

LOCAL GOVERNMENT ACT 1993

SECTION 440Q

STATEMENT OF REASONS FOR DECIDING NOT TO IMPOSE A PERIOD OF SUSPENSION UNDER SECTION 440O CLR PAUL NICHOLS – SINGLETON COUNCIL

1. I, Ross Woodward, Chief Executive, Division of Local Government, Department of Premier and Cabinet, having considered a departmental report prepared under section 440J of the Local Government Act 1993, am satisfied that there is insufficient evidence of misbehaviour on the part of Clr Nichols that would warrant his suspension from civic office.

RELEVANT LEGISLATION

2. "Misbehaviour is defined under section 440F of the Act as any of the following:
 - (a) a contravention by the councillor of this Act or the regulations,
 - (b) a failure by the councillor to comply with an applicable requirement of a code of conduct as required under section 440(5),
 - (c) an act of disorder committed by the councillor at a meeting of the council or a committee of the council,but does not include a contravention of the disclosure requirements of Part 2 of Chapter 14 of the Act.
3. Section 440H(1)(b) of the Act provides that the process for the suspension of a councillor for misbehaviour may be initiated by a request made by the Director-General to the council for a report from the council in relation to the councillor's alleged misbehaviour.
4. Section 440I(1) provides that the grounds on which a councillor may be suspended from civic office for misbehaviour are:
 - (a) the councillor's behaviour has:
 - (i) been disruptive over a period, and
 - (ii) involved more than one incident of misbehaviour during that period, and the pattern of behaviour during that period is of such a sufficiently serious nature as to warrant the councillor's suspension, or
 - (b) the councillor's behaviour has involved one incident of misbehaviour that is of such a sufficiently serious nature as to warrant the councillor's suspension.
5. Section 440J provides that the Director-General may arrange for a departmental report to be prepared into the matters raised by or connected with a request referred to in section 440H. The preparation of such a report is a prerequisite to a decision by the Director-General to suspend the councillor from office.
6. Section 745 provides that the Director-General may delegate to any person any of the Director-General's functions under the Act, other than the power of delegation. I have been delegated the power to refer this matter.

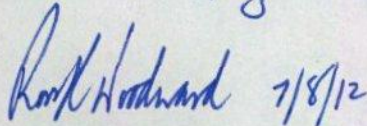
THE MATTER

7. It is alleged that Cllr Nichols breached the provision of the Local Government Act 1993 and clauses of Singleton Council's code of conduct in respect to the protection and management of confidential information provided during Council's consideration of the matter 'Supreme Court proceedings 4888/2010 Jones -v- Singleton Council' at an ordinary meeting of Council on the 15 March 2010.
8. It is further alleged that Cllr Nichols breached the provision of the Local Government Act 1993 and clauses of the Singleton Council's Code of Conduct in respect to the resolution of Council during Council's consideration of the matter "Supreme Court proceedings 4888/2010 Jones -v- Singleton Council" at an ordinary meeting of Council on the 15 March 2010.

REASONS FOR DECIDING NOT TO IMPOSE A PERIOD OF SUSPENSION

9. I have also carefully considered a departmental report prepared following an investigation of the matters.
10. In my view, there is insufficient evidence that Cllr Nichols committed an act of misbehaviour by breaching Council's code of conduct.
11. I observe that the nature of the resolution of Council on the 15 March 2010, by referencing a letter from the Jones brothers' solicitor, dated the 5 March 2010, had the effect of conveying what Council was willing to accept to settle this dispute.
12. I am satisfied that there is insufficient evidence that Councillor Nichols provided confidential information to the Jones brothers contrary to Council's code of conduct.
13. Further, I observe that on or about the 10 and 11 May 2010, Councillor Nichols could not have acted contrary to the resolution of Council from the 15 March 2010, which delegated the function of negotiating the disbursement of cost with the Jones brothers to the General Manager. This is because on the 1 April 2010, a Deed of Settlement was executed, effectively finalising the function for which the delegation existed.
14. Therefore, I am satisfied that this matter does not warrant any further action.

DATED: 7 August 2012

 Ross Woodward 7/8/12

Ross Woodward
Chief Executive, Division of Local Government,
Department of Premier and Cabinet