150W(1)(b) of the Local Government Act 2009 (Qld) ('the Act')
- c. The matter was originally the subject of a notification made to the OIA by Councillor Ireland, who had written that he expected that 'the Councillor be officially reprimanded and undergoes counselling in behaviour management'.
- d. The OIA's referral included a recommendation that the matter be considered for early resolution.
- e. Consistent with section 150AE of the Act, council had in force at all material times a Councillor Complaints Investigation Policy, which:
 - i. provided that the Councillor Complaints Investigation Policy applies to investigations and determinations of complaints about alleged inappropriate councillor conduct referred to council by the OIA;
 - ii. provided that the Mayor is the investigator for suspected inappropriate councillor conduct referred to council except in particular circumstances, including when the Mayor is the complainant;
 - iii. set out the steps for considering early resolution of a matter, including that:
 - A. before investigating a matter, the investigator must consider whether early resolution would be appropriate, taking into account any recommendation from the OIA;
 - B. early resolution is only available if both parties agree; and
 - C. if a matter is resolved by way of early resolution, the Councillor Conduct Register will reflect that the complaint was withdrawn.
 - iv. set out the requirements for finalising an investigation, including that:
 - A. the subject councillor be afforded natural justice prior to any adverse formal findings or orders;

	<p>B. the investigator must provide a report to council; and</p> <p>C. that council must then consider whether the councillor has engaged in inappropriate conduct and, if so, what action it will take.</p> <p>f. On 11 January 2022, Councillor Ireland finalised the matter by way of signing a letter addressed to Councillor C, which relevantly stated:</p> <p>... I support the reasonable suspicion of the OIA and find that your conduct is inappropriate and in breach of section 150K(1)(a) of the Local Government Act 2009...</p> <p>On the basis of the investigation Council orders that:</p> <ol style="list-style-type: none"> 1. Council C attend the scheduled training on 10 February 2021 “De-escalating aggressive and hostile language”, and 2. Councillor C attend a 1:1 coaching session with the Mayor to address the Councillor’s conduct. <p>g. Council’s publicly available Councillor Conduct Register was subsequently updated to include a record stating that Councillor C had engaged in inappropriate conduct.</p> <p>h. By finding that Councillor C had engaged in misconduct and purporting to make orders on behalf of council, Councillor Ireland:</p> <ol style="list-style-type: none"> i. acted inconsistently with section 150AG(1) of the Act, which required the local government, not the investigator, to decide whether Councillor C had engaged in inappropriate conduct and, if so, what disciplinary action to take; ii. failed to comply with council’s Councillor Complaints Investigation Policy by: <ol style="list-style-type: none"> A. conducting the investigation despite being the original complainant, in breach of section 5.5 of the policy; B. failing to follow the steps required for considering whether the matter could be resolved by early resolution as set out in sections 5.6 and 5.10 of the policy, when this was also a recommendation made by the assessor in accordance with section 150AC(3) and not varied by resolution of council; C. failing to provide Councillor C with natural justice, as required by section 5.2 of the policy; and D. finding that Councillor C had engaged in inappropriate conduct and deciding on sanction on behalf of council, without the matter being considered and decided by council, as required by section 5.10 of the policy. iii. failed to comply with the local government principles of ‘transparent, and effective processes, and decision-making in
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	<p>the public interest', as contained in section 4(2)(a) of the Act, and 'ethical and legal behaviour of councillors, local government employees and councillor advisors', as contained in section 4(2)(e) of the Act.</p> <ul style="list-style-type: none">i. As a consequence:<ul style="list-style-type: none">i. Councillor C was denied the opportunity for:<ul style="list-style-type: none">A. 'early resolution' which may have resulted in the complaint being withdrawn;B. natural justice;C. the matter to be considered fully by council; andii. Councillor Ireland acted as notifier, investigator, and decision-maker in the matter in circumstances where he might reasonably have been considered to have pre-judged the matter.j. As such the conduct is alleged to be a breach of the trust placed in Councillor Ireland as a councillor, either knowingly or recklessly.
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