

**LOCAL GOVERNMENT PECUNIARY INTEREST &  
DISCIPLINARY TRIBUNAL**

**LOCAL GOVERNMENT ACT, 1993**

**PIDT No 2/2006**

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

**RE: (FORMER) COUNCILLOR LYNETTE LAWRY;  
GREAT LAKES COUNCIL**

**STATEMENT OF DECISION**

**Dated: 5 December 2007**

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**STATEMENT OF DECISION**

1. This is the Statement of Decision made pursuant to s.484 of the Local Government Act in relation to a hearing before the Tribunal concerning a claim that Ms Lynette Ivy Lawry, (Former) Councillor of the Great Lakes Council, whilst a Councillor of that Council, breached s.451 of the Local Government Act.

**PROCEDURAL HISTORY**

2. On 6 June 2006 the Director-General of the Department of Local Government made a complaint pursuant to s.460 of the Local Government Act in relation to Ms Lawry alleging that she:

“Failed to declare a pecuniary interest in a matter before Council on 9 March 2004 in respect of consideration of the adoption of the draft Great Lakes Rural Living Strategy in accordance with s.451 of the Local Government Act 1993 and failed to absent herself from the said Council meeting when such matter was considered and voted upon.”

3. That complaint was made following the receipt of a written letter of complaint from the General Manager of the Great Lakes Council which, because of formal defects, did not constitute a complaint for the purposes of s.460 of the Local Government Act. Also on 6 June 2006 the Director-General notified Ms Lawry of the complaint and the additional decision, pursuant to s.462 of the Local Government Act, to investigate that complaint. On 6 June 2006 the Tribunal was, pursuant to s.465 of the Local Government Act, notified by the Director-General of his decision to investigate the complaint.
  
4. On 12 February 2007 the Tribunal received from the Director-General, pursuant to s.468 of the Local Government Act, a Report of an investigation into the complaint against Ms Lawry. On 6 July 2007, pursuant to s.469 of the Local Government Act, the Tribunal determined to conduct proceedings into the complaint and issued its Notice of Decision to Conduct Proceedings on that date. Following receipt of responses to that Notice from the Director-General and Ms Lawry, on 3 August 2007 the Tribunal issued a Notice of Appointment of Preliminary Hearing.

- 5, The Preliminary Hearing was held on 14 September 2007 at which Directions were made for the Hearing which was to be conducted on 2 November 2007. Additionally the Issues for Determination by the Tribunal, referred to below, were settled.
- 6, The Hearing in relation to the complaint was heard before the Tribunal on 2 November 2007 in Sydney. The Director-General was represented by Mr M Robinson of counsel. Ms Lawry appeared on her own behalf.

#### **ISSUES FOR DETERMINATION**

7. The Issues for determination, as first identified in the Notice of Decision to Conduct Proceedings, and as supplemented at the Preliminary Hearing, are as follows:
  - (1) Whether, in relation to the matter dealt with at the said meeting, Councillor Lawry had a pecuniary interest within the meaning of s.442 of the Act.
  - (2) Whether, in relation to the matter under consideration at the meeting of the Great Lakes Council particularised in the Notice of Decision to Conduct Proceedings dated 6 July 2007, Councillor Lawry is not taken to have a pecuniary interest because the interest was so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter pursuant to s.442(2) of the Act.

(3) Whether, in relation to the matter under consideration at the said meeting, Councillor Lawry is not taken to have a pecuniary interest because the interest was one that did not have to be disclosed as it was an interest described in s.448(g) of the Act.

(4) Whether, in relation to the matter under consideration at the meeting, Councillor Lawry has not breached section 451 because she did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which she had a pecuniary interest.

(5) If the Tribunal were to find that any contravention of the Act by Councillor Lawry had been proved, whether action should be taken by the Tribunal, and if so what action should be taken by the Tribunal.

8. The parties agreed both at the preliminary hearing and in the final hearing that all issues were to be determined at the final hearing.

#### **FACTUAL BACKGROUND**

9. The Great Lakes Council is a Council governing an area located on the mid-north coast of New South Wales.
10. Ms Lawry was elected as a Councillor of the Great Lakes Council at its election held in September 1999.

- 11, For some time, according to Ms Lawry as long ago as about 1982, general discussion and consideration had been given to a co-ordinated strategy regarding the future direction and growth of the Great Lakes local government area. In about the beginning of 2000 a strategy later known as the Great Lakes Rural Living Strategy was commenced to be drafted, which Strategy was concerned with providing a future direction for the towns, villages and rural land within Great Lakes so as to provide for the management of growth in rural areas for approximately the ensuing 15 years and which was to deal with specific issues such as village zone expansion, rural residential development, resubdivision of existing rural residential areas, future zones and lot sizes, agriculture, housing, tourism and biodiversity conservation incentives.
- 12, On and from 19 September 2002 until 19 December 2002 a draft Strategy was placed on exhibition and submissions in relation to that Strategy were invited.
- 13, At about the same time, or possibly a month or two earlier, a parcel of land formally known as Lot A in DP404745, located on the Pacific Highway at Bulahdelah, was offered for sale on the open market. The land was owned by Ampol and was adjacent to a water treatment plant owned and operated by MidCoast Water.
- 14, Ms Lawry showed sufficient interest in the land to ultimately enter into a contract for the purchase of that land on 6 January 2003. Shortly prior to that date the

vendor had permitted Ms Lawry to store a relocatable home on the land, an item which was subsequently the subject of consideration by the Council, as will be referred below.

15. In evidence before the Tribunal Ms Lawry claimed that the property had been first offered to MidCoast Water which had indicated a disinterestedness in purchasing the land. That claim was somewhat contentious but at the least it appears, on the basis of a public advertisement for the land (Exhibit 2), that the land was publicly offered for sale and that as it was adjacent to the MidCoast Water Treatment site, which gained its access adjacent to the subject land. The Tribunal will address this matter further, below.
16. Although not strictly relevant to the issues before the Tribunal the sale price of the land was \$20,000. Subsequent to exchange (and completion) Ms Lawry expended some money for the further development of the land.
17. On 2 April 2003, prior to the completion of the purchase of the land, Ms Lawry wrote to MidCoast Water offering to sell the land to them. The motivation for that offer, as derived from the text of the letter itself, appeared to be a perceived difficulty in obtaining services for the parcel of land and obtaining consent for the erection of a dwelling house. The offer for sale did not nominate any sale price.

18. On 17 April 2003 the settlement of the purchase of the land was effected and thereafter Ms Lawry became the registered proprietor of the subject land. The next day, 18 April 2003, Ms Lawry lodged with the Great Lakes Council an application for the construction of a dwelling house. Ms Lawry asserted, in correspondence with the Director-General in response to a "show cause" letter from the Director-General, that at the time of the lodgment of the application an officer of MidCoast Water was also in attendance at the Council offices, and who had indicated to Ms Lawry that MidCoast Water would object in the strongest possible terms to the erection of a dwelling house on her land. It is presumed that that position was adopted because of a perceived conflict between a residence and the Water Treatment Plant, but no evidence was adduced specifically with respect to that matter.
19. On 25 April 2003 it appears that MidCoast Water replied to Ms Lawry's offer to sell the land. Although the specific reply was not in evidence before the Tribunal, in her Statement of Evidence (Exhibit 1) Ms Lawry indicated that in the reply (dated 25 April 2003) MidCoast Water indicated a willingness to buy the lot and that if no agreement was reached between the parties MidCoast Water would move to compulsorily acquire the land. This alternative course of action appears to have had significant moment in the mind of Ms Lawry because previously land that she owned had been the subject of a compulsory acquisition of land (by a public instrumentality). Ms Lawry indicated that on and from that time she formed the view that she would ultimately be divested of the land. Ms Lawry



indicated to the Tribunal that her intention was to attempt to secure the best price for the land, she being “wiser” regarding the process of compulsory acquisition the second time round, but was concerned that MidCoast Water held all of the negotiating strength because it was a public body.

20. On 21 August 2003 Ms Lawry completed a Declaration of Pecuniary Interest Return identifying the subject land as a relevant matter. As indicated previously, these proceedings relate to a claimed breach of s.451 of the *Local Government Act*, about which the completion of the Return is not strictly relevant.
21. Following the consideration of submissions received in response to an exhibition of the draft Strategy, on 14 October 2003 the draft Great Lakes Rural Living Strategy was presented to a Council meeting. Following some discussion in relation to the draft, Ms Lawry moved a motion (seconded by Councillor Jeffery) that the Council hold a workshop to go through the main issues raised in submissions as well as suggested changes to the draft Strategy and that the Council determine a date to discuss issues/concerns with the public. The motion was carried.
22. In the draft before the Council precincts for future development were placed into three categories (numbered 1 through 3). Category 1 areas were identified as “those precincts with a relatively high degree of certainty and for which delegation for the rezoning process will be provided to Council from DIPNR with

the endorsement of the Strategy”. Category 2 areas were “those precincts for which there is in principle support from DIPNR and a reasonable degree of certainty that subdivision will be able to occur. Delegations will not be granted to Council from DIPNR for the rezoning of these areas. At this stage there are no Category 2 areas in the Strategy.”. Category 3 areas were areas of land not identified in the Strategy which may be nominated by Council as being potential suitable for development. “DIPNR” was the then Department of Infrastructure Planning and Natural Resources.

23. The “Bulahdelah Urban Precinct” was specifically addressed in the draft Strategy, including reference to a request by MidCoast Water for a buffer between the Water Treatment plant and adjacent future housing. The draft Report referred to the need for a buffer effectively negating the use of land on the eastern side of the current alignment of the highway from being used for future housing. This area included Ms Lawry’s land. The draft Report noted however that that area may be suitable for non-residential usage, possibly in line with Bulahdelah’s future recognition as a highway service centre. In terms of “action” for the urban treatment, the draft Strategy noted “4: That the eastern Bulahdelah urban precinct be considered for non-residential usage when separate land use zones are applied to the current village area.”
24. On 21 October 2003 the workshop contemplated by the Council resolution on 14 October 2003 took place. The Tribunal understands that as a result of that

workshop and further input derived therefrom changes were made to the draft Strategy, including those referred to below.

25. On 29 October 2003 the solicitor then acting for Ms Lawry wrote to MidCoast Water inviting discussions with MidCoast Water with a view to the purchase of Ms Lawry's land. Elements of consideration from Ms Lawry's position were identified but otherwise the letter did not nominate a price for the land other than to note that payment of the market value of the property and additional costs and expenses were to factor into the negotiation process.
26. On 9 March 2004 the Council considered the draft Great Lakes Rural Living Strategy at its Ordinary Meeting held on that day. It is this meeting that is the basis of the complaint heard by the Tribunal.
27. The summary of the Report relating to the draft Strategy noted that the draft Strategy was last reported to the Council at the meeting of 14 October 2003 and that since then a workshop between staff and Councillors and a public meeting were held. The Report then incorporated relevant sections from the previous Report as well as findings from the workshop with Councillors and requests from a public presentation day held on 3 December 2003. The recommendation to the Council was that the draft Great Lakes Rural Living Strategy be adopted with the changes as outlined in the Report before being forwarded to DIPNR for endorsement. In the list of annexures an annexure labeled "B" constituted maps

showing proposed development precincts. That annexure, at p102, included land identified as “Pacific Highway East – Urban/Industrial (Category 2)”, which included Ms Lawry’s land.

28. In the Report before the Council, as with the earlier draft, future development precincts were nominated in a three category system. The description of Category 1 areas did not alter from the manner of description in the 14 October 2003 Report. However Category 2 was now defined as follows:  
“Category 2 areas are those areas where there is a reasonable degree of certainty that at least a part of the area can be developed but further, more detailed investigations are required to peruse the suitability and capability of these areas. Other factors, such as demand, will also determine whether these areas proceed to rezoning.”.
29. Apart from the textural differences the important change was that in the October 2003 Report it was indicated that no Category 2 areas were in the Strategy, whereas by March 2004 that exclusion no longer existed. As referred above Ms Lawry’s land was included as Category 2 land. As well as the Attachment “B” map it appears that the description of the Bulahdelah land in Category 2 that then followed the development Category section included Ms Lawry’s land.
30. Furthermore in the body of the Report it was specifically noted that “It is proposed that the part of the precinct on the eastern side of the highway be

changed from future urban to an industrial area...”, and certain reasons were given for that change. The Report again referred to the need for a buffer as sought by MidCoast Water, effectively precluding future housing, but industrial uses were not considered to be such an issue; however the Report did note that an assessment of how much industrial land is need for Bulahdelah must firstly be undertaken, concluding that the area should be nominated as Category 2. The specific recommendation in the conclusion to the Report recommended that the eastern Bulahdelah urban precinct be a Category 2 area and be considered for future industrial area and it be considered for future industrial uses when separate land use zones are applied to the current village area. It is thus clear that Ms Lawry’s land was specifically referred to in the Strategy and was specifically identified as Category 2 land.

31. There is no doubt that Ms Lawry participated in the discussion of the Rural Living Strategy during the course of the meeting held on 9 March 2004. Ms Lawry made no disclosure of pecuniary interest at the meeting. That participation was reflected, amongst other things, in the fact that Ms Lawry, according to the Minutes of the Meeting, was present at the Meeting and moved the Motion, seconded by Councillor Gill, that was adopted by the Council and which resolved that:

- “1. Council adopt the draft Great Lakes Rural Living Strategy with the changes as outlined in the Report and that once updated it be forwarded to the Department of Infrastructure, Planning & Natural Resources with a

request that delegations under ss65 and 69 of the Environmental Planning & Assessment Act be granted for Category 1 precinct identified in the strategy.

2. The Director of Planning & Environmental Services report back to Council on the extension of the Coolongolook Village.”
  
32. Thus in so far as the Meeting was concerned it is apparent to the Tribunal that Ms Lawry was present at the meeting of the Council at which the matter of the draft Great Lakes Rural Living Strategy was considered and was present at the Meeting during the time at which the matter was being considered and was present at the Meeting during the time at which the Council voted in relation to the adopt of the Strategy.
  
33. On 20 March 2004 the Council met again, resolving amongst other things to adopt the Minutes of the Meeting held on 9 March 2004.
  
34. On 30 April 2004 Ms Lawry’s solicitor again wrote to MidCoast Water on a “Without Prejudice save as to costs” basis, offering to sell the land for \$50,000. In evidence before the Tribunal Ms Lawry indicated that that letter was written without her instructions (in the sense that the offer was too low).
  
35. On 18 May 2004 the Council sent a letter to landowners who were affected by the Rural Living Strategy adopted by the Council on 9 March 2004. Ms Lawry, as

the owner of the subject land, was one such person. The group letter repeated the Categories of land, in terms, and thereafter invited land owners who were interested in rezoning to indicate that position, and set out the main steps in the process. In a schedule attached to that letter entitled "Summary of Development Precincts" land including Ms Lawry's land was described as "Highway West" and identified as being Category 2, as suitable for "industrial or other commercial ... unsuitable for residential due to conflict with highway." A note to that schedule indicated that investigation would need to precede the rezoning of each precinct.

36. On or about 16 June 2004 Ms Lawry wrote to the Council in response to the 18 May 2004 letter noting that the land identified in that earlier letter had in fact been incorrectly labeled "Highway West". She requested that the Council write to her again identifying the land as relevant to the eastern side "it previously having been identified as Highway West". In her letter Ms Lawry indicated that "I need it to resolve the compulsory acquisition of my land by MidCoast H<sub>2</sub>O".
37. On 22 June 2004 the Council reissued the earlier letter to Ms Lawry confirming that the reference ought have been to "Pacific Highway East" and provided to her a revised schedule.
38. On 29 June 2004 Ms Lawry's solicitor again wrote to MidCoast Water amending the offer to sell the land to \$75,000, being on the basis of an offer received from a

transport company. That offer was again on a Without Prejudice save as to costs basis.

39. On or about 30 June 2004 in a pecuniary interest return Ms Lawry again declared the ownership of the subject land. As referred above with respect to the earlier declaration, these proceedings do not concern any claim related to the lodgment of a return.
40. On 25 August 2004, in response to the (corrected) letter from the Council, Ms Lawry sent an email to the Council indicating her interest in having her land rezoned to Commercial/Industrial and reiterated the previous communication that the property is on the eastern side of the Highway.
41. On 31 August 2004 Ms Lawry's solicitor again wrote to MidCoast Water reminding it that Ms Lawry was prepared to sell the land for \$75,000, nominating a date by which contracts were to be exchanged for that amount, and a settlement date.
42. On 3 February 2005 Ms Lawry wrote directly to MidCoast Water. In evidence before the Tribunal Ms Lawry indicated that she had terminated the services of her previous solicitor and this appears to have been some time between 31 August 2004 and 3 February 2005. In this letter Ms Lawry set out the circumstances which she considered to be relevant to the sale, ultimately indicating to MidCoast



Water that she considered it fair for her to expect to receive the amount of \$110,000 for her property.

43. On 19 May 2005 the Council granted consent to the erection of a dwelling house on Ms Lawry's land. Shortly following that, on 3 June 2005, MidCoast Water proceeded to compulsorily acquire the subject land. In a subsequent (statutory) valuation prepared for the purposes of the *Land Acquisition (Just Terms Compensation) Act*, a valuation in the amount of \$83,300 was determined in relation to the subject land (comprising \$80,000 as market value, and \$3,300 as to disturbance, as those terms are defined in the *Land Acquisition (Just Terms Compensation) Act*).
44. On 11 August 2005 the General Manager of the Great Lakes Council sent a letter to the Director-General of the Department of Local Government by way of a complaint in relation to Councillor Lawry. As that letter was defective in form in terms of s.460(2)(d), it did not constitute a complaint for the purposes of s.460 of the Local Government Act.
45. Subsequent to the compulsory acquisition of the land it appears that proceedings were commenced in the Land & Environment Court of NSW for the determination of compensation payable by MidCoast Water (described in the Compulsory Acquisition Notice as "MidCoast County Council"). A valuation prepared for Ms Lawry, as applicant in those proceedings, on or about 22

September 2005 indicated as relevant to the highest and best use of the land the inclusion of the land in the Rural Land Strategy. Notwithstanding that identification, when assessing the value of the land the valuer relied upon the comparable sales of land zoned Residential 2(a), and expressed the market value of the land as being land “with Council approval for building consent”. The market value in that valuation was assessed at \$125,000 with additional sums representing disturbance and solatium.

46. On or about 27 October 2005 as required by the *Land Acquisition (Just Terms Compensation) Act* MidCoast Water issued a prepayment to Ms Lawry of 90% of the statutory valuation (referred to at [43] above). Although there was no direct evidence of this it is a matter which may be derived by an offer of compromise issued by Ms Lawry’s legal advisers set out below.
  
47. Notwithstanding the defect in the complaint by the General Manager of the Council, on 21 November 2005 the Director-General of the Department of Local Government wrote to Ms Lawry requesting her to show cause why a complaint should not be made. Ms Lawry responded to the Director-General on 9 December 2005. In that letter she referred to the encounter with the MidCoast Water representative on the date of lodgment of her application to erect a house on her land (the day after settlement of the purchase), in particular its position that MidCoast Water would not permit her to build, and that they were going to acquire the land. She indicated that because she was never going to be able to

retain the land there was no reason for her not to take part in the Rural Land Strategy debate. In addition she indicated that the Rural Land Strategy had been around for decades and was a vital matter for the Great Lakes Council area, in particular Bulahdelah, and that it was only sensible that she take part in the debate. Those matters were reiterated by Ms Lawry in her evidence before the Tribunal.

48. On 26 April 2006 Ms Lawry's solicitor in the Land & Environment Court proceedings issued an Offer of Compromise in relation to the compensation proceedings. The offer was for a total amount of \$137,500 (comprising, in the main, market value in the amount of \$110,000).
49. On 6 June 2006, as referred above, the Director-General made a complaint pursuant to s.460 of the Local Government Act and determined to investigate that complaint, notifying the Tribunal of that course of action.
50. On 30 June 2006 Ms Lawry resigned as a Councillor of the Great Lakes Council.
51. At some time in late 2006 settlement of the proceedings between Ms Lawry and MidCoast Water was effected. There was some uncertainty as to the precise date of that settlement and as to the precise amount of it, but Ms Lawry indicated that the settlement was somewhere in the range between \$125,000 and \$137,000 (as a

total amount). As will be discussed further below that ultimate amount is not strictly relevant to the determination of the Tribunal.

52. As set out above the Tribunal determined to conduct proceedings and held a preliminary hearing on 14 September 2007 and a final hearing on 2 November 2007.

53. At the date of hearing the subject land was still zoned Rural Residential, that is, no action had been taken to rezone the subject land to Industrial/Commercial.

#### **THE KNOWLEDGE OF MIDCOAST WATER**

54. Most of the factual circumstances as set out above presented before the Tribunal were uncontentious save for one. That related to whether or not MidCoast Water was aware that the subject land was available for sale at the time when Ms Lawry had observed that it was, and subsequently proceeded to purchase the subject land. Ms Lawry claims, by reference to Exhibit 2 (comprising a letter from Jeff Carryer Realty Pty Ltd to her and an advertising brochure indicating the land for sale and possibly also indicating the existence of a sale sign on the subject land) that prior to Ms Lawry's purchase the land had been offered to MidCoast Water for sale, but that it had declined. The Director-General objected to the tendering of such evidence, but the evidence was allowed over that objection. The Director-General's case, by reference to a record of interview with a Mr

Powell of MidCoast Water (Exhibit A, Attachment 16), was that the first time that MidCoast Water became aware that Ms Lawry was interested in having the property acquired was upon receipt of a letter from her in April 2003, and that that was the first time that MidCoast Water was aware that Ms Lawry had purchased the land: Id at p3.36-.46 p.4.43-5.07. Although that passage might infer such a position it does not appear that the matter of whether or not MidCoast Water was offered the land for sale, whether by Mr Powell or anyone else, was directly put to the MidCoast Water representative.

55. Doing the best that the Tribunal can it would appear that the land was offered for sale on the open market, however it is uncertain as to whether it was offered directly to MidCoast Water for purchase. That uncertainty exists because the letter from the real estate agent (Exhibit 2) refers to contact with MidCoast Water essentially for the purposes of obtaining a copy of water and sewerage details (for the purposes of a sale). That qualification might ordinarily limit the basis of the communication between the real estate agent and MidCoast Water. If the Tribunal had to decide the matter it would find that the property was offered for public sale on the open market but that it is unlikely that it was specifically offered to MidCoast Water any more directly than any other member of the public. In this respect it is to be observed that having been offered for sale to the general public, if a "For Sale" was placed on the property, that MidCoast Water ought have been aware that the property was sale because access to the MidCoast Water site was adjacent to the subject land.

56. That notwithstanding the determination of the factual circumstance of this matter is not relevant to the issues before the Tribunal. This is because regardless of whether or not the land had been offered to MidCoast Water for sale, the relevant facts are those pertaining to the Meeting of the Council held on 9 March 2004. By that date, whether or not the land had been offered to MidCoast Water, Ms Lawry had become the registered proprietor of the land. Even if MidCoast Water had been offered the land but had refused to purchase it, or even if MidCoast Water had not been offered the land and discovered that a member of the public had purchased it in circumstances where it believed it should be utilised as a buffer to the water treatment plant, such a conclusion (either way) does not alter the determination of whether Ms Lawry had a pecuniary interest in the matter the subject of the meeting.

#### **ISSUE 1 – WHETHER MS LAWRY HAD A PECUNIARY INTEREST**

57. The first issue is whether Ms Lawry had a pecuniary interest in the matter dealt with at the Council meeting on 9 March 2004.

58. Section 442 of the Local Government Act defines a pecuniary interest. In s.442(1):

“For the purposes of this Chapter a “pecuniary interest” is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.”

59. The relevant element of that definition for the purposes of this hearing comprise the notion of an appreciable gain or loss to the person. Importantly the section does not require that only financial gain be the subject of the pecuniary interest. The notion of pecuniary interest can also involve a financial loss to the person. The pecuniary interest though is directed towards financial consequences (which is a specific requirement if not already sufficiently obvious from the adjective “pecuniary”). Those consequences are required to be, in the words of the section, “appreciable.”
60. The test for whether a pecuniary interest exists or not is whether there is a reasonable likelihood, or expectation, of that appreciable financial gain. The relevant nexus is not limited to a direct cause of appreciable financial gain, as may be gleaned from the concepts of a reasonable likelihood or expectation.
61. In previous Determinations of this Tribunal it has been held that a chance or possibility of appreciable financial gain is sufficient to engage the definition of pecuniary interest in s.442: see *Councillor David Taylor, Weddin Shire Council*, PIT 1/2003, 22 March 2006 at [52]; see also *Councillor Roberts, Hastings Shire Council* PIT 1/1995.

62. It is apparent from the terms of s.442 that all that is required is a likelihood or expectation, of a reasonable nature, of appreciable financial gain or loss.
63. The gain or loss does not have to constitute a transfer of money, but includes non-immediate gains or losses. Within the broader statutory context, for example s.448(g), it is clear that notions of changed permissible land uses are regarded as being the subject of an interest which may ultimately constitute a pecuniary interest. Often changes in permissible uses in relation to land reflect an altering of the value of land because it is either more attractive or less attractive in its development potential.
64. One important element of s.442 is that the test in s.442 is an objective one. The section is engaged upon a finding that there is a reasonable likelihood or expectation of appreciable financial gain or loss to the person, regardless of that person's own view about whether such an interest existed. The language of s.442 is language of an objective nature to be contrasted with, for example, matters subjective in nature as contained in s.457, which refers to actual knowledge or reasonable expectation of knowledge.
65. Finally the financial gain needs to be more than nominal, it must be appreciable.



66. In the circumstances of this matter the Tribunal is satisfied for the reasons set out below that in the matter of the adoption of the Draft Great Lakes Rural Living Strategy Ms Lawry did have a pecuniary interest as defined in s.442.
67. The Rural Living Strategy identified certain land within the Great Lakes Council which was to be identified for rezoning. As referred above such land was categorized in one of three categories, with Ms Lawry's land in the second of those. There appears to be no issue but that Ms Lawry was aware that her land was within Category 2. Category 1 land was land which, upon adoption of the Strategy, was most imminently affected. That was land which was to proceed, effectively immediately, as indicated from the resolution on 9 March 2004, in the process of re-zoning under Part 3 of the *Environment & Planning Assessment Act*. Category 2 land was not land with such imminent consequences but, that notwithstanding, it was land that was identified for an alteration in land use at a later time, albeit not deferred for a significant period. Furthermore, Ms Lawry's land had been identified as being the subject of specific alteration to an Industrial/Commercial use because of its presence within a claimed buffer area of the water treatment plant operated by MidCoast Water.
68. The effect of the adoption of the Strategy was the identification of Ms Lawry's land as land which ought, within a foreseeable period of time, be converted from Rural Residential to Industrial/Commercial.

69. In some instances such a rezoning of land may not necessarily result in an appreciable financial gain or loss to the person. Theoretically a change in zoning may not alter the value of the land.
70. The evidence before the Tribunal in the nature of valuation evidence (Exhibit A, Attachment 8) establishes however that even at a point preliminary to the actual rezoning of the land, the effect of the adoption of the Strategy, being a Strategy which included the subject land as Category 2 land, was to increase the value of the land, by some \$15,000. That is, self evidently, a financial gain (for the purposes of s.442).
71. It is also apparent that such an amount of money is an appreciable financial gain, that is, it is not and could not be said to be a notional or nominal gain. The Tribunal is thus satisfied that the alteration in value in the circumstances of this case did constitute an appreciable financial gain.
72. In terms of the notion of “reasonable likelihood or expectation” of the appreciable financial gain, as is required in s.442, the effect of the adoption of the Strategy, by reference to the valuation referred to above, was in fact to create the appreciable financial gain. This is because as a matter of valuation, the inclusion of the subject land in the Strategy, and the Strategy’s adoption, had the effect of increasing the value of the land. That causation of gain is more direct than the notion of reasonable likelihood, or expectation.

73. It is apparent furthermore that the inclusion of the subject land in the Strategy did operate as a factor in the negotiations between Ms Lawry and MidCoast Water concerning the sale, or subsequent compulsory acquisition, of the subject land. In correspondence with Council Ms Lawry sought to correct the reference to the subject land as being West of the Highway in circumstances where by her own letter she required that clarification for her negotiations with MidCoast Water. Her own valuer in the proceedings before the Land & Environment Court identified as a relevant component of the highest and best use of the land an inclusion of the land within the Strategy.
74. The primary basis claimed by Ms Lawry to say that she did not have a pecuniary interest was that at all relevant times she believed that her land would be taken from her by MidCoast Water. That position in terms of the issue of pecuniary interest in s.442 is not strictly to the point. Section 442 talks simply of gain or loss. It does not exempt the pecuniary interest because of a non-permanent nature of the holding in land or the holding in the matter that is the subject of the interest. It matters not that the matter may not be long lived. What is relevant though, and what strikes at the heart of the definition, is the consequence of appreciable gain or loss, and its reasonable likelihood or expectation.
75. In evidence before the Tribunal and in submissions Ms Lawry contended that even with the change in the zoning of the land there would not be an alteration in

the value of the land. The submission was that presently the land was valuable as permitting the erection of a dwelling house and that it would not be any more valuable if zoned for commercial/industrial.

76. The difficulty with such a proposition is that it is not supported by the valuation evidence presented to the Tribunal concerned directly with the question posed in s.442. Furthermore, even in an environment outside the realm of this hearing, as referred above, Ms Lawry's own valuer in proceedings in the Land & Environment Court to determine compensation upon the acquisition of the subject land adverted to the land's inclusion in the Strategy as relevant to the highest and best use of the land, although as noted above it does not appear that such a reference translated to any higher value for the land, at least in the opinion of that valuer. Also as set out above, Ms Lawry, in correspondence with MidCoast Water with a view to the sale of the subject land, adverted directly to the inclusion of the subject land in the Strategy. It would be open to infer that even in Ms Lawry's view, at that time, such an inclusion certainly did not operate as a negative matter. To this effect it is to be recalled also that Ms Lawry sought a correction from the Council as to the inclusion of the subject land within the Strategy so that she could complete the issue of the acquisition of the land with MidCoast Water. This action would tend to suggest that even notwithstanding the position presented to the Tribunal Ms Lawry herself in negotiations with MidCoast Water considered the inclusion of her land within the Strategy as a matter of relevance, and certainly not as a detracting matter. However even if it

was a detracting matter it is to be observed that s.442, which defines pecuniary interest, also contemplates that a pecuniary interest may operate to the negative, and hence the reference to “appreciable financial ... loss to the person”.

77. Finally with respect to the matter of valuation it should be noted that Ms Lawry tendered in evidence before the Tribunal an extract from the Australian Financial Review on 27 September 2006: Exhibit 3. This Exhibit was tendered over the objection of the Director-General. That Exhibit demonstrates over a number of suburbs, including Bulahdelah (Item 2423), a percentage change in value over the previous year, and a 10 year percentage trend of “median prices”. Even assuming that the median price referred to in that article was referable to the subject land, at best all that it demonstrates was a general trend. Even with that general trend it is difficult to exclude the valuation evidence before the Tribunal to the effect that the effect of inclusion of the subject land within the Strategy and the adoption of the Strategy had an immediate effect upon the value of the subject land in the order of some \$15,000.

78. Having regard to all of those matters the Tribunal is satisfied that the inclusion of the subject land in the Strategy and its adoption had the effect of an appreciable financial gain to Ms Lawry in so far as the subject land increased in value in the order of some \$15,000.

79. For the reasons set out above the Tribunal is satisfied that in relation to Issue 1 Ms Lawry had a pecuniary interest in the matter before the Council meeting on 9 March 2004 being the adoption of the Draft Great Lakes Rural Living Strategy.
80. The relevant section then of the Local Government Act is s.451 which requires a Councillor who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered to disclose the nature of the interest to the meeting as soon as practicable. This obligation is additional to the requirement for disclosure in written returns: s.444. No disclosure was made and hence Ms Lawry failed to disclose that interest as soon as practicable, or at all.
81. In addition s.451(2) requires the Councillor to not be present at or in sight of the meeting of the Council at any time during which the matter is being considered or discussed by the Council or at any time during the Council is voting on any question in relation to the matter. As the facts set out above demonstrate, additionally, Ms Lawry was present at the meeting during the discussion of the matter of the adoption of the Strategy, and not only was present during the voting on it, but moved the motion for its adoption.
82. Thus in terms of Issue 1 the Tribunal is satisfied that, subject to Issues 2 – 4 addressed below, Ms Lawry had a pecuniary interest in the matter and has breached s.451 of the Local Government Act.

## ISSUE 2 – REMOTE OR INSIGNIFICANT INTEREST?

83. Issue 2 before the Tribunal is whether Ms Lawry is not taken to have a pecuniary interest because the interest was so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter. This Issue is sourced in s.442(2) of the Local Government Act.
84. The analysis set out above in relation to the valuation which is before the Tribunal establishes that on the evidence before the Tribunal the effect of the inclusion of the subject land in the Strategy, and more importantly the effect of the adoption of the Strategy by the Council, upon the value of the land, even before any rezoning, was a direct one. It is difficult on such a basis to conclude therefore that the pecuniary interest so described was remote for the purposes of s.442(2).
85. In terms of the balance of the test in this issue, as derived from s.442(2), in circumstances where that effect is an order of magnitude of a \$15,000 increase in value it is also difficult to conclude that the interest was insignificant such that it could not reasonably be regarded as likely to influence any decision by Ms Lawry. As referred above the valuation evidence suggests that the adoption of the Strategy had an immediate effect on the value of the land. Also as referred above there would appear to be no doubt that Ms Lawry's land was included within the

Strategy, albeit that it was Category 2 land. However it was specifically referred to in the body of the Strategy and its ultimate use was specifically identified. The effect of these matters and the adoption of the Strategy was to increase the value of the subject land by some \$15,000.

86. Hence in terms of Issue 2 the Tribunal is satisfied that s.442(2) is not engaged to disqualify the pecuniary interest otherwise determined by the Tribunal.

### **ISSUE 3 – AN INTEREST THAT DID NOT NEED TO BE DISCLOSED?**

87. Issue 3 concerns whether in relation to the matter under consideration at the Meeting Ms Lawry is not taken to have had a pecuniary interest because the interest is one that did not have to be disclosed as being one described in s.448(g) of the Act.

88. Section 448(g) of the Act relevantly provides as follows:

“The following interests do not have to be disclosed for the purposes of this Chapter:

...

- (g) An interest in a proposal relating to the making, amending, altering or repeal of an environmental planning instrument other than an instrument that effects a change of the permissible uses of:
- (i) land in which the person ... has a proprietary interest ...



(ii) ...

if the person ... would by reason of proprietary interest have a pecuniary interest in the proposal ...”

89. The first aspect of s.448(g) is the requirement that there is a proposal relating to the making, amending, altering or repeal of an environmental planning instrument. The Strategy of course was not directly concerned with the making of an environmental planning instrument (the definition of which one may derive from the *Environmental Planning & Assessment Act*). However for the purposes of s.448(g) the Tribunal is satisfied that the Strategy did concern a proposal relating to the making of an environmental planning instrument in so far as it was the first, and significant, step in effecting an alteration to land uses and strategies in the local government area. In that theme it can be described as being a proposal relating to the making of an environmental planning instrument. Affording to Ms Lawry the benefit of any doubt in this respect *prima facie* s.448(g) may be considered to be relevant, that is an interest that might not need to be disclosed.
90. However excluded from the operation of s.448(g), and hence an interest that does not need to be disclosed, is an instrument that “... effects a change of the permissible uses of ... land in which the person has a proprietary interest”. Whilst it may be said that the Strategy, for the purposes of this analysis, effected a proposal to amend or make an environmental planning instrument, such

amendment would of necessity include an alteration of the permissible uses of land covered by the Strategy. Such land included Ms Lawry's land, which was included in Category 2 uses. Thus the exclusion in s.448(g) operates to identify that the interest in the matter before the Council was not one that did not have to be disclosed for purposes of s.448.

91. The suffix to s.448(g) provides that the exclusion within s.448(g) operates if a person would by reason of the proprietary interest (here in the land) have a pecuniary interest in the proposal. As referred above the Tribunal is satisfied that such a pecuniary interest would exist.
92. Thus the Tribunal is satisfied that the exclusionary operation of s.448(g) does not operate in the circumstances of the present case.

#### **ISSUE 4 – KNOWLEDGE OF THE MATTER UNDER CONSIDERATION**

93. Issue 4 is concerned with whether Ms Lawry has not breached s.451 because she did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which she had a pecuniary interest. This issue is derived from s.457 of the Act which provides as follows:

“A person does not breach s.451 ... if the person did not know and could not reasonably have been expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.”

94. The first thing to note about s.457 is that in so far as knowledge is concerned that knowledge is directed towards knowledge of “the matter under consideration at the meeting”, and whether such a matter was a matter in which the person had a pecuniary interest. This point of distinction is important because the section operates only in circumstances of an absence of knowledge about the existence of the matter before the meeting, rather than an absence of knowledge about the pecuniary interest (once the matter is under consideration, to the knowledge of the person).
95. The s.457 “knowledge” is knowledge of the matter before the Council. In the circumstances of the present case it is clear that Ms Lawry was well aware that the matter before the Council was the issue of the adoption of the Strategy; that the Strategy affected her land; that in so far as her land was concerned it was to be affected within Category 2; and that in so far as was affected it was specifically addressed in the body of the Strategy itself, as distinct from the way the Strategy dealt with Category 2 lands generally. In those circumstances it is difficult to conclude, in terms of s.457, that Ms Lawry did not know, let alone could not reasonably be expected to have known, that the matter under consideration at the Meeting was a matter in which she had a pecuniary interest

96. Hence in terms of Issue 4 the Tribunal is not satisfied that Ms Lawry has not breached s.451 because she did not know and could not reasonably be expected to have known that the matter under consideration at the Meeting was a matter in which she had a pecuniary interest.

#### **CONCLUSION ON SECTION 451**

97. In the circumstances set out above the Tribunal is satisfied that a breach of s.451 of the Local Government Act occurred at the Meeting of the Council of the Great Lakes Council on 9 March 2004 in so far as Ms Lawry had a pecuniary interest in a matter with which the Council was concerned, was present at the Meeting of the Council in which the matter was considered, and failed to disclose the nature of the interest to the Meeting. In addition Ms Lawry was present at the Meeting of the Council during the time in which the matter was considered or discussed by the Council, and during the time in which the Council voted in relation to the matter, being the matter of the adoption of the draft Great Lakes Rural Living Strategy.

#### **ISSUE 5 – CONSEQUENCE OF BREACH**

98. Issue 5 is concerned with the consequences of a finding of a breach of s.451.

99. At the Preliminary Hearing held by the Tribunal it was agreed by the parties that in the event that the Tribunal determines that there has been a breach of s.451 of the Act the Tribunal should proceed to determine, as part of the one hearing, the issue of consequences of that finding. That position was confirmed at the hearing before the Tribunal on 2 November 2007.

100. Section 482 of the Local Government Act prescribes the action available to the Tribunal in circumstances where a complaint against a Councillor is proved. At the time of the breach of s.451 (ie 9 March 2004) s.482 provided as follows:

“(1) The Pecuniary Interest & Disciplinary Tribunal may, if it finds a complaint against a councillor is proved:

- (a) counsel the councillor, or
- (b) reprimand the councillor, or
- (c) suspend the councillor from civic office for a period not exceeding six months, or
- (d) disqualify the councillor from holding civic office for a period not exceeding five years.”

101. An additional provision was inserted into s.482(1) by the *Local Government Amendment (Discipline) Act, 2004* (Act No 73 of 2004) . Section 3, and Schedule 1[12] of that Act inserted in s.482(1)(e) as follows:

“(e) suspend the councillor’s right to be paid any fee or other remuneration, to which the councillor would otherwise be entitled as the holder of the civic office,

in respect of a period not exceeding 6 months (without suspending the councillor from civic office for that period).”

102. This new provision was inserted into s.482(1) by an Act which commenced subsequent to the date of the breach of s.451. Section 2 of the Amendment Act provides that the Act commences on a day or days to be appointed by proclamation, and on 17 December 2004 such a proclamation was made, to take effect from 1 January 2005: Government Gazette No 201, 17 December 2004, p.9621. Hence the insertion occurred after the date of breach of s.451. The Tribunal is unable to identify any provision of the amending Act, or otherwise, which would have the effect of deeming the new s.482(1)(e) as having retrospective operation. Even if it did, as referred to in this Determination, Ms Lawry has ceased to be a Councillor from 30 June 2006, and hence the matter the subject of s.482(1)(e) would not have any practical application in the determination of appropriate consequences of the breach.
103. Paragraph s.482(1)(c) is concerned with the suspension of a councillor from civic office and would, for the same reason, have no operation in the circumstances of the present case.
104. That leaves s.482(1)(a), (b), or (d) as relevant to the available penalty to the Tribunal. Those avenues are alternatives.

105. The Director-General submits that the appropriate penalty in the circumstances of the present case is one sourced in s.482(1)(d). In its (written) submissions on the matter the Director-General has pointed to certain factors which would indicate that a lengthy disqualification from holding civic office is warranted. In this respect it is to be noted that the maximum period of such a disqualification pursuant to s.482(1)(d) is 5 years. Those factors are said to be:

- (a) In *Councillor Kemper*; Uralla Shire Council (PIT 2/2001, 27 August 2004) the Tribunal determined that a 12 month disqualification was appropriate in circumstances where the Councillor did not understand many matters about the Act and did not personally profit or gain from the breach of the Act, and that the present is the converse of that.
- (b) In *Councillor D'Amico*; Lane Cove Council (PIT2/2005, 13 October 2006) a 4 month disqualification from civic office was determined in circumstances where the Councillor was held to have been "blinded by the commitment" as he saw it to the community, in circumstances where that Councillor had been elected on a platform that involved the matter the subject matter of the Council's decision about which a breach had been determined.
- (c) The fact that the Councillor has already resigned is immaterial (*Councillor Eichorn* ; Uralla Shire Council (PIT3/2001) 27 August 2004). A series of Local Government elections are to be held on 27 September 2008 and although Ms Lawry is not presently a councillor she could become one.

106. In addition the Director-General has noted that the breaches were of core provisions of Chapter 14 of the Act and were not of no consequence in that there was a direct increase in the value of land held by Ms Lawry, being an increase which presumably is reflected in the compensation that she had been paid by MidCoast Water in consequence of its acquisition of the subject land. The Director-General also submits that the breach was flagrant in that the fact which gave rise to the breach was patent for all to see, or at least all who cared to properly apply the relevant provisions of Act: *Councillor Taylor*, (PIT1/2003, 22 March 2006) at [35], *D'Amico*,( PIT2/2005, 13 October 2006) at [41].
107. The Director-General also submits that no remorse has been demonstrated by the Councillor and that the Tribunal can be satisfied that the Councillor set upon a path of selling her property at the earliest opportunity and that she deliberately undertook to vote on the adoption of the strategy knowing full well of her pecuniary interest obligations under the Act. In this respect the Director-General identifies that Ms Lawry was an experienced Councillor and was well aware of her duties and obligations having previously declared pecuniary interests in matters related to this land, and other instances. The Director-General also pointed to Ms Lawry's awareness of the content and import of the Strategy and the manner in which the adoption of it affected her property.



108. It is to be noted that in so far as the proceedings before the Tribunal were concerned Ms Lawry had co-operated with the process before the Tribunal both in providing a response to the Director-General's show cause letter, and co-operating with the Tribunal in so far as the undertaking of the preliminary hearing and a final hearing is concerned. That position was notwithstanding that she elected not to participate in the investigation undertaken on behalf of the Director-General.
109. In evidence before the Tribunal Ms Lawry indicated that she did not believe she had any pecuniary interest in the Rural Land Strategy primarily because by the time it came to be adopted there was no doubt in her mind that the land was going to be acquired by MidCoast Water. She accepted that though she intended to obtain the best price possible for her land and that she had obtained experience in the compulsory acquisition process because she had been subjected to it previously. She conceded she had been a Councillor for many years and accepted that on previous occasions she had disclosed a pecuniary interest in matters before the Council, including pecuniary interest in matters concerning the subject land. To this extent a schedule was put before the Tribunal in which, prior to the meeting held on 9 March 2004, Ms Lawry was shown to have made some 14 Declarations of Pecuniary Interest between July 2000 and December 2003, including three occasions with respect to the subject property, related to the matter of the "unauthorised relocated dwelling" on the land. She also accepted that she had received educational material and information material issued by the

Department of Local Government and the Council officers regarding the duties of Councillors, and indicated that she had a filing system that other Councillors had complimented her on in relation to those circulars, but indicated that although she would have mostly read it all there was probably too much to have completely digested. She conceded that she moved to adopt the Strategy and that she was a supporter of it. She also accepted that she was aware of the content of the Report and how it affected her land but indicated that by that time she thought that she had no control over her property because of the intentions of MidCoast Water. Ms Lawry denied that she deliberately voted knowing that she had a pecuniary interest in the adoption of the Strategy and denied that she took a calculated risk in March 2004 in relation to her participation in the adoption of the Strategy.

110. Ms Lawry acknowledged that in the past she had declared a pecuniary interest, but in those circumstances in so far as the declaration related to the subject land they were of a direct nature because the matter before the Council involved the specific matter of the presence of the moveable dwelling on her land. She indicated that in the circumstances of the present case the adoption of the Strategy was far removed from that circumstance and gave an example of the proposed Bulahdelah bypass and its broad affectation upon much land operating to have a less direct consequence on specific parcels of land. Ms Lawry indicated to the Tribunal that she did not intentionally breach the Act. She accepts that she was aware that her land was in Category 2. She acknowledged that she had on many previous occasions declared a pecuniary interest in matters before the Council and

indicated that therefore she knew what her obligations were but considered it was only with respect with direct connections between the matter the subject of the voting by the Council and the subject matter of the pecuniary interest.

111. Ms Lawry indicated that she had not been warned by the General Manager of the Council that she had a pecuniary interest in circumstances where previously such warnings had been given and that in circumstances in which it was obvious that she was the owner of land within Category 2. She complained that she ought have been warned and to have been given the opportunity to then declare a pecuniary interest. In this respect though in the light of the continued rejection by Ms Lawry that she in fact had a pecuniary interest (evidenced by her continued reference to the fact that the effect of the Strategy was not to increase the value of the land) it is uncertain that such a warning would have had any effect.
112. Ms Lawry additionally said that her vote was irrelevant in the adoption of the Strategy because it was a unanimous decision by the Council. She said that her vote was also irrelevant because at the time of the vote she knew that her land was already to be acquired.
113. As set out above Ms Lawry expressed the view that she had no pecuniary interest in the subject matter of the meeting because as industrial land her land was not more valuable. As indicated above this position is inconsistent with the valuation evidence before the Tribunal.

114. Also as referred above Ms Lawry indicated that MidCoast Water had been upset by the fact that they had not purchased the land and that Ms Lawry had effectively beat them to it and was now seeking to have them pay a price greater than that for which Ms Lawry purchased the land. As the Tribunal has set out above this conduct is not relevant to the issue of the breach of s.451. In so far as penalty is concerned it is to be observed that even if MidCoast Water was so concerned, or upset, the consequence of the acquisition was that Ms Lawry ultimately was in fact paid a greater sum of money than that which she would have been without the adoption of the Strategy.
115. Ms Lawry reiterated on a number of occasions that she did not declare a pecuniary interest because she did not have any "interest". This submission is contrary to the finding of the Tribunal.
116. Ms Lawry indicated that she had been aware of the Strategy for some time and was specifically aware of it from about 2002. She indicated that she knew at the time of the meeting that she was going to lose her land. She submitted that she did not declare a pecuniary interest because she did not have any interest in the matter because she knew she was going to lose the land. Ms Lawry has maintained this position from before the hearing by this Tribunal, and certainly during the course of it.

117. It is apparent to the Tribunal that this position is one that has been long held by Ms Lawry; however the relevant question is whether s.451 has been breached and as set out above the Tribunal is satisfied that it has. That breach is not excused by an adherence to a belief that no pecuniary interest exists. If that were to be the test then undoubtedly all Councillors about whom a complaint is made would hold the belief that they do not have a pecuniary interest.
118. The issue most relevant in this respect though, especially in so far as the claim by Ms Lawry that she knew she was going to lose the land is concerned, is about the gain that resulted as a result of the adoption of the Strategy. Even though at the date of the relevant meeting on 9 March 2004 Ms Lawry may be taken to have known that she was going to lose the land, by the adoption of the Strategy, in the course of losing her land, the amount of money to which she would be entitled as a result of either a negotiated purchase or a compulsory acquisition was to be greater. That is the critical matter concerned with the notion of s.442 and its definition of pecuniary interest.
119. Another relevant matter to the issue of consequence is the fact that at the same meeting another Councillor, Councillor Stuart, had declared a pecuniary interest. Although Councillor Stuart had declared a pecuniary interest in circumstances in which his land was included in Category 1, even in the absence of a warning by the General Manger to Ms Lawry, such a declaration ought have operated as a logical trigger to Ms Lawry to at least be concerned that she may have a

pecuniary interest in a manner not dissimilar, albeit not as direct, as that of Councillor Stuart.

120. Exhibit C constituted a Statutory Declaration by the General Manager of the Council in which the education program of Councillors is set out. It would appear from that Exhibit that the education process is concerned more about the Code of Conduct and the completion of pecuniary interest returns than it is with the manner in which a pecuniary interest may be determined to exist, or whether or not a declaration should be made at a Council meeting. It thus does not serve to make more grave any breach of s.451 in the face of a clear education process.
121. This notwithstanding, by her prior conduct it appears that Ms Lawry was well aware of the notion of a pecuniary interest, and the need to disclose it.
122. Ms Lawry also indicated in her submissions that the Strategy was a Shire wide document which affected many people. That position is a correct description of the document; however the test in circumstances of the present case is whether Ms Lawry had a pecuniary interest in the matter the subject of it. The Tribunal has set out above references in the document to Ms Lawry's land and its inclusion in Category 2 and the valuation evidence establishing that as a consequence of the Strategy the value of her land of necessity increased sufficient to constitute an appreciable financial gain.

123. Ms Lawry indicated that she did not consider as relevant her participation in voting on the Strategy because the vote was ultimately unanimous and that if she had declared a pecuniary interest and excused herself then the Strategy would have been adopted in any case. She did not consider that the actions of Councillor Stuart in excusing himself once declaring a pecuniary interest were relevant to her because he was simply hoping to subdivide and sell his land, whereas her land had already been taken care of. She did though indicate that notwithstanding her position in relation to the voting, she considered that her efforts in promoting the Strategy were important in its adoption. She indicated that there was no way that she intentionally breached the Local Government Act and she rejected any assertion that she doggedly pursued a course of conduct in seeking to increase the value of compensation payable to her. She indicated that she was concerned that MidCoast Water was delaying settlement of the proceedings because she considered that they were upset that someone else had bought the land on the open market rather than them and that they were thereby disadvantaged. She concluded by indicating that she was the only Independent Councillor.
124. Finally in her written response to the Tribunal's Notice of Decision to Conduct a Hearing Ms Lawry adverted to being distracted by cancer treatment, albeit treatment that occurred after the relevant meeting. Because of the fact that such treatment followed the meeting, and in the absence of any evidence (lay or medical) establishing it as a factor at the time of the meeting, it is difficult for the

Tribunal to afford any substantial weight to that matter in terms of the consequences flowing from the breach that occurred.

125. The Tribunal is not satisfied that in the circumstances s.482(a) or (b) are appropriate consequences of the breach.
  
126. Having regard to all of the circumstances set out above the Tribunal is satisfied that an appropriate consequence of the breach of s.451 is one derived from s.482(1)(d) of the Act, namely the disqualification of Ms Lawry from holding civic office. The maximum period for such a disqualification pursuant to that section is 5 years. In the finding of the Tribunal the pecuniary interest was, or ought have been, apparent to Ms Lawry, and the financial gain flowing was certainly appreciable. This notwithstanding it is apparent to the Tribunal that Ms Lawry had a long held connection with the notion of the revitalisation of Bulahdelah and she was a vocal supporter of such revitalization. The draft Strategy had its genesis some time before Ms Lawry's purchase of the land. In many ways the circumstance bears similarity with the decision of this Tribunal in *D'Amico* in so far as the subject matter of the complaint concerning pecuniary interest is a matter in which the Councillor was personally involved, albeit that in the *D'Amico* case the Councillor was elected upon the platform of promoting a new supermarket at Lane Cove. Ms Lawry, somewhat similarly, was an avid promoter of the Strategy and saw it as a way to revitalize Bulahdelah and the wider area.



127. Notwithstanding her belief as to the generality of the Strategy it is quite clear that the effect of its adoption had a direct and appreciable increase in the value of her land. That was increase about which Ms Lawry derived benefit not so much in increasing the value of land which she would continue to retain, but an increase in the compensation that was ultimately by MidCoast Water to her as a consequence of MidCoast Water's acquisition of her land. Whilst all of the factors set out above might not indicate that the circumstances of the present case are at the most extreme end of the period contemplated by s.482(1)(d), the Tribunal is equally satisfied that the circumstances are equally not insignificant.
128. Taking all of those factors into account the Tribunal determines that the appropriate consequence of a breach of s.451 is that Ms Lawry be disqualified from holding civic office for a period of 2 years from the date of this Determination.
129. As has been said by this Tribunal on many occasions in the past, the obligations in Chapter 14 of the Local Government Act are important ones that should be appreciated and acknowledged by all Councillors as the *quid pro quo* for the privilege of office that they hold. The *Local Government Act* provides a mechanism in which anyone who may qualify as a Councillor and become one can enjoy the privilege and importance of contributing to decision making in matters of direct and immediate effect in their local government area. In many

instances, almost by definition, the decision that Councillors make have real and sometimes significant financial economic and social consequences. The part of Chapter 14 of the *Local Government Act* with which this Tribunal is concerned in this Determination is designed to ensure that decisions in which Councillors participate are not decisions in which they stand to gain or lose in a financial way. Other legislation in this State deals more broadly with conduct of Councillors and Officers in this and other regards. But in so far as Chapter 14 of the *Local Government Act* is concerned it is quite clear in its requirement of the high onus of disclosure in Councillors as to matters in which they hold a pecuniary interest. The privilege that comes with the office of a Councillor of a Council in the State of New South Wales is not one that includes a right or entitlement to participate in matters in which that Councillor has a pecuniary interest. The reason for that inclusion should be obvious. It is at the least so that the community can be satisfied that persons who have been elected to hold office do not vote on matters which may result in a pecuniary gain or benefit to them, for obvious reasons of conflict of interest. The circumstances of the present case fall within that category. Often persons are elected to hold office on the basis of platforms advanced during election campaigns. That process is one that is available to them and is obviously one that is inevitably used in the process of election to office. But at the junction at which the matter the subject of the elected platform creates a pecuniary interest in the matter, the obligations in the *Local Government Act* are clear and they are that the Councillor, or the Officer, or other person referred to in

Chapter 14, must disclose the interest and must not participate thereafter in the process.

130. The Office of an elected Councillor is to serve the purposes of the *Local Government Act* and is not intended by Parliament, at least from what this Tribunal may glean from the terms of the Act, to facilitate the personal pecuniary advancement (or loss) of an individual councillor or office holder.

### **THE TRIBUNAL'S ORDER**

131. Accordingly, the Tribunal's Order is as follows:
1. The Local Government Pecuniary Interest & Disciplinary Tribunal, **FINDS** that a complaint made by the Director-General, Department of Local Government, pursuant to s.460 of the *Local Government Act, 1993* against (former) Councillor Lynette Lawry, being a councillor of Great Lakes Council contravened Chapter 14, Part 2 of that Act in respect of the consideration by the Council at a meeting of 9 March 2004 of the adoption of the draft Great Lakes Rural Living Strategy has been proved.
  2. Pursuant to s.482(1) of the Act, the Tribunal **ORDERS** that Lynette Ivy Lawry be and is hereby disqualified from holding civic office for a period

of 2 years commencing on 5 December 2007 and expiring on 4 December 2009.

3. The Tribunal's order will be furnished to Ms Lawry and the Director General pursuant to s.484(1) forthwith.
4. Copies of the Tribunal's Statement of Decision will be provided to the General Manager, Great Lakes Council pursuant to s.484(3).
5. The Tribunal's Statement of Decision and Order will be made publicly available pursuant to s.484(d).

DATED: 5 December 2007



Adrian Galasso SC

Local Government Pecuniary Interest & Disciplinary Tribunal