

New South Wales

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| Medium Neutral Citation: | Office of Local Government v Councillor Ticehurst of Lithgow City Council (No 2) [2016] NSWCATOD 162 |
| Hearing dates: | 13 December 2016 |
| Date of orders: | 13 December 2016 |
| Decision date: | 13 December 2016 |
| Jurisdiction: | Occupational Division |
| Before: | Dr J Renwick SC, Senior Member |
| Decision: | Councillor Ticehurst is suspended for a period of five months. |
| Catchwords: | CIVIL AND ADMINISTRATIVE TRIBUNAL – Local Government Act – Local Government Councillor – Code of Conduct – misconduct established – consideration of penalty – suspension ordered – consequence of suspension is disqualification from civil office for five years |
| Legislation Cited: | Civil and Administrative Tribunal Act 2013 (NSW) Local Government Act 1993 (NSW) |
| Cases Cited: | Director General, Department of Premier and Cabinet re Councillor Martin Ticehurst LGPIDT 06/2012 |
| Category: | Principal judgment |
| Parties: | Office of Local Government (Applicant) Councillor Martin Ticehurst of Lithgow City Council (Respondent) |
| Representation: | Ms B Tronson, of counsel; instructed by Mr Rowe (Applicant) Respondent in person |
| File Number(s): | 1520173 |
| Publication restriction: | None |

REASONS FOR DECISION DELIVERED ORALLY

Introduction

- 1 On 27 September 2016, I found that the respondent, Councillor Martin Ticehurst, had engaged in misconduct within the meaning of the *Local Government Act 1993* (*the Act*), and the Model Code of Conduct adopted by Lithgow City Council under that Act. These reasons should be read together with my earlier decision as to the established misconduct.
- 2 In essence, I have found misconduct established on three bases:
 - (1)

On 27 October 2014, the respondent swore at the Mayor, calling her twice a "bitch" and also threatening her by saying "I hope you choke on your sandwich" (Ground 1);

- (2) At the Council meeting on 1 June 2015, despite there being a Council resolution that he apologise to the Mayor for the conduct the subject of the finding on Ground 1, he declined to do so (Ground 5A); and
 - (3) On 1 June 2015 following a Council meeting, he acted in an aggressive, rude, intimidating and embarrassing manner toward a member of the public, namely Ms Renee di Franco (Ground 6).
- 3 A number of other grounds, it was true, were not successful.
- 4 The earlier hearing was conducted, with the consent of both parties, on the basis that I would first determine whether there had been misconduct (as I now have) and, if so, I would proceed to consider penalty.
- 5 I ordered that submissions be filed by both parties, together with any further evidence, and that the parties indicate whether they wished an oral hearing on the question of penalty.
- 6 I had received submissions from the applicant at the commencement of the matter, I received submissions from Councillor Ticehurst which included a request for oral hearing on penalty, and I received submissions in response from the applicant.
- 7 I have considered all of these and I conducted a further oral hearing at Councillor Ticehurst's request. I have, earlier today, first, declined to admit fresh evidence in relation to Ground 6, and second, declined to refer proceedings to the Independent Commission Against Corruption under s 486 of the Act.
- 8 Section 482A(2) of the Act provides as follows:
- (2) The Tribunal may, if it finds that the behaviour concerned warrants action under this section:
 - (a) counsel the councillor, or
 - (b) reprimand the councillor, or
 - (c) suspend the councillor from civic office for a period not exceeding 6 months, or
 - (c1) disqualify the councillor from holding civic office for a period not exceeding 5 years, or
 - (d) 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 6 months (without suspending the councillor from civic office for that period).
- 9 By reason of the insertion of s 275(1A) of the Act, which commenced on 13 November 2015, if I am to make an order that the Councillor be suspended and that is the third or subsequent such suspension order, the Councillor is, by operation of law, disqualified from holding civic office for 5 years:- I am conscious that if I do make a suspension order, that would be the practical effect of the decision, but I consider that it is my duty is to consider the appropriate punishment under s 482A, without being diverted by the consequence of a suspension order, should I so order.
- 10 In my opinion, there is a need to denounce misconduct, to deter Councillor Ticehurst specifically, and other councillors more generally, from behaving in the same fashion, and to maintain public confidence in the institution of local government.

- 11 Very significantly, Councillor Ticehurst has been before the Local Government Pecuniary Interest and Disciplinary Tribunal on a number of occasions. In fact, on six occasions, Councillor Ticehurst has been suspended. The relevant Tribunal orders were:
- (1) On 28 August 2009, he was suspended from holding civic office for a period of 1 month.
 - (2) On 12 August 2010, he was suspended from holding civic office for a period of 2 months.
 - (3) On 14 May 2013, he was suspended from holding civic office for 2 months.
 - (4) On 15 July 2013, he was suspended from holding civic office for 4 months.
 - (5) On 27 June 2014, he was suspended from holding civic office for 2 months.
 - (6) On 2 July 2014, he was suspended from holding civic office for 2 months.
- 12 That is a significant history of penalties. Plainly enough, in those circumstances, the need for specific deterrence is high, and further, Councillor Ticehurst does not get the benefit of leniency on the basis that he had never previously engaged in misconduct, whereas in fact, he has done so. Earlier findings include findings concerning failure to apologise in accordance with council resolutions, and that includes matter 06/2012. As was made clear in that decision, failure to comply with such resolutions 'strikes at the heart' of the local government system. I agree with the finding of the previous Tribunal in that regard.
- 13 The misconduct in relation to the Mayor, particularly, calling her a "bitch", needs to be the subject of both specific and general deterrence and denunciation. Being respectful towards colleagues, but particularly, the Presiding Officer at meetings, namely, the Mayor (although this was immediately outside the Council Chamber) is important in ensuring that the local government system operates properly. Failing to apologise for such misconduct exacerbates the misbehaviour. Finally, inappropriately aggressive or intimidating conduct towards a member of the public also requires denunciation and deterrence.
- 14 I take into account that:
- (1) The misconduct in this case concerns matters central to the effective operation of the important civic institution of local government;
 - (2) There needs to be punishment of the Councillor's failure to comply with his statutory obligations, bearing in mind that any punishment greater than reprimand or censure will, by operation of law, prevent Councillor Ticehurst for a period of time, from exercising any functions as a Councillor, and this does have an impact on his constituents which weighs in his favour. Just now, Councillor Ticehurst has reminded me that he has been re-elected and that he is the Deputy Mayor, and there will be a cost involved in any by-election. I have taken those matters into account; and
 - (3) Finally and significantly, there is no acknowledgement of wrongdoing (or apology), indeed, Councillor Ticehurst's continuing persistence with apparently baseless claims of malicious prosecution and perjury means that any reduction of punishment on the basis of contrition, and thus insight, is unavailable.

In the circumstances, I suspend Councillor Ticehurst for a period of 5 months from civic office. That has a consequence by operation of law, but my order is for suspension for a period of 5 months.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.
Registrar

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Decision last updated: 22 December 2016