

**BUDGET ESTIMATES 2014-2015**  
**QUESTIONS TAKEN DURING HEARING**  
**Office of Local Government**

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**QUESTION**

**The Hon. SOPHIE COTSIS:** This is about councillors who are landholders and who vote on rezonings. I am asking two questions: First, is the Office of Local Government monitoring these **pecuniary interest declarations?**

**Mr PAUL TOOLE:** You have now asked a question of the Office of Local Government.

**The Hon. SOPHIE COTSIS:** Yes or no?

**Mr PAUL TOOLE:** I will ask the chief executive officer to provide an answer.

**Mr WOODWARD:** They are public; they have to be declared publicly. The only thing that section 451 really did was to remove the ministerial approval process. It did not change the obligation on councillors to make a proper declaration. **We investigate any complaint or accusation that we receive.**

**The Hon. SOPHIE COTSIS:** How many complaints have you received?

LOCAL GOVERNMENT 19 TUESDAY 19 AUGUST 2014

**Mr WOODWARD:** I will provide that information on notice. There are not very many.

**ANSWER:**

The Office of Local Government will examine such declarations when a complaint is received.

The Office of Local Government has received complaints about 2 councillors breaching the special disclosure provisions of section 451 of the Act. As one of these matters is still under investigation it would not be appropriate to comment further.

**QUESTION**

**Mr DAVID SHOEBRIDGE:** Could you provide details to the Committee of the councils in relation to which the 451 complaints were made and, to the extent possible, provide details of the complaints that have been made? I can only fairly ask you to take that on notice.

**Mr WOODWARD:** I will have to check because there might be some privacy issues with that.

**ANSWER:**

The Office of Local Government has received complaints about 2 councillors breaching the special disclosure provisions of section 451 of the Act. It is not appropriate for the Office to provide information about the complaints that it manages, particularly as one of these matters is still under investigation.

**QUESTION:**

**The Hon. SOPHIE COTSIS:** When will you report or make public the findings of your office's inquiry into the administration of the Sutherland Shire Council?

**Mr PAUL TOOLE:** I will ask the chief executive officer to answer that question.

**Mr WOODWARD:** We wrote to the council and as far as I am aware that is a public document.

**The Hon. SOPHIE COTSIS:** Have the findings been made public?

**Mr WOODWARD:** I believe they have been made public.

**The Hon. SOPHIE COTSIS:** Can you put those findings on your website?

**Mr DAVID SHOEBRIDGE:** Can you provide a copy to the Committee?

**Mr WOODWARD:** Certainly.

**ANSWER:**

The Office of Local Government wrote to the Mayor of Sutherland Shire Council on 9 December 2013 to inform the Council of the outcome of its preliminary enquiries into complaints received about the administration of the Council. The content of that letter was published in a Mayoral minute at Council's meeting of 16 December 2013 and is available in the Council Minutes section of the Sutherland Shire Council's website.

A copy of that letter is provided hereunder:



**Premier & Cabinet**  
Division of Local Government

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Clr Steve Simpson  
Mayor  
Sutherland Shire Council  
Locked Bag 17  
SUTHERLAND NSW 1499

**E-MAILED**  
9.12.13-ll

Dear Clr Simpson

Thank you for letter of 13 November 2013 to the Minister for Local Government, the Hon Don Page MP, requesting details of an investigation into the conduct of certain councillors at Sutherland Shire Council. The Minister has requested that I respond on his behalf.

As you would be aware, following recent media articles raising concerns about the Council's preparation of its comprehensive Local Environmental Plan (LEP), the Council resolved to request the Minister to undertake a full investigation and public inquiry into all planning matters over the last 12 months. The Minister referred the matter to the Division for consideration and advice.

Based on an examination of all the information and allegations raised in the media articles, I authorised preliminary enquiries under section 734A of the *Local Government Act 1993* (the Act). The purpose of preliminary enquiries is to determine whether a formal investigation under section 430 of the Act is warranted.

The Division's enquiries involved reviewing the Council's LEP processes, the conduct of certain councillors, Council meeting minutes and other relevant documents. In addition, a Divisional Senior Investigator met with the Council's General Manager, Mr John Rayner to discuss the issues raised.

The Division has now finalised its preliminary enquiries, with the outcome of such enquiries detailed below.

As I understand it, the Council has spent approximately five years in the preparation of its draft LEP. Following receipt of a Gateway Determination from the Department of Planning and Infrastructure in early 2013, the Council publicly exhibited the draft LEP.

Among the proposed changes to the current LEP was 'Amendment 20'. This sought to duplicate the development standards and controls in the draft LEP, thereby enabling their introduction without extensive delays. It appears that this was one of the proposed changes which prompted the concerns raised in the media.

In an attempt to address the concerns and restore its credibility within the community, the Council resolved that the Planning and Assessment Commission conduct a public hearing into the content of the draft LEP. The Council also resolved to withdraw 'Amendment 20'.

While the draft LEP is yet to be finalised, it appears that to date, Council has complied with the LEP process. Ultimately, the proposal is subject to the gateway process and approval of the Minister for Planning and Infrastructure, the Hon Brad Hazzard MP. Therefore, any concerns about the inadequacy of the LEP process are ones for Minister

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Hazzard and the Department of Planning and Infrastructure. To this end, I note that Minister Hazzard has recently announced an independent review into the draft LEP, calling for submissions. I also note that a series of public hearings will be held.

I now turn to the issues relating to the conduct of certain councillors, involving conflicts of interests and developer influence.

The Act provides for councillors who have a pecuniary interest in a principal planning instrument (applying to the whole or a significant part of the council's area), to participate in the discussion of and vote on the instrument. In order to participate, a councillor must make a special disclosure before the commencement of the council or committee meeting. Councillors have made a special disclosure of pecuniary interests in the matter of the draft LEP.

Based on an assessment of the areas affected and the impact of the proposal, the Division has concluded that the draft LEP applies to the whole of Council's area. Therefore, the councillors' use of section 451 of the Act to participate in Council's consideration of the draft LEP was appropriate in the circumstances.

As you would be aware, allegations that a councillor's conduct is not consistent with the standards provided in the Model Code of Conduct should be referred to the General Manager and dealt with by Council in the first instance. The Division would normally only intervene in a Code of Conduct matter if it seemed that the Council has failed to correctly apply its Code of Conduct or if the Division was exercising its powers under the misconduct provisions of the Act.

To this end, the Division referred one specific matter back to the Council for assessment in accordance with the Code of Conduct procedures. The General Manager has subsequently reviewed the matter and advised that it is his belief that it does not breach the Council's Code of Conduct.

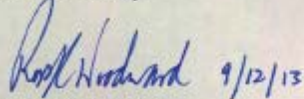
During the course of the Division's enquiries, the disclosure of political donations was raised with the Division. One matter is currently under examination by the Division. Should there be evidence of breaches of the political donations provisions of the Council's code of conduct, then this should be referred to the Division.

Finally, an examination of the information and allegations referred to the Division of Local Government did not disclose evidence of corruption. However, any evidence of corrupt conduct should be referred to the Independent Commission Against Corruption (ICAC). The ICAC is the appropriate agency to deal with such matters.

In conclusion, the Division's assessment of the allegations did not disclose evidence of a serious breakdown in Council's operations or major flaws in key Council processes. In the circumstances, a formal investigation under section 430 of the Act or public inquiry under section 438U of the Act is not warranted.

Thank you for the Council's assistance during this process.

Yours sincerely



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

## QUESTION

**The Hon. SOPHIE COTSIS:** Minister, following on from an earlier question about whether you have had any discussions with the general manager of Newcastle City Council about an election date, have you discussed the by-election date for the Lord Mayor of Newcastle with the general manager?

**Mr PAUL TOOLE:** That question has already been asked and, as I said, if you are asking me personally have I spoken with the general manager then the answer is no.

**The Hon. SOPHIE COTSIS:** Has your office?

**Mr PAUL TOOLE:** Your question was to me: have I spoken to the general manager?

**The Hon. SOPHIE COTSIS:** Yes. Has your office?

**Mr PAUL TOOLE:** To the best of my knowledge, I would be saying no. But we can check anyway for you to make sure that is correct.

**The Hon. SOPHIE COTSIS:** So you are not aware if your office has spoken to the general manager of Newcastle City Council, or any of your advisers?

**Mr PAUL TOOLE:** I am certainly unaware of that but I can also get the Chief Executive to give you an answer in relation to the Office of Local Government as well.

**Mr WOODWARD:** I certainly have not had any conversations and I am pretty sure my staff have not either, but I can certainly check on that.

## ANSWER

I am advised that an Officer of the Office of Local Government contacted the Council to ascertain whether it was proposing to administer the by-election for the Lord Mayor itself or engage the NSW Electoral Commissioner to administer it. At that point, no decision had been made.