

LOCAL GOVERNMENT ACT 1993

SECTION 440I

STATEMENT OF REASONS FOR TAKING DISCIPLINARY ACTION UNDER SECTION 440I

COUNCILLOR CON HINDI – GEORGES RIVER COUNCIL

1. I, Alison Dench, Executive Director, Local Government, having considered a departmental report prepared under section 440H(5A)(c) of the Local Government Act 1993, am satisfied that Clr Con Hindi has engaged in misconduct.
2. I have determined, after considering Councillor Hindi's submissions on penalty dated 22 November 2021, that he should be reprimanded, pursuant to section 440I(2)(b) of the Act, and suspended from civic office for a period of 1 (one) month pursuant to section 440I(2)(g) 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(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.

THE MATTER

9. It was alleged that Clr Hindi breached provisions of Council's Code of Conduct at a Council Meeting held on 26 April 2021 by publicly alleging that another Council official had breached the Code in relation to the release of confidential information.

REASONS FOR TAKING DISCIPLINARY ACTION UNDER SECTION 440I(2)(g) OF THE LOCAL GOVERNMENT ACT 1993

10. I have previously considered a departmental report that was prepared in relation to the alleged misconduct. On the basis of that departmental report, I was satisfied that Clr Hindi had engaged in misconduct as defined 440F(1)(b) and 440(1)(d) of the Local Government Act 1993 (the Act).

11. I formed a preliminary view that disciplinary action was warranted and invited Clr Hindi's submissions on the proposed actions.
12. Having considered the departmental report and Clr Hindi's submissions, I maintain the view that having engaged in misconduct, disciplinary action is warranted.
13. I do not consider this to be a matter that should, as submitted by Clr Hindi, be referred back to Council with recommendations.
14. I consider the matter warrants more than a reprimand, as submitted by Clr Hindi. I also note Clr Hindi offered, in his submissions, to make a public apology.
15. I note Clr Hindi made an apology at Council's recent meeting held on 22 November 2021.
16. On the issue of prior finding of misconduct, while Clr Hindi's submission is correct as at 26 April 2020, it does not acknowledge that Clr Hindi was recently found to have engaged in misconduct (see decision dated 26 October 2021).
17. I am also advised Clr Hindi has also been found to have breached Council's adopted code of conduct and censured on 4 previous occasions.
18. I also do not consider the matter warrants referral to the NCAT. This is because the penalty I have imposed is well within my jurisdiction.
19. I maintain the view that disciplinary action is necessary to provide both a specific deterrence to Clr Hindi in the future, and also as a general deterrence to others.
20. In arriving at the penalty to be imposed, I have considered the submissions made on the issues of duplicity and totality as well the references to the principles in the matter of *Deputy Secretary, Local Government Planning and Policy v Byrne (No 2) [2021] NSWCATOD 112*, which in turn referred to *Deputy Secretary, Local Government, Planning and Policy v Byrne [2021] NSWCATOD 53*.
21. I am of the view the matter is not duplicitous and the penalty, noting the reference by Principal Member Pearson at [71] in Byrne to the Pauling matter (*Office of Local Government v Pauling [2014] NSWCATAD 121 at [31]*), is sound having regard to the principle of totality.
22. I have determined that Clr Hindi should be reprimanded and suspended from civic office for a period of 1 month.
23. I note Clr Hindi had been cautioned that an earlier decision by the Office of Local Government not to take action should not be taken as precedent that

it would not take action. Further, he had been reminded in writing that he should not raise code of conduct matters at a Council meeting.

24. I note Cllr Hindi has previously acknowledged that a breach of the provisions of the code of conduct, that are in place to maintain its integrity, is a very serious matter.
25. I consider Cllr Hindi's submissions in relation to this matter demonstrate a lack of insight into his conduct and its potential impact on Council's General Manager and other Council employees who may be called upon to attend Council meetings and answer questions.
26. I have considered Cllr Hindi's extensive experience as a councillor, including time as a Mayor. This experience should have given him insight into what is acceptable and what his obligations are under the code of conduct.
27. Taking disciplinary action will give emphasis to the unacceptability of the conduct involved and will remind both Cllr Hindi and other councillors of importance of the maintenance of high standards of conduct. It will also serve to repair damage to the integrity of the code, which relies in part on Council officials being able to trust that allegations about them will be dealt with in accordance with Council's adopted processes.
28. I understand the period of suspension will, of necessity, be short in its operational effect given Cllr Hindi will cease to be a councillor at midnight on 3 December 2021. I also note he is not standing as a candidate for re-election in the 2021 Local Government elections to be held on 4 December 2021. Given this, the impact of suspension on the community will be limited. In this regard, it can be noted that Council's last ordinary meeting was held on 22 November 2021.
29. Notwithstanding, I consider that I am still required to have regard to the effect my decision might have on constituents and also to Council's operations.
30. I hold the view that reprimanding and suspending Cllr Hindi from civic office is appropriate, despite the impact (albeit limited as stated) that the action would have on Council constituents.
31. Similarly, I hold the view that the disciplinary action does not preclude Council from undertaking business. This is, as stated, particularly so given it is in caretaker mode.
32. I am of the view that taking this disciplinary action will serve to give confidence to council officials being able to trust that allegations will be dealt with in accordance with Council's adopted processes.

DATED: 26 November 2021



Alison Dench
Executive Director, Local Government
Department of Planning, Industry and Environment

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ORDER

SECTION 440I(2)(g)

**SUSPENDING COUNCILLOR CON HINDI OF GEORGES RIVER COUNCIL FROM
CIVIC OFFICE FOR A PERIOD OF ONE MONTH**

I, Alison Dench, Executive Director, Local Government, under delegation from the Secretary, Department of Planning, Industry and Environment, by **ORDER**, **direct** that Councillor Con Hindi of Georges River Council:

- be suspended from civic office for a period of 1 (one) month (s.440I(2)(g)).

The period of suspension commences on 3 December 2021.

Dated: 26 November 2021



ALISON DENCH

EXECUTIVE DIRECTOR, LOCAL GOVERNMENT

Department of Planning, Industry and Environment