

## LOCAL GOVERNMENT ACT 1993

### SECTION 440I

#### STATEMENT OF REASONS FOR TAKING DISCIPLINARY ACTION UNDER SECTION 440I AGAINST COUNCILLOR GRAHAM MEINEKE – LISMORE CITY COUNCIL

1. I, Tim Hurst, Acting Chief Executive, Office of Local Government, having considered a departmental report prepared under section 440H of the *Local Government Act 1993* (the Act), am satisfied that Councillor Graham Meineke has engaged in misconduct within the meaning of section 440F of the Act and that a reprimand and the suspension of his right to be paid any fee or other remuneration is warranted.

#### RELEVANT LEGISLATION

2. "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 as required 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.
3. 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.
4. 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.]
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).

## **THE MATTER**

7. It was alleged that Councillor Meineke failed to disclose and appropriately manage a 'significant' non-pecuniary conflict of interests at Lismore City Council meetings on 9 July 2013 and 10 December 2013 in breach of clauses 4.2 and 4.12 of Council's code of conduct. The private interest stems from his private business, GM Project Development and Management in which he is a planning consultant.

## **REASONS FOR REPRIMANDING COUNCILLOR MEINEKE AND SUSPENDING HIS RIGHT TO BE PAID ANY FEE OR REMUNERATION TO WHICH HE WOULD OTHERWISE BE ENTITLED AS THE HOLDER OF THE CIVIC OFFICE FOR A PERIOD OF THREE MONTHS UNDER SECTION 440I(2)(h) OF THE LOCAL GOVERNMENT ACT 1993.**

8. I have carefully considered the departmental report under section 440H of the Act into the conduct of Councillor Meineke.
9. I am satisfied that Councillor Meineke contravened clauses 4.2 and 4.12 of the Council's code of conduct on 9 July 2013 and again on 10 December 2013 by participating when matters relating to Mr Larrescy, a client of Councillor Meineke's business, were discussed. The business relationship constituted a non-pecuniary conflict of interests.
10. Council's code of conduct regulates how such non-pecuniary conflict of interests are to be handled by a councillor.
11. I find that Councillor Meineke has engaged in misconduct as defined in section 440F(1)(b) of the Act.
12. The non-pecuniary conflict of interests was 'significant' as it was a current client relationship and ongoing business relationship likely to be perceived by a reasonable and informed person as an interest that could influence Councillor Meineke when carrying out his public duty. In

particular, when voting on a resolution that concerned Mr Larrescy's property at 262 Rous Road, Goonellabah.

13. The section 448(g) exemption claimed by Councillor Meineke does not apply to exempt non-pecuniary conflict of interests being dealt with appropriately under the code of conduct and therefore does not excuse Councillor Meineke in relation to his participation at the meetings and voting on the matters.
14. Even when warned about the risks of conflicts of interests, Councillor Meineke did not take advice about governance matters, or seek advice to understand his obligations to manage conflicts of interests.
15. Councillor Meineke's conduct evidences a 'reckless disregard' for his obligations as a councillor in the sense observed by Dr Renwick in the NSW Civil and Administrative Tribunal (the Tribunal) *Office of Local Government v Councillor Campbell of Murray Shire Council* decision.
16. In the Supreme Court *Mehajer v Office of Local Government* decision, Adam J held that to warrant suspension reckless conduct needed to be coupled with evidence of 'concealment or deceit involved'. There is no concealment or deceit present in the matter of Councillor Meineke.
17. Councillor Meineke has been a councillor for 11 years and yet he refused to take advice believing that he did not need further guidance about his obligations under the code of conduct.
18. Councillor Meineke has at no time accepted that his conduct has fallen short of that required by the code of conduct.
19. The conduct of Councillor Meineke shows a similar degree of recklessness to the conduct of Councillor Campbell, and his conduct is similarly lacking in contrition and insight.
20. I am thus guided by the decision of the Tribunal in the matter of Campbell in applying a sanction.
21. I have, accordingly, determined to reprimand Councillor Meineke and suspend his right to be paid remuneration as the holder of civic office for a period of 3 months commencing on 1 June 2016 and ending on 31 August 2016.

DATED: 20 April 2016



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

**LOCAL GOVERNMENT ACT 1993**

**SECTION 440I(2)(b) and (h)**

**ORDER REPRIMANDING CLR MEINEKE, LISMORE CITY COUNCIL AND  
SUSPENDING HIS RIGHT TO BE PAID ANY FEE OR OTHER REMUNERATION  
FOR A PERIOD OF 3 MONTHS**

I, Tim Hurst, Acting Chief Executive, Office of Local Government, hereby **ORDER** that Councillor Graham Meineke of Lismore City Council be reprimanded.

Further I **ORDER** that Councillor Graham Meineke's right to be paid any fee or other remuneration, to which he would otherwise be entitled as the holder of the civic office, be suspended for a period of three months commencing on 1 June 2016 and ending on 31 August 2016.

Dated: 20 April 2016



**TIM HURST**

**Acting Chief Executive, Office of Local Government**