

LOCAL GOVERNMENT ACT 1993

SECTION 440I

STATEMENT OF REASONS FOR TAKING DISCIPLINARY ACTION UNDER SECTION 440I(2)(b) COUNCILLOR WARREN STEEL – THE COUNCIL OF THE MUNICIPALITY OF KIAMA

1. I, Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, having considered a departmental report prepared under section 440H(5) of the *Local Government Act 1993* (the Act), am satisfied that Cllr Warren Steel of the Council of the Municipality of Kiama has engaged in misconduct as defined by section 440F of the Act.
2. I have determined, that he should be reprimanded, pursuant to section 440I(2)(b) and that the Statement of Reasons should be made publicly available pursuant to section 440I(7) of the Act

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(1) of the Act provides that the Departmental Chief Executive may conduct an investigation for the purpose of determining whether a councillor has engaged in misconduct.
5. Section 440H(5) of the Act provides that the Departmental Chief Executive may arrange for a departmental report to be prepared in relation to an investigation conducted under this section.
6. Section 440H(6) of the Act provides that the preparation of a departmental report is a prerequisite to a decision by the Departmental Chief Executive to take disciplinary action against a councillor, unless the disciplinary action is taken on the basis of a report by the Ombudsman or Independent Commission Against Corruption.
7. 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.
8. 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).
9. Section 440I(6) provides that the Departmental Chief Executive is to make a decision to suspend a councillor from civic office or to suspend a councillor's right to be paid any fee or other remuneration, and statement of reasons for the decision, publicly available.
10. Section 440I(7) provides that the Departmental Chief Executive may make any other decision to take disciplinary action against a councillor, and the statement of reasons for the decision, publicly available.

THE MATTER

11. It is alleged that Clr Steel had a private interest in a matter that was a proposed development at 11 Northpoint Place Bombo which was the subject of a report included in the business paper before Council on 19 December 2017.
12. The private interest is established because of:
 - the possible impact of the development on views enjoyed from his property;
 - the possible impact on the amenity enjoyed by Clr Steel at his property during the construction of the development;
 - his relationship with his neighbours, who had lodged an objection to the development;and these were factors that a reasonable and informed person would perceive could influence Clr Steel when carrying out his public duty in considering the matter at the Council meeting on 19 December 2017.
13. It is alleged Clr Steel failed to appropriately manage the abovementioned interest in accordance with his obligations under Council's adopted Code of Conduct and as such engaged in misconduct as defined by section 440F of the Act.

REASONS FOR REPRIMANDING COUNCILLOR WARREN STEEL UNDER SECTION 440I(2)(b) OF THE LOCAL GOVERNMENT ACT 1993

14. I have carefully considered the Departmental Report and Annexures.
15. I have decided that Clr Steel should be reprimanded for his actions (s.440I(2)(b)).
16. I have also decided that the statement of reasons should be made publicly available (s.440I(7)).
17. I have noted that Clr Steel has advised he does not intend to provide submissions on the issue of penalty.
18. While Clr Steel has made a commitment to making a disclosure and not participating in a similar circumstance, I do not view this as sufficient to warrant not taking any disciplinary action against him.
19. I have also considered and rejected the referral of the matter back to Council as Council originally declined to take any action on the complaint.
20. Clr Steel was aware that his neighbours had objected to the development. The development was close to his home. In these circumstances, he clearly should have, at the very least, disclosed a conflict of interest and provided an explanation if he considered it did not warrant him not participating in the matter.
21. Clr Steel took no action to manage the conflict. A reprimand and publication of a statement of reasons is warranted to communicate the seriousness of this, having regard to the importance of the public being able to have confidence in the probity of Council's decision-making processes. It is also important to deter others from engaging in similar conduct.
22. While suspension has been imposed in other matters where a councillor has failed to disclose a conflict of interest, in this case, I believe due regard can be had to Clr Steel's extensive period of unblemished public service prior to this instance of misconduct, and his full cooperation with the investigative process.

DATED: 19 March 2021



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