

**LOCAL GOVERNMENT PECUNIARY
INTEREST TRIBUNAL**

PIT NO 1/99

DIRECTOR-GENERAL, DEPARTMENT
OF LOCAL GOVERNMENT

RE: COUNCILLOR JAMES MORRISON
TRELOAR, TAMWORTH CITY COUNCIL

STATEMENT OF DECISION

Dated: 11 May 2000

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**RE: COUNCILLOR JAMES MORRISON TRELOAR,
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STATEMENT OF DECISION

INTRODUCTION

The Tribunal received a Report from the Director-General of Local Government of an investigation into a complaint with respect to Councillor James Treloar, a Councillor and presently the Mayor of Tamworth City Council. The complaint alleged that Councillor Treloar committed breaches of section 451 of the *Local Government Act 1993* when he was present at the meetings and voted with respect to motions before the Council on 25 August 1998 and 13 October 1998. Councillor Treloar denies this alleged breach.

A further complaint alleged that Councillor Treloar committed breaches of section 449 of the Act in that he failed to disclose his interests fully and correctly in his returns pursuant to section 449(3) of the Act for the period 1996-97 and 1997-98. Councillor Treloar concedes this alleged breach.

After considering the Report, the Tribunal decided to conduct a hearing into the complaints. Following preliminary hearings, the Tribunal sat to receive evidence on 24 and 25 February 2000. Prior to the hearing, Councillor Treloar had been provided with a copy of the Director-General's Report and a Statement of Prima Facie Facts and Issues. Final oral submissions were received on 12 April 2000.

Mr Michael Lawler of counsel, instructed by Mr Reg Wilmot, Department of Local Government, appeared at the hearing to represent the Director-General. Mr David McGovern of counsel, instructed by Lyons Barnett Kennedy, appeared for Councillor Treloar. The Tribunal has been greatly assisted by their presentation of relevant material and carefully prepared submissions.

THE SUMMARY FACTS

Councillor Treloar is a member of a family which has for many years conducted a large retail shopping business from premises in the centre of Tamworth, a large regional city in northern New South Wales. The family, through a corporate structure, maintains a substantial holding of commercial property within the city. The trading name "Treloars" is used by three separate businesses, a Mens and Boyswear business, a Ladies and Girlswear business and a Mitre 10 Furniture and Hardware business which operate from the various family properties.

The precise corporate structure and shareholding of Treloars is complex. The original premises acquired by the family are known as 315 Peel Street, Tamworth (also known as 31 Brisbane Street Tamworth). These premises were acquired in 1889. Treloar Estates Pty Ltd is the owner of this property. The shareholders in Treloar Estates Pty Ltd are Mr Treloar senior, the father of Councillor Treloar and T.J. Treloar & Co Pty Ltd of which both Councillor Treloar and his brother John and other family members are shareholders. The premises are comprised of a number of sections. Part of the property is leased to T.J. Treloar and Co Pty Ltd which conducts a Ladies and Girlswear business. The shareholders in T.J. Treloar and Co Pty Ltd include both Councillor Treloar and his brother John. The other part of the premises is leased to J.R. Treloar Pty Ltd which conducts a Mitre 10 Furniture and Hardware business on the premises.

J.R. Treloar Pty Ltd is the trustee for the John Treloar Family Trust. John Treloar and his wife are the principal beneficiaries of that Trust.

The premises known as 307-313 Peel Street are owned by Treloar and Treloar Pty Ltd. The property is leased (at a rate which is said to be “non-commercial”) to T.J. Treloar & Co Pty Ltd which sub-lets to J.M. Treloar Pty Ltd which conducts a Mens and Boyswear business as trustee for the James Treloar Family Trust. Councillor Treloar and his wife and children are the principal beneficiaries of the Trust.

The present corporate structure of “Treloars” derives from a rearrangement of various family interests which occurred in 1996, the intention being to split the business activities between Mr Treloar Senior’s children, with Councillor Treloar owning and operating the Mens and Boyswear business.

Tamworth City has experienced an expansion in retail activity in recent years. As part of that expansion an old shopping centre, originally constructed in the 1950s, was extended in 1987. It is located in West Tamworth and comprises a Big W department store, a Woolworths supermarket and 53 specialty shops. The centre is well located, being on one of the major traffic routes to the centre of the city. It is located approximately 1.5 km to the west of the city centre which is commonly referred to as the CBD. It has an existing total gross floor space of 21,000m². It is now known as ShoppingWorld. The CBD, apart from the Treloar interests, has a Grace Bros department store, a major supermarket and many other retail and commercial premises. The CBD has a total floor space of approximately 66,000m².

Land in Tamworth is controlled by the Tamworth Local Environmental Plan. Under that Plan the land occupied by ShoppingWorld is zoned Business 3(a). Within this zone “major retail premises” and “major commercial premises” are prohibited. These prohibitions were introduced in 1966 when a Business 3(a1) zone was created which permitted major retail and commercial premises within the CBD. The obvious purpose of these provisions was to reinforce the central area as the main business centre in Tamworth.

The West Tamworth Public School has existed for many years on land adjacent to the ShoppingWorld development. Apparently it had outlived its usefulness and was available for sale. McConaghy Developments Pty Ltd, the owner of the existing ShoppingWorld, sought to acquire the school site and incorporate it with the existing development to allow major expansion of the centre. As a consequence, by letter dated 3 June 1988, McConaghy requested the Council to rezone the school land and a portion of a public street, Denne Street, between existing ShoppingWorld and the school. The letter also stated that *"It is also our intention to submit a development application to Council in relation to the proposal. We expect to lodge this application in 2-3 weeks. We request that the Council process that development application jointly with this rezoning submission ..."*. Apparently the foreshadowed development application was not lodged. However, the Council appears to have acted at all times as if an application had been made. It will be necessary to examine that matter in greater detail.

The proposal for which approval was sought by McConaghy provided for an additional potential gross floor area of 17,500m². Expressed in terms of nett area the existing and proposed facilities were comprised as shown in the table below.

COMPONENT	EXISTING	PROPOSED SCHEME	INCREASE
Discount department store	7,907	¹ 11,595	3,688
Supermarket	4,146	9,000	4,854
Specialties	4,895	7,483	2,588
Total	16,948	28,078	11,130
¹ Includes four "junior DDSs"			

The proposal was a matter of considerable controversy, debate at public meetings, newspaper articles and political "lobbying". The Council sought advice from its planning staff and engaged consultant planners to assess the proposal.

Ultimately, the matter was considered by the Council on 25 August 1998 when the motion was:

- “(i) That Council resolve not to prepare a draft Local Environmental Plan in relation to the West Tamworth Primary School site and that part of Denne Street between Bridge Street and William Street.*
- (ii) That, on legal advice, Council take no further action in relation to Development Application 123/98.*
- (iii) That Council seek a meeting with the Department of School Education to discuss alternative land use options for the West Tamworth Primary School site under zone no.2 residential.”*

The motion was carried by a majority of 7:3 with Councillor Treloar voting with the majority.

A rescission motion was lodged in the following terms:

“A motion was moved that the following motion passed at the ordinary meeting of Council held on Tuesday 25 August 1998 be, and is hereby rescinded:

- ‘(i) That Council resolve not to prepare a draft Local Environmental Plan in relation to the West Tamworth Primary School site and that part of Denne Street between Bridge Street and William Street.*
- (ii) That, on legal advice, Council take no further action in relation to Development Application 123/98.*
- (iii) That Council seek a meeting with the Department of School Education to discuss alternative land use options for the West Tamworth Primary School site under zone no.2 residential’.”*

That motion was voted on at the Council meeting of 13 October 1998. The motion was lost 7:4. Councillor Treloar voted against the motion.

THE RELEVANT LAW

The “pecuniary interest” provisions of the *Local Government Act 1993* relevant to the present matter are the following:

Section 451 of the *Local Government Act* provides the fundamental obligation for councillors with a pecuniary interest:

“Disclosure and participation in meetings

- (1) *A councillor or a member of a council committee 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 must disclose the interest to the meeting as soon as practicable.*
- (2) *The councillor or member must not take part in the consideration or discussion of the matter.*
- (3) *The councillor or member must not vote on any question relating to the matter.”*

“Pecuniary interest” is described in section 442 of the Act in the following terms:

- “(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 or another person with whom the person is associated as provided in section 443.*
- (2) A person does not have a pecuniary interest in a matter if the interest is 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 or if the interest is of a kind specified in section 448.”*

Section 443 provides a comprehensive statement as to the persons who have a pecuniary interest. It provides as follows:

- “(1) A person has a pecuniary interest in a matter if the pecuniary interest is the interest of:*
 - (a) the person; or*
 - (b) another person with whom the person is associated as provided in this section.*
- (2) A person is taken to have a pecuniary interest in a matter if:*
 - (a) the person’s spouse or de facto partner or a relative of the person, or a partner or employer of the person, has a pecuniary interest in the matter; or*
 - (b) the person, or a nominee, partner or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.*

- (3) *However, a person is not taken to have a pecuniary interest in a matter as referred to in subsection (2):*
- (a) *if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body; or*
 - (b) *just because the person is a member of, or is employed by, a council or a statutory body or is employed by the crown; or*
 - (c) *just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.”*

Section 448 makes special provision with respect to a resolution relating to an environmental planning instrument. It provides that an interest does not have to be disclosed if it is:

- “ . *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:*
- (a) *land in which the person or another person with whom the person is associated as provided in section 443 has a proprietary interest (which, for the purposes of this paragraph, includes any entitlement to the land at law or in equity and any other interest or potential interest in the land arising out of any mortgage, lease, trust, option or contract, or otherwise), or*
 - (b) *land adjoining, or adjacent to, or in proximity to land referred to in paragraph (a),*
- if the person or the other person with whom the person is associated would by reason of the proprietary interest have a pecuniary interest in the proposal.”*

THE PROPOSAL AND SUPPORTING MATERIAL

The development proposal by McConaghy was submitted by Design Collaborative Pty Ltd, a firm of consulting town planners, in conjunction with Leyshon Consulting, Christopher Hallam and Associates Pty Ltd and Allan Lovell Architects. Described as a “rezoning submission” it sought an amendment to Tamworth Local Environmental

Plan 1996 to alter the zoning of the school site and the road to Business 3(a) and to further amend the plan to allow "major retail premises" in the 3(a) zone.

The approval which was sought would have increased the total size of the shopping centre by 11,130m² to 28,078m². Four junior DDSs or discount department stores totalling 3,688m² were proposed, with another supermarket and the addition of 2,588m² of specialty floor space.

Design Collaborative emphasised the fact that Tamworth ShoppingWorld had been identified in the Council's "Tamworth Urban Development Strategy - 2001 and Beyond" as part of the retail and commercial core area. It was suggested that the expanded facility will complement the functions of the town centre and "*would not prejudice the viability of the town centre*".

Leyshon Consulting carried out the economic assessment for McConaghy. It provided a detailed report which indicated that the proposal before the Council would increase the turnover in Tamworth ShoppingWorld in the order of +\$50.4 million per annum. It believed sales in the existing town centre would decline by some \$19.9 million per annum or -10.3%. This would reduce by 2006 to -6.4%. It also identified the fact that the Council had previously issued a development consent allowing for a second supermarket to be added to the centre which would have impacted -5.8% on the town centre. Thus it was said the additional impact was in the order of 4.5%. Although this was technically correct, the fact was that the previous approval had not been implemented and the consent had lapsed. The current proposal incorporated the previous approval.

It is unlikely that Leyshon would have exaggerated the negative impact of the proposal. Even so, the impact was described as "*at the lower end of the medium/high range diminishing to the 'low to medium' category by 2006*". It was said that the impact will take some time to dissipate "*as a result of relatively slow population growth and spending growth in the trade area*". Elsewhere the impacts were described as "significant".

A short report was also provided from Jebb Holland Dimasi, retail consultants. The report expressed general agreement with Leyshon and noted:

"We note further that there is a high degree of cross shopping between the two locations, and therefore that a strengthening of Tamworth ShoppingWorld also has the capacity to improve the overall performance of the Tamworth CBD. Additional visits generated by Tamworth ShoppingWorld should result in spin-off visits to the Tamworth CBD to the extent of approximately one-third. Because of the additional services other than retail stores which are available primarily within the Tamworth CBD, we would expect that these current patterns will continue following the improvements which will occur both at Tamworth ShoppingWorld through the expansion of that centre, and in the CBD through the refurbishment of the Kmart/Coles centre."

REPORT TO THE COUNCIL

The matter was reported on by the Environmental Services Department in a report dated 22 July 1998. The report summarised the proposal and noted that McConaghy Developments Pty Ltd had also lodged a development application and requested that it be processed jointly with the rezoning submission in accordance with the provision of Division 4B of Part 3 (ss. 721-726 inclusive) of the *Environmental Planning and Assessment Act 1979*. No doubt this report was the source of the continuing identification of the proposal as being one for rezoning together with a development application.

A further comprehensive report was prepared for the meeting held on 25 August 1998. This report outlined the planning studies which had previously been undertaken and the decisions made to ensure the continued strength of the commercial development within the city. It identified the fact that only one city centre was considered appropriate in Tamworth because *"it was considered that development of another district shopping centre, located in a peripheral area, has the potential to significantly diminish the economic viability and future growth of Tamworth's Central Business District"*.

The Council engaged McInnes Group International Ltd ("MGI") to provide an independent review of the conclusions in the Leyshon Report. As the planning report stated, the MGI report raised serious concerns about some of the underlying

assumptions used as the basis of the economic impact assessment by McConachy and, consequently, the validity of the conclusions reached with regard to the potential impacts of the proposed expansion of Tamworth ShoppingWorld and particularly the likely impacts on the Tamworth Central Business District.

MGI further concluded:

- “ ... the applicant is proposing an additional 11,130 m² floorspace in a trade catchment that has no prospects of growth to the year 2006 ... Even in the unlikely event that ‘real growth of 9.5%’ occurred this would only support around 8,000 m² of retail floorspace, the majority of which should, in accordance with Council’s planning policies be accommodated within the CBD.

- . Future sales in this market will only be generated through aggressive competition for market share ... The EIA estimated the CBD to be capturing 28% of food sales from the primary trade catchment in 1996 with Tamworth ShoppingWorld capturing 31%. In 2006 ... (ShoppingWorld’s) market share will have expanded to 45% of food sales in the PTA, while the CBD will have slipped back to 22%. Total market shares from the PTA are equally revealing. In 1996, the EIA estimates the CBD to be capturing 43% of sales and Tamworth ShoppingWorld 23%. By 2006, the CBD is anticipated to slip back to 38.8% with Tamworth ShoppingWorld improving its share to 31.9%. Even as they are reported in the EIA these changes in market share represent a significant negative impact on the CBD in terms of its role and function. In a nil growth environment, the impact this would have on the CBD would be much more severe.”

The planners went on to say:

“The extent to which these impacts might generate business failure is conjecture, since much will depend upon present retail floorspace productivity, efficiency, operating margins and hence profitability before and after the expanded centre opens. Given that MGI calculate significant changes in retail sales, productivity levels and market share, certainly some store closure is likely as a result of the proposal.

A further consequence of potential closures is referred to as ‘blighting’. This essentially means that vacant premises lead to a ‘blighted appearance’ of the retail centre, which in effect dissuades shoppers and potential shopkeepers, resulting in adverse flow-on effects. It can be reasonably expected that the anticipated downturn for the CBD and other local centres would result in ‘blighting’, which can only be considered as seriously detrimental to the continued viability of those centres.

In conclusion, the review of the Economic Impact Assessment demonstrates that there are major concerns over the economic impact of the proposal. It will have significant impacts on existing retail traders in Tamworth and on the existing shopping fabric."

The report also discussed the relationship between Tamworth CBD and Tamworth ShoppingWorld. It stated:

"The rezoning submission (p17) proposes that a functional relationship exists between Tamworth ShoppingWorld and the CBD that enables Tamworth ShoppingWorld to operate as part of the Town Centre. This relationship is then used to argue that Council's preferred hierarchy would not be jeopardised by the expansion of Tamworth ShoppingWorld."

The MGI Report addressed this proposition as follows (p19):

"In reality these two centres operate in competition with each other, competing vigorously for market share with access achieved almost exclusively through the use of the private motor vehicle. The centres compete because of their similar retail composition although there are distinct points of differentiation. The CBD has higher order retailing functions (Grace Bros and Treloars department stores) and the civic and administrative services and facilities traditionally associated with regional centres. Tamworth ShoppingWorld is an air-conditioned freestanding retail centre with undercover parking which enables it to compete with the CBD. Furthermore, Tamworth ShoppingWorld is strategically located between the significant residential areas to the south of the Peel River and the CBD. As such, it provides an attractive and convenient intervening opportunity for residents who might otherwise have continued on to the CBD. The expansion of Tamworth ShoppingWorld would significantly strengthen this location and status.

Consequently, the logic proposed by the rezoning application which suggests that Tamworth ShoppingWorld should be considered part of the CBD and that its expansion would not seriously jeopardise the viability of the traditional city centre is in conflict with both the reality of retailing at the local level as well as Council's stated planning policies."

The report concluded with the following statements:

"The decision confronting Council in respect to the proposed rezoning of the West Tamworth Primary School site is one of enormous significance, and one which, if made in favour of the applicant, would have widespread implications, some of which would be positive, and others which would be adverse. It is the role of the Council to determine whether the potential benefits outweigh the disbenefits, and whether the adverse impacts lie within acceptable parameters.

On balance, it is considered that the rezoning submission does not establish a case to justify departure from Council's existing planning policies. In fact, it is considered that the potential economic impacts have confirmed the continued relevance of the policy to reinforce the CBD as the preferred location for 'major retail premises' within the City. Consequently, it is recommended that Council endorse its adopted strategic planning framework and resolve not to rezone West Tamworth Primary School site and part of Denne Street. It is considered that to rezone this site to allow expansion of Tamworth ShoppingWorld would seriously compromise the objectives of the Urban Development Strategy 1993 and Tamworth Local Environmental Plan 1996 and jeopardise the City Centre as the primary focus for major retail activities within the City and wider Region."

THE COUNCIL MEETINGS

The matter relevantly came before the Council first on 25 August 1998. Councillor Treloar was present at this meeting, which he chaired.

A motion was moved that the Council resolve not to prepare a draft LEP for the school site and the road closure, that on legal advice the Council take no further action in relation to the development application, and that the Council seek a meeting with the Department of School Education to discuss alternatives for the school site.

One amendment was foreshadowed which contemplated that legal advice be sought to clarify the Council's duty of care obligation to those people who had previously made investment decisions in relation to the CBD based on the 1996 LEP. This particular amendment was lost, and another attempt was made to pass a motion having similar effect, but this too was lost.

The main motion, recorded above, was carried. The rezoning application was refused, and as a result the other applications were not dealt with. A division was requested and the minutes record that Councillor Treloar was amongst the seven councillors voting for the motion, with only three against. The minutes do not record the names of persons who put forward or seconded the various motions.

The Council meeting of 13 October 1998 was an extraordinary meeting called to deal with a proposed rescission motion lodged after the 25 August meeting seeking to

overturn the outcome of the meeting in relation to the Tamworth ShoppingWorld matters and to pass another motion approving the rezoning application. The motion was moved by three councillors and was dated 29 September 1998.

Councillor Treloar was again present and chaired the meeting.

A number of members of the public addressed the meeting, including the former Mayor, Mr D. John. Mr John presented a petition containing 4,381 signatures. The petition indicated total disagreement with Council's decision on the Tamworth ShoppingWorld matters.

Councillor Botfield, who was absent at the previous meeting, declared a pecuniary interest (on the basis that he owned property and a business in an arcade in the CBD) and left the Chamber. No other declarations were made.

The rescission motion was put, and lost. A division was again requested on the vote, and the minutes record that Councillor Treloar was amongst the seven councillors voting against the motion, with only four in favour.

A motion was then moved that the Council hold a presentation evening for the benefit of the public to explain its development plans for the CBD. This was carried, and the meeting closed.

THE EVIDENCE BEFORE THE TRIBUNAL

Evidence was presented to the Tribunal by both Councillor Treloar and the Director-General. Apart from Councillor Treloar, evidence on his behalf was given by Mr Stuart Prowse, a valuer, Mr Duncan Shore, a retail consultant, and Mr Timothy Taylor, a chartered accountant.

On behalf of the Director-General, evidence was called from Mr Colin Thomas, the area valuer with the State Valuation Office, and Mr Ian Booth, a consulting economic statistician.

When the first of his evidence was called, the Tribunal expressed some doubt as to whether evidence which might reveal or depend on facts not known at the time could be relevant to the Tribunal's determination. It seems to the Tribunal to impose an impossible burden on councillors if factual material not reasonably available to them could be later used to contradict a decision made in good faith. The legislation requires a Councillor to determine whether he has an interest which requires him to act in a particular manner. The quality of that decision must be examined by the Tribunal, in the event of a complaint having regard to the facts which were reasonably known to the Councillor at the relevant time.

Submissions were made by the Director-General that evidence from experts not available at the time of the Council decision is relevant and has previously been accepted by the Tribunal. In particular, evidence from valuers has been admitted to assist a decision as to whether a pecuniary interest exists. Although in many cases such evidence may carry little weight, it may be of assistance in some cases. In the present matter, the material which was available and evaluated the proposal at the time of the Council's decision is compelling. The evidence of the experts called by both parties was of little assistance to the Tribunal. A summary of that evidence follows.

The evidence of Mr Thomas

Mr Thomas was called by the Director-General. He is the area valuer with the State Valuation Office in Tamworth. In his report prepared for the Tribunal, he expressed the conclusion that there was a reasonable chance or possibility of financial loss to the Treloar family interests if the ShoppingWorld proposal had proceeded. He believed this would apply to the value of the business and the real estate holdings.

The Tribunal accepts his evidence. Even the Leyshon prediction of an initial negative impact on the CBD of 10.3% would be likely to adversely affect the Treloar interests. MGI predicted a greater impact than Leyshon. The Tribunal appreciates that the Treloar interests are generally in the nature of specialised department stores whereas ShoppingWorld was intended to provide a supermarket-based enterprise. However, the negative impact of trading on the CBD, if the ShoppingWorld expansion had gone

ahead, was such that some negative impact upon all the Treloar interests, both in retail trading and commercial property values was, in the Tribunal's view, probable.

The evidence of Mr Booth

Mr Booth was called by the Director-General. He is a consulting economist/statistician with significant experience in the evaluation of shopping centres and their financial performance. He reviewed the reports prepared by Leyshon and the other market research firms in respect of the development proposal by ShoppingWorld but had not conducted original research in relation to the Tamworth area. However, he indicated that in all the studies that he had conducted elsewhere, the inevitable conclusion is that there will always be a reasonable possibility of financial loss to ventures that trade in the CBD in the event of the development of a substantial centre outside that CBD. This ultimately reflects in both trading performance and reduced property values.

The evidence of Mr Tyler

Evidence was given by Mr Tyler of BKR Walker Weyland Services Pty Limited, an accountant, who extracted various detailed trading accounts for the Treloar Group at the time the original ShoppingWorld development commenced trading. It was submitted that analysis of these figures did not reflect any significant impact on Treloars from the opening of ShoppingWorld. This position was challenged by the Director - General. In the result, the Tribunal is unable to determine whether these figures support the conclusion contended for by Councillor Treloar. It is possible that the figures include adverse trading impacts which, for other reasons, do not emerge. Furthermore, I doubt whether the circumstances of trading in 1987 are of particular relevance to likely trade more than a decade later when an expanded ShoppingWorld could be expected to have quite different impacts.

The evidence of Mr Prowse

Mr Prowse was called to give evidence by Councillor Treloar. He is a registered valuer and a divisional councillor of the Australian Property Institute. He has worked extensively in the Tamworth area since 1995.

He told the Tribunal that from an examination of the available sales evidence, the yields on properties within the CBD in the 12 to 18 months after ShoppingWorld had originally opened, were in the band of 9.64-11.65%. He believed this was a fairly normal range of CBD yields within a centre such as Tamworth.

He also discussed the likely impact of a competing centre on the CBD. In his opinion, the impact would have been felt more in the peripheral areas than in the central CBD.

Although indicating that he was not a retail expert, he accepted that a competing centre may bring vacancies within the existing CBD with less people resorting to it. He accepted that the income level of all traders in a CBD will suffer if there are fewer people going there. This would be exacerbated if the CBD centre lost its supermarket because of competition from the rival centre. Apparently, Coles operated a supermarket within the Tamworth CBD. Because of the threat of further supermarket competition in the ShoppingWorld centre, Coles had suggested that it may close its supermarket. Mr Prowse accepted that if this was to occur, everybody in the CBD would suffer. He was asked:

“Q. But isn't it the simple fact that if the CBD lost its supermarket, everybody in the CBD would suffer?”

A: Without a doubt I'd say so, yes.”

Although Mr Prowse indicated that from his analysis of the situation, it was not possible to show that the 1987 upgrade of ShoppingWorld had any effect on property values within the Tamworth CBD, he was not able to confirm that there had been no effect.

Furthermore, whether the outcome of the development in 1987 would be similar to that from the proposal in 1998, is not clear. He was asked about the likely impact of a 13% increase in the retail space in the ShoppingWorld complex, 1.5 km from the CBD and when it was suggested it might adversely affect property values in the CBD, he said:

“No, I think to categorically say that would be uninformed. Again there would be some property ...

Q: There will be exceptions but the starting point for analysis would be that it would be negative, wouldn't it?

A: Well, it's negative sentiment.

... On a general statement, taking into consideration that it would affect some properties in the CBD, yes there could probably be an overall effect but not every property affected to the same amount. ...”

He was also asked:

"Would you accept that it would be a surprising proposition to the man in the street, the ordinary person in the marketplace, if it were suggested that there was going to be a significant increase in the floor space of the rival shopping area that would not have an adverse effect on the existing shopping area?"

He answered:

"The general man in the street would probably say overall, yes, there would be an adverse effect."

Mr Prowse was not an impressive witness. The Tribunal formed the view that he was not entirely candid in his answers and rather than answer the question directly, sought to frame his answer in a manner which might assist Councillor Treloar's interests.

The evidence of Mr Shore

Mr Shore is presently a consultant to the retail industry. Most of his career in retailing was spent working for Grace Bros. He has known Councillor Treloar for many years, having trained him at Grace Bros. He is familiar with retailing in Tamworth due to Grace Bros' interests within the city.

In general his evidence was that the success of a department store in a country centre is based on the quality of its management. He believes that competition at another location will only cause an appreciable difference to trading if a business fails to adopt management practices to react to the competition. He believed that Treloars was well managed and would continue to prosper even with an expanded ShoppingWorld.

However, when asked about the potential impact of a supermarket-based shopping centre to impact on the CBD, he accepted that there would be an adverse effect on all existing traders, especially those who are not good traders. He also accepted that an expanded ShoppingWorld may ultimately bring about a restructuring of existing shopping facilities but felt he was not qualified to comment on the likely effect upon land values. He also believed that a projected impact of 10.3% on the trade of the CBD from

an expanded ShoppingWorld was a high level of impact. It would adversely affect some of the traders within the CBD.

Mr Shore did not reveal an intimate knowledge of the Treloar business. He had no understanding of its turnover figures. I accept that he had a good knowledge of the trading by Grace Bros in Tamworth but otherwise his evidence was generalised and of marginal assistance. I accept that Treloars would be likely to have survived competition from an expanded ShoppingWorld but whether it would have suffered a loss of turnover or profitability are quite different matters. I did not find Mr Shore's evidence helpful on these important issues.

The evidence of Councillor Treloar

Councillor Treloar gave evidence before me. He stated that he was originally elected to the Council in 1987 and was first elected Mayor in 1995. The original ShoppingWorld development was apparently opened in 1987 but approved before he was elected to the Council.

Councillor Treloar says that he supported the original ShoppingWorld expansion. He says he saw it as strengthening the identity of Tamworth as a regional centre. He says his opposition to the proposal to expand ShoppingWorld came following the review of the Local Environmental Plan in 1996. He described it as a thoroughgoing review which provided the parameters for future development in Tamworth. Because the McConaghy proposal was contrary to the zoning derived from this review, he could not support it.

He was asked by the Tribunal whether he had concerns about voting with respect to the McConaghy proposal. He responded as follows:

"Well, firstly, the Act says I have to have a pecuniary interest. I can't get [sic] step out. I'm not allowed to say, 'I'll be sick', or 'I'll just leave the room'. I actually have to declare my pecuniary interest. It's now a requirement to declare that. Now, I have done research on what had happened on the opening of Shopping World in 1987. Unfortunately because our company was established before federation and we haven't got a financial year ending June, February figures can be somewhat difficult to understand for somebody who is not used to reading them. I can clearly demonstrate from our trading figures that Shopping World had no effect on the trading of our business, none at all. It was the most significant development that was of a comparison to what we were

looking at. And it had no effect on our retail action at all. So I couldn't just turn around and say, look, the public thinks I've got a pecuniary interest on this so I'm standing down. Four other councillors were challenged - three others were challenged. And one who actually owns an arcade of shops felt he really did have a pecuniary interest because he was competing for the same leasing dollars as the Shopping World. But I looked at him and I tried to assess it and find out was this actually going to - was this going to affect the trading of our business. The fact that I didn't oppose it when it originally took place clearly indicated that our company was not opposed to competition.

He was then asked:

Q. But that's not quite the same thing. You might not be opposed to competition but the question is whether or not there is a likelihood that your financial position could be affected by this particular expansion?

A: And I am happy - and I have provided the department with figures that I think clearly indicate that it didn't.

Q. You say that it didn't back in 1987 but the question is whether the increase in floor space had any likelihood of affecting your business in 1997 and 1998?

A. The increase in floor space was going to be 25 per cent in terms of a supermarket. 25 per cent of that floor space was going to go in the supermarket. The greatest opposition to the opening and expansion of ShoppingWorld were other traders in ShoppingWorld.

Q. I can understand that.

A. Woolworths weren't excited about it. The record shop owner, the delicatessen owner, the people in ShoppingWorld itself raised enormous concerns about it but for some reason the media focused not on those concerns but the only concerns they raised were the concerns of what some of the CBD traders had raised as concerns. So it wasn't just the fact that it was going to have some effect on the CBD, it was going to have a very significant effect on ShoppingWorld itself.

Q. Did you think that any of the predicted 10.3 per cent effect upon existing trade would be impacted upon your business or businesses at all?

A. I can't categorically say no to that. What I can say is that there was going to be some refocusing. There were some areas where I was going to pick up business and there were some areas that I was going to lose business. But I felt the overall position was that I was going to remain very much constant."

Councillor Treloar also told the Tribunal of his concern over the issue of conflict as the public debate unfolded. He identified two possible effects, one on the value of his landholdings and the other the revenue from his businesses. He sought advice about the possible effect upon land values from three real estate agents. He says they told

him that the proposed developed “*would affect a lot of other CBD properties but it won't affect yours*”. With respect to any potential effect upon the businesses, he says he did not take advice but relied upon the trading history of the Treloar businesses. He believed they were not affected when ShoppingWorld opened and did not believe the impact of the proposed extension would be any different.

The issue was put directly to him by counsel and he responded:

“He [Mr McConachy] had an application to develop over the open air car park over the existing site. He had already said that it was going to have a six per cent or four per cent impact on the CBD. He said that he was going to spend 50 million inside Tamworth, 30 million of that was refurbish and the development of the car park area. The other 20 million was for the proposed addition, five million of that was to buy the site. That is \$15m left. And that was his words when he came and addressed the council, that's what he told the council his proposal was and that's why he said at that time affect will be minimal. The major effect is already there, I've got the entitlement to do this refurbishment. Now, what I did take on as being fair and accurate was that it would have no effect on my business, it would have no effect on my business because they were bulky goods involved and as I've already expressed Harvey Norman and Retravision and those others they are bulky goods people, they aren't affected by that type of trade. And that's why our Hardware was not going to be affected. But I was also confident that my menswear business would not be affected it would bring additional people to the city and I would pick up a spin-off of that in terms of what I lost as well.”

After the August meeting, Councillor Treloar was asked by the Council's General Manager to provide any advice which he relied upon in deciding to vote on the matter.

He responded by letter dated 9 September 1998 in the following terms:

“Re: Your letter of 9 September 1998. Pecuniary Interest.

I sought advice from numerous areas in relation to the McConoghy [sic] Holding rezoning application. Unfortunately the advice I received was as unclear as the pecuniary interest wording itself and used very similar words such as 'expectation' and 'appreciable' which can have a very different understanding depending on ones situation.

The decision to take part in the debate was ultimately my decision based on the fact I had twice before participated when approval was given to increase the size of this development which reports suggested would have about the same affect as this proposed rezoning. In the words of the applicant, he stated 'this was a modest development with a significant redevelopment which had already been approved and would have a minimal affect on the rest of Tamworth'.

It was on this information I was able to satisfy in my own mind I did not have a pecuniary interest and hence chose to participate in the debate.”

The letter reveals a degree of confusion in the Councillor’s thinking. He does not acknowledge the material contained in the MGI report or the Council planning report. However, it is inconceivable that he was not aware of that material when he voted. The failure to have regard to this material when making his decision is a serious error. Councillor Treloar repeated his position in a further letter to the General Manager dated 13 October 1998. He again indicates reliance on McConaghy’s experts without reference to MGI. Furthermore, he fails to appreciate that a change in value of land may be a loss or gain even if there is no present intention to realise the asset. The letter stated as follows:

“Further to your letter of the 9 September 1998 re Pecuniary Interest. As this matter is under review there is some information that may assist the outcome.

Recently BBC established the first Hardware House store west of the Great Dividing Range in Tamworth. Tamworth City Council approved this DA and BA and also sold the land to enable this development to take place. I was very aware whilst these negotiations were taking place that I may have a Pecuniary Interest and sought advice on this matter.

However, after taking into consideration all the matters involved I was unable to find any area I would have appreciate financial loss or gain. As it has eventuated this was the case and I would be happy to provide our sales figures for hardware for the year preceding the opening of Hardware House and the year after the opening which will confirm this development had no effect on our Hardware business.

The Shoppingworld Development again presented the same situation but there was more information available. Again, I was unable to find how I would have appreciable loss or gain and this had clearly been confirmed by Mr Robert McConaghy’s Economic Consultant, Mr Gavin Dueane who addressed a public meeting in Tamworth and stated ‘There would be an impact of about 12% on existing CBD business but many would be unaffected - bulk goods stores, major retailers like Treloars and Grace Brothers and the like’

I have enclosed a press clipping of the statement for confirmation.

As our company does not deal in land in the CBD, in fact in my lifetime I am not aware of our company ever having sold any CBD property, I did not consider property values to be relevant but did seek private advice on this matter. Because of the prominence of location of our CBD property a commercial

development in another location would not have any effect on our companies real estate values.

Because of this information I did not believe perception was grounds to remove myself from this debate and hence have participated in Council's decision making."

SUBMISSIONS ON BEHALF OF THE DIRECTOR-GENERAL

On behalf of the Director-General it was submitted that the absence of a formal development application was not material. The "matter" before the Council for the purpose of section 451 of the Act was the proposed development. Reliance was placed on the decision in Fern (PIT 4/1997, 13 March 1998) where the Tribunal held that a councillor cannot avoid the provisions of chapter 14 by some apparent defect in the legality of the decision-making process.

It was also submitted that the corporate arrangements of the Treloar family had the consequence that any adverse impact upon the trading of the Mens and Boyswear business would be likely to be reflected in a reduced income for Councillor Treloar and his wife and children. Any adverse impact upon the trading of the Mitre 10 and Hardware business would be likely to be reflected in a reduced income for Councillor Treloar's brother and his family.

It was submitted that a pecuniary interest could also arise because of an adverse impact from the proposed development on CBD property prices and rental levels either:

- (a) directly through Councillor Treloar's shareholding in T J Treloar & Co Pty Ltd (the holder of a valuable long-term low rent lease from Treloar & Treloar Pty Ltd of the property from which the Mens and Boyswear store traded), or
- (b) indirectly (via the application of section 443(2)) through his father and T J Treloar & Co (a company in which he was a shareholder) being shareholders in Treloar & Treloar Pty Ltd (the owner of the property from which the Mens and Boyswear store traded) and Treloar Estates Pty Ltd

(the owner of the properties from which the Ladies and Girlswear and Mitre 10 stores traded).

It was further submitted that a pecuniary interest could arise because of an adverse impact from the proposed development on CBD businesses and, in particular, the Treloar businesses:

- (a) directly as a beneficiary of the James Treloar Family Trust and shareholder of J M Treloar Pty Ltd and through that means sharing in the profits of Mens and Boyswear business;
- (b) indirectly (via an application of section 443(2)), by virtue of his wife and children being beneficiaries of the James Treloar Family Trust and through that means sharing in the profits of Mens and Boyswear business;
- (c) indirectly (via an application of section 443(2)), by virtue of his brother and his brother's wife and children being beneficiaries of the John Treloar Family Trust and through that means deriving the profits of the Mitre 10 Furniture and Hardware business;
- (d) indirectly (via an application of section 443(2)), by virtue of his father's holdings in Treloar & Treloar Pty Ltd, Treloar Estate Pty Ltd and T J Treloar & Co Pty Ltd;
- (e) indirectly (via an application of section 443(2)), by virtue of the arrangements that saw the Ladies and Girlswear business operated so that profits from that business were derived by Councillor Treloar's other brother and his sister (cf T178/53).

The real question was said to be "*whether there was a reasonable likelihood or expectation* (within the meaning of those words in section 442(1)) that the development proposal would have a significant adverse impact on the profitability of the Treloar

businesses or the value of the Treloar CBD properties. The Director-General submitted that this question should be answered adversely to Councillor Treloar.

SUBMISSIONS ON BEHALF OF COUNCILLOR TRELOAR

It was submitted on behalf of Councillor Treloar that the *“essence of the matter before the Council on 25 August 1998 was whether the existing LEP should be amended”*. It was said that if the Council resolved not to prepare a draft LEP the other parts of the motion were otiose. It was also emphasised that the Director-General had conceded that no formal development application was in fact lodged with the Council and the motion before the Council contained a proposal for the *“making, amending, altering”* of an environmental planning instrument. Accordingly, it was submitted no disclosure was required unless the environmental planning instrument *“effects a change of the permissible uses”* of land. It was then submitted that a draft Local Environmental Plan could never have that effect.

It was then submitted that Councillor Treloar did not have an interest in the school land, which is obviously correct. It was further submitted that the school land was not relevantly in proximity to the land in which Councillor Treloar had an interest within the Tamworth town centre.

It was further submitted that because a shareholding in the capital of a company does not give rise to a proprietary interest in the company's landholdings, section 448.6 was not relevant.

Submissions were also made with respect to section 442. It was submitted that Councillor Treloar accepts that section 442(1) requires an objective judgment of the facts and circumstances at the time the decision was made by him. The question was whether he *“had a pecuniary interest”* in the matter which was the subject of the vote because of *“a probability of perceptible financial loss or a reasonable chance or reasonable possibility of financial loss albeit falling short of probability”*. It was submitted the Tribunal should not be satisfied on the balance of probabilities that the respondent had a pecuniary interest in the matter conformably with section 442(1) of the Act. In challenging the submission of the Director-General that the impact of the

proposed increase in ShoppingWorld would adversely impact upon the Treloar CBD properties was obvious, it was submitted that the Leyshon Report confirmed a high level of cross-shopping between the CBD and ShoppingWorld and drew attention to the extent of supermarket and specialty shop expansion proposed. It was said that the potential impact was dependent upon the goods to be sold and the extended nature of the goodwill of the potentially affected businesses. Because there was no way of knowing what would actually happen to existing businesses, it was appropriate to have regard to what had previously happened when the ShoppingWorld complex underwent its first major expansion.

It was also submitted that the Tribunal should find that Councillor Treloar was honest, both in his actions and in the evidence which he gave to the Tribunal. Accordingly, it was submitted that the evidence which Councillor Treloar gave that the impact of ShoppingWorld had not previously affected the Treloar businesses, should be accepted. Furthermore, the evidence which he gave that there was not an adverse impact on CBD properties from the opening of ShoppingWorld was also suggested as evidence which would support Councillor's Treloar's judgment in the matter.

It was further submitted that the history of the Treloar businesses and their successful trading against existing competition suggests that the Treloar businesses would not be affected by the expansion of ShoppingWorld.

With respect to the alleged adverse impact upon the value of Treloar CBD properties, it was submitted that there was no evidence upon which an adverse finding could be made. Attention was drawn to the fact that at the time Councillor Treloar had made his decision, he had taken advice from real estate agents who informed him that they did not believe there would be likely to be an adverse effect from the proposal. This was said to be supported by the previous activities of the Valuer General when valuing CBD properties. It was further submitted that it would be an uninformed approach to consider the property market in Tamworth on the basis of saying that a 13% increase in retail space would have a negative impact on a hypothetical vendor because that would fail to take into account the prominence of the Treloar properties within the CBD, which would itself tell against any adverse effect.

FINDINGS AND CONCLUSIONS

In The Tribunal's opinion, the matter before the Council at the relevant meetings was the prospective development of Tamworth ShoppingWorld by its expansion. There were two elements involved, the first being the requested rezoning and the second development consent to carry out the proposed development. Although the operation of section 448.6 would have the effect that Councillor Treloar did not have a direct interest in land which might be affected by the proposed rezoning, he is a shareholder of T.J. Treloar & Co Pty Ltd which is a shareholder in Treloar & Treloar Pty Ltd which owns the land from which the Mens and Boyswear shop is conducted. Accordingly, section 443(2)(b) provides that as a shareholder of T J Treloar Pty Ltd, the lessee of that land, Councillor Treloar has a potential interest in any proposal to rezone land adjoining, adjacent or in proximity to the land on which the Menswear shop is situated.

The Tribunal is satisfied that the Treloar land is relevantly in proximity to the ShoppingWorld land. It is obvious that it was neither adjoining or adjacent land. However, it is clear that the inclusion of the word "proximity" was intended to broaden the application of the provision for it is obvious that if land is adjoining or adjacent to other land it must be in proximity to it. In my opinion, the word should be given a meaning appropriate to its context having regard to the purpose of the legislation, which is to preclude councillors from voting where their pecuniary interest could be affected. It was submitted on behalf of Councillor Treloar that proximity must be construed as suggesting a degree of nearness "*which although not described as 'adjacent' or 'adjoining' is 'practically so' "*". I do not believe this is correct. In the context of land presently used as a shopping centre and land within 1½ km proposed to be used for a shopping centre, in my opinion proximity exists. It may be different if the two developments were merely corner stores.

It is also clear that because environmental planning instruments are made by the Minister, a Council will only ever consider a draft. Accordingly, the reference in the section to a change of use must be a reference to a draft instrument which, if made, would have the relevant effect.

Accordingly, Councillor Treloar's interests were in the land occupied by the Menswear store. He was also employed by T J Treloar & Co Pty Ltd and had an expectation of a distribution from the James Treloar Family Trust, he and his wife being the shareholders of the trustee company J M Treloar Pty Ltd.

Section 443(2)(a) deems a person to have a pecuniary interest if a spouse or relative has a pecuniary interest. Councillor Treloar's wife had an expectation of a distribution from the family trust which gives rise to a relevant interest in the Councillor himself. "Relative" is defined in the Act and includes a parent or a brother. Accordingly, being a shareholder in Treloar & Treloar Pty Ltd and Treloar Estates Pty Ltd, the interest of Councillor Treloar's father gives rise to an interest in Councillor Treloar. The interests of Councillor Treloar's brother and those of his wife reflect the corporate structure of the Ladieswear and furniture and hardware holding of the family and give rise accordingly to interests in Councillor Treloar.

The Tribunal has previously considered the words "*reasonable likelihood or expectation of appreciable financial gain or loss*" in the section.

In the decision in Roberts (PIT 1/1995, 3 August 1995) it was pointed out that the legislation is focussing upon potential conflicts between public duty and private interest. It is directed to the relationship between the potential outcomes of the matter in question before the Council and the potential financial interests of the Councillor. It was accepted that the concept of pecuniary interest is intended to attach to chances or possibilities as well as to probabilities of financial gain or loss. Accordingly, the test was formulated for the word "expectation" as "*applying to cases where the prospects of financial gain or loss fell short of being a probability but consisted of a reasonable chance or possibility*" (p.20). The Tribunal believes that approach is appropriate.

It was debated in Roberts whether the legislation required an objective or subjective approach to the question of whether a pecuniary interest existed. The Tribunal accepted that an objective approach, one based on "*outward facts and indicia not coloured by personal feelings or opinions*", was appropriate.

Although McConachy and its consultants claimed there would be benefits to the City of Tamworth from the expansion of ShoppingWorld, nevertheless Leyshon identified a likely impact upon existing trade in the town centre of the order of 10.5% p.a. This must have resulted in a downturn in income of individual rental values and CBD property values. The Tribunal accepts that Treloars may have been protected from some of the impacts, both because of the nature of the department store businesses and their capacity as traders, but it is inconceivable that they would not have been impacted. Furthermore, the suggested impact of 10.5% was most likely at the low end of any range - the real impact would probably have been greater.

In the opinion of the Tribunal, the view of MGI is the most appropriate by which to assess the likely impact on the CBD. Its prediction that the McConachy proposal would cause a downturn for the CBD and other local centres which would result in a blighting of the CBD raised serious implications for all property owners and traders in the CBD. If the area became “blighted”, the value of existing property holdings would be likely to be adversely affected, as would the existing trading patterns of the businesses within it. The Treloar properties could not expect to be immune from this impact.

It is obviously not possible to form a precise judgment as to the extent of any impact upon Councillor Treloar and the interests of his family. However, the legislature does not require this degree of precision. Only if an identified interest is so remote or insignificant that it could not reasonably be regarded as likely to influence the relevant decision of the Councillor may it be disregarded. In the opinion of the Tribunal, the exception in section 442(2) cannot operate in the present case.

Accordingly, the Tribunal finds that Councillor Treloar had a reasonable likelihood of appreciable financial loss, either by a reduction in his income or the value of real estate holdings or both, if the McConachy proposal was approved. The Tribunal also finds that his wife, father, brother and other family members had similar interests. Those interests were such that they should be regarded as likely to influence Councillor Treloar’s decision.

Councillor Treloar submits that he was entitled to conclude that he did not have a pecuniary interest because of his view of matters in the Leyshon report, the claim by

McConaghys that there would be no impact, his belief that there was no impact in 1987 and the type and quality of the Treloar businesses. However, in coming to his decision to vote on the matter, Councillor Treloar appears to have ignored the MGI report which was commissioned to give independent advice to the Council. Quite why he ignored this report is not plain. Although Councillor Treloar was no doubt motivated by a desire to ensure a decision was made which was in the best interests of Tamworth, because his family has such a significant land holding and trading enterprise in the CBD, any decision which could protect that holding from competition raised serious problems for him as a councillor.

ACTION UNDER SECTION 482 OF THE ACT

Having found the complaint proved, the Tribunal has power under section 482(1) to counsel or reprimand the Councillor, suspend the Councillor from civic office for a period not exceeding six months, or disqualify the Councillor from holding civic office for a period not exceeding five years.

In the opinion of the Tribunal the breach by Councillor Treloar was significant. Although the Tribunal has no doubt that Councillor Treloar believed he did not have the relevant interest considering all of the material available at the time, this view was not correct.

The Tribunal doubts whether, in the atmosphere of intense controversy and public debate, it was reasonable to rely on local estate agents for advice. Furthermore, the quality of that advice has not been tested. It was certainly not reasonable for Councillor Treloar to rely on the opinion of McConaghy to the exclusion of the Council's own planner and independent consultants who had concluded that it was likely that the proposal would have significant adverse impacts upon traders within the CBD. The decision to be made by the Council, if in favour of the McConaghy proposal, would have had both immediate and long-term impacts on the properties and traders within the CBD.

In Councillor Treloar's favour is that none of his actions was clandestine or dishonest. The fact that he may have an interest was known by all councillors and throughout the wider community. In fact, along with some other councillors, his interests were a matter of public debate. Furthermore, his vote was not critical to the outcome of the

matters before the Council. The McConaghy proposal was lost without the vote of Councillor Treloar.

In all the circumstances, and mindful of the action taken by the Tribunal in other matters, the Tribunal is of the view that Councillor Treloar's action warrants a period of suspension from office. The period should be sufficient to recognise the serious nature of the obligation which he has breached. It is important to recognise that the legislature has carefully set out the parameters which must be adhered to when matters of pecuniary interest of councillors arise. Failure to observe these parameters has the potential to seriously undermine the confidence of the community in local government and prejudice effective decision-making. In all the circumstances the Tribunal is of the opinion that suspension for a period of four(4) months is appropriate.

The Tribunal is mindful of the significance of this decision in other local government areas. Obviously any person who owns commercially zoned property or conducts a retail business in a country centre will be concerned about the decision in the present matter whenever a proposal for retail development comes before them. The important elements which need to be identified are whether the proposal will not only directly compete with the Councillor's business but also whether it may have adverse effects on their interests because it may impact upon the retail structure or commercial viability which presently exists in the relevant commercial area. If any of these issues arise, a pecuniary interest is likely to exist.

BREACHES OF SECTION 449 OF THE ACT

Section 449 of the Act provides:

- “(1) A councillor or designated person must complete and lodge with the general manager, within 3 months after becoming a councillor or designated person, a return in the form in Part 1 of Schedule 3.*
- (2) A person need not lodge a return within the 3-month period after becoming a councillor or designated person if the person lodged a return in the previous year or if the person ceases to be a councillor or designated person within the 3-month period.*

- (3) *A councillor designated person holding that position at 30 June in any year must complete and lodge with the general manager within 3 months after that date a return in the form in Part 1 of Schedule 3.*
- (4) *A person need not lodge a return within the 3-month period after 30 June in a year if the person lodged a return under subsection (1) within 3 months of 30 June in that year.*
- (5) *Nothing in this section prevents a councillor or designated person from lodging more than one return in any year.*
- (6) *Nothing in this section or Schedule 3 requires a person to disclose in a return lodged under this section an interest of the person's spouse or de facto partner or a relative of the person."*

Although in each relevant year Councillor Treloar lodged the necessary return, he failed in each year to file an accurate return. Various interests were omitted. The omissions are set forth in the following table:

	1996-97 return	1997-98 return	Amended 1998-99 return
Real Estate	2 parcels of farming land forming part of "Glenbrook" - 1/338469 & 1/745074	2 parcels of farming land forming part of "Glenbrook" - 1/338469 & 1/745074	2 parcels of farming land forming part of "Glenbrook" - 1/338469 & 1/745074
Sources of income		T J Treloar & Co Pty Ltd	
Directorships		Poltrip Pty Ltd T J Treloar Pty Ltd	Poltrip Pty Ltd
Position as secretary	J M Treloar Pty Ltd	J M Treloar Pty Ltd	J M Treloar Pty Ltd
Shareholdings	J M Treloar Pty Ltd T J Treloar & Co Provident Pty Ltd	J M Treloar Pty Ltd T J Treloar & Co Provident Pty Ltd	T J Treloar & Co Provident Pty Ltd

There is no suggestion that Councillor Treloar was dishonest or intended or could gain any advantage from the non-disclosure. His substantial interests were otherwise appropriately disclosed and were well known both in the Council and the wider community.

However, it has previously been stated by the Tribunal that a failure to comply with section 449 is a serious matter. The public has a right at all times to know by inspection

of the Council's Pecuniary Interest Register where a councillor's financial interests lie. A failure to lodge an accurate return denies the public of a complete understanding of the Councillor's situation during the time of the breach.

In the present case, the Tribunal accepts that the omissions were occasioned by inadvertence and lack of sufficient care with respect to the compilation of the return.

The appropriate response from the Tribunal is to counsel Councillor Treloar to exercise greater care in ensuring that his returns are full and accurate. Any further breach could be expected to be met with a far more severe response from the Tribunal.

THE TRIBUNAL'S ORDER

The Tribunal's order is as follows:

The Local Government Pecuniary Interest Tribunal HAVING FOUND that a complaint against Councillor James Morrison Treloar of Tamworth City Council, namely that having a pecuniary interest in a matter before the Council at its meeting of 25 August 1998 and having a pecuniary interest in a matter before the Council at its meeting of 13 October 1998, he failed to disclose that interest to the meeting, took part in consideration and discussion of the matters and voted on questions relating to the matters in contravention of the provisions of section 451 of the Act has been proved NOW ORDERS pursuant to section 482(1) of the Act that Councillor James Morrison Treloar be and he is hereby suspended from civic office for a period of four (4) months commencing on 1 June and expiring on 30 September 2000.

The Tribunal's order will be furnished to Councillor Treloar, the Director-General and Tamworth City Council forthwith.

Copies of the Tribunal's Statement of Decision will be provided to Councillor Treloar and the Director-General in accordance with section 484(1). Pursuant to section 484(3), copies will also be provided to Tamworth City Council and such other person as the Tribunal thinks fit.

Dated: 11 May 2000



A handwritten signature in black ink, appearing to read 'P. D. McClellan', written in a cursive style.

**P. D McCLELLAN QC
DEPUTY MEMBER
PECUNIARY INTEREST TRIBUNAL**