

LOCAL GOVERNMENT ACT 1993

SECTION 440I

STATEMENT OF REASONS FOR TAKING DISCIPLINARY ACTION UNDER SECTION 440I COUNCILLOR JOHN WALKER – HILLTOPS COUNCIL

1. I, Tim Hurst, Deputy Secretary, Local Government, Planning and Policy, having considered a departmental report prepared under section 440H(5A)(c) of the *Local Government Act 1993* (the Act), am satisfied that Cllr John Walker of Hilltops Council has engaged in misconduct and that the matter is sufficiently serious to warrant taking disciplinary action.
2. I have determined, after considering Cllr Walker's submissions on penalty dated 12 July 2020, that he should be reprimanded, pursuant to section 440I(2)(b) of the Act.
3. I have also determined my decision be made publicly available on the Office of Local Government's web page pursuant to section 440I(7) of the Act.

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) provides 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) provides 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 department 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).
11. Section 440I(3) provides that in determining which disciplinary action, if any, to take against a councillor who has engaged in misconduct, the Departmental Chief Executive may take into account any previous

incidents of misconduct by the councillor, any disciplinary action previously taken against the councillor and any other relevant matters.

12. Section 440I(3A) provides that before taking disciplinary action against a councillor, the Departmental Chief Executive is to:
 - (a) give the councillor written notice:
 - (i) specifying the grounds on which it is proposed to take disciplinary action against the councillor, and
 - (ii) specifying the disciplinary action that the Departmental Chief Executive proposes to take against the councillor, and
 - (iii) inviting the councillor to make submissions within a specified period (of not less than 14 days) about the proposal, and
 - (b) consider any submissions made by the councillor in accordance with the notice.
13. Section 440I(4) provides the Departmental Chief Executive is to notify the councillor of any decision to take disciplinary action under this section and the reasons for the decision.
14. Section 440I(5) provides a copy of the decision and the statement of reasons for the decision are to be provided to the council.
15. Section 440I(6) provides the Departmental Chief Executive is to make any decision to suspend a councillor from civic office or to suspend a councillor's right to be paid any fee or other remuneration under this section, and the statement of reasons for the decision, publicly available.
16. Section 440I(7) provides 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.
17. Section 440J of the Act provides for referral of matters to the NSW Civil and Administrative Tribunal.

THE MATTER

18. It was alleged that Clr Walker breached clauses 3.1a) and c), 3.2 and 3.3 of Council's code, in place at the time, by sending an email on 13 January 2018 to all councillors containing unsubstantiated allegations, improper and disrespectful comments and statements based on factually incorrect information about the conduct of other council officials.

REASONS FOR REPRIMANDING CLR WALKER UNDER SECTION 440I(2)(b) OF THE LOCAL GOVERNMENT ACT 1993

19. I have considered a departmental report that has been prepared in relation to the alleged misconduct of Clr John Walker of Hilltops Council.
20. I have also considered submissions provided by Clr Walker on the issue of breach and separately on penalty.

21. I consider that in the absence of evidence to the contrary, the departmental report and annexures satisfy, to the required standard, the allegation that Clr Walker has breached cll.3.1a) and c), 3.2 and 3.3 of Hilltop Council's adopted code of conduct which is misconduct pursuant to section 440F(1)(b) of the Act.
22. I am of the view Clr Walker has engaged in misconduct that cannot be characterised as technical or trivial in nature. This is because Clr Walker sent an email, containing comments about two Councillors that were improper and disrespectful and that were based on factually incorrect information.
23. In deciding on the penalty of reprimand, I am informed by the fact that there are no other Tribunal decisions that provide a precedent for this type of breach and the fact that Clr Walker has no previous incidents of misconduct or any disciplinary action previously taken against him.
24. I do not consider that an educative approach would be appropriate, noting that Clr Walker has had the benefit of training.
25. I also noted that Clr Walker has previously said that he would not undertake counselling or training as he had completed governance training in previous terms, and he believed that he had done nothing wrong by sending the subject email.
26. I don't think this is a matter that would be appropriate to refer back to Council given the seriousness and the limited courses of action open to Council to deal with the matter. I also am of the view the matter is not so serious or complex as to warrant referral to the NCAT.
27. Making the matter publicly available will provide a deterrent to other councillors considering engaging in this type of conduct.

DATED: 11 September 2020



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