

22 November 2022

Wiremu Thomson
[redacted]

John Ryan
Auditor-General
Office of the Auditor-General
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Re: Breach of the Local Authorities (Members' Interests) Act 1968

Dear Auditor-General,

I am writing to make a complaint that Christchurch City Councillor James Tracy Gough has breached the Local Authorities (Members' Interests) Act 1968 (LAMIA) section 6 (Member of local authority or committee not to discuss or vote on question in which he has pecuniary interest).

This is in regards to the Christchurch City Council's decision on 14 July 2022 of whether to¹:

- Invest an additional up to \$150 million to enable the Te Kaha stadium project to continue as planned,
- Stop the project altogether, or
- Pause and re-evaluate the project

For the meeting, Cr. Gough did not declare he had a pecuniary interest and when it came time to vote, he voted in favour of investing an additional up to \$150 million to continue the project as planned.²

Under s 6(1) of the LAMIA:

A member of a local authority or of a committee thereof shall not vote on or take part in the discussion of any matter before the governing body of that local authority or before that committee in which he has, directly or indirectly, any pecuniary interest, other than an interest in common with the public.

Subsection (2) sets out what is definitely considered a pecuniary interest, but does not limit a pecuniary interest to only those things. The legislators could have limited a pecuniary interest to just those situations if that had been their intent. For example, the repealed Companies Act 1955 s 158(1) uses a phrase along the lines of "For the purposes of [some piece of legislation] [something] shall be deemed to be [some term] if, **but only if**, [some reasons]" (Emphasis added). The "but only if" means that no other reason but those mentioned can cause it to be deemed to fit the definition. Given they had this phrase back then, and chose not to include it, means the plain language interpretation that other reasons for a pecuniary interest may be considered is correct.

Grounds on which Gough had a pecuniary interest

1. Cr. Gough had a pecuniary interest in the Te Kaha decision on the following grounds together and individually.

Ground 1

1 <https://ccc.govt.nz/the-council/haveyoursay/show/514>

2 A video recording of the meeting can be seen at <https://www.stuff.co.nz/the-press/news/129255045/live-christchurch-to-get-new-stadium-after-councillors-agree-to-683m-deal>

2. Cr. Gough's father Tracy Owen Gough³ owns 20% of the shares in The Terrace Carpark Limited (12.5% in Tracy Gough's name, and 7.5% via a wholly owned company), which is likely to benefit from the Te Kaha decision in the forms of revenue from greater levels of visitors, revenue from commercial tenants due to greater business confidence, increased property and business value and potential alteration of use for other commercial opportunities^{4,5}.
3. Cr. Gough can expect to inherit from his father as it is a common practice and their family has a history of handing down the business to the next generation⁴.
4. Though a different act and a similar but not entirely the same situation, this interpretation of interest is supported by s 139(1)(d) of the Companies Act 1993:

“(1) Subject to subsection (2), for the purposes of this Act, **a director of a company is interested in a transaction to which the company is a party if, and only if, the director—(d) is the parent, child, spouse, civil union partner, or de facto partner of another party to, or person who will or may derive a material financial benefit from, the transaction; or**” (Emphasis added)

5. The executive summary of the Te Kaha Canterbury Multi-Use Arena Investment Case had the following statements regarding the benefits to businesses in the CBD on pg. 40⁵.

“Broadly, the main benefits expected to be delivered include: ... • Accelerated levels of investment and relocation of businesses in the CBD.”

“Such provision of amenity improvements can also result in an uplift in value of property and businesses within local areas.”

“The CMUA complements the other facilities and amenities in the central city. Typically, entertainment centres, sporting stadiums, convention centres and theatres have individually, or in combination been at the heart of programmes intent on bringing life back to undervalued and under-utilised parts of a city. The widely held view is that these major facilities generate a level of commercial and social activity, the benefits of which flow on to other parts of the precinct, anchoring and stimulating greater levels of visitation in the area, new activity and development.”

"The benefits of the project acting as a 'change catalyst' to support business confidence, the visitor economy ... The development and construction of the CMUA may be a significant transformative project with the potential to act as a catalytic injection to Christchurch CBD, assisting to support business confidence and investment."

Ground 2

6. Tracy Gough seems [redacted some ambiguous words that might be misconstrued] a trust that is the majority owner of Ferry Road Property Holdings Limited, and Ferry Road is only about 200m away from the stadium. This pecuniary interest is similar to Ground 1.
7. Though inheritance is enough of a pecuniary interest for this ground, Cr. Gough would have an additional interest if he is a beneficiary of the trust. [The OAG said that Cr. Gough was not a beneficiary of the trust.]

3 <https://www.stuff.co.nz/the-press/business/75001482/christchurch-city-councillor-jamie-gough-ceases-family-directorships>

4 <https://www.stuff.co.nz/business/8402989/Christchurchs-Mr-Personality>

5 https://christchurch.infocouncil.biz/Open/2019/12/CNCL_20191212_ATT_4037_EXCLUDED.PDF

Ground 3

8. Tracy Gough owns other property in the CBD, e.g. Peterborough Holdings Limited, and similar arguments to Ground 1 apply.

Ground 4

9. His uncle Antony Thomas Gough, who has no children⁶ and may bequeath things to Cr. Gough, has the following relevant shareholdings:

- The Terrace Carpark Limited: 20%
- The Terrace on Avon Limited: 25.10%
- The Terrace Christchurch Limited: 100%

10. Each of which is to do with The Terrace hospitality area bordered by Oxford Terrace, Hereford St, and Cashel St. This is only a few blocks from the Te Kaha Canterbury Multi-Use Arena site bordered by Madras St, Hereford St, Barbadoes St, and Tuam St.

11. These would have similar benefits from the Te Kaha decision as those mentioned in paragraph 5.

12. Again using the Companies Act 1993 as a guide for interpretation of a pecuniary interest, sections 139(1)(a) or (e) may apply.

“(a) is a party to, or will or **may derive a material financial benefit from, the transaction;** or

(e) is otherwise directly or **indirectly materially interested in the transaction.**”
(Emphasis added)

13. For the benefit of the Auditor-General who may not be aware of Antony Gough's interest in the CBD, there is the following article⁶ which says:

‘Then after the Government's recovery Blueprint finally came out last July, Gough was the first major land owner to start doing deals on the properties the Government said it wanted to take for the anchor projects.

He was also the first to start buying central city properties from others, consolidating his holdings to create his own whole half block development site - a Gough-zone! - centred around his old Oxford Terrace bar and restaurant precinct.

It is a confident reinvestment in the inner city, a statement of belief that is \$40 million "going on \$100m" Gough confesses.’

Regarding Defences

14. Cr. Gough should have been aware of the LAMIA because it is mentioned in the conflicts of interest section of the Council's Code of Conduct for Councillors.

15. The LAMIA s 7(2) mentions the following regarding a defence.

⁶ <https://www.stuff.co.nz/business/8402989/Christchurchs-Mr-Personality>

“It shall be a defence in proceedings for an offence against subsection (1) if the defendant proves that when he took part in the discussion of, or, as the case may be, voted on, the matter before the local authority or committee he did not know and **had no reasonable opportunity of knowing** that he had a pecuniary interest in that matter other than an interest in common with the public.” (Emphasis added)

16. This defence is not applicable for Cr. Gough on the following grounds together and individually.

Ground 1

17. To comply with s 14(1)(f) of the Local Government Act 2002 (“a local authority should undertake any commercial transactions in accordance with sound business practices”), he as a councillor should have read at least the executive summary of the Canterbury Multi-Use Arena Investment Case, which had the statements regarding benefits to businesses in the CBD listed in para. 5 above.
18. He as a director of The Terrace Carpark Limited, The Terrace on Avon Limited and The Terrace Christchurch Limited would also have been aware that his father and uncles owned businesses in the CBD.
19. Aside from a reasonable expectation of competence of any councillor, as a director of both private and council-owned companies, he should be aware of the Companies Act 1993’s definition of interested with regards to transactions involving self-interest. If he was unsure, he should have checked with the Auditor-General before partaking in the decision.

Ground 2

20. He did seem to be aware of investors’ pecuniary interest from the following statements in a Stuff article⁷. He must have known that his father and uncles were some of those investors, especially given he is a director of some of the companies.

‘City councillor James Gough said the stadium would be a “magnet for attracting tourists and locals” into the city and a major catalyst for the local economy, leading to new investment.

Major events would bring in a huge number of people “who want to enjoy themselves in the city and see what it has to offer”, he said.

Investment in the city was made with the promise of a stadium, he said. “Not delivering on a promise like that is really pulling the rug out from underneath people.”

Gough said the council needed to find solutions to deliver the stadium, but he did not want to give out blank cheques. Selling the old Red Bus Ferry Rd depot and the temporary stadium in Addington should be considered, he said.’

Regards,
Wiremu Thomson

⁷ <https://www.stuff.co.nz/the-press/news/128871705/actual-benefits-or-just-feel-good-factor-the-dilemma-of-christchurch-stadium>