

**ITEM LATE MAYORAL MINUTE - 17/06/13 - CODE OF MEETING
PRACTICE, SUSPENDED COUNCILLOR**

REPORT FROM: MAYOR MAREE STATHAM

REFERENCE

NIL

SUMMARY

As indicated at the last Council meeting Councillor Martin Ticehurst has been suspended from Council by the Local Government Pecuniary Interest and Disciplinary Tribunal. Questions have now been asked about the ability of a suspended councillor to be able to participate in the public forum.

This Mayoral Minute provides clarification on this matter.

COMMENTARY

It was been well documented that current suspended Councillor, Martin Ticehurst, proposes, on written advice from the Division of Local Government, to attend tonight's Council meeting and exercise what he calls his 'lawful rights of freedom of speech'.

To avoid any unnecessary confrontation I am now providing some clarification.

During the last period of suspension of Councillor Ticehurst the Council sought legal advice in relation to this matter and as a result passed the following resolution:

10-344 RESOLVED

THAT Council:

1. Note the Mayoral Minute and that advice has been received that a suspended councillor cannot participate in a Council meeting in any way; and
2. Not accept any contribution from a suspended councillor during the Council meeting, including during the Public Forum as a suspended councillor is not considered a member of the public under these purposes.

The legal advice provided outlined that:

The Local Government(LG) Act 1993, Section(§)440N makes provision for the Director-General to refer a Code of Conduct(the Code) matter that is the subject of a request or report under LG Act 1993 §440H for consideration by the Pecuniary Interest and Disciplinary Tribunal(PIDT). The PIDT, refer to LG Act 1993 §470B, is required to consider a report from the Division of Local Government. After considering a report presented to it under §440N and any other document or other material lodged with or provided to the Tribunal in relation to the report, PIDT may determine the proceedings and impose a penalty. Under §482(A) the PIDT may, amongst other things suspend Councillor from civic office for a period not exceeding six(6) months.

The LG Act 1993 defines civic office “ - - the office of councillor or mayor or, in the case of a county council, the office of chairperson or member.” In a practical sense this means that the Councillor is still an elected Councillor but during the period of suspension cannot undertake the roles and responsibilities of an elected councillor. To use a sporting analogy, the councillor is in the sinbin and cannot take the field. Upon completion of the period of suspension the Councillor is entitled to resume the exercise of civic office.

Attendance at Meetings

The LG Act 1993 is silent as to the extent of the practical restrictions placed upon of the suspended Councillor. While there are some obvious restrictions, for example a Councillor seeking to sit in the Chamber at an Ordinary Meeting of Council would be seeking to exercise civic office, establishing the boundaries between civic office and an interested party could be difficult. In regard to the attendance at the public forum of meetings the following points should be taken into consideration:-

- i. any member of the public is entitled to attend the public session of a Council Meeting;*
- ii. unless a person has been expelled from the meeting he is entitled to remain in the open session;*
- iii. it is not possible to prohibit a person from a meeting in anticipation that they may cause disorder; you have to wait until they breach the public order*
- iv. addressing the Council at a public forum is not a statutory right but may be granted in the Code of Meeting Practice;*
- v. if granted in a Code of Meeting Practice then it is available to members of the public in attendance and in accordance with the Code of Meeting Practice;*
- vi. a Councillor is not a member of the public;*
- vii. a Councillor, as they are not a member of the public, has not the right to exercise any privileges available to the public under the public access rules;*
- viii. a suspended Councillor is still a Councillor and not a member of the public;*
- ix. therefore, the Chair should refuse to accept a question from a suspended Councillor on the grounds that they are not a member of the public*

In addition to the above the additional points can also be considered:-

- i. the public forum is still a part of the Council meeting;*
- ii. seeking to ask a question(s) in the meeting even from the public gallery is a form of participation in the Council Meeting;*
- iii. a Councillor seeking to ask a question(s) from the public gallery is seeking to participate in the meeting;*
- iv. a suspended Councillor seeking to participate in a meeting is attempting to exercise civic office;*
- v. a suspended Councillor is not permitted to exercise a civic office*
- vi. the Chair should not accept questions from a suspended Councillor as it would be permitting the suspended Councillor to exercise civic office*

It would be a breach of the Chair’s responsibilities to permit a breach of the LG Act 1993.

In order to avoid any confusion over the matter the advice provided a recommendation that there be a Mayoral Minute at the start of the meeting and before the public forum begins. As a result the above resolution was passed by Council.

Suspended Councillor Ticehurst indicates that he will be asking questions in the Public Forum section of the Council meeting and that this comes from advice from the Division of Local Government. Suspended Councillor Ticehurst further states that the advice that he has been provided is that he *“has the same privileges as those of any other residents and ratepayers under the Lithgow City Council’s Code of Meeting Practice, which in fact allows for questions to be asked during the regular Public Forum sessions at Lithgow City Council Meetings.”*

This statement is NOT correct.

The advice from the DLG states:

3. *A suspended councillor can attend council meetings, but not in their capacity as a councillor. This means that they cannot take part in the election of the mayor or deputy mayor, either as a candidate or as a councillor, or vote on any matter before the council. There is no automatic right under the Act or the Regulation for the public to participate in a council meeting. It is a privilege granted by each council which is usually conferred through a council’s adopted Code of Meeting Practice. It is for each council to decide if and when members of the public are allowed to speak and on any limitation on the speakers or time for speeches.*

There is no advice within the DLG’s letter that gives suspended Councillor Ticehurst an opportunity to exercise his *“lawful rights of freedom of speech as a resident and ratepayer under the Councils Code of Meeting Practice and will be asking questions during the Public Forum session.”*

Whilst there may be differences in opinion in some areas between the Council legal advice and the opinion of the DLG, the DLG opinion still clearly reinforces the Council’s position to *“Not accept any contribution from a suspended councillor during the Council meeting, including during the Public Forum”*.

As the DLG opinion states:

- there is no automatic right under the Act or the Regulation for the public to participate in a council meeting
- It is a privilege granted by each council which is usually conferred through a council’s adopted Code of Meeting Practice.
- It is for each council to decide if and when members of the public are allowed to speak

This Council has made the conscious decision to *‘Not accept any contribution from a suspended councillor during the Council meeting, including during the Public Forum’*.

Should a suspended councillor seek to participate in the Council meeting, including in the public forum, then they would be considered to be committing an act of disorder and would thereby be dealt with in accordance with the provisions of the Code of Meeting Practice and the NSW Local Government Act.

The previous legal advice also stated that such an act could constitute a potential breach of the Code of Conduct.

POLICY IMPLICATIONS

Through Council's Code of Meeting Practice.

FINANCIAL IMPLICATIONS

NIL

LEGAL IMPLICATIONS

Should a suspended councillor seek to dispute the motion or participate in the Council meeting then such should be ruled out of order.

It is clear that the suspended Councillor is not permitted to participate in the meeting, even to oppose the Mayoral Minute.

Should a suspended councillor persist with participating in the Council meeting, even through the Public Forum session, they should be formally warned that the continued behaviour could constitute a breach of the Code of Meeting Practice, leading to public disorder.

RECOMMENDATION**THAT** Council:

1. Note the Mayoral Minute on the Code of Meeting Practice, Suspended Councillor; and
2. Not accept any contribution from a suspended councillor during the Council meeting, including during the Public Forum.