

**LOCAL GOVERNMENT
PECUNIARY INTEREST AND DISCIPLINARY TRIBUNAL**

LOCAL GOVERNMENT ACT 1993

LGPIDT 05/2012

**DIRECTOR GENERAL, DEPARTMENT OF PREMIER AND CABINET
RE: COUNCILLOR MARTIN TICEHURST, CITY OF LITHGOW
COUNCIL**

DETERMINATION

1. The hearing before the Tribunal in this matter relates to Councillor Martin Ticehurst, a Councillor of the City of Lithgow Council.
2. The Director General, Department of Premier and Cabinet, Division of Local Government alleges that by his conduct at four meetings of the Council held between March and May 2012 Councillor Ticehurst engaged in behaviour that constituted misbehaviour for the purposes of Chapter 14 of the *Local Government Act* sufficient to warrant consequential orders by this Tribunal.
3. For the reasons set out below the Tribunal is of the view that Councillor Ticehurst's behaviour at the meetings, and during the period, alleged by the Director General did constitute misbehaviour.

THE FACTUAL BACKGROUND

4. The meetings which are the subject of the complaint by the Director General took place between 23 March 2012 and 14 May 2012.
5. As relevant to those meetings, but before them, on 5 March 2012 the Council held an Ordinary Meeting. Councillor Ticehurst attended. During

the course of that meeting it was claimed that Councillor Ticehurst had made a remark, which, at the invitation of the Mayor, warranted certain action to be taken. Councillor Ticehurst refused, and left the meeting. Another Councillor also left the meeting with Mr Ticehurst and the meeting was adjourned because it lacked a quorum.

6. The uncompleted agenda business of that meeting was resumed on 19 March 2012 and at that meeting a resolution was passed relating to the matters that arose at the previous meeting. The resolution included components requesting Councillor Ticehurst to withdraw his comment and to apologise, and that if he refused to do so a motion would be sought to be passed expelling him from the meeting. The resolution also included components anticipating Councillor Ticehurst's refusal to withdraw and apologise and the refusal to comply with a motion to be expelled from a meeting and contemplated that in such circumstances the General Manager be authorised to arrange with the Police for the removal of Councillor Ticehurst.
7. The meetings held on 5 March 2012 and 19 March 2012 are not the subject of specific complaint by the Director General, but are referred to for the purposes of factual background to the four meetings that followed.
8. The first meeting that is the subject of the complaint by the Director General was the Ordinary Meeting of the Council held on 26 March 2012.
9. According to the minutes of that meeting, at which Councillor Ticehurst was present, at the outset of the meeting a point of order concerning "unfinished business" was called, which included the request by the Mayor of Councillor Ticehurst as to whether he would withdraw and apologise for his previous remark (on 5 March 2012). Councillor Ticehurst refused and the Mayor reminded Councillor Ticehurst of the existing resolution that if he did not withdraw and apologise he would be

asked to leave. Councillor Ticehurst said he would not be leaving, and raised the issue of a Code of Conduct complaint against himself.

10. A resolution was then passed to the effect that "Councillor Ticehurst be expelled from the meeting for his failure to withdraw and apologise for his previous disparaging remark".
11. Following that resolution the meeting was adjourned to permit Councillor Ticehurst to leave the meeting. Councillor Ticehurst remained in his chair in the Council Chamber and the General Manager then proceeded to telephone the Police. Before the Police arrived Councillor Ticehurst left the Chamber, and the meeting then continued.
12. Subsequently Councillor Ticehurst returned to the Chamber whereupon a point of order was called in relation to his presence. The Mayor asked Councillor Ticehurst whether he was prepared to withdraw and apologise for his remark, but Councillor Ticehurst did not respond. A second resolution was then passed to (again) expel Councillor Ticehurst from the meeting. The meeting was again adjourned and Councillor Ticehurst remained in his chair. The General Manager proceeded to telephone the Police and Councillor Ticehurst left the Chamber before the Police arrived. The Council Meeting thereafter continued, and Councillor Ticehurst did not return to the meeting.
13. The second meeting the subject of the complaint by the Director General was the Extra-Ordinary Meeting of Council held on 16 April 2012. Councillor Ticehurst was in attendance. At the beginning of the meeting a point of order for unfinished business was again raised prompting Councillor Ticehurst and another Councillor to leave the meeting. Their departure meant that the meeting no longer had a quorum and the Mayor called an adjournment. Shortly thereafter the meeting resumed with Councillor Ticehurst and two further Councillors in attendance (the Councillor who left with him, and an additional Councillor who had arrived in the interim), and the point of order for unfinished business was again raised. The Mayor asked Councillor Ticehurst if he would withdraw

and apologise for his previous remark, and he refused. Upon that refusal a resolution was passed that Councillor Ticehurst be expelled from the meeting for his failure to withdraw and apologise for his previous disparaging remark.

14. Councillor Ticehurst refused to leave the meeting and the General Manager proceeded to call the Police. Upon the arrival of the Police Councillor Ticehurst was asked (by them) to leave the meeting, and he complied. The meeting then proceeded, although Councillor Ticehurst remained in the foyer area of the Council Chambers insisting that he was not required to leave the premises.

15. The third meeting the subject of the complaint by the Director General was the Ordinary Meeting of the Council held on 23 April 2012. Councillor Ticehurst was in attendance. Again, at the outset of the meeting a point of order for unfinished business was called and the Mayor asked Councillor Ticehurst if he intended to apologise for his previous disparaging remark. Councillor Ticehurst refused to apologise. A resolution was then passed that Councillor Ticehurst be expelled from the meeting and Council premises for his failure to withdraw and apologise for his previous disparaging remark. The minutes record the Mayor as then asking Councillor Ticehurst to leave the Chamber and Councillor Ticehurst advising that he would not be leaving. The Mayor called an adjournment, and according to the minutes following the adjournment Councillor Ticehurst continued to address the Council and members of the public gallery. The minutes record that the Police were called to remove Councillor Ticehurst. Councillor Ticehurst left the meeting room before the Police arrived but remained in a room outside the Chamber. Councillor Ticehurst insisted that he could remain outside the Chamber and the Police refused to remove him from that room notwithstanding the insistence by the General Manager. That notwithstanding, following his departure from the meeting the Council meeting continued in his absence.

16. The fourth meeting the subject of the complaint by the Director General was the Ordinary Meeting of Council held on 14 May 2012. Councillor Ticehurst was not in attendance at the beginning of the meeting, but entered the Chamber at 7:45pm. Upon his entering the Chamber a resolution was passed to suspend then current business in order to address the previous outstanding motion in relation to Councillor Ticehurst withdrawing and apologising for a previous disparaging remark. According to the minutes the Mayor asked Councillor Ticehurst if he was going to withdraw and apologise for his disparaging remark. Councillor Ticehurst did not respond. A resolution was then passed that Councillor Ticehurst be expelled from the meeting and premises for his failure to withdraw and apologise for his previous disparaging remark. Councillor Ticehurst refused to leave the meeting. The Mayor adjourned the meeting so that the Police might be called. The minutes record that:

“Councillor Ticehurst continued to address the public gallery and made accusations towards the General Manager and Councillors. Councillor Ticehurst ripped the Code of Conduct report up and threw it on the floor of the Chambers. Councillor Ticehurst was escorted from the Council Chambers at 7:58pm by the Police.”

17. The meeting was then resumed and continued.
18. The reference in the minutes to the “Code of Conduct Report” was a Code of Conduct Report that had been prepared in relation to Councillor Ticehurst.
19. The reference in the minutes to Councillor Ticehurst addressing the public gallery was also the subject of additional evidence before the Tribunal in the form of a DVD of a news report. Situated within the public gallery was a television news crew which recorded Councillor Ticehurst’s statements and his physical act of tearing up the Code of Conduct Report.

THE POSITION OF COUNCILLOR TICEHURST

20. On 5 April 2012 and again on 30 May 2012 the Director General sent letters to Councillor Ticehurst in relation to, firstly, the meeting held on 26 March 2012, and then the four meetings which have been outlined above. The Director General invited Councillor Ticehurst to respond to what ultimately became the allegations forming the basis for the complaint before this Tribunal. Councillor Ticehurst did not respond to those letters.

21. This notwithstanding, before the Tribunal Councillor Ticehurst maintained that his conduct could not form the basis of any criticism because he did not do anything inconsistent with maintaining order. This he claimed was because the original basis for the requirement for him to apologise was invalid. In particular he claimed that because the resolution requiring the apology was, in terms, directed to the assertion that he showed disrespect "to a member of the public gallery", but that in fact any remark he made was not to a member of public, the foundation for the beginning of the each of the four meetings was undermined. That is because, as he claimed, the resolution for the apology was wrongly based and he was not required to apologise and anything that followed, essentially, was equally invalid.

22. In support of this proposition, namely that whatever remark he was said to have made at the meeting of 5 March 2012 was a remark made to another Councillor rather than a member of the public, Councillor Ticehurst directed attention to the later Council meeting held on 20 June 2012 at which, by resolution, it was resolved to note the withdrawal of the remark by Councillor Ticehurst. That withdrawal was made in the form of a statutory declaration prepared by Councillor Ticehurst which was read out by the General Manager to the meeting. In the Statutory Declaration Councillor Ticehurst asserted that the remark "was solely, personally and verbally directed towards adjoining tabled Lithgow City Councillor Joe McGinnes and which was made in reply to an

immediately prior audible question by Councillor McGinnes in Council Chambers.”

23. Councillor Ticehurst submitted that by accepting that apology the Council may be taken to have accepted that the remark was not made to a member of the public, and hence the resolution requiring him to withdraw a remark made to the member of public was invalid. Everything then that followed was founded on the wrong assumption in the resolution(s).
24. Councillor Ticehurst further referred to an apology by a Mr Mitchell, made to the council meeting of 26 March 2012. Mr Mitchell is the person about whom, originally, it was alleged Mr Ticehurst made the remark and Mr Ticehurst noted that there was no complaint by Mr Mitchell that had been the subject of any disparaging remark by Councillor Ticehurst. He referred to the meetings held on 14 May 2012 and 4 June 2012 and 20 June 2012 at which Mr Mitchell spoke to the Council (on various topics), but at none of those meetings did Mr Mitchell make any complaint about any disparaging remark made to or about him by Councillor Ticehurst.
25. Councillor Ticehurst also claimed before the Tribunal that there was a significant degree of bias against him by certain of the Councillors and certain of the Officers of the Council.
26. Councillor Ticehurst also tendered a newspaper article in which the current Premier was recorded as having called the current Opposition Leader the same disparaging remark as was alleged that he said, noting that in those circumstances perhaps it was not actually a disparaging remark to have made.
27. Finally, he noted that the Director General's complaint took no issue with his conduct at the meeting of 19 March 2012 (at which he was requested to leave, but he did not), and that that was inconsistent with the complaint concerning the subsequent four meetings (which he also did not leave).

MISBEHAVIOUR

28. Division 3 of Part 1 of Chapter 14 (Misbehaviour) defines misbehaviour for the purposes of the Division within s.440F(1) as follows:

“misbehaviour of a councillor means 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 as required under s.440(5),
- c) an act of disorder committed by the councillor at a meeting of the council or a committee of the council but does not include a contravention of the disclosure requirements of Part 2....”

29. Pursuant to s.440F(2) misbehaviour includes misbehaviour that consists of an omission or failure to do something, (presumably) in addition to the undertaking of an act of misbehaviour.

30. Leaving aside the procedural aspects of an investigation or complaint with respect to misbehaviour, the grounds on which a councillor may be suspended from civic office under Division 3 are as contained in s.440I(1). Those grounds are that:

a) a councillor's behaviour has:

- i. been disruptive over a period, and
- ii. involved more than one incident of misbehaviour during that period, and the pattern of behaviour during that period is of such a sufficiently serious nature as to warrant the councillor's suspension, or

b) the councillor's behaviour has involved one incident of misbehaviour that is of such a sufficiently serious nature as to warrant the councillor's suspension.

31. As referred above, s.440F(1) identifies three bases for conduct amounting to misbehaviour, being a contravention of the Act or the Regulations, a failure to comply with an applicable Code of Conduct, or

more generally “an act of disorder” committed by the councillor at a meeting of the council or committee of the council.

A CONTRAVENTION OF THE ACT OR REGULATIONS

32. Section 10 of the Act deals with who is entitled to attend at meetings, providing in section 10(1) that as a default position everyone is entitled to attend a meeting of the Council.

33. This notwithstanding, pursuant to s.10(2):

“However, a person (whether a councillor or another person) is not entitled to be present at a meeting of the council or of such a committee if expelled from the meeting:

a) by a resolution of the meeting, or

b) by the person presiding at the meeting if the council has, by resolution, authorised the person presiding to exercise the power of expulsion.”

34. That power of expulsion is limited pursuant to s.10(3), which provides that a person may be expelled from a meeting only on the grounds specified in, or in the circumstances prescribed by, the Regulations.

35. Division 4 of Part 10 of the *Local Government (General) Regulation 2005*, addresses the matter of “keeping order at meetings”.

36. As relevant to the circumstances of this proceeding are Clauses 255 and 256. Those clauses provide as follows:

“255 Questions of Order

1) The chairperson, without the intervention of any other councillor, may call any councillor to order whenever, in the opinion of the chairperson, it is necessary to do so.

2) A councillor who claims that another councillor has committed an act of disorder, or is out of order, may call the attention of the chairperson to the matter.

- 3) The chairperson must rule on a question of order immediately after it is raised but, before doing so, may invite the opinion of the council.
- 4) The chairperson's ruling must be obeyed unless a motion dissenting from the ruling is passed.

256 Acts of disorder

- 1) A councillor commits an act of disorder if the councillor, at a meeting of a council or a committee of a council:
 - a) contravenes the Act or any regulation in force under the Act, or
 - b) assaults or threatens to assault another councillor or person present at the meeting, or
 - c) moves or attempts to move a motion or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the council or committee, or addresses or attempts to address the council or committee on such a motion, amendment or matter, or
 - d) insults or makes personal reflections on or imputes improper motives to any other councillor, or
 - e) says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the council or committee into contempt.
- 2) The chairperson may require a councillor:
 - a) to apologise without reservation for an act of disorder referred to in subclause (1) (a) or (b), or
 - b) to withdraw a motion or an amendment referred to in subclause (1) (c) and, where appropriate, to apologise without reservation, or
 - c) to retract and apologise without reservation for an act of disorder referred to in subclause (1) (d) or (e).
- 3) A councillor may, as provided by section 10 (2) (a) or (b) of the Act, be expelled from a meeting of a council for having failed to comply with a requirement under subclause (2). The expulsion of a councillor from the meeting for that reason does not prevent any other action from being taken against the

councillor for the act of disorder concerned.”

37. As referred above, at various of the meetings the subject of the complaint the Police were called to address the topic of compliance with the resolution by Councillor Ticehurst. Pursuant to Clause 258 of the Regulation, if a councillor fails to leave the place where a meeting of the council is being held immediately after the council has passed a resolution expelling the councillor a Police officer (*inter alia*) may remove the councillor from that place.
38. In so far as a breach of the Act is concerned, a question arises as to whether clause 256(3) limits the power for expulsion as contained in section 10(2). That matter will be addressed more fully below.

THE CODE OF CONDUCT

39. As provided above, pursuant to s.440F(1)(b) misbehaviour of a councillor means a failure by a councillor to comply with an applicable requirement of a Code of Conduct as required under s440(5).
40. The Council resolved on 14 September 2009 to adopt (as its Code of Conduct) the provisions of the Model Code of Conduct.
41. The Code of Conduct stipulates a broad range of requirements including the following provisions which were claimed by the Director General to be relevant to the current circumstances:

“6.1 You must not conduct yourself in carrying out your functions in a manner that is likely to bring the council or holder of civic office into disrepute. Specifically, you must not act in a way that:

- a) contravenes the Act, associated regulations, council’s relevant administrative requirements and policies
- b) is detrimental to the pursuit of the charter of a council
- c) is improper or unethical

- 6.3 You must treat others with respect at all times.
- 9.5 You must act in accordance with council's Code of Meeting Practice, if council has adopted one, and the *Local Government (General) Regulation 2005* during council and committee meetings.
- 9.6 You must show respect to the chair, other council officials and any members of the public present during council and committee meetings or other formal proceedings of the council."

ACT OF DISORDER

- 42. Section 440(F)(1)(c) includes within the concept of misbehaviour "an act of disorder". That is a broad term which is not specifically defined in the Act.
- 43. That notwithstanding pursuant to Clause 194 of the Regulation, for the purposes of Chapter 14 of the Act the acts of disorder specified in Clause 256(1) are prescribed as acts of disorder. I have set out above in full the provisions of Clause 256(1).

WERE THERE ACTS OF DISORDER?

- 44. As is implicit from the provisions of s.440(F) the scope of what may constitute misbehaviour is quite wide.
- 45. As far as acts of disorder are concerned as referred above they are as prescribed in Clause 256(1) of the Regulations. In a circular way clause 256(1)(a) effectively repeats s.440(F)(1)(a) of the Act. Neither clause 256(1)(b) nor (c) is relevant to the circumstances of the present case.
- 46. As referred above clause 256(1)(d) deems as an act of disorder (the act of) a councillor who insults or makes personal reflections on or imputes improper motives to any other councillor.
- 47. In this case at all material times during the four meetings the subject of the complaint the resolution of the council was directed towards a withdrawal and an apology required of Councillor Ticehurst because of

an allegation that he had insulted or made a personal reflection upon a person who was not a councillor. In strict application therefore clause 256(1)(d) could not, at the time of those meetings, be said to be engaged.

48. However, quite ironically, by his statutory declaration read by the General Manager to all councillors on 20 June 2012, Councillor Ticehurst effectively admitted that he did in fact insult or make a personal reflection upon another councillor. Because of the irony of the circumstances I do not propose rely upon clause 256(1)(d) in determining whether there has been an act of misbehaviour.

49. Clause 256(1)(e) provides that a councillor commits an act of disorder if a councillor at a meeting of council:

“e) says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the council or committee into contempt.”

50. Irrespective of the nature of the precise terms of the resolution requiring the apology to be made by Councillor Ticehurst, and irrespective of the submission by him that his remark was made to another councillor and not a member of the public, the fact remains that at each of the meetings that I have summarised above Councillor Ticehurst refused to address the topic of the making of a disparaging remark. Although he claims that the remark was made to another councillor and not to a member of the public (a matter which, of itself, as referred above would have engaged clause 256(1)(d)) he did not make any positive moves to establish that factor until well after the course of the four meetings set out above, and did not prepare his statutory declaration to that effect until 20 June 2012. Instead, in the face of the request to withdraw the remark, a remark which appears not to be denied (although what is denied is the person to whom the remark was made), Councillor Ticehurst persisted in his refusal to address the topic of the withdrawal of the remark.

51. In my view that conduct constituted an act of disorder for the purposes of clause 256(1)(e).
52. Furthermore, as was made quite apparently plain by the television coverage of it, at the meeting held on 14 May 2012 Councillor Ticehurst, despite the adjournment of the meeting by the Mayor, continued to berate the meeting in an agitated way whilst standing up, apparently for the benefit of the television crew and the members of the public who were witnessing his behaviour. Compounding that situation, he then proceeded to tear up a code of conduct report that had been prepared in relation to his previous conduct.
53. In my view such conduct of itself is inconsistent with maintaining order at the meeting and, in the graphic way displayed in the television report, was likely to bring the council into contempt. As such that conduct constituted an act of disorder for the purposes of clause 256(1)(e) of the Regulation.
54. In those circumstances there has been misbehaviour that is defined in s.440F(1)(c).
55. Section 440F(1)(b) deems as misbehaviour failure to comply with the Code of Conduct. I have set out above what were alleged by the Director General to be the relevant clauses of the Code of Conduct. The conduct that I have identified above relating to the failure to address the making of the disparaging remark, and Councillor Ticehurst's conduct at the meeting of 14 May 2012, would also constitute a breach of clause 6.1 of the Code of Conduct. That is because, especially with respect to the meeting of 14 May 2012, Councillor Ticehurst's conduct was likely to bring the Council into disrepute. It was also, for the purposes of clause 6.1(c), improper conduct.
56. In my summary of the various meetings set out above almost inevitably at the beginning of each meeting the Mayor reminded Councillor Ticehurst of an existing resolution concerning the making of a withdrawal and an apology for the remark. He consistently refused to do so, and

that conduct might be taken, in addition, to constitute a breach of clause 9.6 of the Code of Conduct to the extent that that clause requires respect to be shown for the Chair. However, I do not place particular reliance upon breach of that clause of itself.

57. Section 440F(1)(a) deems as misbehaviour a contravention by the Councillor of the Act or the Regulations.
58. As referred above, pursuant to s.10(2) a person is not entitled to be present at a meeting of the Council if expelled from the meeting by resolution of the meeting. Section 10(3) limits the circumstances of expulsion to those circumstances prescribed by the Regulations.
59. The only Regulation that deals with expulsion of a Councillor is clause 256(3). That clause provides that expulsion of a councillor may be made by resolution for having failed to comply with a requirement under sub clause 256(2).
60. Clause 256(2) permits the Chairperson (of a meeting) to require a councillor (as relevant to the circumstances of this case):
 - "c) to retract and apologise without reservation for an act of disorder referred to in subclause (1)(d) or (e).
61. As referred above, at the time that the requirement for a retraction and an apology was made the Chairperson (the Mayor) and the other Councillors were of the view that the insult or personal reflection was not made to another Councillor, but rather was made to a member of the public. Strictly speaking therefore clause 256(2)(c) could not be engaged with respect to the matter contained in clause 256(1)(d).
62. However it is apparent from the minutes of meeting held on 5 March 2012 that the Mayor had asked Councillor Ticehurst to withdraw the remark. At the subsequent meeting held on 19 March 2012 the minutes record the Mayor as reminding Councillors not to make untoward comments to the general public during meetings. Although he does not describe it in that way it is clear that that statement was directed to the

question of maintaining order at a meeting, sufficient for the purposes of clause 256(1)(e). At the meeting of 19 March 2012 the minutes record the Mayor as asking Councillor Ticehurst if he was prepared to withdraw and apologise for his remarks. Councillor Ticehurst refused to withdraw the remark and apologise. That course of conduct is sufficient to have engaged clause 256(2)(c) of the Regulation.

63. What followed of course was the resolution by the council repeating the requirement to withdraw the remark and apologise. But that resolution does not diminish the fact that before then the Chairperson had made that request, which was not complied with. In the course of events that followed the resolutions passed for Councillor Ticehurst to leave the meetings were made in consequence of the resolution to withdraw and apologise the remark, which itself was preceded by the request by the Mayor to do so. For the purposes therefore of Clause 256(3), and s.10(2)(a) and (3), the power to expel Councillor Ticehurst as provided in s.10(2) was engaged.
64. As referred above, clause 258 provides, even if it was not implicit in the expulsion order, for the requirement to leave the meeting immediately upon the expulsion resolution. On each of the occasions identified above, including the meeting of 26 March 2012 (to which meeting Councillor Ticehurst returned after his initial refusal to leave) Councillor Ticehurst refused to leave the meeting until the Police were called, or until the Police were present at the Council Chambers.
65. In these circumstances the refusal to leave the meeting constituted a breach of the Act and of the Regulations for the purposes of s.440F(1)(a).
66. I note, in passing, that there is an issue as to whether the power in s.10(2) is in fact limited by s.10(3) such that an expulsion resolution can only be made in the circumstances of clause 256 of the Regulation. This arises both because the power in s.10(2) is not, in the terms of that subsection, circumscribed by s.10(3); and in addition clause 256(3) does not in its terms appear to limit the power of expulsion to only the

circumstances set out in clause 256(2). Because of the findings set out and made above with respect to the engagement of clause 256(3) that question does not arise in circumstances of the present case.

GROUNDS FOR SUSPENSION?

67. As referred above s.440I provides that the grounds on which a councillor may be suspended from civic office under Division 3 are that the Councillor's behaviour has been disruptive over a period, involved more than one incident of misbehaviour during that period, and the pattern of behaviour during that period is of such a sufficiently serious nature as to warrant the councillor's suspension (s.440I(1)(a)), or the councillor's behaviour has involved one incident of misbehaviour that is of such a sufficient serious nature as to warrant the councillor's suspension (s.440I(1)(b)).
68. In its terms s.440I(1) is referring to a suspension from civic office "under this Division". That "Division" is Division 3. Suspension from civic office under Division 3 is as addressed in s.440K, being suspension by the Director General. It is unclear whether, notwithstanding that the referral of a matter of misbehaviour to this Tribunal is effected by s.440M which is contained in "Division 3", any suspension of a Councillor is in fact under "Division 3". That is because, pursuant to s.482A, if the Tribunal finds that the behaviour concerned warrants action it is open to the Tribunal to make certain orders, including a suspension order. Such a consequence would mean that the grounds in s.440I(1) are not required to be addressed prior to any suspension from civic office in consequence of a finding of misbehaviour.
69. Section 482A is not contained within Division 3 of Part 1, but rather is contained in Division 4 of Part 3 of Chapter 14. Section 482A(1) though deems s.482A as applicable to the circumstances of a referral to the Tribunal of a matter pursuant to s.440N. Thus, strictly speaking, although s.482A is not contained within Division 3, it is effectively incorporated within Division 3 by operation of s.482A(1).

70. If that be wrong, in the circumstances set out below, in my view in any case s.440I is satisfied.
71. It is apparent from the circumstances set out above that for the purposes of s.440I(1)(a) Councillor Ticehurst's behaviour has been disruptive over a period. That period comprises the period of the four council meetings the subject of the complaint, all set out above. Over that period there was involved more than one incident of misbehaviour, being the incidents of misbehaviour that I have set out above. For the reasons set out below the pattern of behaviour during that period in the circumstances summarised above is of such a sufficiently serious nature as to warrant the councillor's suspension. Accordingly in the circumstances s.440I(1)(a) is satisfied.
72. In the alternative, for the reasons set out above, Councillor Ticehurst's behaviour may be said to have involved single incidents of misbehaviour each of such a sufficiently serious nature as to warrant suspension. On each occasion Councillor Ticehurst refused to comply with the resolution that he be expelled from the Council Meeting. Each of those incidents constituted an individual incident of misbehaviour sufficient, of itself, to warrant suspension.
73. Furthermore, the conduct of Councillor Ticehurst at the council meeting of 14 May 2012 (as recorded by the television news crew, and as summarised above) was, even notwithstanding his refusal to comply with the resolution to leave the meeting, of such a serious nature as to warrant suspension of Councillor Ticehurst.
74. Accordingly, in the circumstances set out above s.440I(1)(b) is satisfied.

CONSEQUENCE

75. Pursuant to s.482A(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
- 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).

76. The Director General submits, through his representative Mr Barley, that a suspension order pursuant to s.482A(2)(c) is appropriate in the circumstances of this case. I agree.
77. In the circumstances that have occurred the counselling or a reprimand of Councillor Ticehurst is patently inappropriate.
78. As referred above Councillor Ticehurst's conduct has been disruptive over a period. Within that period there have been significant incidents of misbehaviour, and in any case there has been a singular incident of misbehaviour that warrants suspension.
79. The conduct in this matter may be described as quite remarkable. Councillors should not consider that it is within their individual right or power to conduct themselves at council meetings however they feel to be appropriate at the time. Both the Act and the Regulations (and for that matter the Model Code of Conduct) seeks to establish certain principles and guidelines, which, amongst other things, are directed to ensuring that order is kept at meetings.
80. Whilst, as referred above, Councillor Ticehurst emphasised the invalidity of the original resolution requiring the withdrawal and apology of the remark, emphasising the distinction between that resolution's reference to the remark being made to a member of the public whereas, well after the course of these meetings his presented statutory declaration sought to say that the remark was made to another councillor, that is insufficient to qualify in any sufficient way to diminish the seriousness of the misbehaviour, and hence the period of suspension that should be

imposed. So too are aspects of claimed bias by other councillors or by council officers.

81. The course of the meetings that I have summarised above originates, without doubt, from a remark made by Councillor Ticehurst during the course of a council meeting. All that followed emanated from that remark. Rather than address what flowed from making of the remark Councillor Ticehurst arguably compounded the circumstances (for himself) by continually refusing to withdraw the remark (to whomever it was made), and most importantly refused to comply with a resolution by the Councillors that he be expelled from the meeting. Those acts, particularly the later ones, are acts of disorder that warrant a significant suspension.

82. Chapter 14 of the *Local Government Act* was amended by the *Local Government Amendment (Conduct) Act 2012*. That amending Act amended certain of the provisions of Chapter 14, and also amended Schedule 8 of the *Local Government Act* (dealing with savings and transitional provisions). The provisions of the Amending Act commenced on 1 March 2013. Pursuant to (now) Part 35 of Schedule 8 of the *Local Government Act*, the provisions of the Amending Act have various application to incidents of misbehaviour, or proceedings commenced in this Tribunal, before the commencement of the Amending Act.

83. One of the new provisions inserted by the Amending Act is s.482A(3) which is in the following terms:
 - “3) In determining which action, if any, take to against the councillor, the Tribunal may take into account any previous incident of misconduct by the councillor, any disciplinary action previously taken against the councillor and any other relevant matters.”

84. Pursuant to clause 104(6) of Part 35 of Schedule 8 of the *Local Government Act* s.482A(3) as inserted by the *Amending Act* extends to complaints proved against the person, incidents of misconduct by a councillor and any action taken against a councillor or other person before the commencement of those subsections.

85. This notwithstanding s.482A is contained within Part 3 of Chapter 14, and amendments to that Part, pursuant to clause 104(4) of Schedule 8, do not apply to proceedings that were referred to the Tribunal or commenced in the Tribunal before commencement of those amendments. According to that clause "such proceedings are to be dealt with as if the amendments have not been made." This means that s.482A(3) is not relevant to the determination of consequence in this proceeding (having been referred to, and commenced in, the Tribunal before 1 March 2013); but when s.482A(3) is engaged it may extend to conduct that occurred before the commencement of s.482A(3).
86. This notwithstanding it is important to remember the gravity of the misconduct of Councillor Ticehurst. In mitigation of penalty he submits that the remark that he made was not made to a member of the public, that the person to whom it was alleged he made the remark (a member of the public) never complained of any remark, and that the whole basis for the original resolution was misplaced. As referred above this was supported by the noting by the council (comprising, as he submitted, an acceptance) of his statutory declaration on 20 June 2012.
87. Councillor Ticehurst also referred to a notion of "double jeopardy" relating to the code of conduct investigation report, however, as this Tribunal has referred to in the past, it is concerned with complaints of misconduct made to it, and the determination of whether or not conduct constitutes misconduct sufficient to warrant suspension (or any other consequence) is not dependent upon the undertaking of, or any findings by, a code of conduct committee.
88. He also made reference to this Tribunal's decisions concerning his departure from the earlier meetings which found that mere departure alone did not constitute misconduct. However in the circumstances of the present case the complaints before the Tribunal are materially different to those previous circumstances.
89. As referred above he also referred to the resolution being motivated by political opponents of his, and a degree of bias within Council. None of

those matters remove the fact of the initial remark, nor of the seriousness of Councillor Ticehurst's subsequent conduct.

90. The maximum period for a suspension of a Councillor pursuant to s.482A(2)(c) is six months. The circumstances that have been set out above demonstrate serious and repeated acts of misconduct on the part of Councillor Ticehurst.
91. In the circumstances set out above it is appropriate that an order of suspension be made for a period of four months.
92. In its decision delivered on 14 May 2013 (PIDT 02/2012) the Tribunal determined the complaint lodged by the Director General against Councillor Ticehurst for failure to lodge an annual return. In determining a breach of the act with respect to that complaint the Tribunal imposed a suspension order for a period of two months from the date of those Orders (14 May 2013).
93. The circumstances addressed in this Determination relate to matters, although contained in Chapter 14, involving misbehaviour as distinct from disclosure of interest. They relate to conceptually very different matters, and materially different conduct. It is inappropriate in those circumstances that any suspension imposed with respect to the current circumstance overlap any current suspension order.
94. Accordingly the suspension order made by the Tribunal pursuant to s.482A(2)(c) will be a period of four months effective from 15 July 2013.

Dated: 25 June 2013



Adrian Galasso SC



Local Government Pecuniary Interest and Disciplinary Tribunal