



## Office of Local Government

5 O'Keefe Avenue NOWRA NSW 2541  
Locked Bag 3015 NOWRA NSW 2541

Our Reference:  
Your Reference:  
Contact:  
Phone:

Brett Whitworth  
0437 868 167

Mr Ian Robertson  
Secretary  
DEPA  
106/118 Great North Road  
Five Dock NSW 2046

Dear Mr Robertson

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

I am very sorry that I have not replied to you earlier.

While I accept your criticism of the Office of Local Government (OLG), I believe the action to commence proceedings against Mr Funnell in the NSW Civil and Administrative Tribunal demonstrates the seriousness of this particular complaint, as well as the need for a strong sanction.

I also accept the criticism that OLG needs to make our complaints reviews faster and more strategic. As you can appreciate this is a challenge of policy, resources and a history of cautious decision making.

You have asked me a number of questions about the Funnell matter.

I have been able to confirm that the Office of Local Government had received a number of complaints that referenced multiple instances of [at that time] alleged misconduct. A decision was taken to deal with these complaints separately, rather than compiling them together into one omnibus complaint. One of the lessons for me is whether we should be considering an early escalation of the worst allegations direct to NCAT, rather than undertaking individual investigations.

On your question about the number of 'incidents', I think it is abundantly clear there were numerous incidents that suggested a pattern of behaviour. However, I don't want to specify the actual number as that may breach my obligations to ensure privacy is upheld on conduct matters. This is an important principle because it protects those that are innocent as well preventing the 'weaponisation' of complaints.

I understand OLG was aware of the September 2020 incidents you have flagged very soon after the conduct occurred. This means OLG would have been aware of

T 02 4428 4100 F 02 4428 4199 TTY 02 4428 4209  
E [olg@olg.nsw.gov.au](mailto:olg@olg.nsw.gov.au) W [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au) ABN 20 770 707 468

**\*A146008\***

multiple cases of alleged (and now proven) misconduct when Deputy Secretary Hurst made a determination on 5 February 2021.

I believe it was unfortunate that Mr Hurst's February determination referenced at paragraph 20 the words: "*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 Clr Funnell.*" By the time the determination was ultimately made OLG was clearly aware there were a number of other incidents, while (and unfortunately), the determination implies there were none.

The challenge for OLG, in fact the challenge for any regulatory authority undertaking prosecutions, is ensuring their decisions are not brought undone by failing to apply procedural fairness. My predecessor had also chosen to deal with just the single incident from November 2018 and had to contain their decision making to just that event in order not to appear biased and to protect his decision.

There are two further but important lessons for me here: firstly, I will need to be careful not to make statements such as made by Mr Hurst in paragraph 20 of his February determination; and secondly, OLG created the problem of confusion around how many incidents of alleged misconduct existed by separating the complaints.

As you know the Audit Office has been critical of how the OLG conducts its regulatory activities and needs to be both more strategic and take a risk based approach – in hindsight the case of former Clr Funnell is one that we should have prioritised for early consideration by NCAT given the egregious and escalating nature of the conduct.

I'm sorry if the behaviour of OLG appeared to be one of cover up, but the team wanted to protect the integrity of the process.

I appreciate that you would have liked to see the investigation against former Clr Funnell conducted differently. I cannot address your fundamental concern, but I can offer you that, as a result of our correspondence, I have learnt a number of lessons about how the comments of the OLG are perceived in the investigation of complaints and misconduct.

Yours sincerely



12 December 2023

**Brett Whitworth**  
Deputy Secretary, Local Government



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

A handwritten signature in blue ink, appearing to read 'Ian Robertson', with a long horizontal flourish extending to the right.

Ian Robertson  
Secretary



19 June 2023

Mr Brett Whitworth  
Executive Director, Local Government, DPIE

Dear Brett

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

I wondered why your prosecution was limited to two examples of misconduct by former councillor Funnell, when OLG would have had at least 20 to choose from, and why you would propose a disqualification for only two years, effecting only one Council election, when the multitude of complaints would warrant longer and where he had indicated he had no intention of standing?

The two examples, 14 and 18 September 2020, predated an order made by former Deputy Director of your Office, Mr Tim Hurst, on 5 February 2021, (attached), and where 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.*

1. Why did the prosecution identify only two instances of alleged misconduct when there would be potentially 20 instances that could have been included?
2. Why did the prosecution call for disqualification that would only affect this one local government election, when the multitude of instances would warrant a longer disqualification?
3. How many instances were available to you to be included in the prosecution?
4. Do you acknowledge that the two instances from September 2020 were brought to the Office's attention "*very soon after the incidents*"?
5. Do you acknowledge that the two instances from 2020, both predate the determination by Mr Hurst on 5 February 2021, demonstrate that Mr Hurst's words "*the absence of any prior offending or post event conduct in the past two years and the lack of previous incidents of misconduct*", were factually incorrect, and that soft penalty, based on that incorrect understanding, unreasonably advantaged Mr Funnell, and disadvantaged the complainants?

Yours sincerely

A handwritten signature in blue ink, appearing to read "Ian Robertson", with a long, sweeping horizontal line extending to the right.

Ian Robertson  
Secretary

## **LOCAL GOVERNMENT ACT 1993**

### **SECTION 440I**

#### **STATEMENT OF REASONS FOR TAKING DISCIPLINARY ACTION UNDER SECTION 440I**

#### **COUNCILLOR PAUL FUNNELL – WAGGA WAGGA CITY COUNCIL**

1. I, Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, having considered a departmental report prepared under section 440H of the *Local Government Act 1993*, am satisfied that Councillor Paul Funnell of Wagga Wagga City Council has engaged in misconduct pursuant to s.440F(1)(b) of the *Local Government Act 1993*; and
2. That by Order, I direct he:
  - cease engaging in the misconduct. Specifically, to cease engaging in conduct that causes, comprises or involves intimidation or verbal abuse and to cease engaging in conduct that is overbearing or threatening to Council staff (s.440I(2)(c)); and
  - apologise to Council staff and councillors for inappropriate behaviour towards them on 19 November 2018. The apology is to be tabled at the first available Council meeting, but within three (3) months of this Order (s.440I(2)(d)); and
  - be suspended from civic office for a period of 1 (one) month (s.440I(2)(g)).

#### **RELEVANT LEGISLATION**

3. "Misconduct" 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,
  - (c) a failure by a councillor to comply with an order issued by the Departmental Chief Executive under this Division,
  - (d) an act of disorder committed by the councillor at a meeting of the council or a committee of the council,
  - (e) an act or omission of the councillor intended by the councillor to prevent the proper or effective functioning of the council or a committee of the council.
4. Section 440H(5A) of the Act provides that the Departmental Chief Executive may arrange for a departmental report to be prepared about



whether a councillor has engaged in misconduct without an investigation being carried out under this section if:

(a) the matter has been referred to the Departmental Chief Executive by the council and the Departmental Chief Executive is of the opinion that the report may be based on the findings of an investigation conducted by or on behalf of the council, or

(b) the Departmental Chief Executive is of the opinion that the alleged misconduct, if proven, would be minor in nature and, were it to warrant disciplinary action, the disciplinary action would be comprised only of counselling or reprimanding the councillor, or

(c) the Departmental Chief Executive otherwise considers it appropriate to do so.

5. Section 440I(1) provides that the Departmental Chief Executive may take disciplinary action against a councillor if satisfied that:

(a) the councillor has engaged in misconduct (whether on the basis of a department report or a report by the Ombudsman or Independent Commission Against Corruption), and

(b) disciplinary action is warranted.

6. Section 440I(2) authorises the Departmental Chief Executive to take one or more of the following disciplinary actions:

(a) counsel the councillor,

(b) reprimand the councillor,

(c) by order, direct the councillor to cease engaging in the misconduct,

(d) by order, direct the councillor to apologise for the misconduct in the manner specified in the order,

(e) by order, direct the councillor to undertake training,

(f) by order, direct the councillor to participate in mediation,

(g) by order, suspend the councillor from civic office for a period not exceeding 3 months,

(h) by order, suspend the councillor's right to be paid any fee or other remuneration to which the councillor would otherwise be entitled as the holder of the civic office, in respect of a period not exceeding 3 months (without suspending the councillor from civic office for that period).

7. Section 440J of the Act provides for referral of matters to the NSW Civil and Administrative Tribunal.

## **THE MATTER**

8. On 19 November 2018 Clr Funnell walked into the Council Chamber approximately 15 minutes late and once he sat down, he began to loudly shout questions at a Council staff member who was presenting information.
9. Clr Funnell continued to direct questions to the staff member in a heightened voice and he did not allow the staff member to fully respond as he would constantly interrupt and speak over the staff member. Clr Funnell used a dismissive and antagonising tone whilst subjecting the staff member to a confrontational kind of questioning.
10. Clr Funnell's behaviour was overbearing, threatening, disrespectful, argumentative and dismissive.
11. When Clr Funnell was asked to speak to the staff member more respectfully, Clr Funnell's behaviour escalated, and he commenced directing profanities at some Councillors.
12. Clr Funnell's verbal abuse continued for up to 10 minutes until he left the workshop.
13. The available evidence supports the finding that Clr Funnell has breached several clauses of Council's Code by behaving in a disrespectful, intimidating and inappropriate manner towards Council staff and by directing foul language towards fellow Councillors at the Council's workshop on 19 November 2018.
14. As a result of Clr Funnell's conduct, Council staff and Councillors have been subjected to behaviour which has caused them to fear for their personal safety in the workplace.

## **REASONS FOR ORDERING CLR FUNNELL TO CEASE ENGAGING IN THE MISCONDUCT, PROVIDE AN APOLOGY FOR THE MISCONDUCT AND SUSPEND CLR FUNNELL FROM CIVIC OFFICE FOR ONE MONTH UNDER SECTIONS 440I(2)(c), 440I(2)(d) and 440I(2)(g) OF THE LOCAL GOVERNMENT ACT 1993.**

15. I have carefully considered the Departmental Report and Annexures, submissions and advice provided to me throughout the course of this matter.
16. The misconduct, as detailed in the Departmental Report and Annexures, is sufficiently serious as to warrant taking disciplinary action.
17. The misconduct cannot be reasonably characterised as merely technical or trivial in nature.
18. There were multiple complaints concerning the conduct during the councillor workshop on 19 November 2018, where Clr Funnell behaved in a disrespectful, offensive and aggressive manner towards Councillors and Council staff.
19. As a result of the behaviour I am satisfied a number of the complainants were concerned for their personal safety.



20. 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.
21. Having regard to the absence of submissions or other evidence supplied by Cllr Funnell, I believe that apart from Cllr Funnell's partial apology, he has at no time explained his conduct or accepted that his conduct has fallen short of that required by the code demonstrating a lack of contrition and insight into his conduct on his part.
22. I have concluded that Cllr Funnell's conduct was conduct which would be regarded by reasonable persons as falling below, if not well below the standards of conduct to be expected of Councillors, in that it tends to bring into disrepute the civic office held by Councillors, or the Council, or both.
23. In determining that the conduct warrants suspension, given other options available to me, I have specifically noted that this course of action will have the effect of depriving the constituents of their representative for one month, and I gave this outcome significant consideration in weighing the disciplinary options.
24. In my view this is not a matter that would be appropriate to refer back to Council given the seriousness and the limited courses of action open to Council to deal with the matter.
25. Having said that, the matter is not so serious or complex as to warrant referral to the NCAT for consideration of a penalty that is beyond those available to me to impose.

**DATED: 5 February 2021**



**Tim Hurst**  
**Deputy Secretary, Local Government, Planning and Policy**  
**Department of Planning, Industry and Environment**