

## LOCAL GOVERNMENT ACT 1993

### SECTION 440I

#### STATEMENT OF REASONS UNDER SECTION 440I COUNCILLOR STEPHEN O'HALLORAN – BALRANALD SHIRE COUNCIL

1. I, Tim Hurst, Chief Executive, Office of Local Government, having considered a departmental report prepared under section 440H of the *Local Government Act 1993*, am satisfied that Councillor Stephen O'Halloran of Balranald Shire Council has engaged in misconduct within the meaning of section 440F of the *Local Government Act 1993* and as a result, disciplinary action is warranted pursuant to section 440I of the *Local Government Act 1993*.
2. I have determined to take the following disciplinary action:
  - By order, direct Clr O'Halloran to apologise to [REDACTED] in writing;
  - By order, direct Clr O'Halloran to apologise to the Mayor at a council meeting and in his presence;
  - By order, direct Clr O'Halloran to cease engaging in misconduct;
  - By order, suspend Clr O'Halloran from civic office for a period of 2 months.

#### 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 under section 440,
  - (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) 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.
5. Section 440I(1) provides that the Departmental Chief Executive may take disciplinary action against a councillor if satisfied that:

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- (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 440J provides that the Departmental Chief Executive may take no further action against the councillor if satisfied that no further action is warranted or, instead of taking disciplinary action, may refer the matter to the council or to the NSW Civil and Administrative Tribunal.

## THE MATTERS

8. On 2 January 2018, Clr O'Halloran had a telephone discussion with [REDACTED]. During the discussion, Clr O'Halloran is alleged to have said to [REDACTED] *otherwise his job might be on the line.* [REDACTED]
9. By virtue of this conduct, Clr O'Halloran breached clauses 3.1a), 6.2a), 6.7e) and 6.7g) of Council's code of conduct, by engaging in an inappropriate interaction with a Council employee [REDACTED]. This conduct is misconduct as defined in section 440F of the Local Government Act 1993.
10. On 8 February 2018, Clr O'Halloran breached clause 256 of the Local Government (General) Regulation 2005 by committing an act of misconduct at Council's meeting of that date, by insulting and making personal reflections about Clr Byron and Clr Purtill and behaving in a manner inconsistent with maintaining order at the meeting. This conduct is misconduct as defined in section 400F of the Local Government Act 1993.
11. On 8 February 2018, Clr O'Halloran breached clauses 6.5 and 6.6 of Council's code of conduct by failing to act in accordance with the Local Government (General) regulation 2005 and failing to show respect to the

chair and other council officials at the meeting. This conduct is misconduct as defined in section 440F of the Local Government Act 1993.

## **REASONS**

12. I have carefully considered the Departmental Report under s.440H(5A) of the *Local Government Act 1993* into the conduct of Councillor O'Halloran.
13. I agree with the contents of the Departmental Report.
14. I have also considered the submissions by Clr O'Halloran dated 13 July 2018 on the question of breach.
15. Clr O'Halloran offered no evidence in his submissions to alter the findings in the Departmental Report.
16. I find that on 2 January 2018, Clr O'Halloran breached clauses 3.1a), 6.2c), 6.7e) and 6.7g) of Council's code of conduct. This conduct is misconduct as defined in s440F of the Local Government Act 1993.
17. Clr O'Halloran breached Council's code of conduct by engaging in an appropriate interaction with a council employee, [REDACTED]
18. I find that on 8 February 2018 Clr O'Halloran breached clause 256 of the Local Government (General) Regulation 2005 and clauses 6.5 and 6.6 of council's code of conduct.
19. Clr O'Halloran breached clause 256 of the Local Government (General) Regulation 2005 and committed misconduct at Council's meeting of 8 February 2018 by insulting and making personal reflections about Clr Byron and Clr Purtill and behaving in a manner inconsistent with maintaining order at the meeting.
20. Clr O'Halloran breached clauses 6.5 and 6.6 of Council's code of conduct at council's meeting of 8 February 2018 by failing to act in accordance with the Regulation and failing to show respect to the Chair and other council officials at the meeting.
21. I have read Clr O'Halloran's submissions on penalty. Clr O'Halloran appears to accept the seriousness of the conduct and that it warrants disciplinary action. However, in his opinion, this should be limited to apologising for the misconduct. I note that Clr O'Halloran has not addressed the preliminary indication about a two month period of suspension.
22. Clr O'Halloran's submission does not refer to any mitigating factors or justification for him to have behaved in the manner in which he did.

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23. Taking into account Clr O'Halloran's previous breaches of the code, this can be considered a pattern of behaviour.
24. Clr O'Halloran is an experienced councillor who has served as Mayor on at least four occasions.
25. Clr O'Halloran has been the subject of two previous code of conduct complaints and there was disciplinary action taken in each case.
26. Despite Clr O'Halloran having previously apologised, undertaken training and has his conduct reported publicly, this has failed to prevent Clr O'Halloran behaving in a similar manner.
27. Clr O'Halloran's conduct in these matters amount to significant breaches of Council's code of conduct.
28. In determining to suspend Councillor O'Halloran I have taken into account that suspension of a councillor means that some residents will be deprived of their representation during this period. On balance, I consider Councillor O'Halloran's misconduct to be sufficiently serious to warrant this.

DATED: 10 August 2018



**Tim Hurst**  
**Chief Executive**  
**Office of Local Government**

**LOCAL GOVERNMENT ACT 1993**

**SECTION 440I(2)(c), (d) and (g)**

**ORDER REQUIRING COUNCILLOR STEPHEN O'HALLORAN OF BALRANALD SHIRE COUNCIL TO APOLOGISE, CEASE ENGAGING IN MISCONDUCT AND SUSPENDING HIM FROM CIVIC OFFICE FOR A PERIOD OF TWO MONTHS**

1. I, Tim Hurst, Chief Executive, Office of Local Government, by **ORDER**, direct that Councillor Stephen O'Halloran of Balranald Shire Council:
  - apologise in writing to Balranald Shire Council's [REDACTED] [REDACTED] (s.440I(2)(d) of the Local Government Act 1993;
  - apologise to the Mayor, Clr Leigh Byron at a Council meeting and in his presence (s.440I (2)(d) of the Local Government Act 1993;
  - cease engaging in misconduct (s.440I(2)(c)).
  
2. I, Tim Hurst, Chief Executive, Office of Local Government, hereby **ORDER** Stephen O'Halloran of Balranald Shire Council:
  - be suspended from civic office for a period of 2 (two) months (s.440I(2)(g)).

The period of suspension commences on 21 August 2018 and ends on 20 October 2018.

Dated: 10 August 2018



**TIM HURST**

**Chief Executive, Office of Local Government**