

## LOCAL GOVERNMENT ACT 1993

### SECTION 440Q

#### STATEMENT OF REASONS FOR DECIDING NOT TO IMPOSE A PERIOD OF SUSPENSION UNDER SECTION 440O

#### COUNCILLOR JOHN TATE – NEWCASTLE CITY 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 no further action in respect of the alleged misbehaviour of Councillor (now Mr) Tate is warranted.

#### RELEVANT LEGISLATION

2. "*Misbehaviour*" is defined under section 440F of the Act to mean 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 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 the period is of such a sufficiently serious nature as to warrant the councillor's suspension, or

- (iii) 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 determine or refer this matter.

### **THE MATTERS**

7. At a Council Meeting held on 13 April 2010 Councillor Tate participated in a matter relating to the modification of a Development Application in respect of which political donors to his 2007 State election campaign had an interest.
8. At a Development Applications Committee Meeting held on 8 June 2010 Councillor Tate participated in a matter relating to a Development Application in respect of which a political donor to his 2007 State election campaign had an interest.
9. At a Council Meeting held on 15 June 2010 Councillor Tate participated in a matter relating to a lease extension in respect of which political donors to his 2007 State election campaign had an interest.

### **REASONS FOR DECIDING TO TAKE NO FURTHER ACTION UNDER SECTION 440(1) OF THE ACT**

10. I have carefully considered the departmental report dated 21 August 2012, prepared in accordance with my authorisation of 23 March 2011 under section 440J of the Act.
11. Mr Tate was not a candidate for election on 8 September 2012. Accordingly, he ceased to hold civic office at midnight on 7 September 2012.
12. The sanctions available to me, as Chief Executive, and to the Local Government Pecuniary Interest and Disciplinary Tribunal have limited utility in circumstances where a councillor ultimately found to have committed misbehaviour under the Act has ceased to hold civic office.

13. Should a decision be made to refer this matter to the Tribunal pursuant to section 440N(1) of the Act, suspension from civic office or the suspension of any fee or other remuneration as provided for by section 482A(2)(c) or (d) will not be available to the Tribunal should that action be considered to be warranted.
14. Consequently, in the event of a finding by the Tribunal that Mr Tate committed misbehaviour in respect of the matters the subject of report, the actions available to the Tribunal would, effectively, be limited to the counselling or reprimand of a former councillor.
15. Given the significant level of public resources required to prosecute a matter such as this before the Tribunal, and the likely cost to Mr Tate of defending the matter, I do not believe that the public interest would be best served in pursuing this course.
16. Accordingly, notwithstanding the seriousness of the matters investigated and reported upon, I have determined to take no further action.

DATED: 22nd October 2012



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