



10 October 2023

Mr Brett Whitworth
Deputy Secretary, Local Government

Dear Mr Whitworth

Executive Director, Local Government v Paul Funnell NCAT decision 16 June 2023

I'm following up my original letter to you of 19 June 2023 about the implications of the two examples of unacceptable conduct by former Councillor Funnell. In particular that those examples of unsatisfactory conduct on 14 and 18 September 2020, predated an order made by former Deputy Director of your Office, Mr Tim Hurst, 5 February 2021.

At paragraph 20 Mr Hurst said:

I have considered and taken into account that this conduct occurred in a single episode, and the absence of any prior offending or post event conduct in the past two years and the lack of previous incidents of misconduct on the part of Cllr Funnell

Your Office's prosecution of Paul Funnell demonstrates that there was prior offending and previous incidents of misconduct by the former Councillor. A significant number of incidents in fact.

depa challenged the accuracy of that paragraph (and I understand so did the general manager of the Council) providing information about previous and subsequent incidents of misconduct.

For our part we sought a correction of the inaccuracy which was ignored, we made an application under GIPA for access to the reasoning (rather than the details of the investigation) but this was rejected by the OLG before our cheque would have even arrived in Nowra, we appealed unsuccessfully to NCAT, and appealed unsuccessfully against NCAT's decision.

We remain aggrieved and as a major stakeholder in the industry, with our members involved in planning and building and planning compliance more vulnerable than others to this kind of unacceptable behaviour. We can have no confidence in the OLG managing complaints against councillors until this error is corrected. The cover-up is shameful and dishonourable and needs to be corrected.

I write and ask that you acknowledge and correct this historic inaccuracy. We don't seek any retrospective action, but we want, deserve, your acknowledgement that the Office at the time did have knowledge of other complaints and unacceptable conduct. I ask that you agree to the following:

1. That the statements made in paragraph 20 were incorrect as the Office did have knowledge of other complaints, both previously and awaiting consideration.
2. That the paragraph should not have been published in that form at all, and that it resulted in a lesser penalty than if the previous and subsequent incidents had been properly considered and acknowledged.
3. That this wording, and the subsequent actions of your Office to ignore entreaties from depa and the Council to correct the statement was unacceptable and regrettable.
4. That this acknowledgement be provided in writing to depa and also to the General Manager of the Council who was similarly aggrieved, and can be distributed to our members.
5. That you apologise to both depa and the Council for these failures and the subsequent steps taken by the Office to prevent access to material which would have demonstrated the accuracy of our concerns and the inaccuracy of paragraph 20.

We have been persistent with our concerns now for more than two and a half years and trust that under your stewardship this unacceptable behaviour by the Office can be remedied and won't be repeated.

Yours sincerely



Ian Robertson
Secretary