

**LOCAL GOVERNMENT PECUNIARY
INTEREST TRIBUNAL**

PIT No. 3/2001

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

**RE: COUNCILLOR BRIAN EICHORN, URALLA
SHIRE COUNCIL**

STATEMENT OF FURTHER DECISION

Dated: 27 August 2004

**LOCAL GOVERNMENT PECUNIARY
INTEREST TRIBUNAL**

PIT No. 4/2001

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

**RE: COUNCILLOR BRIAN EICHORN, URALLA
SHIRE COUNCIL**

STATEMENT OF FURTHER DECISION

INTRODUCTION

1. In a Statement of Decision dated 7 April 2004 the Tribunal determined that Councillor Brian Eichorn had breached the pecuniary interest provisions of the *Local Government Act 1993* in respect of meetings of that Council held on 23 February and 28 September 2001.
2. Following upon that Decision Councillor Eichorn and the Director-General, Department of Local Government were invited to make submissions as to what consequences, if any, ought to follow from the Tribunal's Decision of 7 April 2004.
3. By letter dated 19 May 2004 Councillor Eichorn advised that he had not been re-elected to Uralla Council in the Local Government election held in March 2004. [The Tribunal shall however in this Decision still refer to him as 'Councillor Eichorn'.] He said,

however, that he found it almost impossible to accept the Tribunal's conclusions because at no time did he intentionally or knowingly set out to breach the *Local Government Act*. He attached testimonials from Mr R. Torbay MP, the Member for Northern Tablelands, Superintendent Bruce Lyons, Local Area Commander, New England Local Area Command, Armidale Police. The letter from Councillor Eichorn indicated that he would not be making any detailed submissions as to what consequences ought to follow from the Tribunal's Decision of 7 April 2004.

4. The Director-General, Department of Local Government, by his Counsel, provided detailed written submissions of 10 June 2004 and submitted that a penalty of significance and substance was called for in the present case. Those written submissions were forwarded to Councillor Eichorn by facsimile on 17 June 2004 and he was requested to respond within 21 days with any submissions that he wanted to make in reply. He, in conformity with the sentiments expressed in his letter of 19 May 2004, has provided no further submissions.

CONSIDERATION

5. The Tribunal accepts that Councillor Eichorn is a man of honesty, integrity and of good character. It accepts that he is a person of high standing in the community.
6. Councillor Eichorn had a pecuniary interest in the relevant matter before the Council meeting on 23 February 2001 because his wife and two sons were the sole shareholders in the company Brian Eichorn & Co Pty Limited, which was the estate agent involved in the proposed transaction as the vendor's agent. Councillor Eichorn knew and appreciated that he had a pecuniary interest because, following the resumption of standing orders on that day he declared a pecuniary interest in the matter as his family had interests in the company that was involved in the proposed transaction. However, as found by this Tribunal, he participated extensively in earlier discussions concerning the proposals when the Council had suspended its standing orders to allow informal discussion. It seems to have been assumed by Councillor Eichorn (and inferentially by all others present) that this was permitted in circumstances where not only were the standing orders suspended but there was also before the Council no formal motion for discussion [as

opposed to discussion of the general matter]. For reasons explained in the Tribunal's Decision of 7 April 2004, both beliefs were ill-founded and wrong.

7. At the meeting of 28 September Councillor Eichorn, at the commencement of the meeting, declared a pecuniary interest in the matter then before the Council because his family members had an interest in property in New England which had submitted an expression of interest for the provision of marketing advice for Lakeview which, as the Tribunal has held, was the matter for discussion. Nevertheless, Councillor Eichorn went on, at the meeting, to make a statement concerning the maximising of proceeds of sale with any interested party by private treaty or tender. He made that statement while he was still acting as Chairman of the Council meeting and while there was not then before the Council any specific motion. He nevertheless was present at the meeting of the Council when it was considering the matter. Section 451(2)(a) of the *Local Government Act 1993* precluded him from being so present. As also found by the Tribunal, to the extent to which Councillor Eichorn was intending to exercise his "rights" under the Council's Code of Meeting Practice, then he was not in fact doing so.
8. The Tribunal accepts that Councillor Eichorn did not knowingly intend to breach the provisions of the Act. In circumstances, however, where he was clearly aware that he had a pecuniary interest, the Tribunal is of the opinion that he ought to have taken greater care in doing what he did at the meetings of 23 February and 28 September. The view put forward that what he said was permitted when the standing orders were suspended and when there was no formal motion before the Council is a view which has an air of unreality about it. There was a matter being considered by the Council, albeit the formal rules of debate had been suspended. As the Tribunal has said, it has an air of total unreality to suggest otherwise. It seems, however, to have been assumed by all present at the meeting that it was permissible behaviour. It was not. It was precluded by the terms of the *Local Government Act 1993*.
9. In relation to the meeting of 28 September, again Councillor Eichorn clearly acknowledged that he had a pecuniary interest and he ought to have exercised far greater care and desisted from making the statement which he did, particularly in circumstances where on any view of it he did not comply with the Code of Meeting Practice, albeit the

Tribunal accepts that he may have thought he was doing so.

10. As the Tribunal has said, in this case it accepts Councillor Eichorn as a person who did not knowingly and intentionally breach of the provisions of the Act. He knew he had a pecuniary interest and it was declared at the meetings, although what occurred before the declaration in the case of the meeting of 23 February and after the declaration in the case of 28 September, constituted breaches of the Act.
11. The Tribunal accepts that what occurred was an honest, albeit mistaken, belief that Councillor Eichorn was entitled to do what he did. That, however, does not militate against the view that he ought to have taken greater care to ensure that his responsibilities under the Act were complied with.
12. Even though Councillor Eichorn is no longer a member of the Council this Tribunal decided in *Director-General, Department of Local Government Re Former Councillor John Norman Frank Fisk, Burwood Council* PIT No.1/1996 that s.482(1) (as it then stood) continued to apply to people who were councillors at the time of the breach of the Act and were no longer councillors at the date of the application of penalty. While the provision permitting a suspension from civic office no longer applies (as it could not operate any longer) all the other penalty options available in the Section were available.
13. The Tribunal is of the opinion that former Councillor Eichorn ought to be reprimanded for his breaches of the Act.

THE TRIBUNAL'S ORDER

14. The Tribunal's Order is as follows:

The Local Government Pecuniary Interest Tribunal, **HAVING FOUND** that a complaint against Councillor Brian Eichorn of Uralla Shire Council, namely, that contrary to Chapter 14, Part 2 of the *Local Government Act 1993* he participated in the consideration at meetings of the Council on 23 February 2001 of a proposal to purchase Lakeview and on 28 September 2001 of a matter concerning

expressions of interest for marketing advice for Lakeview, has been proved.

Pursuant to s.482(1) of the Act the Tribunal **ORDERS** that Councillor Eichorn be and he is hereby reprimanded.

The Tribunal's Order will be furnished to Councillor Eichorn, the Director-General and the Uralla Shire Council forthwith.

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

DATED: 27 August 2004

