

## LOCAL GOVERNMENT ACT 1993

### SECTION 440I

#### STATEMENT OF REASONS FOR TAKING DISCIPLINARY ACTION UNDER SECTION 440I(2)(b) and (g) COUNCILLOR KATH ELLIOTT – NEWCASTLE CITY COUNCIL

- I, Kiersten Fishburn, Coordinator General, Planning Delivery and Local Government having considered a departmental report prepared under section 440H of the Local Government Act 1993, am satisfied that Cllr Kath Elliott has engaged in misconduct as defined by s.440F of the Local Government Act 1993.
- I have determined that Cllr Elliott should be:
  - reprimanded, pursuant to section 440I(2)(b) of the Act; and
  - suspended for a period of six (6) weeks, pursuant to section 440I(2)(g) of the Act.

#### RELEVANT LEGISLATION

- “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.
- 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.
- 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.

- 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).
- Section 440I(6) 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.
- Section 440I(7) 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.

## **THE MATTER**

- It is alleged that Clr Elliott breached Council's Code on 23 April 2020 and failed to comply with section 440 of the Act by providing the final investigation report from Phil O'Brien dated 22 January 2020 and other information regarding code of conduct complaints to the media.
- It is further alleged that Clr Elliott did not comply with Council's *Procedures for the Administration of the Code of Conduct* (Procedures) on 23 April 2020 and thereby failed to comply with section 440AA of the Act on 23 April 2020 by providing the final investigation report from Phil O'Brien dated 22 January 2020 and other information regarding code of conduct complaints to the media.

## **REASONS FOR RELEVANT DISCIPLINARY ACTION COUNCILLOR KATH ELLIOTT UNDER SECTION 440I(2)(b) and 440I(2)(g) OF THE LOCAL GOVERNMENT ACT 1993**

- My final decision, based on the information provided in the departmental report, and following consideration of all material provided after the preliminary view, is to support the taking of disciplinary action in the following terms:
  - To reprimand Clr Elliott (s.440I(2)(b)).
  - To suspend Clr Elliott from civic office for a period of six (6) weeks (s.440I(2)(g)).
- Clr Elliott has engaged in misconduct that cannot be characterised as technical or trivial in nature. Clr Elliott intentionally provided the following to the media:

- Confidential details of at least 12 code of conduct complaints (some code of conduct complaints contained multiple complaints) with Clr Elliott being the subject of the complaints.
- Excerpts of transcripts of interviews of identified individuals.
- Her own submissions in relation to a number of code of conduct complaints.
- Information that identified the individuals who made the code of conduct complaints.
- Clr Elliott has had Code of Conduct training on three occasions and would therefore be expected to fully understand the standards of behaviour that are required of her. Instead in her submission, she stated that she had the right to provide the information to the media in order to defend herself, even if her conduct was contrary to the Code.
- Clr Elliott has made no mention that her conduct has fallen below that of the standards required by the Code. Instead Clr Elliott has shown a blatant disregard for the Code and the Procedures that underpin them.
- Council officials play a vital role in serving local communities. To do this effectively and the right way, Councillors must uphold the highest standards of behaviour to ensure communities have trust and confidence in local government.
- Clr Elliott's deliberate misconduct has fallen short of the standards expected of Councillors and brings disrepute on both her own council and local government as a whole.
- The breach is not one that can be easily remedied and cannot be rectified.
- The penalty reflects the seriousness of the matter, the failure by Clr Elliott to acknowledge that her behaviour undermined the Code and the reputation of council, and the fact that the breach was done knowingly. It also sends a clear message to local government of the need to uphold the Code and the Procedures.

**DATED: 8 October 2021**



**Kiersten Fishburn**  
**Planning Delivery and Local Government**  
**Department of Planning, Industry and Environment**

**LOCAL GOVERNMENT ACT 1993**

**SECTION 440I(2)(g)**

**ORDER**

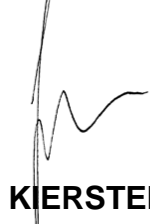
**SUSPENDING COUNCILLOR ELLIOTT OF NEWCASTLE CITY COUNCIL FROM  
CIVIC OFFICE FOR A PERIOD OF SIX WEEKS**

I, Kiersten Fishburn, Coordinator General, Planning Delivery and Local Government under delegation from the Secretary, Department of Planning, Industry and Environment, by **ORDER, direct** that Councillor Kath Elliott of Newcastle City Council:

- be suspended from civic office for a period of six (6) weeks (s.440I(2)(g)).

The period of suspension commences on 18 October 2021 and ends on 29 November 2021.

**Dated: 8 October 2021**



**KIERSTEN FISHBURN**  
**Coordinator General**  
**Planning Delivery and Local Government**  
**Department of Planning, Industry and Environment**