

Councillor Conduct Tribunal decision

14 August 2019

Key issue - Conflict of Interest

What use can be made of a councillor's past practice in declaring conflicts of interest on the same matter

The Tribunal was asked to consider whether a councillor should have declared a personal interest in relation to a CBD Development Incentive policy under consideration of council.

The same policy was considered by, either the Planning and Development Committee or at Ordinary Council meetings, on several occasions as follows:

- 10/03/15 - no personal interest declared
- 17/03/15 - no personal interest declared
- 15/03/17 - conflict of interest declared and left the meeting
- 21/03/17 - material personal interest declared and left the meeting
- 14/11/18 - no personal interest declared
- 20/11/18 - perceived conflict of interest declared

The Office of the Independent Assessor argued that the councillor's past practice of declaring conflicts of interest or material personal interests represented an acknowledgement that the councillor had an interest to disclose.

The councillor's legal representative maintained that this prior conduct should not be viewed as any kind of admission. Rather, that the councillor simply took too conservative an approach to the matter of conflict of interest in the past¹.

The Tribunal accepted that the councillor's past practice of making declarations cannot be considered an admission. This is because the councillor's circumstances and the potential for conflict need to be considered as they exist at the time of each meeting.

However, the Tribunal noted that the inconsistent approaches taken by the councillor, are relevant to whether a fair-minded observer might consider a perceived conflict of interest existed at the meeting in question.

¹ *Grand Enterprises Pty Ltd v Aurium Resources Ltd* (2009) 256 ALR 1]

