

LOCAL GOVERNMENT ACT 1993

SECTION 440I

STATEMENT OF REASONS FOR TAKING DISCIPLINARY ACTION UNDER SECTION 440I

COUNCILLOR MATT BROWN – KIAMA MUNICIPAL 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 Matt Brown of Kiama Municipal Council has engaged in misconduct for the purposes of section 440F of the Act; and
2. I have determined, after considering Cllr Brown's submissions on penalty dated 6 May 2021, that he should be:
 - reprimanded, pursuant to section 440I(2)(b) of the Act; and
 - by order, suspend Councillor Brown's right to be paid any fee or other remuneration to which he would otherwise have been entitled as the holder of civic office for a period of ONE (1) month (without suspending the him from civic office for that period) (s.440I(2)(h)).
3. Pursuant to sections 440I(6) and (7) of the Act, the statement of reasons for the decision is to be made publicly available.

RELEVANT LEGISLATION

4. "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.
5. 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.
6. 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.]

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. The matter that formed the basis of the investigation was whether Cllr Matt Brown from Kiama Municipal Council:
 - (a) Engaged in misconduct within the meaning of section 440F of the Act when attending the Global Eco-Asia-Pacific Tourism Conference in Townsville, whilst representing Council on Monday 26 November 2018, by leaving the conference, consuming a prohibited drug and returning to the conference.

 - (b) Engaged in misconduct within the meaning of section 440F of the Act when attending the Global Eco-Asia-Pacific Tourism Conference in Townsville, whilst representing Council on Tuesday 27 November 2018, by failing to attend the conference and in turn attending a court hearing in relation to charges of Possess Drug pursuant to s.9 (1) of the *Drugs*

Misuse Act 1986 and Possess Implement under the Drugs Misuse Act 1986.

REASONS FOR REPRIMANDING COUNCILLOR BROWN AND SUSPENDING HIS RIGHT TO BE PAID ANY FEE OR OTHER REMUNERATION, TO WHICH HE WOULD OTHERWISE BE ENTITLED AS THE HOLDER OF CIVIC OFFICE FOR A PERIOD OF ONE (1) MONTH, (WITHOUT SUSPENDING COUNCILLOR BROWN FROM CIVIC OFFICE FOR THAT PERIOD) UNDER SECTION 440I(2)(b) and (h) OF THE LOCAL GOVERNMENT ACT 1993

12. I note the decision of the former Deputy Secretary on 27 April 2021 that Clr Brown engaged in misconduct and that he formed a preliminary view on penalty.
13. I also note that in his submission Clr Brown states that he understands and accepts the reasons and the proposed action as set out in the Deputy Secretary's letter dated 28 April 2021.
14. In reaching my decision, I have considered the Departmental Report, Annexures and submissions provided by both Clr Brown and the Office of Local Government in relation to this matter.
15. It is my view that the misconduct, as detailed in the Departmental Report, is sufficiently serious to warrant taking this disciplinary action. The misconduct cannot be reasonably characterised as merely technical or trivial in nature.
16. This matter would not be appropriate to refer back to Council given the seriousness and limited courses of action available to Council, and is not serious or complex enough to warrant referral to NCAT.
17. As a result of Clr Brown's actions, he did not appropriately represent the Council at the Conference he was required to attend representing Council on 26 and 27 November 2018.
18. It is accepted that Clr Brown had a legal obligation to attend a court hearing on 27 November 2018. It is also accepted that representatives from Council provided advice that he should not attend the conference for the remainder of the day and that he was upset as a result of the incident. Despite this, Clr Brown still received his councillor fee and there were associated costs for attending the conference, which was a cost borne by the Council and the ratepayers.
19. Taking disciplinary action will have the important benefit of reassuring the community that the conduct of council officials 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.
20. Councillors must conduct themselves when carrying out their functions in a manner that does not bring Council or holders of civic office into disrepute and their conduct must be proper and ethical. They must also act lawfully, honestly and exercise a reasonable degree of care and diligence in carrying out their functions under the Act. Clr Brown engaged in conduct at the Conference that fell significantly short of the standard of behaviour expected of Councillors.

Statement Of Reasons – Determination by Departmental Chief Executive, Office of Local Government

21. I have noted that Clr Brown has provided a public apology for his behaviour.
22. I have also taken into account the fact that Clr Brown has previously been subjected to an adverse finding for breaching the Code, whilst representing Council at a separate Conference.

DATED: 18 June 2021



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

LOCAL GOVERNMENT ACT 1993

ORDER

SECTION 440I(2)(h)

COUNCILLOR MATT BROWN

KIAMA MUNICIPAL COUNCIL

SUSPENDING COUNCILLOR MATT BROWN'S RIGHT TO BE PAID ANY FEE OR OTHER REMUNERATION, TO WHICH COUNCILLOR BROWN WOULD OTHERWISE BE ENTITLED AS THE HOLDER OF CIVIC OFFICE, FOR A PERIOD OF ONE (1) MONTH WITHOUT SUSPENDING COUNCILLOR BROWN FROM CIVIC OFFICE FOR THAT PERIOD.

1. I, Luke Walton, Acting Deputy Secretary, Local Government, Planning and Policy, under delegation from the Secretary, Department of Planning, Industry and Environment, by **ORDER**:
 - **SUSPEND** Councillor Matt Brown's right to be paid any fee or other remuneration, to which Councillor Brown would otherwise be entitled as the holder of civic office, for a period of ONE (1) month without suspending Councillor Brown from civic office for that period.

Dated: 18 June 2021



LUKE WALTON

Acting Deputy Secretary, Local Government, Planning and Policy

Department of Planning, Industry and Environment