

LOCAL GOVERNMENT ACT 1993

STATEMENT OF REASONS FOR TAKING DISCIPLINARY ACTION UNDER SECTION 440I

COUNCILLOR STUART COPPOCK – WILLOUGHBY CITY COUNCIL

1. I, Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, under delegation from the Secretary, Department of Planning, Industry and Environment having considered a departmental report prepared under section 440H of the *Local Government Act 1993* (the Act), am satisfied that Cllr Stuart Coppock of Willoughby City Council has engaged in misconduct within the meaning of section 440F of the Act and as a result, disciplinary action is warranted pursuant to section 440I of the Act.
2. I have determined, after considering Cllr Coppock's submissions on penalty dated 29 July 2019, that he should:
 - be reprimanded, pursuant to section 440I(2)(b) of the Act;
 - pursuant to section 440I(2)(e) of the Act, undertake training with respect to his rights and obligations as a councillor when interacting with Council staff within 3 months of the date of this decision; and
 - by order pursuant to section 440I(2)(h) of the Act, suspend, Cllr Coppock's right to be paid any fee or other remuneration to which he would otherwise be entitled as the holder of civic office, for a period of 2 months (without suspending him from civic office for that period) commencing on 1 April 2020 and ending on 31 May 2020.
3. A statement of reasons is to be made publicly available (section 440I(6)).

RELEVANT LEGISLATION

4. "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.*
5. 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.
6. 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.

7. 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.*

8. Section 440H(6) of the Act provides that the preparation of a departmental report is a prerequisite to a decision by the Departmental Chief Executive to take disciplinary action against a councillor, unless the disciplinary action is taken on the basis of a report by the Ombudsman or Independent Commission Against Corruption.

9. 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 departmental report or a report by the Ombudsman or Independent Commission Against Corruption), and*
 - (b) *disciplinary action is warranted.*

10. 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

11. It is alleged:
 - a) at or around 2:25pm on 18 October 2017, Clr Coppock telephoned Development Enforcement Officer Mark Fisher to discuss an enforcement matter relating to a commercial property at 278 Willoughby Road, Naremburn; and
 - b) in the course of his discussion with Mr Fisher, Clr Coppock requested Mr Fisher to not issue an infringement notice to the owner in respect of unauthorised works at the property.

REASONS FOR RELEVANT DISCIPLINARY ACTION OF COUNCILLOR COPPOCK UNDER SECTION 440I(2)(b), (e) and (h) OF THE LOCAL GOVERNMENT ACT 1993

12. I have read and adopt the final Departmental Report and its annexures prepared under section 440H of the Act.
13. I have read Clr Coppock's submissions provided through his solicitor Mr Max Menzies on the issue of breach dated 29 July 2019.
14. Having regard to Part 1 of the Departmental Report and for the reasons set out in the Analysis section of the Departmental Report, I found the evidence was to the requisite standard to prove the allegation that Clr Coppock engaged in misconduct in relation the allegation.
15. I have read Clr Coppock's submissions on the issue of penalty provided through his solicitor dated 29 July 2019. I am not persuaded by those submissions.
16. By contacting Mr Fisher to discuss an active enforcement matter, Clr Coppock contravened the Interaction Policy as Mr Fisher was not identified as a contact officer under the Policy, and the contact was not in the nature of an enquiry for basic information and not pertaining to a matter before Council.
17. Clr Coppock does not admit to his misconduct and has shown contempt for the code of conduct and misconduct processes. It is reasonable to expect Clr Coppock, as an experienced councillor, to be more respectful of the disciplinary processes in place to deal with alleged contraventions of the code of conduct.
18. In taking disciplinary action in this matter, I have turned my mind to both the nature of Clr Coppock's misconduct and the corrosive impact on the integrity and force of, and public confidence in, the disciplinary framework should unacceptable conduct not attract appropriate sanction.
19. I consider Clr Coppock's misconduct in this matter to be serious. It goes beyond mere ignorance of an important Council policy regulating the interaction between councillors and staff. His attempt to influence a Council official in the exercise of an enforcement discretion was highly improper.
20. I have therefore formed the concluded view that Clr Coppock's misconduct warrants disciplinary action.
21. It is not appropriate that the matter be referred back to Council given its seriousness and the limited courses of action open to Council to deal with it.
22. I decided not to refer the matter to NCAT and seek a higher penalty as I have the requisite jurisdiction to consider the matter on breach and penalty.
23. I am also mindful of the effect certain sanctions, such as suspension or disqualification, have to the people who elected Clr Coppock (see *Mehajer v Office of Local Government [2014] NSWSC 1804*).

Statement Of Reasons – Determination by Departmental Chief Executive, Office of Local Government

24. Given Cllr Coppock's qualifications and extensive experience as both a lawyer and an elected representative, he should be held to a high standard and to be taken to be aware of, and to understand, the standards of conduct required of him under Council's code of conduct. It is disappointing that he has failed to comply with those standards and as such I have determined to reprimand him as a formal expression of my disapproval.
25. While it has been submitted that a direction for training would be "patronising", I have taken into account that, in respect of this matter, Cllr Coppock has demonstrated an ignorance of, and a lack of appreciation for, an important Council policy. In light of Cllr Coppock's apparent refusal to receive and/or read email communications from Council and to avail himself of professional development opportunities offered to councillors, I believe he would benefit from targeted training, as ordered.
26. While it would have been open to me to suspend Cllr Coppock from civic office, I have decided to suspend Cllr Coppock's fee for a period without suspending him from civic office after weighing both the seriousness of the misconduct and the effect a suspension may have on the community that Cllr Coppock represents.
27. The penalties reflect the seriousness of the matter and provide deterrents specifically and generally.

DATED: 28 February 2020



Tim Hurst
Deputy Secretary, Local Government, Planning and Policy
Department of Planning, Industry and Environment