

**LOCAL GOVERNMENT PECUNIARY  
INTEREST TRIBUNAL**

**PIT No. 2/2001**

**DIRECTOR GENERAL, DEPARTMENT OF  
LOCAL GOVERNMENT**

**RE: COUNCILLOR CHRISTOPHER GULAPTIS,  
MACLEAN SHIRE COUNCIL**

***STATEMENT OF DECISION***

Dated: 24 December 2003

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## ***STATEMENT OF DECISION***

### **BACKGROUND**

1. Councillor Christopher Gulaptis is a Surveyor by profession, who established his own practice in Maclean Shire in 1984. Between 1988 and 2000 he was a director and shareholder of Gulaptis & Smith Pty Limited, Consulting Surveyors, which carried on practice in Maclean. He was the senior practitioner within the practice carried on by the company.
2. On 30 March 2000 Councillor Gulaptis was elected as a Councillor of Maclean Shire Council and on 5 April 2000 he was elected Mayor.
3. On 13 December 2001 the Director General, Department of Local Government, made a

formal complaint pursuant to s.460(1) of the *Local Government Act 1993* alleging that Councillor Gulaptis had breached the provisions of Chapter 14, Part 2 of that Act in that:

- (i) at a Council meeting on 12 April 2000 he took part in the consideration and discussion of and voted on questions relating to the Maclean Shire Council's decision that a Gulmarrad s.94 Road Contribution Plan be prepared;
  - (ii) at a meeting on 17 January 2001 he took part in the consideration and discussion of and voted on questions relating to Maclean Shire Council's decision to acquire from Dovoni Pty Limited certain land affected by the proposed Yamba By-Pass for \$189,000, and related matters;
  - (iii) he was present at, or in sight of, the meeting of Maclean Shire Council held on 11 April 2001 while an application by Australian Indigenous Christian Ministries Limited proposing the establishment of a Recreation Establishment (Religious Retreat) at Murray Road, Ashbury was being discussed and considered and voted on by the Council; and
  - (iv) in each case failed to disclose his alleged pecuniary interests.
4. Following receipt by the Tribunal of a report from the Director General, Department of Local Government of an investigation under s.462 of the *Local Government Act 1993* the Tribunal, on 29 October 2002, determined to conduct proceedings into the complaint and it issued a notice of its decision to that effect.
5. Subsequently, an application was made to the Tribunal on behalf of Councillor Gulaptis that the three complaints be summarily dismissed by the Tribunal without proceeding to formal hearing. On 11 August 2003 that application was dismissed, for the reasons set out in a Statement of Decision of that date.
6. On 17 and 18 November 2003 a hearing took place and submissions were received in relation to the substance of the alleged breaches. The Department was represented by Mr

Robinson of counsel and Councillor Gulaptis was represented by Mr Harris of counsel. The Tribunal intends to deal with each complaint separately.

### **Gulmarrad Contributions Plan**

7. There is an area of Maclean Shire known as "Gulmarrad". The future traffic requirements of the Gulmarrad area had been assessed in the "Townsend and Gulmarrad Traffic Study" prepared by the consultants ERM Mitchell McCotter in June 1997. On 9 July 1997, after further consideration and input by the Gulmarrad Technical Working Group from the Council, that Traffic Study was adopted by the Council. On 14 April 1999 the Council adopted a Development Control Plan for Gulmarrad which included amendments to some of the recommendations in the Traffic Study.
8. As at 12 April 2000 Lanai Pty Limited had four directors of whom Councillor Gulaptis was one. As at that date the issued capital of Lanai Pty Limited was \$40 made up of 40 ordinary shares of \$1 each. Silkpen Pty Limited beneficially held 20 of those issued shares.
9. As at 12 April 2000 Councillor Gulaptis was a director of Silkpen and Councillor Gulaptis and his wife, Vicky Gulaptis, beneficially held one half of the issued capital of Silkpen Pty Limited.
10. As at 12 April 2000 Lanai Pty Limited owned and had done since 20 March 1995 certain land situated in Gulmarrad and known as Causley Farm Estate. The evidence reveals that that area of land has a frontage to Brooms Head Road, vehicular access off that road, and is partially subdivided.
11. On 10 March 2000 Lanai Pty Limited exchanged contracts for the purchase of certain land in Gulmarrad known as the Rosella Estate, which contract was settled on 15 June 2000. The evidence establishes that that area of land has a frontage to Sheehans Lane and is likewise partially subdivided. Contrary to the map which forms part of the Gulmarrad Development Control Plan the evidence before this Tribunal establishes that the Rosella Estate does not have, physically, vehicular access to Sheehans Lane.

12. At present, Sheehans Lane is an unformed dirt road. The Gulmarrad Development Control Plan indicates an intention that "Sheehans Lane to be constructed by s.94 Plan". While the Development Control Plan indicates that Sheehans Lane's future upgrading would be funded directly from s.94 contributions, by contrast, other works on collector roads identified in the Development Control Plan were to be undertaken by the developers of adjoining frontage land. The Development Control Plan also indicates "For future subdivisions, a s.88B instrument is to be submitted to Council prior to the release of the linen plan which prohibits the construction of any direct "property access" onto Sheehans Lane". On behalf of Councillor Gulaptis emphasis was placed, especially in the valuation context, on the fact that the DCP expressly envisaged that there would be no direct access from the Rosella Estate to Sheehan's Lane.
13. Prior to 12 April 2000 there was a s.94 Contribution Plan for rural roads apparently adopted by the Council in 1994. In terms, the Plan applied to all land within the Shire (with some here not relevant exceptions). Schedule 2 of that Plan expressly refers to Sheehans Lane and estimates that its requirements will be a 7 metre carriageway. The evidence before the Tribunal did not seek to explore in any detail how the s.94 Contribution Plan might impact upon a subdivision of the Rosella Estate or the Causley Farm Estate or the level of contribution which may be required thereunder.
14. On 12 April 2000 a meeting of the Council of the Shire of Maclean considered a report by Council officers relating to traffic and road issues in the Gulmarrad area. The report in turn referred to the ERM Mitchell McCotter study which identified certain works required to various roads including Sheehans Lane and estimated the amount of work required and the approximate cost. That report also sought to prioritise work as either being short term, i.e. the next five years, or longer term, i.e. between five and fifteen years. Most of the work recommended in the ERM Mitchell McCotter report for Sheehans Lane was envisaged as being a short term priority. The said meeting resolved "That a Gulmarrad s.94 Road Contribution Plan be prepared".
15. At the said meeting, when the said resolution was passed Councillor Gulaptis was present. He did not declare any pecuniary interest in the matter and he took part in the

consideration and discussion on the question and voted on it.

16. The question which arises is whether Councillor Gulaptis in the circumstances was entitled to do so, bearing in mind the prohibitions contained in s.451 of the *Local Government Act 1993*. That question in turn depends upon whether Councillor Gulaptis had a pecuniary interest in the terms of s.442(1) which is relevantly defined as meaning: "a reasonable likelihood or expectation of appreciable financial gain or loss".
17. It was contended on behalf of the Director General that the preparation of the s.94 Contribution Plan was likely to facilitate or prioritise the raising of funds for and the implementation of road developments and improvements in the area the subject of the proposed Plan. It was alleged that those road developments and improvements as identified in the Traffic Study and to be the subject of the s.94 contribution would result, or may result, in an appreciable financial gain to the company Lanai Pty Limited in that such works would appreciably increase the value of the said two areas of land. It was said that there was a reasonable likelihood or expectation of appreciable financial gain to Councillor Gulaptis by virtue of the impact on his and his wife's shareholding in Silkpen Pty Limited (and its shareholding in Lanai Pty Limited, the owner and equitable owner of the Causley Farm Estate and the Rosella Estate).
18. As was submitted on behalf of Councillor Gulaptis that the subject resolution was a resolution that a s.94 Plan be prepared. It was not even, so it was submitted, a resolution that a s.94 Plan be adopted by the Council. It was submitted that the form of the Plan and its content was of necessity unknown, assuming that the resolution was at some point of time in the future carried into effect (which at the date of the hearing in this matter it had not). Of necessity, not only did the Plan have to be prepared by Council officers, the process required by s.94 of the *Environmental Planning and Assessment Act 1979* and the Regulations thereunder necessitated placing a draft Contribution Plan on public exhibition (following, a Council resolution to that effect), the receipt of submissions following such exhibition, the consideration of submissions and, if it be the case, the adoption of a Contributions Plan in whatever form the Council then decides.

19. Valuation evidence was obtained by the Department of Local Government, and included in the Director General's report, from Robert Houlden from the State Valuation Office. His written evidence was to the effect that the property market in the Gulmarrad area had been depressed for several years and that from 1996 to late 2001 property values in the Gulmarrad area had either remained static or declined. He referred to an oversupply of serviced vacant lots in the area. An analysis of comparable sales material for Gulmarrad showed that the value of vacant land fell from 1996 to 1998 and then appeared to stabilise through to June 2001. Comparable sales material for the Rosella Estate showed, a similar fall through to about June 1998 and then a stabilisation. There was a similar trend for the Causley Farm Estate.

20. Mr Houlden concluded, by reference to this comparable sales material that:

"It would appear that neither the Townsend Gulmarrad Traffic Study (June 1997), the subsequent development and adoption of the Gulmarrad Development Control Plan (April 1999), nor the 12 April 2000 resolution to develop a Gulmarrad s.94 Road Contributions Plan, have had any effect on property values in Gulmarrad or the Rosella Estate or the Causley Farm Estate."

21. Counsel on behalf of Councillor Gulaptis, naturally, placed such emphasis on this evidence as showing that as a result of the 12 April 2000 resolution to prepare the s.94 Contributions Plan there was no effect on property values and hence there could be no effect on the value of the land in Lanai Pty Limited let alone any effect on the value of its shares or those held by Councillor Gulaptis in Silkpen Pty Limited.

22. Mr Houlden then went on in his report to consider the impact on values in relation to the land within the Gulmarrad area generally and within the Rosella Estate and the Causley Farm Estate in particular, on the assumption that the roadworks and road developments proposed within the Townsend Gulmarrad Traffic Study had in fact been carried out. For the purpose of this exercise Mr Houlden assumed that the works as referred to in the Traffic Study had been carried out as at 12 April 2000 and he assumed that various assumptions in the ERM Mitchell McCotter study were accurate. He acknowledged, in his written report, that the answer to each of the questions was nebulous, particularly when

viewed in terms of future population growth and vehicle movements along the relevant carriageways. He expressed the view that if the population growth and vehicle movements reached the figures contained within the Traffic Study then without road improvements real estate values were likely to suffer because of traffic congestion and safety issues. However, he expressed the view that if the population and traffic projections were inaccurate then without road improvements the real estate values may not be affected significantly. He assumed, for the purposes of his report and the evidence which he gave before the Tribunal, that the population growth and vehicle movement figures used in the study were accurate.

23. Mr Houlden's evidence was that if the said proposed works had been carried out then the benefit to properties adjoining Sheehans Lane would depend upon whether those properties had vehicular access to Sheehans Lane. If they did have such access then he was of the opinion that because the road is presently unsealed, the sealing of it would benefit, in terms of increased land values, properties adjacent to and having access to Sheehans Lane. He did not attempt to gauge any impact on values in dollar terms because he considered it was impossible to do so. He did not know how the market would react to such improvements and there were a whole range of other variables that would affect values to a greater extent. He said that while the actual impact on values could not be predicted it would be safe to say that in the longer term values in the Gulmarrad area in general would rise if the proposed road works and improvements were undertaken. "Values in general may not be affected immediately or even in the medium term but eventually, as the population of the area increases and traffic becomes an issue, the benefits of the works would start to take effect. This would then be taken into consideration by the market.
24. Mr Houlden was asked to assume that in accordance with the provisions of the DCP vehicular access to Sheehans Lane would not be permitted in any future subdivision of adjoining properties. If this were to occur and if Sheehans Lane nevertheless was to be sealed and the other works carried out, he considered that while there would be some benefit to those properties, the benefit would not be substantial. The benefit would manifest itself in a road which was less noisy and less dusty. He considered that if the works had been carried out in the Gulmarrad area generally, there would not be any

significant overall impact on values although in Sheehans Lane area there would be some impact on value but not substantial.

25. In relation particularly to the Rosella Estate and the Causley Farm Estate, Mr Houlden expressed the view that the sealing of the road and the carrying out of the other works would make these lands more attractive but that this would create additional supply of properties with bitumen sealed roads and thus create more competition for purchasers. He considered that this may have led to a slight fall in values due to increased competition for purchasers. As at April 2000, if anything, if the works had been carried out, this may have led to a reduction in the value of land in the Causley Farm and Rosella Estates. Indeed, Mr Houlden considered that if the roadworks had been undertaken then it was unlikely that developers would seek to subdivide the land and take advantage of the improvements because of the competition within the market and they would be unlikely to see the profit or margin in subdividing the land because the market was so depressed.
26. The evidence before this Tribunal concentrated upon the land value in the manner summarised above. No attempt was made to address the question of translating any gross increased land value into a nett increase upon subdivision, taking into account any expenses (including s.94 contributions) let alone what impact, if any that may have upon Silkpen's shares in Lanai Pty Limited or Councillor Gulaptis' shares in Silkpen Pty Limited.
27. Prior to 12 April 2000 both parcels of land owned by Lanai Pty Limited were, with the consent of the Council, capable of being subdivided and sold as residential blocks. As the Tribunal has said, no attempt was made, and indeed could not be made, to compare the situation which may have arisen by reference to the s.94 Rural Roads Contribution Plan on any subdivision and what may have been anticipated to be the position in the event that the resolution of 12 April 2000 was implement (in some form).
28. Mr David Morrison, a town planner, gave evidence to the Tribunal. He acknowledged that even where a Council has approved a s.94 Plan that, of itself, does not create any priority for the construction of any particular public service, for the reason that the s.94

contributions may come in quickly from subdivisions or alternatively, may take many years to accumulate. His evidence was that the fact that some work is identified on a s.94 Plan does not in any way determine the priority with which it might be constructed. The particular work has to be placed upon a Strategic Planning Works Program and that there were all sorts of matters, including public pressure, which influenced the order in which works may be carried out, albeit one of these factors was the Council's ability to extract s.94 contributions.

29. The Tribunal is of the opinion that the resolution of 12 April 2000 to prepare the Gulmarrad s.94 Contributions Plan was not a matter in respect of which Councillor Gulaptis had a pecuniary interest.
30. On behalf of the Director General it was submitted that a long-term view ought to be taken of what would flow from this first step towards the improved road conditions in the Gulmarrad area and near the subject land in particular. While that may well be, in general, a permissible approach, this Tribunal must be satisfied, on the balance of probabilities, that Councillor Gulaptis, as at 12 April 2000 had a pecuniary interest in the subject resolution. Put another way, by virtue of his shareholding in Silkpen Pty Limited, and its shareholding in Lanai, did he have a reasonable likelihood or expectation of appreciable financial gain or loss from a decision by the Council to prepare a s.94 Contributions Plan. It could not be predicted, as at 12 April 2000, whether a s.94 Contributions Plan would in fact be prepared and if so when and in what form, let alone adopted by the Council. The evidence before this Tribunal establishes that the existence of a s.94 Contributions Plan, and the Council's ability to use it to help defray road costs, is but one of many factors in determining a priority for a Works program. Even the existence of a Plan does not of itself create any priority, let alone a resolution to prepare one.
31. So far as the value of the land is concerned the evidence of Mr Houlden is that the resolution of 12 April 2000 had no effect. Even if one were to assume that as at 12 April 2000 the works identified in the ERM Mitchell McCotter report had in fact been carried out then the evidence does not satisfy this Tribunal that there would have been any appreciable impact on land values, let alone any that would translate into Councillor

Gulaptis' share value. On the one hand there may be some impact on value depending on whether there was access to Sheehans Lane in the case of Rosella estate, on the other hand the market for vacant land was so depressed that it is doubtful if developers would have taken advantage of the new roads to subdivide the land. If they had, then land prices may have fallen because of increased competition.

32. In order for the complaint to be established this Tribunal must be satisfied of a reasonable expectation or likelihood of appreciable financial gain or loss in the value of Councillor Gulaptis' shares. There is before this Tribunal no evidence which deals with the value of those shares. In circumstances where the evidence of gross selling price of the land itself is as set out above, this Tribunal is not satisfied that there was any such expectation or likelihood in relation to Councillor Gulaptis' shareholding.
33. The Tribunal dismisses the first ground of complaint.

### **Acquisition of the Dovoni Pty Limited Land**

34. As has been set out above, Gulaptis & Smith Pty Limited was a firm of surveyors based in Maclean and, on the evidence before the Tribunal, conducted a successful practice. Councillor Gulaptis was a little reluctant to agree to the proposition that the company had no competition, or no real competition, but that was certainly the view of Desmond Smith, who had been a director and a shareholder of Gulaptis & Smith Pty Limited since its formation.
35. Although there may at one point of time have been some question about the relevant dates, at the hearing, counsel for the Director-General accepted the evidence that Councillor Gulaptis' employment by Gulaptis & Smith Pty Limited ceased on 12 April 2000 and that that date was the last date when he received a salary from the company. By a series of transfers and resignations as director, all dated 14 April 2000, his and his wife's involvement with the company as shareholders and directors ceased. The evidence is that

at no time since 14 April 2000 has Councillor Gulaptis had any involvement in the operation or administration of Gulaptis & Smith Pty Limited. At no time since then has he had any interest in the company or in any shares in the company.

36. Since ceasing to be employed by Gulaptis & Smith Pty Limited, Councillor Gulaptis had, from time to time, carried out consultancy work for that company at its request. This was mainly in circumstances where he had some special knowledge of a matter as a result of his involvement with it when he was employed by the company. Sometimes it was in circumstances where work was required urgently and the company did not have the resources to carry it out. The details of the work have been set out in a statement of evidence by Councillor Gulaptis. Between ceasing to be employed by Gulaptis & Smith Pty Limited and the receipt of the complaint the subject of the proceedings (April 2000 to December 2001), Councillor Gulaptis carried out a total of just over 321 hours work and earned a total of just over \$7,300. For consultancy work relating to land in the Maclean Shire, the total (included in the above figure) was \$1,885. His rate of remuneration was \$20 per hour (since June 2002, \$25 per hour). For a period of time his name appeared on the Gulaptis & Smith Pty Limited letterhead as a consultant.
37. While he was employed by Gulaptis & Smith Pty Limited, Councillor Gulaptis carried out work for Dovoni Pty Limited. He first commenced work for that company in about 1990. The last job which he did for the company was in early 1999. He has carried out no further work for that company since that time, either as an employee or a consultant, and he has never been a director or shareholder or held any interest in the company.
38. As referred to above, it was on 30 March 2000 that Councillor Gulaptis was elected as a Councillor of the Maclean Shire Council and he was elected Mayor on 5 April 2000. In about March 2001 he was advised by the solicitor for Dovoni Pty Limited that he, Councillor Gulaptis, would be subpoenaed to give evidence at the hearing of proceedings commenced by Michael Rosser against Dovoni Pty Limited relating to the quantity and quality of fill material placed by Mr Rosser on land owned by Dovoni Pty Limited. Councillor Gulaptis had carried out surveys to identify the amount of fill at various points of time and as a result of those surveys the quantity of fill placed could be determined.

39. Councillor Gulaptis had prepared an expert report in relation to the conflict between Mr Rosser and Dovoni.
40. As at 17 January 2001, Councillor Gulaptis did not believe that he was acting for Dovoni Pty Limited. The report that he had produced had been produced when he had been a director of Gulaptis & Smith Pty Limited. The evidence of Councillor Gulaptis satisfies the Tribunal that as at 17 January 2001 Councillor Gulaptis was not mindful of the possibility that at some point of time one of the parties to the dispute may ask him to become involved in some litigation.
41. Dovoni Pty Limited owned certain land which was affected by the proposed Yamba By-Pass. On 9 August 2000 there was before the Council a recommendation that the Council issue certain instructions to its solicitor in relation to the acquisition of the said land from Dovoni Pty Limited and that the Council delegate to the Deputy Mayor and General Manager the authority to negotiate with Dovoni Pty Limited for the acquisition of the land. Councillor Gulaptis was present at this meeting, he declared an interest in the matter, he left the Council Chambers and did not take part in the discussions or the voting. He said in evidence that he did not believe that he had a pecuniary interest, but he refrained in voting and taking part because of his previous professional association with the Managing Director of Dovoni Pty Limited.
42. On 19 January 2001 a meeting of the Council considered a report concerning the acquisition of the said land owned by Dovoni Pty Limited. The meeting resolved to acquire the said land for \$189,000 and to pay all costs associated with the subdivision and transfer of that land, including the vendor's reasonable legal costs on sale. Councillor Gulaptis was present at the meeting. He did not declare a pecuniary interest in the matter and he voted in favour of the resolution. He says that he did not consider that he had a pecuniary interest in the matter and he certainly had no interest in the land or in Dovoni Pty Limited.
43. It was contended on behalf of the Director General that the alleged pecuniary interest of

Councillor Gulaptis in the resolution of the Council at its said meeting on 17 January 2001 (and the reasonable likelihood or expectation of appreciable financial gain) arose because of the perceived ability of Gulaptis & Smith Pty Limited to obtain Council approval on matters before the Council, and that this could reasonably have been expected to enhance the company's reputation in the community. In turn, so it was contended, this could result in a steady continuation of or an increase in the volume of work being presented to Gulaptis & Smith Pty Limited, thereby contributing to the success of the company and creating an opportunity for future consultancy work being directed to Councillor Gulaptis, for which he would have been remunerated.

44. During final oral submissions, counsel on behalf of the Director-General submitted that an alternative way of viewing the matter was that it was Gulaptis & Smith Pty Limited who had the direct pecuniary interest in the matter before the Council on 17 January 2001; and that, properly understood, Councillor Gulaptis was in the nature of an employee and thus, s.443(2) of the *Local Government Act* gave Councillor Gulaptis a pecuniary interest. Counsel frankly conceded that the matter had not been so put earlier, and that it could not be put any higher than the proposition that although Gulaptis & Smith Pty Limited had no involvement at all in the Dovoni matter before the Council, that company nevertheless had been a client and that having a client treated favourably by the Council would stand Gulaptis & Smith Pty Limited in good stead. Councillor Gulaptis was still associated with Dovoni and could reasonably be expected to act in the future for that party that was before the Council. Gulaptis & Smith Pty Limited would thus be reasonably likely to improve its reputation in the area.
45. If this Tribunal is to determine that the complaint has been established, it needs to be satisfied on the balance of probabilities that there arises a reasonable likelihood or expectation of appreciable financial gain or loss. There is no doubt that this Tribunal can draw inferences of fact in the appropriate circumstances. In the present case, however, the Tribunal is being asked, in the absence of any direct evidence, to draw an inference that Councillor Gulaptis had (or in the alternative, as orally submitted Gulaptis & Smith Pty Limited had) a pecuniary interest in the matter before the Council on 17 January 2001 in circumstances where neither Councillor Gulaptis nor Gulaptis & Smith Pty Limited had

any association at all with the land the subject of the Council resolution and there is no suggestion either ever had. Neither had, and never had any relevant interest in Dovoni Pty Limited.

46. The Tribunal is not satisfied that either Councillor Gulaptis or Gulaptis & Smith Pty Limited had any pecuniary interest in the subject matter before the Council on 17 January 2001. The proposition contended for involves, in this particular case, a series of steps being hypothetically taken. Firstly, the Council's decision becomes publicly known (as it almost certainly would) and some person or persons then draws an association between that decision and the fact that Gulaptis & Smith Pty Limited had acted for Dovoni Pty Limited at some earlier point of time and on some totally unrelated matter, it having no connection at all with the subject matter before the Council on 17 January 2001. From this the reputation of Gulaptis & Smith Pty Limited is enhanced and further work flows to that company as a result. Further, so of necessity must be the contention, this Tribunal would need to be satisfied that Gulaptis & Smith Pty Limited could itself not cope with the additional work which would be performed by Councillor Gulaptis as a consultant.
47. The Tribunal is not prepared to draw all the inferences necessary for the above propositions to be established on the balance of probabilities. It was submitted on behalf of the Director General that the Tribunal should draw the necessary inferences and that it ought not assume there are no matters other than this one example. It was said that these matters are difficult to prove and the Tribunal ought have reference to the principles and objects and purposes of the pecuniary interest provisions. It was contended that the number of cases before the Tribunal is no indicator of whether or not the Tribunal can draw an inference that there is a pecuniary interest and that one case can be sufficient. It was submitted that the Council papers and meetings are all public and that this makes easier the drawing of the inferences.
48. Each case depends on its particular facts. There is no doubt about the public nature of the papers and the meeting. It is apparent that the public nature and knowledge of the substance of the Council's resolution can be inferred. However absent some further evidence the Tribunal is not satisfied on the balance of probabilities of the steps, referred

to above, necessary to establish the complaint. This is particularly so where Gulaptis & Smith Pty Limited had no association at all with the matter before the Council and none would have been revealed by the Council papers or debate. Also of particular relevance is the fact that Gulaptis & Smith Pty Limited had little real competition for surveying work in any event and this makes it all the harder to draw any inference of additional work going to that company as a result of the assumed increased reputation. Harder still is the necessary inference that there was a reasonable likelihood or expectation of Councillor Gulaptis obtaining financial gains from it.

49. The second complaint is dismissed.

### **Australian Indigenous Christian Ministries**

50. In February 1999 Gulaptis & Smith Pty Limited had represented the then mortgagee in possession of land at Murrayville Road, Ashby owned by J. & P. Crisp in relation to a s.96 application to the Council to amend the development approval so as to permit two proposed lots to use a common driveway access. The application was lodged in the name of Gulaptis & Smith Pty Limited and was signed by Christopher Gulaptis who had the carriage of the matter. The Council refused the s.96 application.
51. Gulaptis & Smith Pty Limited instituted proceedings against the Maclean Shire Council in the Land and Environment Court, appealing the Council's refusal. Christopher Gulaptis gave evidence on behalf of the applicant and against the Council at the hearing. The appeal was dismissed.
52. On 11 April 2001 the Council was considering a development application by Australian Indigenous Christian Ministries Limited for the establishment upon the said land of a recreation establishment.
53. As at April 2001, and as detailed above, Councillor Gulaptis and his wife had ceased to be shareholders in Gulaptis & Smith Pty Limited and Councillor Gulaptis had ceased to be a

director in that company. Likewise, as detailed above, he had some ongoing association with the company from time to time as a consultant.

54. The April 2001 development application was lodged by Australian Indigenous Christian Ministries Limited. The applicant's address was given as c/o Gulaptis & Smith Pty Limited and the application was apparently signed by a solicitor for the applicant. Gulaptis & Smith Pty Limited had prepared a Statement of Environmental Effects which was lodged with the application. Councillor Gulaptis, however, had no involvement in the decision by the applicant to lodge the application. He had no involvement in any way with Australian Indigenous Christian Ministries Limited and he had no interest in the land the subject of the application.
55. At the meeting on 11 April 2001 the meeting considered a report in relation to the development application and against the recommendations in the said report, the Council resolved to refuse the development application. Councillor Gulaptis was present at the meeting when the matter was considered. He did not disclose any pecuniary interest in the matter before the Council. He spoke against the motion to refuse the development application and he voted against the motion to refuse the application. He did so, according to his evidence, because he considered that he had no pecuniary interest in the matter before the Council.
56. As in the matter previously dealt with, it was contended that Councillor Gulaptis had a pecuniary interest because of the perceived ability of Gulaptis & Smith Pty Limited to obtain Council approval on matters before the Council and that this would have enhanced the company's reputation in the community. In turn this would result in a steady continuation of or an increase in the volume of work being presented to Gulaptis & Smith Pty Limited, thereby contributing to the success of the company and creating an opportunity for future consultancy work being directed to Councillor Gulaptis for which he would be remunerated. Counsel on behalf of the Director-General invites the Tribunal to draw an inference that there is a reasonable likelihood of appreciable financial gain flowing to Councillor Gulaptis from the matter before the Council on this occasion. It was submitted that on the evidence it would be reasonable to expect that if customers of the

company got a "good run as it were" through the Council that that would or could impact favourably on the business of Gulaptis & Smith Pty Limited. It was contended an improvement in the reputation of the company should be inferred which in turn may well lead to increased work opportunities now or in the future. It was said that the appreciable financial gain may be either ascertainable within the short or the long term.

57. On behalf of Councillor Gulaptis it was emphasised that Councillor Gulaptis' involvement with the subject land had been for a different client and that Australian Indigenous Christian Ministries Limited had not been a client of Gulaptis & Smith Pty Limited while Councillor Gulaptis was either a director or shareholder of that company. It was not suggested that Councillor Gulaptis had had any previous involvement with this client at all. It was again emphasised by counsel for Councillor Gulaptis that there was no evidence from which the Tribunal could be satisfied, nor should it infer that there was a reasonable likelihood of or expectation of financial gain to Councillor Gulaptis, substantially for reasons similar to the Dovoni matter. The number of steps necessary to be taken and their complexity precluded the inferences being drawn, so it was submitted.
58. Unlike the Dovoni Pty Limited matter if the inference is made about public knowledge of the development application then that knowledge would include an expressed association between the applicant and Gulaptis & Smith Pty Limited. Unlike the Dovoni matter, there was here an association both present and previously, albeit for a different applicant, between Gulaptis & Smith Pty Limited and applications to the Council.
59. If this complaint is to be established it is necessary to conclude that Councillor Gulaptis had a pecuniary interest and in doing so to draw inferences similar to the Dovoni matter. It would be necessary to infer that had the application been approved the reputation of Gulaptis & Smith Pty Limited in the community would have been enhanced, that this would have resulted in work going to Gulaptis & Smith Pty Limited that would not otherwise have done so, that Gulaptis & Smith Pty Limited would have been itself unable to cope with the work and that it would have been carried out by Councillor Gulaptis as a consultant.

60. The Tribunal is of the opinion that any interest which Councillor Gulaptis had in this matter was so remote or insignificant that it could not reasonably be regarded as likely to influence any decision he might make in relation to the matter then before the Council. There is little doubt, as submitted on behalf of the Director General, that in principle being associated with clients having a "good run" through Council may enhance one's reputation and may lead to further work for the company. Where however Councillor Gulaptis was a consultant with no financial interest in the company, where the minor extent of his work for the company is as set out above and where the company had, in any event, little real competition, the Tribunal considers Councillor Gulaptis' pecuniary interest was exceedingly remote or insignificant. In the Tribunal's opinion it could not reasonably be regarded as likely to influence his decisions on the matter before the Council. That being so, s.442(2) provides that Councillor Gulaptis did not have a pecuniary interest.

61. The Tribunal dismisses the complaint.

### **Generally**

62. For the foregoing reasons, the Tribunal finds that the complaints concerning Councillor Gulaptis have not been established. The complaints will accordingly be dismissed. The Tribunal's order will be furnished to Councillor Gulaptis, the Director-General and the Council of the Shire of Maclean forthwith. Copies of the Tribunal's Statement of Decision will be provided to Councillor Gulaptis and the Director-General in accordance with s.484(1). Pursuant to s.484(3) copies will also be provided to Maclean Shire Council and such other persons as the Tribunal thinks fit.

DATED: 24 December 2003

