



Office of Local Government

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Ms Jane Worthy
Manager, Internal Ombudsman's Office
Waverley Council
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CONFIDENTIAL

Dear Ms Worthy

I refer to correspondence that the Office of Local Government (OLG) has received on behalf of the Mayor of Waverley Council, Cllr Sally Betts, about the consideration of a matter concerning her alleged conduct under the council's code of conduct.

OLG has conducted a review of the matter under clause 9.1 of the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW* (the Procedures), and is satisfied that the investigators from O'Conner Marsden & Associates have complied with the Procedures in their investigation of the matter.

However, in the course of conducting the review, OLG has made a number of additional observations regarding the final investigation report.

The investigators' determination is that Cllr Betts' conduct in relation to the adjournment of the Council's meeting on 17 May 2016 was in breach of clause 4.2 of the Code. This provides that:

You must act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out your functions under the Act or any other Act (section 439).

In providing their reasons, the investigators take the view that one of Cllr Betts' key responsibilities as chairperson is to 'check the outcome of the vote'. While it may have been prudent for Cllr Betts to do so, neither the *Local Government Act 1993* (the Act) nor the *Local Government (General) Regulation 2005* (the Regulation) placed an obligation on Cllr Betts to check the outcome of the vote in the circumstances.

Clause 251 of the Regulation confers two obligations on the chairperson in relation to voting at council meetings. These are:

1. to make a decision as to the result of a vote; and
2. to ensure that a division takes place immediately if a division is demanded in the manner prescribed under clause 251(3).

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If there is doubt in the chairperson's mind about the result of the vote, the Act and Regulation do not prevent the chairperson from initiating a division, or confirming the outcome of the vote by other means. However, if the chairperson is satisfied about the result of the vote and their decision is disputed, the onus is on objecting councillors to demand a division (clause 251(3)). If a division is not demanded, clause 251(3) provides that the chairperson's decision is final, and neither the Act nor Regulation place an obligation on the chairperson to initiate a process to confirm the accuracy of their original decision.

With respect to Council's meeting on 17 May 2016, OLG notes the following:

- Clr Betts made a decision about the result of the vote on the voices and appears to have been satisfied that the majority of councillors had voted for the motion to adjourn the meeting. Having obtained the audio recording of the meeting in question from Council, OLG believes that it was reasonably open to Clr Betts to arrive at the decision she did.
- the investigators determined, and OLG agrees, that a division was not demanded in the manner prescribed under clause 251(3).
- under these circumstances:
 - Clr Betts' decision on the result of the vote was final; and
 - Neither the Act nor the Regulation required Clr Betts to initiate a division or confirm the outcome of the vote by other means.

In light of this, it is not clear to OLG that the final investigation report sufficiently establishes that Clr Betts' conduct was inconsistent with her obligations under the Act and Regulation, or that Clr Betts failed to exercise a reasonable degree of care and diligence in carrying out her functions as chairperson under the Act.

I request that a copy of this letter be tabled at the next ordinary meeting of the council, so that Council can consider it along with the investigators' recommendation to impose a sanction against Clr Betts.

In making this request, I note that it is a matter for Council to decide what option it should exercise under the Procedures in response to the final investigation report.

Should you have any questions regarding this matter, please contact Mr John Davies, Manager, Council Governance on (02) 4428 4100.

Thank you for your consideration of this matter.

Yours sincerely



Tim Hurst
Acting Chief Executive
Office of Local Government

8/6/17