

ITEM LATE MAYORAL MINUTE - 8/7/13 - CODE OF MEETING PRACTICE, SUSPENDED COUNCILLOR

REPORT FROM: COUNCILLOR MAREE STATHAM - MAYOR

REFERENCE

NIL

SUMMARY

Councillor Martin Ticehurst has now been suspended from Council by the Local Government Pecuniary Interest and Disciplinary Tribunal until mid March 2014.

This Mayoral Minute provides clarification on the use of the Public Forum session of a Council meeting by a suspended councillor.

COMMENTARY

At the Council meeting held last month there was a disappointing and regrettable situation where the meeting was disrupted by principally by a suspended councillor. In the lead up to the meeting it had been well documented that suspended councillor, Martin Ticehurst, proposed that allegedly on written advice from the Division of Local Government that he was going to attend Council meeting and exercise what he called his 'lawful rights of freedom of speech'.

Suspended Councillor Ticehurst had indicated that he would be asking questions in the Public Forum section of the Council meeting and that this came from advice from the Division of Local Government. Suspended Councillor Ticehurst further stated 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."*

In an attempt to avoid any unnecessary confrontation at the time I provided clarification that during the last period of suspension of Councillor Ticehurst the Council sought legal advice in relation to this matter and as a result passed a resolution not to accept any contribution from a suspended councillor during the Public Forum. Unfortunately my attempt to avoid that confrontation was not successful.

I advised at the time that the statement by Mr Ticehurst was NOT correct. Mr Ticehurst had no advice from the Division, or anyone else of standing at the time entitling him to utilise the Public Forum at the Council meeting. In fact the letter that Mr Ticehurst was using gave him no entitlements whatsoever

The advice from the Division stated:

- 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 was no advice within the Division's letter that gave suspended Councillor Ticehurst an opportunity or right to exercise his stated *"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 previous Council legal advice and the opinion of the Division, the Division opinion still clearly reinforced the Council's position to *"Not accept any contribution from a suspended councillor during the Council meeting, including during the Public Forum"*.

As the Division opinion stated:

- 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 then made the conscious decision to *'Not accept any contribution from a suspended councillor during the Council meeting, including during the Public Forum'*.

Disappointingly suspended Councillor Ticehurst refused to accept this and disrupted the meeting.

Since that meeting there have been three more determinations by the Pecuniary Interest and Disciplinary Tribunal resulting in Councillor Martin Ticehurst being suspended three more times with cumulative suspensions amounting to him not being able to sit at Council until after 15 March 2014. Since that time the General Manager has sought further advice from the Division.

The Division of Local Government has now reconfirmed the position and not only agrees with Council on the matter but also has confirmed that it is clearly a misuse of the public participation process to circumvent the effect of the suspension and allow a suspended councillor to utilise the Public Forum at Council meetings.

In addition the Division has made it clear that not only should a suspended councillor not utilise this forum but also that the actions of Council at the last meeting to expel Mr Ticehurst were 'appropriate'.

The advice of the Division is that:

The Division agrees that a suspended councillor should not be permitted to misuse any public participation process provided for under a council's Code of Meeting Practice to circumvent the effects of their suspension or to otherwise provide them with a platform to disrupt council meetings.

..... the Division agrees that it is both open to and appropriate for the Council to resolve to withdraw the opportunity for a suspended councillor to participate in a council meeting as a member of the public.

.....the steps taken by the Council to expel Cllr Ticehurst from the meeting and the way they were recorded in the draft Minutes were appropriate and comply with statutory requirements.

The conduct of Mr Ticehurst at the 17 June 2013 Council meeting was very disappointing and given that he is now suspended until March 2014 I have called upon Mr Ticehurst to respect the decision of the independent Tribunal (Pecuniary Interest and Disciplinary Tribunal) and also the advice from the Division of Local Government.

With the position of councillor comes responsibility. Mr Ticehurst, and him alone, has been responsible for his actions to date and now he needs to be responsible for the outcomes.

Mr Ticehurst is most welcome to come along to the Council meetings and listen quietly in the public gallery. For the pride of this city, and for the sake of moving forward Mr Ticehurst needs to be respectful of the decisions now imposed upon him.

On return from his suspensions in March 2014 I would welcome any positive contribution that Councillor Ticehurst is then willing to make.

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 to Council also stated that such an act could constitute a potential breach of the Code of Conduct.

I am again calling upon suspended Councillor Martin Ticehurst to respect the decision of the Pecuniary Interest and Disciplinary Tribunal and the Division of Local Government and not cause further disruption to the Council meetings. It is important that Council attend to the business at hand for the betterment of the people of Lithgow.

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. Reaffirm its decision not to accept any contribution from a suspended councillor during Council meetings, including during the Public Forum.