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Our Reference: A731067
Your Reference:
Contact: Grant Gleeson
Phone:

Mr David Shoebridge MLC
Committee Chair
Public Accountability Committee
Parliament House, Macquarie Street
Sydney NSW 2000

Via email: Public.accountability@parliament.nsw.gov.au

12 November 2020

Dear Mr Shoebridge,

Thank you for your letter of 30 September 2020 inviting me to respond to comments made by Cr Darcy Byrne when he appeared before the Committee on 21 September 2020.

I categorically reject the allegation made by Clr Darcy Byrne on page 15 of the Hansard Transcript from the hearing of the Committee on 21 September 2020, to the effect that I exercised my functions under the *Local Government Act 1992* for an improper purpose and for political ends. In every case I seek to exercise my functions prudently, considering only relevant matters, motivated by fulfilling my statutory role to the benefit of the people of NSW.

In this regard, I would like to briefly outline the procedural history of this matter which supports my position that the referral of the matter to NCAT was in no way influenced by the Upper House inquiry or who may or may not have been called to give evidence to it. I note that Clr Byrne has waived confidentiality in relation to this matter, however as this matter is before NCAT I have confined my response to the procedural details.

The decision to refer the matter to NCAT was taken on 14 September 2020 following consideration of submissions provided by Mr Byrne through his solicitor on 13 July 2020. On 14 September 2020 the Department's Report and submission provided by Clr Byrne were filed with NCAT. The decision to refer was taken before I had any knowledge that Clr Byrne would be appearing before the Inquiry. I only became aware of this appearance when the hearing schedule for the Committee was later published on 16 September 2020.

In addition, I can say that Mr Byrne has been aware of this matter for some time as it was first raised with Clr Byrne by letter on 25 July 2019. The investigation, reporting and decision making process has progressed along a typical timeline with Mr Byrne being informed about the matter at each stage of the investigation process.



The decision to refer the matter to NCAT was consistent with my preliminary views, communicated to Clr Byrne by letter on 1 July 2020, that the referral to the NCAT was appropriate.

I understand that the Committee wishes to table correspondence relating to these proceedings that was provided to it by Clr Byrne during his appearance before the Committee. I do not agree to the publication of the correspondence relating to this complaint. I have concerns that the publication of this correspondence by the Committee, while the NCAT proceedings are on foot, could interfere with the proper administration of justice and is not consistent with the confidentiality requirement set out in the *Procedures for the Administration of the Model Code of Conduct 2020*.

The letter from Turner Freeman dated 13 July 2020 is a detailed submission setting out Clr Byrne's response to the investigation report of the Office of Local Government provided to Clr Byrne with my letter of 1 July 2020. As such, this correspondence only reflects Clr Byrne's position in relation to the matter and does not provide a comprehensive or balanced picture of the matter. Publication of only this piece of correspondence could be contrary to procedural fairness principles and potentially prejudice the balanced resolution of the matter.

Under the Model Code of Conduct and Procedures Clr Byrne is bound to keep matters about this complaint confidential. The Procedures (clause 12.1) also provide for the Office of Local Government to keep these matters confidential. This confidentiality requirement is not affected by the breach by one party of this obligation of confidentiality. In due course the NCAT will publish its decision on the matter. Until that determination is finalised, I am bound to keep the details of this complaint and investigation confidential and respectfully suggest that the correspondence ought not be tabled or published without the permission of the NCAT.

I do not object to the publication of the letter dated 26 August 2020 from Inner West Council sent to me.

Yours sincerely

Tim Hurst
Deputy Secretary
Local Government, Planning and Policy