

LOCAL GOVERNMENT ACT 1993

SECTION 440I

STATEMENT OF REASONS FOR TAKING DISCIPLINARY ACTION UNDER SECTION 440I

COUNCILLOR TEGAN SWAN – COFFS HARBOUR COUNCIL

1. I, Kiersten Fishburn, Coordinator General, Planning Delivery and Local Government, having considered a departmental report prepared under section 440H(5A)(c) of the Local Government Act 1993, am satisfied that Councillor Tegan Swan has engaged in misconduct as defined in s.440F of the Local Government Act 1993; and
2. I have determined, after considering Councillor Swan's submissions on penalty dated 28 June 2021, by Order:
 - direct that Councillor Tegan Swan of Coffs Harbour Council to cease engaging in the misconduct. Specifically, to cease engaging in any acts of disorder or other conduct that is intended to prevent the proper functioning of Council or will deliberately impede the consideration of business at a meeting (s.440I(2)(c)).
 - suspend Councillor Tegan Swan of Coffs Harbour Council's right to be paid any fee or other remuneration, to which she would otherwise be entitled as the holder of the civic office, for a period of TWO (2) MONTHS (without suspending Councillor Tegan Swan from civic office for that period) (s.440I(2)(h)).

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(5A) of the Act provides that the Departmental Chief Executive may arrange for a departmental report to be prepared about whether a councillor has engaged in misconduct without an investigation being carried out under this section if:

- (a) the matter has been referred to the Departmental Chief Executive by the council and the Departmental Chief Executive is of the opinion that the report may be based on the findings of an investigation conducted by or on behalf of the council, or
 - (b) the Departmental Chief Executive is of the opinion that the alleged misconduct, if proven, would be minor in nature and, were it to warrant disciplinary action, the disciplinary action would be comprised only of counselling or reprimanding the councillor, or
 - (c) the Departmental Chief Executive otherwise considers it appropriate to do so.
5. 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.
6. 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).
7. 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.
8. 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.
9. Section 440J provides alternatives to disciplinary action including:
 - a decision to take no further action against the councillor, if satisfied that no further action is warranted;

- referral back to Council with recommendations as to how the council might resolve the matter, by alternative dispute resolution or otherwise;
- or referral to the New South Wales Civil and Administrative Tribunal for consideration.

THE MATTER

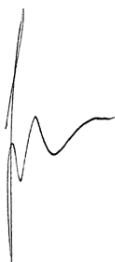
10. It is alleged that Clr Swan breached Council's Code of Conduct on 25 and 26 July 2019 by depriving an Ordinary meeting of Council of a quorum.

REASONS FOR DIRECTING COUNCILLOR TEGAN SWAN TO CEASE ENGAGING IN THE MISCONDUCT AND SUSPENDING COUNCILLOR TEGAN SWAN OF COFFS HARBOUR COUNCIL'S RIGHT TO BE PAID ANY FEE OR OTHER REMUNERATION, TO WHICH SHE WOULD OTHERWISE BE ENTITLED AS THE HOLDER OF THE CIVIC OFFICE, FOR A PERIOD OF TWO (2) MONTHS (WITHOUT SUSPENDING COUNCILLOR TEGAN SWAN FROM CIVIC OFFICE FOR THAT PERIOD) UNDER SECTION 440I(2)(c) AND (h) OF THE LOCAL GOVERNMENT ACT 1993

11. I note the decision of the former Deputy Secretary, Local Government, Planning and Policy dated 7 June 2021 on the issue of breach and that he formed a preliminary view on penalty.
12. 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.
13. This is not a matter that would be appropriate to refer back to Council given it would not be able to form a quorum to deal with it and it is not so serious or complex enough to warrant referral to the NCAT.
14. The actions of Councillor Swan amount to a serious breach of Council's Code of Conduct by, on 25 and 26 July 2019, depriving an Ordinary meeting of Council of a quorum.
15. Clr Swan's conduct was intended to prevent the proper functioning of Council. As a result of Clr Swan's actions, she prevented a quorum being formed that prevented Council being able to deal with all Council business, including the rescission motion, being dealt with at the subject meeting.
16. Clr Swan's conduct is improper and unethical and inconsistent with the duties and obligations expected of an elected representative.
17. While Councillor Swan seems to have now come to some appreciation of the seriousness of her actions, I am mindful of the premeditated and deliberate nature of these actions. I have also considered that Councillor Swan has twice undertaken Code of Conduct training and as an elected official should have applied that training to her decision making.

18. Council has incurred both productivity loss and economic loss as a result of Councillor Swan's actions. The penalty reflects this economic loss.

DATED: 23 August 2021

A handwritten signature in black ink, appearing to be 'Kiersten Fishburn', written in a cursive style.

**Kiersten Fishburn
Coordinator General
Planning Delivery and Local Government
Department of Planning, Industry and Environment**

LOCAL GOVERNMENT ACT 1993

SECTION 440I(2)(c) and (h)

ORDER

**DIRECT COUNCILLOR TEGAN SWAN OF COFFS HARBOUR COUNCIL TO
CEASE ENGAGING IN THE MISCONDUCT**

AND

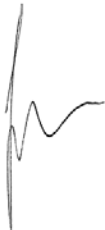
**SUSPENDING COUNCILLOR TEGAN SWAN OF COFFS HARBOUR COUNCIL'S
RIGHT TO BE PAID ANY FEE OR OTHER REMUNERATION, TO WHICH SHE
WOULD OTHERWISE BE ENTITLED AS THE HOLDER OF THE CIVIC OFFICE,
FOR A PERIOD OF 2 MONTHS (WITHOUT SUSPENDING COUNCILLOR TEGAN
SWAN FROM CIVIC OFFICE FOR THAT PERIOD)**

1. I, Kiersten Fishburn, Coordinator General, Planning Delivery and Local Government, under delegation from the Secretary, Department of Planning, Industry and Environment, by **ORDER**:

- pursuant to s.440I(2)(c) direct Councillor Tegan Swan of Coffs Harbour Council to cease engaging in the misconduct. Specifically, to cease engaging in any acts of disorder or other conduct that is intended to prevent the proper functioning of Council or will deliberately impede the consideration of business at a meeting.
- pursuant to s.440I(2)(h) suspend Councillor Tegan Swan of Coffs Harbour Council's right to be paid any fee or other remuneration, to which she would otherwise be entitled as the holder of the civic office, for a period of TWO (2) MONTHS (without suspending Councillor Tegan Swan from civic office for that period).

The period of suspension of the right to be paid any fee or other remuneration commences on 23 August 2021 and ends on 22 October 2021.

Dated: 23 August 2021



KIERSTEN FISHBURN

Planning Delivery and Local Government

Department of Planning, Industry and Environment