

**LOCAL GOVERNMENT ACT 1993**

**SECTION 440I(2)(g)**

**SUSPENDING COUNCILLOR IAN OLSEN OF CESSNOCK CITY COUNCIL FROM  
CIVIC OFFICE FOR A PERIOD OF THREE MONTHS**

1. I, Brett Whitworth, Deputy Secretary, Office of Local Government, Department of Planning, Housing and Infrastructure, under delegation from the Secretary, Department of Planning, Housing and Infrastructure, by **ORDER, direct** that Councillor Ian Olsen of Cessnock City Council:

- be suspended from civic office for a period of 3 (three) months (s.440I(2)(g)).

The period of suspension commences on **3** April 2024 and ends on **2** July 2024.

Dated:

**22 March 2024**



**BRETT WHITWORTH**

**Deputy Secretary**

**Office of Local Government**

**Department of Planning, Housing and Infrastructure**

## LOCAL GOVERNMENT ACT 1993

### SECTION 440I

#### STATEMENT OF REASONS FOR TAKING DISCIPLINARY ACTION UNDER SECTION 440I

#### COUNCILLOR IAN OLSEN – CESSNOCK CITY COUNCIL

1. I, Brett Whitworth, Deputy Secretary, Office of Local Government, Department of Planning, Housing and Infrastructure, having considered a departmental report prepared under section 440H of the Local Government Act 1993 (the Act), am satisfied that Councillor (Clr) Ian Olsen of Cessnock City Council has engaged in misconduct as defined by s.440F of the Act.
2. I have determined, after considering Clr Olsen's submissions on penalty dated 1 March 2024, that he should by Order, be suspended from civic office for a period of 3 months, pursuant to section 440I(2)(g) of the Act.

#### THE MATTER

3. That during the open and confidential sessions of Cessnock City Council's meeting on 19 October 2022, Clr Olsen breached applicable provisions of the Code on four separate occasions and as such, engaged in misconduct, as defined by section 440F(1)(b) of the Act.
4. That following the Meeting, Clr Olsen engaged in misconduct as defined by s.440F(1)(b) of the Act by posting comments on social media on or about 20 October 2022.

#### Specific Allegations:

5. That:
  - during the closed session of the Meeting, Clr Olsen engaged in misconduct as defined by s.440F(1)(a), (b) and (e) of the Act, by engaging in intimidatory and abusive behaviour directed towards Clr Jackson, in breach of cl.3.1(e) of Council's Code, s.490A of the Act, by virtue of clause 182(d) of the Regulation and clause 15.11 of the Meeting Code.
  - during the Meeting, Clr Olsen engaged in misconduct as defined by s.440F of the Act by disclosing information regarding a conduct complaint, to be considered by Council in closed session, in breach of clause 9.12 of the Code.
  - during the Meeting, Clr Olsen engaged in misconduct as defined by s.440F of the Act by engaging in disruptive conduct in breach of cl.3.21 of the Code and s.490A of the Act by virtue of Clauses 182(c) and (d) of the Regulation.
  - during the Meeting, Clr Olsen engaged in misconduct as defined by s.440F of the Act by conducting himself in a manner that caused, comprised or involved intimidation in breach of s.490A of the Act by

virtue of clause 182(d) of the Regulation such conduct breaching cl.3.1 (c) of the Code in that it brought the council into disrepute.

- after the Meeting, Clr Olsen breached applicable provisions of the Code by making/posting comments on social media in breach of cl 3.1 b) of the Code, and in doing so engaged in misconduct as defined by s.440F of the Act.

### **REASONS FOR SUSPENDING COUNCILLOR IAN OLSEN UNDER SECTION 440I(2)(g) OF THE LOCAL GOVERNMENT ACT 1993**

6. I have previously considered a departmental report and annexures that were prepared in relation to the alleged misconduct. On the basis of that departmental report and annexures, I am satisfied that Clr Olsen engaged in misconduct as defined by s.440F of the Act in relation to allegations 1 - 4 but not in relation to allegation 5.
7. I am satisfied allegations 1 through 4 have been substantiated and that Clr Olsen engaged in misconduct through behaviour in the meeting of 19 October 2022 by:
  - Committing acts of disorder through conduct that causes, comprises or involves intimidation or verbal abuse,
  - Disclosing information regarding a conduct complaint, which is to be considered in a closed session to protect both the complaint and the subject of the complaint,
  - Preventing the proper or effective functioning of the Council, and
  - Engaging in disorder by insulting and disparaging the General Manager.
8. I am not satisfied allegation 5 has been substantiated.
9. Having formed the view under section 440I(1)(a) of the Act that Clr Olsen has committed misconduct within the meaning of section 440F of the Act and given the impact that Clr Olsen's misconduct had on the operation of the ability of Council to meet effectively, I also formed a view under section 440I(1)(b) that disciplinary action is warranted.
10. I do not consider this to be a matter that should be referred back to Council with recommendations.
11. I do not consider this to be a matter that should be referred to the New South Wales Civil and Disciplinary Tribunal (NCAT). This is because I consider the 3 month suspension I am imposing to be an appropriate disciplinary action, which is also within my authority under the Act.
12. Clr Olsen was advised of my decision that he had been found to have engaged in misconduct, that disciplinary action was warranted and my position on proposed penalty (suspension from civic office for period of 3 months) by letter dated 12 February 2024. Clr Olsen was provided 21 days from 12 February 2024 to provide submissions on the issue of proposed penalty.
13. Clr Olsen provided written submissions dated 1 March 2024.
14. Having considered Clr Olsen's submissions on penalty, I maintain the view that disciplinary action is warranted to provide both a specific deterrence to Clr Olsen in the future and also as a general deterrence to others.
15. I have determined that Clr Olsen should be suspended from civic office for a period of 3 (three) months.

16. I have considered Clr Olsen's extensive experience (23 years on his submission) as a councillor. I also understand Clr Olsen was Deputy Mayor in 2009.
17. I understand Clr Olsen has attended training throughout his extended career in local government in relation to his obligations including as to his obligations under the Code.
18. I am unaware of any previous decisions of the NCAT or its predecessor the Local Government Pecuniary Interest and Disciplinary Tribunal concerning Clr Olsen.
19. I am aware Clr Olsen has been censured on 7 occasions by Council.
20. I am also of the view Clr Olsen has shown no remorse in relation to the proved allegations.
21. Clr Olsen's experience and training when considered together with his antecedents should have given him insight into what is acceptable and what his obligations are under Council's Code of Conduct.
22. I note Clr Olsen has stated he does not intend to nominate for the upcoming local government elections to be held in September 2024.
23. However, having regard to all of the above, when placed against the allegations, I hold the view that taking disciplinary action will give emphasis to the unacceptability of the conduct involved and will remind Clr Olsen and others of the importance of the maintenance of high standards of conduct. It also sends the appropriate message to the public in general that such conduct is not acceptable and will be investigated and where appropriate, sanctioned.
24. In this matter, I hold the view that suspension from civic office is appropriate, despite the impact that the suspension may have on Council's constituents.
25. Similarly, I hold the view that the disciplinary action does not impede nor preclude Council from undertaking its business.

## **RELEVANT LEGISLATION**

26. "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.
27. 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.

28. 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.
29. 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).
30. 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.
31. Section 440K provides: (1) A councillor, while suspended from office under this Division—
- (a) is not entitled to exercise any of the functions of the civic office, and
  - (b) is not entitled to any fee or other remuneration, or to the payment of expenses or to the use of council facilities, to which he or she would otherwise be entitled as the holder of the civic office.
- (2) The period of suspension under an order made by the Departmental Chief Executive commences on the date 7 days after the service of the order on the councillor or the date specified in the order for the commencement of the period of suspension, whichever is the later.

DATED:

22 March 2024



**Brett Whitworth**  
**Deputy Secretary, Office of Local Government**  
**Department of Planning, Housing and Infrastructure**