

LOCAL GOVERNMENT ACT 1993

STATEMENT OF REASONS FOR TAKING DISCIPLINARY ACTION UNDER SECTION 440I

COUNCILLOR RODNEY KENDALL – WAGGA WAGGA CITY COUNCIL

1. I, Brett Whitworth, Deputy Secretary, Local Government, having considered a departmental report and annexures prepared under section 440H(5) of the *Local Government Act 1993* (the Act), am satisfied that Clr Rodney Kendall of Wagga Wagga City Council (Council) has engaged in misconduct.
2. I have determined that Clr Rodney Kendall should be counselled, pursuant to section 440I(2)(a) of the Act and suspended from civic office for a period of 1 (one) month pursuant to section 440I(2)(g) of the Act.

THE MATTER

3. That:
 - Councillor Kendall breached the provisions of Council's Code of Conduct (Code) by failing to declare and manage a conflict of interests in Council's consideration of *DA21/0492 – Place of Public Worship at 53 Gregadoo Road, Lake Albert, Lot 4 DP 1142732* (The DA) at its meeting of 14 February 2022.
 - Pursuant to cl.5.9(b) of Council's Code, Clr Kendall had a significant non-pecuniary conflict of interest in relation to the DA before Council, namely, a continuing commercial relationship with the applicant, Carl Napier.
 - Clr Kendall at the Council meeting failed to disclose this conflict of interests to the meeting as soon as practicable.
 - Clr Kendall at the Council meeting failed to manage this conflict of interests, in that he remained present at the meeting at which the matter was being considered or discussed, moved the motion to approve DA21/0492 and voted on the motion.

REASONS FOR TAKING DISCIPLINARY ACTION UNDER SECTION 440I(2)(g) OF THE LOCAL GOVERNMENT ACT 1993

4. I have previously considered a departmental report and annexures that was prepared in relation to the alleged misconduct. On the basis of that departmental report and annexures, I am satisfied that Clr Kendall had engaged in misconduct as defined 440F(1)(b) of the Act.
5. Clr Kendall failed to comply with his obligations under cl.5.10(b) of Council's Code of Conduct which in turn refers to cl.4.28 and 4.29, regarding his significant non-pecuniary conflict of interests.

6. Clr Kendall:
 - a. failed to disclose the nature of his interest to the meeting as soon as practicable; and
 - b. remained at the council meeting:
 - at which time the matter was being considered or discussed by the council; and
 - also during the time council voted on the matter.
7. I note Clr Kendall attended the Council meeting, failed to disclose his interest, moved the motion, and voted on the motion.
8. I formed a preliminary view that disciplinary action was warranted and invited Clr Kendall's submissions on the proposed penalty.
9. Clr Kendall did not provide any submissions on the issue of penalty.
10. Having considered the departmental report and annexures, I maintain the view that having engaged in misconduct, disciplinary action is warranted.
11. I do not consider this to be a matter that should be referred back to Council with recommendations.
12. I do not consider this to be a matter that should be referred to the New South Wales Civil and Administrative Tribunal. This is because the disciplinary action I have imposed is within my authority under the Act.
13. I note Clr Kendall participated in the process and made admissions on the issue of breach in interview.
14. I maintain the view that disciplinary action is necessary to provide both a specific deterrence to Clr Kendall in the future, and also as a general deterrence to others.
15. I have determined that Clr Kendall should be counselled and suspended from civic office for a period of 1 (one) month.
16. I have considered Clr Kendall's extensive experience as a councillor, including time served as Mayor. This experience should have given him insight into what is acceptable and what his obligations are Council's Code of Conduct. It is accepted there may have been a training session provided in this period of Council, but that session may have taken place after this matter came before Council.
17. Notwithstanding that, Clr Kendall admitted to having attended a number of training sessions throughout his time as an elected representative. I note Clr Kendall was elected to Council in 2004 and has served continuously since. Clr Kendall was elected mayor in 2012, 2013, 2014, and 2015.

18. In addition, I note Clr Kendall admitted in words to the effect that he believed he had a pretty good grasp, or at the time [sic as at 14 February 2022] had a pretty good understanding of the code of conduct, and the requirements of him. Clr Kendall also admitted in words to the effect that notwithstanding any issues that may have arisen in relation to training due to COVID, he thought he had an adequate understanding of the code of conduct at the time this matter came before Council [sic on 14 February 2022].
19. Taking disciplinary action will give emphasis to the unacceptability of the conduct involved and will remind both Clr Kendall and other councillors of 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.
20. In this matter, I hold the view that counselling and suspending Clr Kendall from civic office is appropriate, despite the impact that the suspension may have on Council's constituents.
21. Similarly, I hold the view that the disciplinary action does not impede or preclude Council from undertaking its business.

RELEVANT LEGISLATION

22. "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.
23. 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.
24. Section 440I(1) of the Act 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.
25. Section 440I(2) of the Act 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).

26. Section 440I(3A) of the Act provides:

'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.

27. Section 440I(4) of the Act 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.'

28. Section 440I(5) of the Act provides: 'A copy of the decision and the statement of reasons for the decision are to be provided to the council.'

29. Section 440I(6) of the Act 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.

30. Section 440I(7) of the Act provides that 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.

DATED: 7 September 2023



Brett Whitworth
Deputy Secretary, Office of Local Government
Department of Planning and Environment

LOCAL GOVERNMENT ACT 1993

SECTION 440I(2)(g)

ORDER

**SUSPENDING COUNCILLOR RODNEY KENDALL OF WAGGA WAGGA CITY
COUNCIL FROM CIVIC OFFICE FOR A PERIOD OF ONE MONTH**

By **ORDER**, I, Brett Whitworth, Deputy Secretary, Local Government, under delegation from the Secretary, Department of Planning and Environment, suspend Councillor Rodney Kendall of Wagga Wagga City Council from civic office for a period of 1 (one) month pursuant to section 440I(2)(g) of the *Local Government Act 1993*.

The period of suspension commences on ¹⁵ September 2023 and ends on ¹⁵ October 2023.

Dated: 7 September 2023



BRETT WHITWORTH

Deputy Secretary, Office of Local Government

Department of Planning and Environment