

LOCAL GOVERNMENT ACT 1993

SECTION 440I

STATEMENT OF REASONS FOR TAKING DISCIPLINARY ACTION UNDER SECTION 440I COUNCILLOR MARY LYONS-BUCKETT – HAWKESBURY CITY COUNCIL

1. I, Luke Walton, Acting 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 Councillor Mary Lyons-Buckett has engaged in misconduct as defined by section 440F of the Act.
2. I have determined, after considering Councillor Lyons-Buckett's submissions, that she should:
 - be counselled, pursuant to section 440I(2)(a) of the Act; and
 - a Statement of Reasons be prepared and published 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. The preparation of such a report is a prerequisite to a decision by the Departmental Chief Executive to take disciplinary action against the councillor.
6. 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.
7. 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).
8. 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.
9. 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

10. The matter that formed the basis of the investigation was whether Cllr Mary Lyons-Buckett of Hawkesbury City Council engaged in misconduct, as defined in section 440F of the Act at the meeting of Council held on 30 June 2020, particularly in respect of her participation in the consideration of a matter described in the business paper as *Item: 111 CP – Update on Kurmond-Kurrajong Investigation Area Structure Plan – Post Exhibition Report – (124414, 95498)*.
11. Specifically, by reference to the Investigation Report at Part 4, the following particulars are provided:

Allegation 1 – Alleged pecuniary interest

- It is alleged that Cllr Lyons-Buckett did not comply with clause 4.29 of the code at the meeting of Council held on 30 June 2020.
- Clause 4.29 stipulates, in effect, that a councillor who has a pecuniary interest in any matter with which the council is concerned must not be present at, or in sight of, the meeting of the council when the matter is being considered or discussed or at any time

during which the council is voting on any question in relation to the matter. It is alleged that Clr Lyons-Buckett did not do so.

- It is alleged that Clr Lyon-Buckett had a pecuniary interest in the consideration of a matter described in the business paper as *Item: 111 CP – Update on Kurmond-Kurrajong Investigation Area Structure Plan – Post Exhibition Report – (124414, 95498)* (the matter).
- It is alleged that Clr Lyons-Buckett was present when the matter was being considered, discussed and when related motions were being voted on.

Allegation 2 - Alleged non-pecuniary conflict of interest

- It is alleged that Clr Lyons-Buckett did not comply with clause 5.4 of the code at the meeting of Council held on 30 June 2020.
- Clause 5.4 of the code stipulates, in effect, that a non-pecuniary conflict of interest must be identified and appropriately managed to uphold community confidence in the probity of council decision-making. This requires a councillor to disclose the interest fully and in writing, and to take appropriate action to manage the conflict in accordance with the code. It is alleged that Clr Lyons-Buckett did not do so.
- Clauses 5.10 and 5.11 of the code deal with the appropriate action required of a councillor to manage a non-pecuniary conflict of interest.
- Clause 5.10 of the code stipulates, in effect, that if a councillor has a significant non-pecuniary conflict of interest that arises in relation to a matter under consideration at a council meeting, it must be managed as if the councillor had a pecuniary interest in the matter by complying with clauses 4.28 and 4.29 of the code.
- Clause 5.11 of the code stipulates, in effect, that if a councillor determines that they have a non-pecuniary conflict of interest in a matter that is not significant and does not require further action, they must, when disclosing the interest also explain why they consider that the non-pecuniary conflict of interest is not significant and does not require further action in the circumstances.
- It is alleged that Clr Lyons-Buckett had a significant non-pecuniary conflict of interest in the consideration of a matter described in the business paper as *Item: 111 CP – Update on Kurmond-Kurrajong Investigation Area Structure Plan – Post Exhibition Report – (124414, 95498)*. (the matter)
- It is alleged that Clr Lyons-Buckett was present when the matter was being considered, discussed and when related motions were being voted on and did not fully disclose the nature of her non-pecuniary conflict of interest in the matter.

Allegation 3 – Failure to exercise a reasonable degree of care and diligence

- It is alleged that Clr Lyons-Buckett did not comply with clause 3.2 of the code in relation to the disclosure she made relating to the matter at the meeting of Council held on 30 June 2020.
- Clause 3.2 of the code stipulates that:
You must act lawfully and honestly, and exercise a reasonable degree of care and diligence in carrying out your functions under the LGA or any other Act (section 439).
- It is alleged that Clr Lyons-Buckett, in purporting to make a “special disclosure” in relation to the matter, failed to exercise a reasonable degree of care and diligence. It is alleged that Clr Lyons-Buckett did not:
 - adequately review the provisions of the code governing the making of a “special disclosure”;
 - seek advice prior to the meeting about the matter and her obligations.

REASONS FOR COUNSELLING COUNCILLOR LYONS-BUCKETT AND MAKING THE DECISION PUBLIC UNDER SECTIONS 440I(2)(a) SECTIONS 440(7) OF THE LOCAL GOVERNMENT ACT 1993

12. I have formed a view in relation to this matter after having considered the Departmental Report, Annexures to the Departmental Report, the former Deputy Secretary’s letter to Clr Lyons-Buckett, and submissions provided by both Clr Lyons-Buckett and the Office of Local Government in relation to this matter.
13. Significantly, I have given careful consideration to the submissions from Clr Lyons-Buckett dated 27 April 2021, but hold the view that the public interest in publication outweighs the private interests of the councillor in not having the matter made public.
14. I am satisfied that Clr Lyons-Buckett engaged in misconduct, as defined in section 440F(1)(b) of the Act at the meeting of Hawkesbury City Council held on 30 June 2020 by:
 - not appropriately managing a non-pecuniary conflict of interest in the consideration of a matter described in the business paper for the meeting as *Item: 111 CP – Update on Kurmond-Kurrajong Investigation Area Structure Plan – Post Exhibition Report – (124414, 95498)*, this being conduct that was contrary to clause 5.4 of the Council’s adopted code of conduct (code); and
 - failing to exercise a reasonable degree of care and diligence in preparing and attempting to make a disclosure pursuant to the provisions of clause 4.36 and clause 4.37 of the code in relation to the matter, this being conduct that was contrary to clause 3.2 of the code.
15. I concur with the former Deputy Secretary’s preliminary views and note that:
 - The matter is sufficiently serious as to warrant counselling and the publication of a statement of reasons.
 - The imposition of a penalty and publication of the reasons for this is important to deter Council officials from engaging in the conduct detailed in the departmental report.

- The penalties of reprimand, suspension from civic office and/or from the right to be paid a fee are not warranted given Cllr Lyons-Buckett's previous good conduct, the lack of any evidence of dishonesty and/or motivation for personal gain.
 - There is no need for an order that Cllr Lyons-Buckett undertake training given she has done that of her own volition.
 - The matter is not one that should be referred back to Council or to the NCAT (s.440J(2)(a) and (b)).
16. I have noted that in regard to the matter that was canvassed in the departmental report, the evidence indicates Councillor Lyons-Buckett moved and spoke to a motion related to the matter, after purporting to make a special disclosure.
 17. I note Cllr Lyons-Buckett cooperated fully with the investigation and there is nothing to suggest that the misconduct described in the department report is part of a pattern and, as stated above, has not engaged in misconduct previously.
 18. I appreciate Councillor Lyons-Buckett participated, of her own volition in further training to gain a more in-depth understanding of her obligations pursuant to the code. I have taken this into account when determining what disciplinary action may be warranted.
 19. I have also taken into account Cllr Lyons-Buckett's detailed submissions on the matter overall and particularly in relation to the issue of whether the statement of reasons should be published.
 20. While I have taken into account that Councillor Lyons-Buckett has served her community as a councillor for more than eight years and not been found to have engaged in misconduct previously, it must be accepted by her that a failure to appropriately manage a conflict of interest has the potential to undermine community confidence in the probity of council decision-making. The potential for this is exacerbated where the person with the conflict of interest actively participates in the consideration of the matter and/or manifestly fails to exercise due care and diligence.
 21. Taking disciplinary action in the manner outlined will have the important benefit of reassuring the community that probity in council decision-making is of the utmost importance; our system of government relies on people being able to trust our public institutions. It will also have the benefit, if the decision is made public, of reminding other council officials of their obligations and deterring them from engaging in such conduct.

DATED: 18 June 2021



Luke Walton
Acting Deputy Secretary, Local Government, Planning and Policy
Department of Planning, Industry and Environment