

**LOCAL GOVERNMENT PECUNIARY INTEREST TRIBUNAL**

**LOCAL GOVERNMENT ACT 1993**

**PIT NO. 2/2000**

**DIRECTOR-GENERAL, DEPARTMENT OF LOCAL GOVERNMENT  
RE COUNCILLOR DOMINIC WY KANAK, WAVERLEY COUNCIL (1)**

**STATEMENT OF DECISION ON APPLICATION TO RE-OPEN**

1. This Statement of Decision ought to be read together with the facts set out in a Statement of Decision (3) of even date in the substantive proceedings.
2. At the hearing of the substantive matter on 17 December 2001, Councillor Kanak formally admitted a breach of the pecuniary interest provisions of the Local Government Act 1993 in the matters before the Council on 28 September 1999 concerning a proposed Olympic Volleyball Stadium. He wished the matter to proceed only in relation to what consequences ought to follow from that admitted breach. Submissions were received at the hearing as to what penalty, if any, ought be imposed. On 18 December 2001 Councillor Kanak sought a further opportunity to make submissions on penalty in the event that the Tribunal was minded to make a decision, in substance, other than counselling or a reprimand. The Tribunal advised Councillor Kanak that, if it were so minded, he would be given that opportunity.

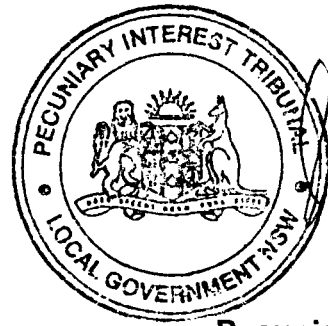
3. By a motion emailed to the Tribunal on 7 January 2002 (Exhibit E in the proceedings) Councillor Kanak sought, in substance, to re-open the substantive hearing and to withdraw the said admissions made by him at the hearing on 17 December. As a related matter, he also sought (by Exhibit H) to re-open a question of the issue of subpoenas to various persons (for the purposes of giving evidence at any re-opened substantive hearing). The applications were, on 4 February 2002 refused for reasons to be given. The reasons are here set out.
  
4. The principle which ought to guide this Tribunal, in determining whether to grant this application to re-open and to withdraw the admissions already made, is whether the interests of justice would be better served by allowing or by rejecting the application (cf. *Urban Transport Authority of New South Wales v. Nweiser* (1991) 28 NSWLR 471). A similar underlying principle would be applicable if one were to consider the present application as being analogous to withdrawing an admission made in civil litigation (cf. *Coopers Brewery Limited v. Panfida Foods Limited* (1992) 26 NSWLR 738) or the wide discretion given to a judge to permit a plea of guilty to be withdrawn (cf. *R. v. Foley* (1963) 80 WN (NSW) 726; *R v. Kouroumalos* (2000) NSWCCA 453).
  
5. In the present case, the history of the matter clearly demonstrates that Councillor Kanak was fully conversant with the proceedings and all its implications. His communications with the Tribunal and the Department and his numerous requests for particulars indicate a close and detailed familiarity

with the facts and allegations in the proceedings. His appearances before the Tribunal reinforce these conclusions. In the Tribunal's opinion there can be no suggestion that when he was at the time that he made the admissions he was under any mistake, disability or misapprehension as to the nature or consequence of those admissions. They were voluntarily made when he was in full possession of the facts.. Councillor Kanak does not suggest that the admissions were made otherwise. He does not suggest that the admissions were made because he did not understand some relevant principle. While Councillor Kanak made lengthy submissions to the Tribunal, it is of the opinion that there is no material before it from which it could conclude other than that the admissions were made voluntarily, deliberately and with a clear appreciation of all relevant facts and the range of consequences which may result. Further, the Tribunal, for reasons given in the Statement of Decision in the substantive issues, considers that the admissions were properly made, in the sense that there can be no suggestion that any miscarriage of justice or unfairness has resulted from such admissions.

6. The Tribunal is of the opinion that there is no basis for permitting Councillor Kanak to withdraw the admissions he made and to reopen the substantive hearing.
7. In light of the above decision, it is not necessary to deal expressly with the application to review the subpoena decision. It should however be noted that, contrary to the terms of the application, this Tribunal did not refuse to issue the said subpoenas. The Tribunal's response to Councillor Kanak on 12

December 2001 was to the effect that it did not then intend to issue the subpoenae as sought but that Councillor Kanak could renew the application, if he saw fit, at the hearing. Councillor Kanak never did renew such application.

DATED: 1 March 2002



**D.P.F OFFICER QC**  
**Pecuniary Interest Tribunal**