

Councillor Conduct Tribunal decision

14 August 2019

Key issue - Conflict of Interest

Use of expert evidence in considering conflict of interest test

The Tribunal was asked to determine if a councillor had a conflict of interest in relation to a council agenda item to extend a CBD Development Incentive policy.

The councillor's legal representatives produced an expert report from an urban planner. The report considered the applicability of the Incentive policy to the councillor's property and the practical and commercial likelihood of the property in question securing an incentive under the policy in the event an incentive was sought.

The test for conflict of interest as amended is: whether a reasonable and fair-minded observer might perceive that the councillor might not bring an impartial mind to the decision and [might] make a decision contrary to the public interest¹.

The Office of the Independent Assessor did not dispute the contents of the expert report but submitted that not all of the expert report could not be taken to have been within the knowledge of a reasonable and fair-minded observer.

The Tribunal acknowledged the expert's opinions but noted that when the Tribunal applies the test of 'a reasonable and fair-minded observer', the Tribunal considers that such an observer cannot be taken to have the expertise of a town planner or have been capable of conducting the professional assessment of the commerciality of redevelopment of the subject property.

The Tribunal also noted however that many of the facts referred to in the expert report would be objective facts taken to be known from the incentive policy itself and the council minutes, and therefore matters that would be within the knowledge of the 'reasonable and fair-minded observer'.

¹ *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337