

**LOCAL GOVERNMENT
PECUNIARY INTEREST TRIBUNAL**

LOCAL GOVERNMENT ACT, 1993

PIT NO. 3/2000

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

**RE: COUNCILLOR BALA BALENDRA, AUBURN
COUNCIL**

STATEMENT OF DECISION

Dated 16 April 2003

**LOCAL GOVERNMENT PECUNIARY INTEREST
TRIBUNAL**

LOCAL GOVERNMENT ACT 1993

PIT NO. 3/2000

**DIRECTOR GENERAL, DEPARTMENT
OF LOCAL GOVERNMENT**

**RE: COUNCILLOR BALA BALENDRA,
AUBURN COUNCIL**

STATEMENT OF DECISION

INTRODUCTION

1. The Tribunal received a Report from the Director-General, Department of Local Government, of an investigation into a complaint by the Director General pursuant to s.460 of the *Local Government Act 1993* that Councillor Balla Balendra, being a Councillor of Auburn Council, had committed breaches of s.451 of that Act with respect to the consideration by the Council at Council meetings held on 1 March, 5 July and 16 August 2000 of questions relating to a draft Development Control Plan. It was alleged that Councillor Balendra had a pecuniary interest in matters with which the Council was concerned and was present at the meetings and that he failed to disclose that interest and that he took part in the consideration and discussion of the matters and that he voted on questions relating to the matters.
2. The pecuniary interest alleged arose out of the fact that Councillor Balendra was one of two owners of a property at Regents Park which was within an area covered by the draft Development Control Plan.
3. It is not necessary for present purposes to consider the detail of the meetings or the proposed Development Control Plan except to say that the Plan involved modifications to floor space ratios and the mix of residential/commercial uses. There were also proposals

in relation to the maximum height of the buildings.

4. The Tribunal, having considered the report from the Director General, decided pursuant to s.469 of the *Local Government Act 1993* to conduct proceedings into the complaint and a written statement of the Tribunal's decision to that effect was furnished in accordance with the Act.
5. Thereafter correspondence was received from the solicitors for Councillor Balendra in which certain particulars were sought and submissions were made that no hearing in relation to the matter ought to take place and that the complaint ought to be dismissed.
6. In the course of those submissions, Councillor Balendra, without making any admissions, was willing to state that if he was in error in voting on changes to the Council's DCP that he apologised for such error and that he would use his best endeavours to ensure that the same situation did not occur in the future. He further stated, on the same basis, that he had at all times acted only in the general interest of the area and it had no thought to the property of which he was an owner which had for at least 7 years been occupied as a child care centre managed by his wife and for which he had no intention of any change to the current arrangement in the foreseeable future. He further stated that at all times he had acted in the interests of the community and not his personal interests, however, he would in any event endeavour to ensure the same situation did not occur in the future.

FURTHER INVESTIGATIONS

7. After the said report and the decision to conduct proceedings the Department of Local Government sought and received further valuation advice from the State Valuation Office. That in turn led to the Department obtaining advice from an independent town planning expert which dealt with the implications, from a planning point of view, of the various amendments made to the DCP so far as it related to the property in which Councillor Balendra had an interest. This in turn led to the Department engaging an independent valuer, Craig Miller Pty Ltd.

THE CURRENT VALUATION EVIDENCE AND ITS IMPLICATIONS

8. Having considered the draft Development Control Plan, as had been considered by the Council at the meetings in question, and having reviewed the documentation and particularly the advice of the independent town planner Miller concluded that, in his view, the limitations of development when considered on a potential and economic basis resulted in there being no appreciable impact on the property in which Councillor Balendra had an interest.
9. In particular Miller emphasised that the theoretical increases in potential floor space arising from the various DCP configurations adopted by Council and that the maximum floor space ratios included in the DCPs could not be realised. Further, to the extent that an increased floor space ratio could be achieved "we believe that in achieving such a hypothetical development, the project will become uneconomic due to the high cost of providing basement car parking".
10. Accordingly, it is clear that the conclusion that there was no appreciable impact from an economic point of view on the property in which Councillor Balendra had an interest was due to the fact that the potential benefits which flowed under the DCP either could not be realised in respect of this particular site or if hypothetically realisable would nevertheless make the development uneconomic.

CONCLUSION

11. Section 442 of the *Local Government Act 1993* provides that a pecuniary interest "is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.
12. With the concurrence of the Director General, Department of Local Government, the Complainant, and at the original request of the solicitors for Councillor Balendra the Tribunal has decided to determine the proceedings without a hearing and to dismiss them. In so doing the Tribunal is of the opinion that there are no material facts in dispute

between the Complainant and Councillor Balendra and that it would be in the public interest not to require a hearing. This is because there is now an absence of evidence of any appreciable financial loss or gain to Councillor Balendra such as would support or could possibly support a finding that he had a pecuniary interest in the matters then before the Council.

13. In so determining the Tribunal would wish to make it clear that its decision is based solely upon the evidence as it has now emerged in this particular case. In particular, that evidence relates to the physical site constraints of the property in which Councillor Balendra has an interest and as a result of those site constraints, what was and was not achievable from a planning point of view, bearing in mind the proposed DCP. Further, those physical and planning constraints in this particular case resulted in there being no evidence available of any reasonable likelihood or expectation of appreciable financial gain or loss. This decision ought not to be read as being any support for the proposition that a consideration of a DCP could not, in other circumstances, give rise to a pecuniary interest within the meaning of the Act.

THE TRIBUNAL'S ORDER

14. The Tribunal's order is as follows:

That a complaint by the Director General, Department of Local Government, that contrary to Chapter 14, Part 2 of the *Local Government Act 1993*, Councillor Balendra:

1. at the meetings of 1 March 2000, 5 July 2000 and 16 August 2000 took part in the consideration and discussion of and voted on questions relating to the draft Auburn Development Control Plan 2000 which proposed changes to properties zoned 3(a), including 52 Amy Street, Regents Park, which would increase the existing floor space ratio thereby increasing the residential development potential of properties such as 52 Amy Street, Regents Park; and

2. failed to disclose his interests fully on 1 March 2000, 5 July 2000 and 16 August 2000 pursuant with s.451 of the Act;

be dismissed.

The Tribunal's order will be furnished to Councillor Balendra, the Director General and Auburn Council forthwith.

Copies of the Tribunal's Statement of Decision will be provided to Councillor Balendra and the Director General in accordance with s.484(1). Pursuant to s.484(3) copies will also be provided to Auburn Council and such other persons as the Tribunal thinks fit.

DATED: April 2003

D.P.F. OFFICER QC
Pecuniary Interest Tribunal