

## LOCAL GOVERNMENT ACT 1993

### SECTION 440Q

#### STATEMENT OF REASONS FOR DECIDING TO IMPOSE A PERIOD OF SUSPENSION UNDER SECTION 440K COUNCILLOR STEPHEN SMITH – GUNNEDAH SHIRE COUNCIL

1. I, Ross Woodward, Chief Executive, Division of Local Government, Department of Premier and Cabinet, having considered a departmental report prepared under section 440J of the *Local Government Act 1993* (the Act), am satisfied, for the purposes of section 440(1)(b) of the Act, that Councillor Smith's behaviour has involved an incident of misbehaviour that is of such a sufficiently serious nature as to warrant his suspension from civic office.

#### RELEVANT LEGISLATION

2. "Misbehaviour" 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 as required under section 440(5),
  - (c) an act of disorder committed by the councillor at a meeting of the council or a committee of the council,but does not include a contravention of the disclosure requirements of Part 2 of Chapter 14 of the Act.
3. Section 440H(1)(b) of the Act provides that the process for the suspension of a councillor for misbehaviour may be initiated by a request made by the Director-General to the council for a report from the council in relation to the councillor's alleged misbehaviour.
4. Section 440I(1) provides that the grounds on which a councillor may be suspended from civic office for misbehaviour are that:
  - (a) the councillor's behaviour has:
    - (i) been disruptive over a period, and
    - (ii) involved more than one incident of misbehaviour during that period, and the pattern of behaviour during that period is of such a sufficiently serious nature as to warrant the councillor's suspension, or
  - (b) the councillor's behaviour has involved one incident of misbehaviour that is of such a sufficiently serious nature as to warrant the councillor's suspension.
5. Section 440J provides that the Director-General may arrange for a departmental report to be prepared into the matters raised by or connected with a request referred to in section 440H. The preparation of

such a report is a prerequisite to a decision by the Director-General to suspend the councillor from office.

6. Section 440K(1)(a) authorises the Director-General to suspend a councillor from civic office for a period not exceeding one month if the Director-General has considered a departmental report into the matters concerned and is satisfied that grounds exist that warrant the councillor's suspension.
7. Section 745 provides that the Director-General may delegate to any person any of the Director-General's functions under the Act, other than the power of delegation. I have been delegated the power to determine this matter.

### **THE MATTER**

8. On the 4 February 2009, Council held an extraordinary Council meeting where it considered and approved a development application (DA 355313) by Blackjack Carbon Pty Ltd for a coal devolatilising plant.
9. Gunnedah Shire Council's code of conduct requires that a councillor must declare a significant non pecuniary conflict of interests and appropriately manage the conflict. The options for managing a conflict of this nature are to divest themselves of the private interest causing the conflict, or to have no involvement in Council's consideration and determination of the matter.

### **REASONS FOR SUSPENDING COUNCILLOR STEPHEN SMITH FOR ONE MONTH UNDER SECTION 440K OF THE LOCAL GOVERNMENT ACT 1993**

10. I have carefully considered the departmental report of the 1 August 2012, prepared in accordance with my authorisation of the 20 June 2011, under section 440J of the Act into the behaviour of Councillor Smith.
11. I have also taken into account Councillor Smith's submissions regarding the departmental report. Councillor Smith was afforded the opportunity to make a submission regarding the possible penalty of suspension but he has not made any submission at this time.
12. Councillor Smith's behaviour involved an incident of misbehaviour on the 4 February 2009 that is of a sufficiently serious nature as to warrant his suspension.
13. At the time of the incident Councillor Smith was employed by Whitehaven Coal Limited.
14. Whitehaven Coal Limited was involved in a joint enterprise with Modderiver Minerals Pty Ltd, which formed Blackjack Carbon Pty Ltd.

15. On the 4 February 2009, Council held an extraordinary meeting to consider a development application lodged by Blackjack Carbon Pty Ltd for a coal devolatilising plant in Gunnedah. This development application was reportedly valued at \$12.5 million.
16. At this meeting Councillor Smith failed to declare a conflict of interests in accordance with clause 7.13 of Council's Code of Conduct. This conflict of interests related to his private interest relating to his employment with Whitehaven Coal Limited.
17. Councillor Smith's conflict of interests was considered to be significant non-pecuniary in nature.
18. At this meeting Councillor Smith failed to appropriately manage this conflict of interests, by leaving the meeting and not taking part in the deliberation of and voting on the motion.
19. Councillor Smith, on the 19 November 2008, had declared a conflict of interests with regard to this development application DA 355313.
20. Councillor Smith is an experienced councillor who was present when the revised Code of Conduct was adopted by Council on the 17 December 2008, the meeting immediately preceding the extraordinary meeting which is the subject of this report.
21. Councillor Smith had an awareness in relation to his obligations with regard to declaring and managing a conflict of interests.
22. Councillor Smith had been advised by Council's General Manager of where his obligations as a councillor could be found and he had the opportunity to obtain independent legal advice prior to the meeting.
23. Councillor Smith's actions have had a negative impact on the community confidence in Council's decision making process.

DATED: 11 December 2012



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