

**LOCAL GOVERNMENT PECUNIARY INTEREST  
AND DISCIPLINARY TRIBUNAL**

**PIT No. 1 / 2003**

**DIRECTOR-GENERAL, DEPARTMENT OF  
LOCAL GOVERNMENT**

**RE: COUNCILLOR DAVID TAYLOR,  
WEDDIN SHIRE COUNCIL**

***STATEMENT OF FURTHER DECISION***

Dated: 20 March 2006

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**INTRODUCTION**

1. In a Statement of Decision dated 29 November 2005 the Tribunal determined that Councillor David Taylor had breached the pecuniary interest provisions of the *Local Government Act 1993* in respect of a meeting of the Weddin Shire Council held on 13 December 2001. Reference should be made to that Statement of Decision and this Statement should be read in conjunction with it.
2. Following upon that decision Councillor Taylor and the Director-General, Department of Local Government were invited to make submissions as to what consequences, if any, ought to follow from the Tribunal's decision of 29 November 2005.
3. Following that general invitation Councillor Taylor and the Director-General, Department of Local Government's attention was specifically drawn to the fact that since the Council meeting held on 13 December 2001 the relevant powers of this Tribunal

contained in s.482 of the *Local Government Act 1993* have been amended so as to insert a power to suspend a councillor's entitlement to be paid any fee or remuneration, as the holder of civic office, for a period not exceeding 6 months. Councillor Taylor's and the Department's attention was drawn to a decision of the Full Federal Court in *Trill v McRae* (2002) 122 FCR 349 and submissions were invited from both parties as to the effect of such amendment in the present case.

#### **DIRECTOR-GENERAL'S SUBMISSIONS**

4. The Director-General submitted that a penalty of significance and substance was called for in the present case. It was submitted that the Tribunal had found in its original decision that the Councillor's understanding of the relevant provisions of the Act at the relevant time were seriously lacking, that one could readily infer, as found by the Tribunal, that the original development application was such that there would have been an adverse impact on Councillor Taylor's relatives' property and that Councillor Taylor should have understood this as well. It was also pointed out that Councillor Taylor was fully aware of all the relevant facts about the nature of his relatives' interest and how it could constitute a pecuniary interest under the Act.
5. It was submitted that the Tribunal should find as a fact that Councillor Taylor should well have known that he had a pecuniary interest and that his understanding of the Act at the time was seriously deficient. It was pointed out that the Councillor well knew of the issue, in one sense, and had even declared such an earlier interest in relation to another development and its impact upon his said relatives' property. It was pointed out that Councillor Taylor knew sufficient of the relevant interests to make oral enquiries of the mayor on the evening of the relevant council meeting as to whether or not he, Councillor Taylor, ought to disclose an interest.
6. The Director-General submitted that Councillor Taylor ought to be disqualified from holding civic office for a significant period. It was put that there had been a serious breach of a core provision of Chapter 14 of the Act, that there may well have been

serious and long-term adverse affectation on Councillor Taylor's sister-in-law's property and that the breach had been flagrant in the sense that the Councillor well knew generally about his duties to disclose and his relatives' interest and had in fact done so on occasion before.

7. It was submitted that the fact that Councillor Taylor regarded his sister-in-law as, in effect, a trouble maker was even more reason for him to properly and fully inform himself about the applicable laws.
8. Contrary to the submissions made on Councillor Taylor's behalf, the Director-General submitted that there was no proper basis whatever for the Tribunal extending to Councillor Taylor any leniency and that the fact that the Councillor has had health problems is irrelevant to the question of the proper consequences that ought to flow from a breach of his responsibilities under the Act. It was put that the testimonials put forward on behalf of Councillor Taylor ought to be given little weight as apparently not all the deponents had been fully informed of the allegations against him.
9. It was submitted that at the time of the breach Councillor Taylor was an experienced councillor and there was no excuse for him not having informed himself of the law and his responsibility under it during his tenure from 1995 until the breach occurred in April 2002.
10. It was submitted that the Tribunal should make an example of Councillor Taylor with a determination and a further warning that will properly serve as a deterrent to other councillors who fail to inform themselves of the applicable law and then breach it.
11. The Director-General submitted that the amendment to s.482(1) which took effect from 1 January 2005 was such that the Council did have, in the present case, power to impose such a penalty. The Director-General, however, maintained that notwithstanding the availability of the new power that the appropriate penalty to be applied to Councillor Taylor in the present case was disqualification from holding civic office for a significant period.

## COUNCILLOR TAYLOR'S SUBMISSIONS

12. On behalf of Councillor Taylor it was submitted that he was currently aged 63 and was and had been at all relevant times a farmer and grazier operating a farming property at Caragabal in partnership with his wife and two sons. It was submitted that he had been elected to the Weddin Shire Council in 1995 and had been involved in a range of community activities as an office holder of the Caragabal Bowling Club, the Local P&C Association, the Local Olympic Torch Relay Committee, the Local Centenary of Federation Committee, the Local Sports Council, the Bushfire Captain of the Caragabal District, the Noxious Weeds Sub-Committee of Weddin Shire Council, the Bland Creek Catchment Committee, the Parks and Gardens Committee of the Council, Grenfell Lions Club and the Mental Health Focus Group in the Weddin community.
13. On behalf of Councillor Taylor it was also submitted that he had suffered from serious health problems in 1988 and, again, between 1996 and 2003.
14. It was pointed out on behalf of Councillor Taylor that he had fully co-operated with the investigation into the alleged breach and that, having observed Councillor Taylor give his evidence during the hearing, the Tribunal would be satisfied that he did his best to be truthful about all the matters, even though it was conceded that he was confused about his obligations under the *Local Government Act*. It was pointed out that he had no prior criminal convictions and that in all the circumstances the Tribunal should extend to Councillor Taylor the maximum leniency.
15. It was drawn to the Tribunal's attention, on behalf of Councillor Taylor, that since the complaint he had attended a course in the *New Disciplinary Act* although, as submitted on behalf of the Director-General, little weight can be given to this in the absence of any information as to the content or duration of the course.
16. The Honourable Ian Armstrong OBE MP, Member for Lachlan in a testimonial speaks of

Councillor Taylor as being highly respected within his community and a person valued for his honesty and integrity. Mr Armstrong speaks of Councillor Taylor's genuinely remarkable recovery from his long and debilitating illness.

17. The President of Grenfell Lions Club, Terry Carroll, speaks of Councillor Taylor as being a reliable, honest and caring person whose integrity is above reproach.
18. In response to the submissions from the Director-General, on behalf of Councillor Taylor it was submitted that, while it may well be that Councillor Taylor should have understood that there was a chance or possibility of appreciable adverse impact on his sister-in-law's property, it was nevertheless clear from the evidence given by him that he did not in fact so appreciate that possibility.
19. It was conceded that Councillor Taylor's understanding of the Act was, at the relevant time, seriously deficient and lacking. While Councillor Taylor's evidence was that he made an enquiry of the mayor on the evening of the relevant council meeting he, Councillor Taylor, did not understand the relevant issues which he needed to apply to his decision.
20. It was submitted on behalf of Councillor Taylor that the offence was at the lower end of the scale and that the nature of the development applications, the conditions which were recommended and the fact that the Motion was passed unanimously are additional factors to be taken into account. It was submitted that the breach was not serious and was of little consequence. It is submitted that at all relevant times it was proposed that the surface area of the applicant's land was to be sealed and it was proposed that a barrier be erected to minimise the noise from the applicant's property.
21. It was denied that the breach was flagrant and that it was evident that Councillor Taylor did his best to give truthful evidence that he was confused about the issues which were relevant to his decision not to disqualify himself. It was put that he was a man of limited education and unsophisticated, but that he had nevertheless made every effort to be frank and honest.

22. It was submitted on behalf of Councillor Taylor that the amendments to the powers of the Tribunal to include a power to suspend a councillor's right to be paid does not apply in the present case because of the normal presumption against retrospectivity of penal laws and that in the absence of clear and unambiguous words, the presumption has not, in the present case, been rebutted. It was submitted that there was particular wording in the amending Act considered by the Federal Court of Australia in *Traill v McRae* which was absent in the present case and which was critical to that Court's decision.

### **WEDDIN SHIRE COUNCIL**

23. By letter dated 24 January 2006 over the signature of the general manager the Weddin Shire Council wrote to this Tribunal and suggested to this Tribunal that any penalty in the present case should be "of a token nature only". It was submitted that Councillor Taylor was a person who was inherently honest, guileless and a compassionate man heavily involved in the community. It was submitted that, while his understanding of the provisions of the *Local Government Act* in this regard were seriously lacking, the Councillors were nevertheless confident that his breach could not have been due to any intention to advantage or disadvantage either himself or any other person. It was put that Councillor Taylor's judgment had obviously been affected by the personal situation within his family. It was submitted that Councillor Taylor was honest, a man of integrity and had a high standing within the community. He was a person who had a long-standing contribution to the local community both as a councillor and as a private citizen. It was put that there was no attempt at personal gain and that the breach had no consequences in affecting the decision of the Council or the imposition of conditions.

### **CONCLUSIONS**

24. The Tribunal accepts that Councillor Taylor is a man of fine character, repute and integrity and a person who has a long history of valuable contribution to the local

community both as a councillor and as a private citizen.

25. The Tribunal is prepared to accept the submission put on behalf of Councillor Taylor that he is not a sophisticated person and that this may have contributed to the breach in the present circumstances.
26. Before the meeting on 13 December 2001, Councillor Taylor was aware that a development application had been lodged and that his sister-in-law had lodged an objection to it. Councillor Taylor had read the business papers in relation to the Development Application No.25/2002 and had read those parts of the papers that related to noise and the other adverse alleged affectations on his sister-in-law's and his brother's land.
27. The said report dealt in some detail with noise and dust affectation in words which made it patently clear to anyone reading the report that issues of dust and noise were such, particularly along the eastern boundary in the direction of Councillor Taylor's brother's and sister-in-law's property that steps ought be taken to ameliorate the impact. It was for this very reason that the said report recommended that certain conditions including noise barriers be erected.
28. This Tribunal is of the opinion that in the above circumstances any person reading the said report with any due care would have been aware of the potential affectation and ought to have been aware that there was, at least, a possibility of the development application if approved adversely impacting upon not only the said property of Councillor Taylor's brother and his wife, but the value of the said property in a not insignificant manner.
29. Councillor Taylor acknowledges that he was aware before the meeting of the said report and its concerns as to the impact of noise and dust but denies that he was aware that those impacts might be likely or expected to have an appreciable financial impact upon the value of his sister-in-law and brother's property. The Tribunal has difficulty in accepting this evidence. Perhaps the explanation is to be found in Councillor Taylor's subsequent

evidence set out in paragraph 32 of the Tribunal's Statement of Decision dated 29 November 2005, namely that he did not really apply his mind to the question of likely or expected financial impact, but that he concentrated on the fact that his relationship with his sister-in-law was estranged in the sense that he did not have much to do with her, according to his evidence.

30. The difficulty of course from Councillor Taylor's point of view, is that the impacts were such that any ordinary reader of the report who diligently applied their mind to the question would have been alerted to the real possibility of appreciable financial impact to Councillor Taylor's brother's and sister-in-law's property.
31. The Tribunal also takes into account the fact that this "issue" was one of which Councillor Taylor had warning before the commencement of the meeting and upon his reading of the said report, if not before. There is no suggestion in the present case that Councillor Taylor did not have full and adequate time to obtain any necessary or desirable advice upon the issues which arose.
32. There is no suggestion in the evidence that Councillor Taylor sought any advice in relation to his position, save for a conversation said to have taken place with the mayor and during a break in the said council meeting. The terms of that discussion have been the subject of some apparent disagreement.
33. At the end of the day, Councillor Taylor determined to stay in the meeting and to vote, in favour of the development application, he taking the view that he could do so because his relationship with his sister-in-law was remote in the sense described. So far as Councillor Taylor's brother was concerned, according to Councillor Taylor it did not worry his brother whether development went ahead or not, he was not concerned at all. On the other hand, Councillor Taylor viewed his sister-in-law as a trouble maker.
34. Councillor Taylor has been a member of the Council since 1995. As found by this Tribunal in paragraph 38 of its original decision, Councillor Taylor's understanding of the provisions of the *Local Government Act* in relation to pecuniary interests was, as at

13 December 2001, seriously lacking. His explanations as to his thought process which then took place bore no relationship at all to the requirements of the legislation. No explanation was given by Councillor Taylor as to what efforts, if any, he had taken between 1995 and 2001 to familiarise himself with the relevant provisions of the Act. No explanation was given as to what steps, if any, he took between becoming aware of the said development application and the meeting in question to familiarise himself with the said provisions of the said Act or to obtain any proper advice as to his position. The peremptory enquiry of the mayor on the night of the meeting in question could, by no stretch of the imagination, be described as a proper discharge by Councillor Taylor of his duties and obligations.

35. The Tribunal considers that the breach which took place in the present case is flagrant in the sense that the facts which gave rise to the breach were patent for all to see or at least all who cared to properly apply their minds to the questions raised by the provisions of the *Local Government Act 1993*. Councillor Taylor had had over 5 years to properly acquaint himself with the relevant provisions of the legislation, and he had not done so.
36. In the Tribunal's opinion, nothing that has been put forward on Councillor Taylor's behalf justifies, in any way, his conduct in relation to this development application.
37. The Tribunal is of the opinion that Councillor Taylor's conduct exhibits not only a serious breach of the provisions of the *Local Government Act*, but exhibits a cavalier and irresponsible attitude to his duty as a councillor since 1995 to acquaint himself with the relevant provisions of the legislation so that he could discharge his functions according to law. The circumstances also reveal that, notwithstanding Councillor Taylor was aware of the development application and its foreshadowed environmental impacts, he failed to make any proper enquiry or to seek any proper advice other than a conversation with the mayor "on the run".
38. Weighing up all the above matters, the Tribunal is of the opinion that Councillor Taylor's breach of the Act warrants him being suspended from civic office for a period of 4 months. The period of suspension will be postponed for a short time to enable

Councillor Taylor and the Council to re-organise their respective schedules so as to avoid undue disruption to Council's business and Councillor Taylor's affairs as a result of the suspension.

## **THE TRIBUNAL'S ORDER**

39. The Tribunal's order is as follows:

The Local Government Pecuniary Interest and Disciplinary Tribunal, **HAVING FOUND** that a complaint made by the Director General, Department of Local Government, pursuant to s.460 of the *Local Government Act 1993* that David Taylor, being a councillor of Weddin Shire Council, contravened Chapter 14, Part 2 of that act in respect of consideration by the Council at a meeting of 13 December 2001 of questions relating to a development application no.DA72/2002 has been proved.

**PURSUANT TO** s.482(1) of the Act, the Tribunal **ORDERS** that Councillor Taylor be and he hereby is suspended from civic office for a period of 4 months commencing on 1 April 2006 and expiring on 31 July 2006.

40. The Tribunal's order will be furnished to Councillor Taylor, the Director-General and Weddin Shire Council forthwith.

41. Copies of the Tribunal's Statement of Further Decision will be provided to Councillor Taylor and the Director-General in accordance with s.484(1). Pursuant to s.484(3), copies will also be provided to Weddin Shire Council and such other persons as the Tribunal thinks fit.

Date: 22<sup>nd</sup> March 2006

