

LOCAL GOVERNMENT PECUNIARY INTEREST TRIBUNAL

PIT NO 3/1995

REPORT FROM DIRECTOR-GENERAL,
DEPARTMENT OF LOCAL GOVERNMENT OF
INVESTIGATION UNDER SECTION 462(1) LOCAL
GOVERNMENT ACT, 1993

RE: FORMER COUNCILLOR JOHN OASTLER
WARD, MAYOR OF ASHFIELD MUNICIPAL
COUNCIL

STATEMENT OF DECISION

Dated: 16 January 1997

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INTRODUCTION

Two residents of Sloane Street, Summer Hill, which is in the area of Ashfield Municipal Council, lodged with the Director-General, Department of Local Government, written complaints against the then Mayor Councillor Dr John Oastler Ward, of alleged breaches by him of pecuniary interest provisions of the Local Government Act, 1993.

Councillor Ward served as a member of Ashfield Municipal Council for 18 years from 1977 to 1995 and was Mayor from 1991 - 1995. Although he is no longer a Councillor it will be convenient to refer to him as Councillor Ward for present purposes.

The relevant provisions of the Act are:

451. (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 member must not vote on any question relating to the matter.

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 ...

(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 ...

Each complainant lodged a statutory declaration giving particulars of the grounds of the complaint as required by section 460(2) of the Act, the first being dated 6 October 1994 and the second 6 March 1995. Both complaints related to proposals before the Council for revision of what was known as the North Summer Hill Local Area Traffic Management Plan (LATM). The streets particularly affected by the proposals under consideration included Dover Street, the easterly section of Kensington Road between Dover Street and Sloane Street, and Sloane Street. It is not necessary to detail all of the traffic movements generated in these streets by traffic flow from adjacent streets that was under consideration. It is sufficient for present purposes to mention that the eastern section of Kensington Road provided a link between Dover Street and Sloane Street for traffic from Grosvenor Crescent and Parramatta Road using Dover Street to connect with Sloane Street as well as for traffic in the other direction seeking access to Dover Street.

Local councils are involved in proposals to introduce or alter traffic controls. There is quite a complex procedure to be followed. Prior to 4 October 1994 a number of steps in the procedure had occurred going back to March 1993 in the course of which Councillor Ward had been an active proponent of measures designed to reduce the traffic flow in east Kensington Road.

On 26 September 1994 the Council had received a proposal for a revision of the North Summer Hill LATM prepared by a firm of professional traffic consultants employed by the Council. Included in the proposal was a

plan to reduce traffic in Dover Street and east Kensington Road by, first, extending a median in Dover Street to prevent right hand turns from Dover Street into Kensington Road and U-turns in Dover Street, secondly, by half closing Kensington Road to prevent left hand turns into Kensington Road from Dover Street and, thirdly, by erecting "No Access to Grosvenor Crescent" signs in Kensington Road and Sloane Street. This proposal was estimated to reduce traffic movements in Kensington Road from 1,500 vehicles per day to 100 vehicles per day.

The consultants' proposal came up for consideration by the Council's Technical Services Committee at its meeting on 4 October 1994. The Committee resolved to recommend to the Council that the proposal be adopted. Council at its ordinary meeting which followed the meeting of the Technical Services Committee on the same day resolved to adopt the proposal. Councillor Ward was present at both meetings when the proposal was under consideration, addressed the Technical Services Committee meeting and did not declare a pecuniary interest in the matter.

THE COMPLAINTS

The two complaints varied as to detail but the substance of each of them was that Councillor Ward owned a residence and lived at 23 Kensington Road and the reduction of traffic flow in his section of the road which would be achieved if the proposal adopted by Council came to be implemented would not only improve the amenity of the environment but would also enhance the value of the properties in that section of Kensington Road, including Councillor Ward's property. It was alleged, therefore, that Councillor Ward had a pecuniary interest in the proposal because of a reasonable likelihood or expectation of appreciable financial gain if the proposal was adopted by the Council and was afterwards put into effect. The complaints asserted that Councillor Ward, by failing to disclose his interest at the meetings in question and by taking part in the consideration or discussion of the proposal and voting on questions relating to it, contravened section

451 of the Act.

The first complainant also complained of a breach by Councillor Ward of a provision of the Council's Code of Conduct dealing with conflicts of interest. Clause 4.1 of the Code provides:

“A Councillor, member of staff or delegate must avoid and appropriately resolve any conflict or incompatibility between his or her private or personal interests and the impartial performance of his or her public or professional duties.”

The complainant alleged that the measures for which Councillor Ward had been campaigning and which would be achieved if the proposal adopted by the Council on 4 October 1994 was implemented would divert traffic from Councillor Ward's street on to Sloane Street and, as well as increasing the value of properties in Councillor Ward's street, would result in a decrease in the value of properties in Sloane Street. The complaint accused Councillor Ward of displaying a “blatant disregard for the amenity and interests of residents in Sloane Street and violating his duty under the Code to avoid a conflict between Councillor Ward’s private and personal interests and the impartial performance of his public duties.” The complainant said that he did not bear any personal ill will against Councillor Ward and was not concerned with or involved in local politics but he was motivated to make his complaint because of his objection to what he called “the Mayor’s blatant abuse of power and misuse of office” that had resulted in such adverse consequences for the complainant and other residents in the complainant’s street. The complainant argued that the proposed diversion was not logical because modifications could be implemented to slow traffic down in Dover Street and east Kensington Road without abolishing the traffic altogether and diverting it on to one other street.

The second complaint was confined to a breach of the pecuniary interest provisions of the Act on the basis that the proposal would increase the value of Councillor Ward's property in Kensington Road but it also accused Councillor Ward of not acting impartially on the matter.

INVESTIGATION

The Director-General has the power to investigate a complaint that complies with the requirements of the Act as the present complaints did: section 462; but he may decide to take no action if he considers that the complaint falls into any of a number of specified categories which include (a) the complaint is frivolous, vexatious or not made in good faith and (b) the subject matter of the complaint is trivial or does not warrant investigation: section 463(1). After receiving the first complaint the Director-General wrote to Councillor Ward inviting him to comment upon the allegations before deciding whether the matter should be the subject of an investigation.

Councillor Ward's Response

The Director-General's letter, dated 4 January 1995, appears to have been greeted with derision by Councillor Ward who returned it to the Director-General endorsed with handwritten notes made on the original letter, two of which read as follows:

"I live in the municipality of which I am an Alderman - is that pecuniary interest? For crying out loud ..."

"463(1)(a) & (b) are obviously relevant here. Life is too short to entertain such idle frivolities son."

Having thereafter obtained relevant information from the General Manager of the Council, the Director-General decided to conduct an investigation into the complaints and on 4 May 1995 notified Councillor Ward, both complainants, Council's General Manager and this Tribunal. Notification to this Tribunal is required by section 465 of the Act. The terms of reference for the investigation under section 462 of the Act were as follows:

"To investigate the conduct of Councillor John Ward in respect of the requirements of section 451 of the Local Government Act, 1993 - disclosures and participation in meetings - in relation to his participation in Council and Council committee meetings since 1 July 1993 concerning the proposed traffic management arrangements involving Kensington Road, Summer Hill."

In June 1995 officers of the Department attempted to arrange an interview with Councillor Ward at his convenience but he eventually advised

that he did not intend to meet with them. They informed him that if he changed his mind a time would be arranged. He never did so.

The Council's Response

On 19 May 1995 the Council's General Manager wrote to the Director-General acknowledging the notice of his decision to investigate the complaints and stating that, after consultation with Councillor Ward, the General Manager intended to submit the matter to Council at its meeting to be held on 6 June 1995. The General Manager requested the Director-General to provide him with the Director-General's reasons for his decision to conduct a formal investigation. The Director-General replied, explaining the operation of the relevant provisions of the Act dealing with complaints and advising that it was considered that there were insufficient grounds to justify a decision under section 463 of the Act not to investigate the complaints in question. The Director-General's advice was dated 8 June 1995 but meanwhile the Council at its meeting on 6 June 1995 had resolved as follows:

“1.3 That a submission be made to the Director-General indicating that Council considers that the complaint falls into categories (a) and (b) of section 463 of the Local Government Act, 1993.

2.3 That Council protest at the wide interpretation being made by the Department.

3.3 That the matter be referred as a motion for consideration at the 1995 Local Government Conference.”

The Council's response was, to say the least, unusual. The Director-General replied to it in a letter to the General Manager dated 7 August 1995 expressing concern at the Council's misunderstanding of its responsibilities under the pecuniary interest provisions of the Local Government Act and reminding the Council of comments on that subject that had been made by the Independent Commission Against Corruption (ICAC) in its “Report on Investigation into Local Government Public Duties and Conflict of Interest” of March 1992. The Director-General reiterated his previous advice as to his

own statutory duties in dealing with formal complaints under the Act and his obligation to report his investigation to this Tribunal. The letter stated:

“The co-operation of Council could have greatly assisted the Department in its inquiries to resolve this matter. As the matter now stands I have no option but to proceed to formalising a submission to the Pecuniary Interest Tribunal.”

The investigation, which had already commenced, continued until it was completed and a report prepared for the Tribunal. From the Council's files, interviews with the Council's officers and staff and other persons involved and information otherwise obtained by the investigators the full story of Councillor Ward's and the Council's participation in proposals for revising the North Summer Hill LATM, in particular those relating to Kensington Road, was established. The results of the investigation with complete documentation were put together in a report to this Tribunal. The report was received on 22 November 1996.

By section 469 of the Act, the Tribunal may, after considering a report, conduct a hearing into the complaint.

THE REPORT - TRAFFIC PROPOSALS - COUNCILLOR WARD'S ACTIVITIES

The Director-General's Report shows that the traffic proposals affecting Kensington Road were highly controversial and excited strong interest and division amongst the local residents whose streets were affected. For present purposes it is not necessary to recount the detail of the various proposals or the events that took place prior to the Council's Technical Services Committee Meeting and Ordinary Meeting on 4 October 1995.

Two principal points of view were being espoused. The first was that (a) Kensington Road had been a quiet residential street but the existing traffic management plan had substantially increased the amount of through traffic using Kensington Road as a by-pass on to Sloane Street and (b) the plan should be revised so as to introduce measures to reduce that traffic by diverting it elsewhere, thus restoring traffic conditions in Kensington Road to what they were previously. The second was that (a) all of the streets in the

area in question were residential, of the same road classification, and were sharing the traffic flow; (b) compared with the others, Kensington Road was not overburdened with traffic; (c) with the possible exception of installing some device to slow traffic in east Kensington Road, no alteration to the status quo was called for and (d) the proposal for reducing the traffic in Kensington Road would only increase the traffic in the other streets thereby enhancing the amenity and value of properties in Kensington Road at the expense of the amenity and values of properties in the other streets to which the traffic would be diverted.

The material in the Report shows that Councillor Ward strongly espoused the first point of view and actively sought to have it implemented. In April 1993 he made representations to the Ashfield Traffic Committee (ATC) and also to the Council's traffic consultants who had been engaged by the Council to study the problem and make recommendations. He circulated to local residents a copy of his letter to the consultants containing his representations.

In September 1993 a proposal by the Council for a full or part closure of Dover Street was advertised for public comment and, subsequent to submissions closing, the Council in December 1993 resolved that the ATC be asked to consider three options one of which was the closure of Dover Street.

A Special Traffic Committee Meeting in January 1994 rejected the Council's recommendation for full closure of Dover Street because of "overwhelming objections by residents, lack of an accident history and potential impacts on other interests as well as objections from the police, the Road Traffic Authority and the representative of the local member of Parliament all of whom were members of the ATC." The police representative foreshadowed that in the event that the Council went ahead with the proposed closure he would appeal to the Regional Traffic Committee which had power to overrule a Council's decision on traffic matters.

In February 1994 the Council's own Technical Services Committee rejected the proposal, recommending that no further action be taken on the question of the closure of Dover Street on the grounds of overwhelming objections of local residents, the proposed potential effects of the closures on local adjacent streets and businesses as well as the opposition from police, the Road Traffic Authority and the State Member for Ashfield. However, the Council's ordinary meeting on the same date declined to adopt the Technical Services Committee's recommendations and deferred a decision pending a further report upon the matter. Councillor Ward attended and chaired this meeting but did not declare a pecuniary interest.

In March 1994 meetings of the Council recommended that its traffic consultants urgently review the North Summer Hill LATM and adopted a report of the Council's Budget Review Subcommittee which also recommended an urgent review and that funding be transferred to enable it to be undertaken as a matter of urgency. Councillor Ward attended these meetings but did not declare a pecuniary interest.

In September 1994 the consultants furnished their report proposing a revised LATM which included recommendations involving Kensington Road. The complaints lodged against Councillor Ward claim that the consultants' recommendations reflected the influence of Councillor Ward's activities by incorporating proposals consistent with views he had advocated by way of his earlier letter to the consultants and other activities such as an article in the local community newsheet, his letter drop to residents, a newspaper article and sundry facsimile messages to Council officers. Copies of the documents to which the complainants refer are annexed to the Director-General's Report to the Tribunal.

As mentioned already, the recommendations were adopted by the Council at its meeting on 4 October 1994 and included a partial closure of Kensington Road at Dover Street.

The subsequent history may be mentioned briefly. In February 1995 the revised LATM plan was advertised and placed on public display for comments by local residents and the general public. The Council received 372 submissions from residents of surrounding streets relating to the proposed half closure of Kensington Road at its intersection with Dover Street. Forty three percent of these were in favour and fifty seven percent were against the proposal. Submissions supporting the proposal were mainly from Kensington Road, Bogan Street (which runs into Kensington Road) and a section of Dover Street. Submissions against the proposal were mainly from Sloane Street, Grosvenor Crescent and a section of Dover Street.

A matter to be considered by Councils in dealing with traffic questions is "Guidelines for Traffic Facilities" put out by the traffic authorities. Section 2.2 of the Guidelines states that a proposal should be acceptable to a majority of the residents concerned unless the scheme is designed to reduce accidents or is necessary to support an improvement scheme on an arterial road.

The Council's Manager, Works and Engineering Services, made a report to the General Manager dated 30 May 1995 which referred to section 2.2 and noted that the scheme proposed had not achieved majority support from residents and suggested that the Council not proceed with a half road closure at the intersection of Kensington Road and Dover Street but instead consider installing one or two "mid-block threshold" or "slow point" devices in Kensington Road between Sloane and Dover Streets to mitigate traffic speeds and volumes.

This report was considered at the Council's Technical Services Committee meeting on 20 June 1995 which resolved to recommend to the Council that it adopt the traffic consultants' proposals and not the suggestions of the Manager, Works and Engineering Services. The subsequent ordinary meeting of Council adopted the traffic consultants' proposals on the casting

vote of Deputy-Mayor Cassidy who presided at the meeting. Councillor Ward did not attend either of these two meetings.

A rescission motion was defeated at the Council's next meeting on 4 July 1995.

On 18 August 1995 the Council's proposal came before the Ashfield Traffic Committee where the Police and the Road Traffic Authority representatives opposed the traffic consultants' proposal while the Council's and the local member's representative supported it. There being an evenly split decision, the Police Department representative advised the committee that the Police Department was strongly opposed to the proposed half closure of Kensington Road and that should Council decide to proceed with it the Police Department would appeal to the Regional Traffic Committee. The RTA representative supported the Police Department's objection. However both the police and the RTA representatives stated that they would support the construction of a mid-block threshold in Kensington Road between Bogan Street and Dover Street.

The issue came to a conclusion on 5 September 1995 when the Council at its ordinary meeting resolved to adopt the Ashfield Traffic Committee's recommendation to install a mid-block threshold in Kensington Road, and to implement it immediately.

POTENTIAL FOR FINANCIAL GAIN TO COUNCILLOR WARD

In so far as the complaints alleged breaches of the pecuniary interest provisions of the legislation as distinct from provisions of the Council's Code of Conduct, the complainants relied upon an assertion that the proposals before the Council advocated by Councillor Ward were calculated to enhance property values in Kensington Road including property owned by Councillor Ward. In order to investigate this aspect of the complaint the Director-General made a request to the Valuer-General for a report on the question whether there would have been any change in the value of Councillor Ward's property, 23 Kensington Road, in the event of any one or more of the

following having occurred namely, a half closure of Kensington Road at Dover Street, an extension of the median in Dover Street to prevent right hand turns from Kensington Road and U-turns in Dover Street and erection of signs in Kensington Road and Sloane Streets indicating that there was no access to Grosvenor Crescent. The Valuer-General was supplied with all relevant information including a copy of the proposed revision of the LATM and in addition the Valuer-General's representative made his own independent investigation and inquiries.

The Valuer-General subsequently furnished a report to the Director-General dated 13 October 1995. The report stated that the valuation approach adopted was the investigation of recent comparable sales in the North Summer Hill locality to ascertain any increase or decrease in selling prices due to the proposed implementation of the revised local area traffic management scheme. It further stated that it had been assumed that any prudent purchaser would have made the appropriate inquiries with Ashfield Council regarding any significant proposals for the locality, and that the revised scheme would also have been on public exhibition.

Under the heading "Valuation Assessment", the report stated that there was no evidence to suggest any increase or decrease in the value of the subject property in the event that any of the three scenarios put forward had occurred. It went on to state that it was further considered that there would be "no affect" on the value of the subject property if all or any of the suggested scenarios was to proceed or not to proceed subsequent to 4 October 1994.

DECISION OF THE TRIBUNAL AND REASONS

Having considered the entire Report the Tribunal has come to the conclusion that it should not conduct a hearing into the complaints.

Section 470(1) provides that if the Tribunal decides not to conduct a hearing into a complaint, it must provide a written statement of its decision, including the reasons for the decision, to the person who made the complaint

and, if the complaint was not made by the Director-General, to the Director-General.

The reasons for the Tribunal's decision are set out hereunder.

Conflict of Interest in general, as dealt with in the Council's Code of Conduct, includes the case where the interest or an element of the interest giving rise to the conflict is financial; but financial interests have to be distinguished because of the special provisions which apply to them under the Local Government Act.

The experience of the Tribunal has been that because of the special provisions in the Act and the fact that the Act has adopted the term Pecuniary Interest to define the kind of financial interest involved, there is a tendency in some Councillors and others to suppose that a Pecuniary Interest is something entirely different from a Conflict of Interest and then to become confused because the two sometimes appear to be similar or to overlap.

The Code and statutory provisions have common goals, namely, (a) to procure impartiality in the exercise of local government powers by excluding persons whose private interests and public duties in relation to the particular matter conflict, or may to a reasonable person appear to do so, and (b) to promote public confidence in the integrity of those exercising such powers. Thus, where there is a pecuniary interest in a matter before the Council and that interest will be affected for good or bad according to the outcome, there is a conflict of interest at the same time as there is a pecuniary interest; but there can be a conflict of interest without any pecuniary interest. There may be a conflict of interest where the interest in the matter is not financial because it is alien to or incapable of being measured in money and, therefore, not "pecuniary". Examples are cases where the interest is based entirely on personal feelings or connections with family, friends or some educational, social, recreational, or other association of which the person is a member.

The Code of Conduct recognises both the duality and the distinction in the two concepts when, after describing in clause 4.2 when it is that a “conflict of interest” arises, it goes on in clause 4.3 to state, “Where the interest in question is a pecuniary one, the person with the interest must comply with the Act.”

The first complainant in the present case expressly recognised the distinction by alleging that Councillor Ward had breached both the Code and the Act. The second claimant was probably also aware of the distinction although the complaint focused mainly on an alleged breach of the Act. The point of the distinction here is, of course, that this Tribunal is not invested with the power to deal with a breach of the Code of Conduct which is not also a breach of the pecuniary interests provisions of the Act.

As Councillor Ward chose to resort to making cryptic comments and sarcastic notations on the Director-General's perfectly proper letter to him and then declined to be interviewed regarding the complaints lodged against him, his personal appreciation of his legal and other obligations as a Councillor and his awareness and expectations in regard to the possible effect of his actions upon the value of his property are not known to the Tribunal and, without a hearing in which he could be compelled to give evidence, will remain unknown. However, although in the Tribunal's view it could not be said that there was no case for complaining of a breach by Councillor Ward of the Code of Conduct, it is another question whether, in the light of the Valuer-General's Report, a hearing into the complaints of pecuniary interest violations would be justified.

On the face of it, it would not be unreasonable to expect that if the radical reduction in traffic flow in Kensington Road that Councillor Ward's proposals were designed to achieve had occurred, the improvement in the safety and amenity of the area would have been reflected in an increase in the values of residences in that road just as values might be expected to fall in the neighbouring streets to which the traffic would have been diverted. In

the Tribunal's opinion, the complainants could not be criticised for supposing that this was a likely result, or expecting that Councillor Ward would have been aware of the possibility, if not the probability, of an increase in the value of his property.

However, there are many and diverse factors other than traffic conditions which may affect residential property values both generally and in particular areas. Factors such as the quality of the general neighbourhood, proximity to the city, employment, shopping facilities, schools, public transport and other services, affordability of the price range of housing in the area and numerous other considerations may individually or in combination have an overriding effect on traffic conditions when it comes to value. Kensington Road could be seen as located in the centre of an area containing a number of streets bearing heavy traffic in any event, so that even a reduction of traffic in the small section of road in which Number 23 is situated might have no significant influence on the value of the residences there.

The Tribunal considers that, in the absence of some persuasive evidence, the question whether Councillor Ward's proposals or the proposals at the Council meetings which he supported were calculated to affect the value of his property must remain in the area of speculation. The standard of proof which the Tribunal must apply in making its findings is laid down by section 483 of the Act as the balance of probabilities. In the realm of the effects of the Council's decisions on the value of real estate which arises in the present case, the Tribunal would wish to have more than purely theoretical expectation to conclude that it would be more probable than not that the value of Councillor Ward's property would or was likely to be affected.

The Director-General appears to the Tribunal to have asked the Valuer-General the right questions and, in the Tribunal's opinion, the Valuer-General's approach to the task was sound in principle. Valuations of real estate are largely a matter of local knowledge, experience and opinion and it

may be that some other valuer might be found who would take a different view from the Valuer-General's on the question whether the traffic proposals, if implemented, would have had any effect on values, but the Tribunal must take heed of the fact that the Valuer-General could find no evidence to support that view. In these circumstances, a hearing would involve an investigation to discover whether evidence to support a contrary view is available from some other source. Whilst the public interest in having the pecuniary interest provisions of the legislation enforced must be at the forefront of the Tribunal's considerations, an exploration of such a speculative question by way of a public hearing would not, in the Tribunal's opinion, be justified in the present case.

The Tribunal therefore proposes to take no further action on the complaints in this matter. However, there is one further matter that requires attention.

AN ATTITUDE PROBLEM?

The Tribunal's decision not to conduct a hearing cannot be taken as a vindication of the responses of Councillor Ward and Ashfield Council to the Director-General's requests for comment and information regarding the complaints.

In the Tribunal's view, the response by Councillor Ward to the Director-General's letter of 4 January 1995 was unworthy of a responsible Councillor in local government, particularly one holding the office of Mayor. As the letter explained, the Act imposes on the Director-General the responsibility of judging whether a complaint comes within section 463(a) or (b), that is, whether it is frivolous, vexatious, not made in faith, trivial or does not warrant investigation, and the Director-General was affording Councillor Ward the opportunity to comment on the allegations before making a decision.

In the opinion of the Tribunal, the contemptuous tone of Councillor Ward's response was not called for and his comments were out of place.

Having regard to the form and content of the complaint in question, it was well open to the Director-General to consider that the complaint was anything but a “frivolity” as suggested by Councillor Ward's comment and Councillor Ward's further suggestion that because he lived in the municipality of which he was an alderman his interest in the matter could not have been “pecuniary” simply displayed an ignorance of the law. Although not legally bound to submit to an interview by the Department’s investigators, Councillor Ward's subsequent refusal to be interviewed on the matter suggested an unwillingness on his part to accept or conform to the system for investigation of complaints set up by the legislation. No Councillor is above the law in the performance of his duties and, as Mayor, Councillor Ward's responses to the complaint and the investigation did not set a good example to other Councillors.

The response of the Council by its resolution of 6 June 1995 indicated an equal unwillingness on the part of the then Council to accept the system and also some ignorance or misunderstanding of the pecuniary interest obligations of Councillors. It cannot be postulated that because an item of business before the Council relates to traffic matters in the Council's area and, as Councillors live in the area, they will or may be personally affected, they cannot have a pecuniary interest in the matter that will preclude them from participating in the decisions of Council.

The fact that there was no evidence of an effect on value in the present case does not eliminate the possibility in other cases and does not affect the propriety of the Director-General's decision to investigate the question in the present case.

The Tribunal's concern about the apparent attitude of the members of the Council that passed the resolution is prompted not only by its terms but also by statements made to the Department’s investigators by Councillor Edward (Ted) Arthur Cassidy who was Deputy Mayor at the time in question. He told them that the basis of the Councillors’ support for that resolution was

that, "They could not understand how a Councillor could have a pecuniary interest in a matter that Councillors consider is part of their job, part of their role to take part in, that is traffic issues as being one of them." He said that Councillors for many years had been considering traffic committee reports that involved their own street and streets close by and that "no-one had ever perceived that a traffic matter could be considered a pecuniary interest" (Director-General's Report, Annexure 17, Transcript of interview, pp.7.1, 14.8).

In the Tribunal's view, that assumption, in so far as it purports to exclude all traffic matters, including those affecting a street in which a Councillor lives, from the possibility of a pecuniary interest arising, is incorrect and may lead a Councillor into error. Circumstances alter cases and it is not difficult to suppose a traffic management issue before Council the outcome of which could have a significant effect on the value of property, whether residential or commercial, in which a Councillor had an interest.

In accordance with section 470 of the Act the Tribunal will provide copies of this Statement of Decision to the complainants and the Director-General. Copies will also be provided to former Councillor Ward and Ashfield Municipal Council.

DATED: 16 January 1997



K J HOLLAND Q.C.
Pecuniary Interest Tribunal