

General Purpose Standing Committee No. 4

# **Badgerys Creek land dealings and planning decisions**

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## Terms of reference

1. That General Purpose Standing Committee No. 4 inquire into and report on land dealings and planning decisions relating to land or interests in land held solely or jointly by Ron Medich Properties Pty Ltd and Roy Medich Properties Pty Ltd in or around Badgerys Creek, and in particular:
  - a. identification of land or interests in land in or around Badgerys Creek held solely or jointly by Ron Medich Properties Pty Ltd and Roy Medich Properties Pty Ltd or any company or body or individual associated with such companies and/or what is referred to in the Department of Planning documents as the Medich Property Group,
  - b. the roles of the Minister for Planning, the office of the Minister for Planning, any other Minister, the Department of Planning, and any other NSW Government department or agency past or present, or any individual within the said entities, in decisions or assessments relating to that land, including, but not limited to, decisions or assessments on the Western Sydney Employment Lands Investigation Area,
  - c. the roles of any member of Parliament, the office of any member of Parliament or any other party in dealing with the land,
  - d. the roles and activities of the State Labor party head office and any other registered political party office and any lobbyist in relation to these matters,
  - e. legislative reforms to enhance the integrity of, and public confidence in, the planning and development assessment system, and
  - f. other relevant matters arising from the Government's planning policies and decisions.
2. That the Committee report by 20 November 2009.<sup>1</sup>

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<sup>1</sup> LC *Minutes* No. 114, 9 September 2009, Item 229, p 135

## Committee membership

<b>Hon Jenny Gardiner MLC</b>	The Nationals	<i>Chair</i>
<b>Hon Amanda Fazio MLC<sup>2</sup></b>	Australian Labor Party	
<b>Hon Kayee Griffin MLC</b>	Australian Labor Party	
<b>Ms Sylvia Hale MLC</b>	The Greens	
<b>Hon Greg Pearce MLC<sup>3</sup></b>	Liberal Party	
<b>Hon Roy Smith MLC</b>	Shooters Party	
<b>Hon Mick Veitch MLC<sup>4</sup></b>	Australian Labor Party	

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<sup>2</sup> Substituting for Hon Henry Tsang MLC.

<sup>3</sup> Substituting for Hon David Clarke MLC.

<sup>4</sup> Substituting for Hon Lynda Voltz MLC.

# Table of contents

	Chair's foreword	ix
	Summary of recommendations	xi
<b>Chapter 1</b>	<b>Introduction</b>	<b>1</b>
	<b>Terms of reference</b>	<b>1</b>
	<b>Submissions</b>	<b>1</b>
	<b>Site visit to Badgerys Creek</b>	<b>1</b>
	<b>Public hearings</b>	<b>1</b>
	<b>Order for papers</b>	<b>2</b>
	<b>Inquiry background</b>	<b>2</b>
	<b>Public perception</b>	<b>3</b>
	<b>Land owned by the Badgerys Creek Consortium</b>	<b>4</b>
	<b>Police and ICAC investigations</b>	<b>4</b>
	<b>Report structure</b>	<b>5</b>
<b>Chapter 2</b>	<b>Major projects &amp; employment lands in western Sydney</b>	<b>18</b>
	<b>State Significant Sites</b>	<b>18</b>
	Committee comment	20
	Standing Committee on State Development Inquiry into the planning framework	20
	Committee comment	21
	<b>Strategic planning for employment lands in western Sydney</b>	<b>21</b>
	Western Sydney Employment Lands Investigation Area	22
	Support for release of additional employment lands	23
	Committee comment	24
<b>Chapter 3</b>	<b>Meetings and communications</b>	<b>26</b>
	<b>Key meetings and communications involving Department of Planning officials</b>	<b>26</b>
	11 September 2006 meeting	26
	20 February 2007 meeting	27
	15 August 2007 meeting	27
	21 August 2007 letter	28
	14 December 2007 meeting	28

24 January 2008 – 6 January 2009 meetings and communications	29
11 February 2008 meeting	29
5 May 2008 meeting	30
August – October 2008 telephone conversations	31
9 March 2009 meeting	32
15 June 2009 meeting	32
2 September 2009 meeting	32
Week of 7 – 11 September 2009 teleconference	33
Other meetings involving Departmental officials and Mr Graham Richardson	33
<b>Did the meetings influence planning decisions regarding the Medich site?</b>	<b>34</b>
Committee comment	37
<b>Due process of meetings with development proponents and their representatives</b>	<b>37</b>
Protocols for meetings involving the Minister and Director General	37
Protocols for meetings involving Departmental officers	39
Committee comment	40
<b>Improved Departmental processes</b>	<b>41</b>
Awarding of consultancy work	41
Committee comment	42
Timely advice to development proponents	43
Committee comment	44
<b>Conduct of other members of Parliament</b>	<b>44</b>
Hon Joseph Tripodi MP	44
Hon John Robertson MLC	46
Hon Eddie Obeid MLC	46
Hon Ian Macdonald MLC	46
Hon Phillip Costa MP	47
Other members of NSW Parliament	47
Committee comment	48
<b>Chapter 4 Transparency in decision-making</b>	<b>50</b>
<b>Lobbyists</b>	<b>50</b>
Services provided by lobbyists	50
Services provided by lobbyist Mr Graham Richardson	51
Role of lobbyists in the planning system	52
NSW Lobbyist Code of Conduct	54
Should ministers be informed of meetings between Departmental officers and lobbyists?	55
Regulation of lobbyists across Australia	56
Effectiveness of lobbyist regulation in New South Wales	58
Committee comment	58
<b>Political donations</b>	<b>61</b>
Political donations by Medich Property Group	61
Did political donations influence planning decisions regarding the Medich site?	62

	Do developer donations influence planning decisions in New South Wales?	63
	Fundraising events	64
	Reforms of NSW electoral funding scheme	65
	Committee comment	67
	<b>Impact of public perceptions on the property development industry in NSW</b>	<b>70</b>
	Committee comment	72
<b>Chapter 5</b>	<b>Outstanding issues</b>	<b>73</b>
	Questions on notice	73
	Reporting date	73
<b>Appendix 1</b>	<b>Submissions</b>	<b>75</b>
<b>Appendix 2</b>	<b>Hearings and site visits</b>	<b>76</b>
<b>Appendix 3</b>	<b>Tabled documents</b>	<b>78</b>
<b>Appendix 4</b>	<b>Map of Western Sydney Employment Lands Investigation Area</b>	<b>79</b>
<b>Appendix 5</b>	<b>Communications between Mr Norman Johnston and Planning Workshop Australia</b>	<b>80</b>
<b>Appendix 6</b>	<b>Minutes</b>	<b>81</b>
<b>Appendix 7</b>	<b>Dissenting statements</b>	<b>106</b>

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## Chair's foreword

On 3 September 2009, Sydney businessman Mr Michael McGurk was shot and killed outside his family home. It was later revealed that prior to his death Mr McGurk made an audio tape recording of a conversation between himself and property developer Mr Ron Medich, which Mr McGurk alleged implicates senior NSW Government figures in bribery and corruption involving land dealings at Badgerys Creek.

The land in question is owned by brothers Mr Ron and Mr Roy Medich. Since 2005 the Medich brothers have sought to have their land rezoned for employment purposes. According to media reports, the brothers stand to make a windfall profit if the site is rezoned.

This Inquiry has come about due to allegations that property developers and their representatives, particularly professional lobbyists, exert undue influence on planning decisions, either through having special access to government officials, or through making political donations.

The potential influence of property developers in the planning system was a major issue in the Inquiry. The Committee therefore considered ways to improve transparency and integrity in planning decision-making. The Committee has made recommendations to strengthen regulations pertaining to contact between planning officials and development proponents and their representatives (particularly registered lobbyists). The Committee also calls for wide-ranging reform of the NSW electoral funding scheme, and in particular, tighter regulation of political donations.

The NSW Government, subsequent to the Committee's public hearings, and courtesy of announcements made by Premier Rees, has given tacit confirmation to the Committee's view that substantial and urgent reform is required with respect to both the protocols relating to contact between planning officials, property developers and lobbyists, as well as the NSW political donations and election funding framework.

The Committee notes that the Inquiry by the NSW Legislative Council Select Committee on Electoral and Political Party Funding, which had wide-ranging terms of reference and which produced recommendations that gained broad cross-Party support, reported in June 2008. That Committee's recommendations provided the NSW Government with the groundwork to go ahead and introduce major reforms. It is a pity that, with a further round of allegations about 'decisions for donations', the Premier's response has been to set up yet another parliamentary inquiry into the same topic, instead of proceeding to implement the Select Committee's recommendations.

It is clear, though, that the conduct of the Inquiry into Badgerys Creek land dealings and planning decisions by General Purpose Standing Committee No. 4 has jolted Premier Rees into making some announcements on key issues considered by the Committee and which go to many of its recommendations.

Additionally, a much broader inquiry into the NSW planning system is being undertaken by the NSW Legislative Council Standing Committee on State Development. This Inquiry does not intend to duplicate the work of the State Development Committee, or pre-empt its report, which is expected to be tabled by December 2009. This report of the Inquiry into Badgerys Creek land dealings and planning decisions does, however, urge the NSW Government to respond quickly to the State

Development Committee's report and particularly with respect to recommendations designed to reform the NSW planning framework.

The Committee recommends that, in reforming the State's planning framework, the NSW Government needs to ensure that the planning framework is amended to incorporate principles to guide the integration of planning decision-making with infrastructure planning and economic development priorities.

The Committee would like to thank Inquiry participants for their involvement in the Inquiry.

I would also like to thank my committee colleagues, and on their behalf thank the committee secretariat, Hansard and all other staff of the Parliament who assisted the Inquiry.



Hon Jenny Gardiner MLC  
**Committee Chair**

## Summary of recommendations

- Recommendation 1** **21**  
 That upon the tabling of the report of the NSW Legislative Council Standing Committee on State Development on the NSW planning framework, the NSW Government should respond quickly to any recommendations made in the report, in particular any recommendations designed to reform the NSW planning framework.
- Recommendation 2** **24**  
 That the NSW Government ensure that the State's planning framework is amended to incorporate principles to guide the integration of planning decision-making with infrastructure planning and economic development priorities.
- Recommendation 3** **40**  
 That the Minister for Planning establish protocols to be applied to all meetings between Departmental officers with development proponents and their representatives. At a minimum, the meeting protocols should contain guidelines regarding venues, properly recorded minutes and the requirement for the third party presence of at least two Departmental officers.
- Recommendation 4** **41**  
 That the Minister for Planning establish record-keeping guidelines to be applied to all telephone conversations between Departmental officers and development proponents and their representatives.
- Recommendation 5** **43**  
 That the Minister for Planning ensure that the Department of Planning's procurement procedures are publicly available, and that where there are circumstances under which it is justifiable that procurement procedures are not adhered to, that these should also be made public. Disclosures relating to procurements and consultancies should appear in the Department of Planning's annual report.
- Recommendation 6** **44**  
 That the Minister for Planning ensure that development proponents are provided with regular and timely updates on the progress of their proposals.
- Recommendation 7** **59**  
 That the Premier strengthen the NSW Lobbyist Code of Conduct to require that each minister is informed at regular intervals of contact between government representatives and registered lobbyists.
- Recommendation 8** **59**  
 That the Premier strengthen the NSW Lobbyist Code of Conduct by publishing a report on the internet at regular intervals detailing contact between government representatives and registered lobbyists. The report should include the name of the lobbyist, date of contact, meeting attendees (if applicable) and issues discussed.

**Recommendation 9****60**

That the Premier strengthen the NSW Lobbyist Code of Conduct by establishing protocols to be applied to all meetings between government representatives and registered lobbyists. At a minimum, the meeting protocols should contain guidelines regarding venues, properly recorded minutes and the requirement for the third party presence of at least one government representative.

**Recommendation 10****60**

That the Premier direct the Minister for Planning, in developing a new NSW Lobbyist Code of Conduct, to review Lobbyist Codes of Conduct in other Australian jurisdictions. The Planning Minister should consider whether any of the provisions contained in these Codes should be incorporated into the NSW Lobbyist Code of Conduct, and report to Parliament on the outcomes of that review and changes the Premier proposes to make to the Code.

**Recommendation 11****70**

That the Premier adopt the model for funding of the NSW electoral scheme proposed by the NSW Legislative Council Select Committee on Electoral and Political Party Funding, and implement the Committee's recommendations in full. The key provisions of the model are to:

- ban political donations by corporations and other organisations
- cap individual donations
- cap election spending
- make disclosure of donations and election spending more timely and transparent
- introduce greater policing of the electoral funding scheme, and tougher penalties for non-compliance.

## Chapter 1 Introduction

This Chapter provides an overview of the manner in which the Inquiry was conducted and the structure of the report.

### Terms of reference

- 1.1 The Inquiry's terms of reference were referred to the Committee by the Legislative Council on 9 September 2009. The terms of reference require the Committee to inquire into and report on land dealings and planning decisions relating to land or interests in land held solely or jointly by Ron Medich Properties Pty Ltd and Roy Medich Properties Pty Ltd in or around Badgerys Creek. The terms of reference are reproduced on page iv.
- 1.2 A media release announcing the Inquiry was distributed on 10 September 2009.

### Submissions

- 1.3 The Committee invited submissions by advertising in the *Sydney Morning Herald*, the *Daily Telegraph*, the *Liverpool Leader* and the *Liverpool City Champion*. The Committee also wrote to key stakeholders inviting them to make a submission to the Inquiry. The closing date for submissions was 25 September 2009 and was later extended to 19 October 2009.
- 1.4 The Committee received a total of 15 submissions. A list of submissions is contained in Appendix 1. The published submissions to the Inquiry are available on the Committee's website: [www.parliament.nsw.gov.au/gpsc4](http://www.parliament.nsw.gov.au/gpsc4).

### Site visit to Badgerys Creek

- 1.5 The Committee conducted a site visit to Badgerys Creek and the Western Sydney Employment Lands Investigation Area on 21 September 2009. Officers from the Department of Planning accompanied the Committee.

### Public hearings

- 1.6 The Committee held two public hearings at Parliament House and heard from a number of witnesses. Committee members also submitted written questions on notice to witnesses after each hearing. A list of witnesses is reproduced in Appendix 2. The transcripts of the hearings are available on the Committee's website.
- 1.7 The Committee would like to thank all individuals and organisations that made a submission or gave evidence to the Inquiry.

## Order for papers

- 1.8 Notwithstanding the Committee's power to order the production of documents, delegated to it under standing order 208(c) by the House, on 22 September 2009 the Chair, the Hon Jenny Gardiner MLC, advised the Committee of her intention to give notice of a motion in the House to order the production of papers relating to Badgerys Creek land dealings and planning decisions the following day. The motion was made by Miss Gardiner in her capacity as a member of the Legislative Council.
- 1.9 The papers were delivered and tabled in the Legislative Council on 20 October 2009. A claim of privilege was made over several of these documents.

## Inquiry background

- 1.10 On 3 September 2009, Sydney businessman Mr Michael McGurk was shot and killed outside his family home. It was later revealed that prior to his death Mr McGurk made an audio tape recording of a conversation between himself and property developer Mr Ron Medich, which Mr McGurk alleged implicates senior NSW Government figures in bribery and corruption involving land dealings at Badgerys Creek.<sup>5</sup>
- 1.11 The land in question is a former CSIRO site purchased by Mr Ron Medich and his brother, Mr Roy Medich, for \$3.5 million<sup>6</sup> in 1997.<sup>7</sup> The 344.7 hectare lot at Badgerys Creek (hereafter referred to as 'the Medich site') was, and still is, zoned for rural use.<sup>8</sup>
- 1.12 At the time of purchase, the Federal Government had earmarked Badgerys Creek as the site for a second Sydney airport.<sup>9</sup> However in December 2000, the Federal Government deferred plans to build a second airport,<sup>10</sup> and in December 2008 it officially announced that it would not progress with the construction of an airport at Badgerys Creek.<sup>11</sup>

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<sup>5</sup> 'Did he know too much? – Execution bombshell: Political corruption claims', *Daily Telegraph*, 5 September 2009, p 1; 'Premier Nathan Rees says he had no knowledge of alleged Michael McGurk tape', *Herald Sun*, 5 September 2009; 'How a quiet bush block turned into a goldmine', *Sydney Morning Herald*, 7 September 2009, p 1

<sup>6</sup> 'How a quiet bush block turned into a goldmine', *Sydney Morning Herald*, 7 September 2009, p 1

<sup>7</sup> Tabled document, Mr Roy Medich, *Badgerys Creek Chronology*, p 1

<sup>8</sup> Submission 7, NSW Department of Planning, p 42

<sup>9</sup> Williams P, 'Second Sydney Airport - A Chronology,' Background Paper 20 1997-98, Economics, Commerce and Industrial Relations Group, 29 June 1998, <<http://www.apf.gov.au/library/pubs/BP/1997-98/98bp20.htm>> (accessed 6 October 2009)

<sup>10</sup> 'Government scraps plans for a second Sydney airport', *7.30 Report*, 13 December 2000, <<http://www.abc.net.au/7.30/stories/s223624.htm>> (accessed 14 October 2009)

<sup>11</sup> Department of Infrastructure, Transport, Regional Development and Local Government, 'National Aviation Policy Green Paper: Flight Path to the Future', December 2008, p 17

- 1.13** Since 2005, the Medich Property Group Pty Limited (established and controlled by the Medich brothers)<sup>12</sup> has sought to have the Medich site rezoned for employment purposes. According to media reports, the Medich brothers stand to make a windfall profit if the site is rezoned as employment land.<sup>13</sup>
- 1.14** This Inquiry was established to examine claims of undue influence on planning decisions in relation to the Medich site.

## Public perception

- 1.15** The Inquiry provided some evidence of a public perception that planning decisions can be influenced by professional lobbyists, who may appear to have special access to government officials,<sup>14</sup> and by political donations from developers.
- 1.16** A number of submission authors expressed the view that planning and development processes in New South Wales are corrupt, or have the potential to be corrupt, and that developer donations can lead to fraud, bribery and preferential treatment by the Government.<sup>15</sup> A lack of public confidence in the NSW planning system was raised as an issue.<sup>16</sup>
- 1.17** Development proponents and their representatives and witnesses from the Department of Planning denied the occurrence of undue influence, however some agreed that a negative public perception regarding transparency in planning decisions does exist.<sup>17</sup> This perception was fuelled by media reports released after Mr McGurk's death, which suggested that property developers and their representatives unduly influence government planning decisions.<sup>18</sup>
- 1.18** After the Committee's public hearings, and on the weekend before this Inquiry report was due to be tabled, the Premier, the Hon Nathan Rees MP, confirmed that these perceptions exist.

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<sup>12</sup> University of Western Sydney Board Members, <[http://www.uws.edu.au/about\\_uws/uws/governance/board\\_of\\_trustees/board\\_of\\_trustees\\_membership2/board\\_of\\_trustees\\_membership](http://www.uws.edu.au/about_uws/uws/governance/board_of_trustees/board_of_trustees_membership2/board_of_trustees_membership)> (accessed 14 October 2009)

<sup>13</sup> 'How a quiet bush block turned into a goldmine', *Sydney Morning Herald*, 7 September 2009, p 1; 'ICAC to examine McGurk murder', *The Australian*, 8 September 2009, p 7

<sup>14</sup> Submission 1, Name suppressed, p 1

<sup>15</sup> Submission 2, Name suppressed, p 2; Submission 5, Wollongong Against Corruption, p 1; Submission 8, Ms Jill Walker, p 5; Submission 12, Mr Mark Stevens, p 1

<sup>16</sup> Submission 13, The Greens NSW, p 11; Mr Ken Morrison, Executive Director, Property Council of Australia (NSW), Evidence, 19 October 2009, pp 25-26

<sup>17</sup> Mr Sam Haddad, Director General, NSW Department of Planning, Evidence, 19 October 2009, p 52; Mr Roy Medich, Evidence, 29 September 2009, p 28; Mr Graham Richardson, Evidence, 19 October 2009, p 40

<sup>18</sup> 'Did he know too much? – Execution bombshell: Political corruption claims', *Daily Telegraph*, 5 September 2009, p 1; 'Politicians 'not implicated' in McGurk tape', *ABC News*, 6 September 2009; 'How a quiet bush block turned into a goldmine', *Sydney Morning Herald*, 7 September 2009, p 1

In his address to the 2009 NSW Labor Party State Conference, the Premier referred to the Department of Planning and said:

Like planning departments everywhere, to do its job properly our department must engage directly with business and the community.

But there is a clear perception that outside influences have attempted to take advantage of the need for genuine industry consultation.<sup>19</sup>

## Land owned by the Badgerys Creek Consortium

- 1.19** In addition to the Medich site, two other parcels of land at Badgerys Creek have been referred to during this Inquiry – the first owned by the University of Sydney, and the second owned by brothers Mr Joe and Mr Daniel Damjanovich. Together with the Medich Property Group, the three parties form the Badgerys Creek Consortium. The Consortium was created for the purpose of redeveloping the parties' joint land holding at Badgerys Creek, which has a combined area of 875 hectares.<sup>20</sup>
- 1.20** The University of Sydney site, adjacent to the Medich site, covers approximately 490 hectares.<sup>21</sup> The University entered into early arrangements to develop their land with the Medich Property Group around 2005/06, which ultimately resulted in the formation of the Badgerys Creek Consortium.<sup>22</sup> The Damjanovich site, also adjacent to the Medich site, covers 40 hectares.<sup>23</sup> The Damjanovich brothers joined the Consortium in 2007.<sup>24</sup>

## Police and ICAC investigations

- 1.21** At the time of writing there is an ongoing murder investigation into Mr McGurk's death being conducted by the NSW Police.
- 1.22** The NSW Police reported the 'Michael McGurk matter' to the Independent Commission Against Corruption (ICAC) and met with the Commission on 7 September 2009.<sup>25</sup> The ICAC is undertaking its own preliminary investigation of the matter.

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<sup>19</sup> Address by Premier Nathan Rees, NSW Labor Party State Conference, 14 November 2009, p 14

<sup>20</sup> 'ICAC to examine McGurk murder', *The Australian*, 8 September 2009, p 7

<sup>21</sup> This figure was calculated by subtracting the 344.7 ha Medich site and 40 ha Damjanovich site from the combined 875 ha area of the Badgerys Creek Consortium's land.

<sup>22</sup> Tabled document, Mr Roy Medich, *Badgerys Creek Chronology*, p 1

<sup>23</sup> 'Link to dead man's land', *Daily Telegraph*, 17 September 2009, p 1

<sup>24</sup> Answers to additional questions on notice, 29 September 2009, Mr Roy Medich, Question 3, p 3

<sup>25</sup> 'Statement regarding Michael McGurk matter', Independent Commission Against Corruption, 7 September 2009, <<http://www.icac.nsw.gov.au/index.cfm?objectID=977B35DC-AAA1-079B-83E51EEA0AA54C55>> (accessed 15 October 2009)



## Report structure

- 1.23** **Chapter 2** provides a brief overview of the planning process for State Significant Sites in New South Wales. It also considers strategic planning in relation to Sydney's employment lands, and the recent NSW Government decision to rezone land in western Sydney for employment purposes.
- 1.24** Key meetings and communications involving Department of Planning officials and the Medich brothers and their representatives are examined in **Chapter 3**, along with the potential involvement of members of the NSW Parliament with the parties or land raised during this Inquiry.
- 1.25** **Chapter 4** concerns transparency in decision-making, including the role played by professional lobbyists in the NSW planning system, and the impact of political donations made by property developers such as the Medich brothers.
- 1.26** **Chapter 5** examines an outstanding issue that was not resolved at the time of the preparation of this report. The issue in question is the answering of questions placed on notice to Mr Graham Richardson, an extension of the reporting date and the possibility of preparing a supplementary report dealing with the answers given by Mr Richardson.

### Timeline of events relating to the Medich site at Badgerys Creek

The Inquiry into Badgerys Creek was relatively short and focused upon one site. However a large volume of documentation was produced as a result of: the public hearings, the order for papers, and the answers to questions on notice. Below is a detailed timeline based upon the evidence submitted, to provide background to this report.

Date	Event
January 1969	Badgerys Creek is one of 11 sites considered by the Federal Government as a possible location for a second Sydney airport. <sup>26</sup>
17 February 1986	The Federal Government announces that Badgerys Creek is to be the site for the second Sydney airport. Land acquisition is to start immediately, but a timetable for construction is to depend on needs. <sup>27</sup>
February 1988	NSW Department of Planning releases ' <i>Sydney Into its Third Century – Metropolitan Strategy for the Sydney Region</i> ', a strategy to guide the development of the Sydney region to accommodate the needs of the growing population. <sup>28</sup>
1989	Department of Planning releases an update of the <i>Metropolitan Strategy</i> , which identifies South Creek Valley as an area for investigation to accommodate future growth in Sydney. South Creek Valley includes the former CSIRO site. <sup>29</sup>
1991	Department of Planning prepares a Regional Environmental Study (RES) and draft Regional Environmental Plan (REP) for the South Creek Valley area. The Land Use Strategy included in the RES identifies the former CSIRO site and other adjoining lands as being suitable for future employment use. <sup>30</sup>
1995	Department of Planning releases ' <i>Metropolitan Strategy for Sydney – Cities for the 21<sup>st</sup> Century</i> '. The strategy retains South Creek Valley/Bringelly as an option for investigation to meet Sydney's future growth needs. <sup>31</sup>
Early 1997	The former CSIRO site, still zoned for rural use, is purchased by Becklon Pty Ltd <sup>32</sup> for \$3.5 million. <sup>33</sup> Becklon is owned by Mr Ron Medich and Mr Roy Medich. <sup>34</sup>

<sup>26</sup> Williams P, 'Second Sydney Airport - A Chronology,' Background Paper 20 1997-98, Economics, Commerce and Industrial Relations Group, 29 June 1998, <<http://www.apf.gov.au/library/pubs/BP/1997-98/98bp20.htm>> (accessed 6 October 2009)

<sup>27</sup> Williams P, 'Second Sydney Airport - A Chronology,' Background Paper 20 1997-98, Economics, Commerce and Industrial Relations Group, 29 June 1998, <<http://www.apf.gov.au/library/pubs/BP/1997-98/98bp20.htm>> (accessed 6 October 2009)

<sup>28</sup> Submission 7, p 16

<sup>29</sup> Submission 7, pp 16-17

<sup>30</sup> Submission 7, pp 17-19

<sup>31</sup> Submission 7, p 19

<sup>32</sup> Submission 10, Penrith City Council, p 2

Date	Event
Late 1998	Ownership of the former CSIRO site (hereafter referred to as the 'Medich site') is transferred from Becklon Pty Ltd to Ron Medich Properties Pty Ltd and Roy Medich Properties Pty Ltd. <sup>35</sup>
December 2000	The Federal Government defers plans to build a second Sydney airport at Badgerys Creek. <sup>36</sup>
September 2003	Penrith City Council adopts the ' <i>Penrith Rural Land Strategy</i> ', which recommends that the Medich site and surrounding land be designated 'Rural Conservation' with limited land uses and a 40 hectare minimum lot size. <sup>37</sup>
July 2005	Mr Graham Richardson is hired by the Medich Property Group as a professional lobbyist. <sup>38</sup>
September 2005	Cox Richardson Architects & Planners <sup>39</sup> make representations to Penrith City Council on behalf of the Medich Property Group Pty Limited seeking rezoning of the Medich site for employment purposes. <sup>40</sup>
2005/2006	Early arrangements commence between Medich Property Group and the University of Sydney, which will ultimately result in the formation of the Badgerys Creek Consortium. <sup>41</sup>
9 November 2005 <sup>42</sup>	<p>Cox Richardson lodge a submission with Department of Planning requesting that the Medich and University of Sydney lands be considered as part of the South West Growth Centre strategic planning process.<sup>43</sup></p> <p>The submission is referred to the independent Land Release Advisory Committee (LRAC) for consideration. Department of Planning recommends to the LRAC that the land not be included as part of the South West Growth Centre investigations as it was not included in any part of the original investigations that occurred between 2003 and 2005 for the purpose of establishing the Growth Centres.<sup>44</sup></p>

<sup>33</sup> 'How a quiet bush block turned into a goldmine', *Sydney Morning Herald*, 7 September 2009, p 1

<sup>34</sup> 'The invisible airport,' *Sydney Morning Herald*, 10 February 2001, p 27

<sup>35</sup> Submission 10, p 2

<sup>36</sup> 'Government scraps plans for a second Sydney airport', *7.30 Report*, 13 December 2000, <<http://www.abc.net.au/7.30/stories/s223624.htm>> (accessed 14 October 2009)

<sup>37</sup> Submission 10, p 3

<sup>38</sup> Answers to questions on notice taken during evidence, 29 September 2009, Mr Roy Medich, Question 1, p 1 (invoices to Mr Graham Richardson)

<sup>39</sup> Cox Richardson was hired by the Medich Property Group to provide consultancy services.

<sup>40</sup> Submission 10, p 3

<sup>41</sup> Tabled document, Mr Roy Medich, *Badgerys Creek Chronology*, p 1

<sup>42</sup> Tabled document, Mr Roy Medich, *Letter from NSW Department of Planning to Medich Property Group – 9 January 2006*, p 1

<sup>43</sup> Submission 7, p 31

Date	Event
18 November 2005	LRAC agree with Department of Planning's recommendation. The land is subsequently not included as part of the South West Growth Centre. <sup>45</sup>
7 December 2005	In response to the Cox Richardson representations of September 2005, Penrith City Council advise that it cannot support the requested rezoning due to conflicts with the <i>Rural Lands Strategy</i> and the Council's <i>Employment Lands Studies Stages 1 &amp; 2</i> , and because the Council is still awaiting direction from the Federal Government as to the future of the second airport site. <sup>46</sup>
December 2005	Department of Planning releases ' <i>City of Cities – Metropolitan Strategy for Sydney</i> ', <sup>47</sup> which includes the need to identify, zone and develop new employment lands, particularly in Western Sydney. The Western Sydney Employment Hub (now known as the Western Sydney Employment Area or WSEA) is identified as an area that has the potential to provide significant stocks of employment land for Sydney in the short term. <sup>48</sup>
9 January 2006 <sup>49</sup>	Department of Planning advises Cox Richardson that their 9 November 2005 request to amend the South West Growth Centre boundary to include the Medich and University of Sydney lands is not supported by the NSW Government, and notes that Badgerys Creek will be investigated as potential employment land as part of the Metropolitan Strategy for Sydney. <sup>50</sup>
Early 2006	Cox Richardson forward a submission to Department of Planning requesting that the Medich site be designated for employment purposes. <sup>51</sup>
April 2006	Draft letter prepared by Department of Planning notes that the Medich site has potential as a location for employment related activities. <sup>52</sup>
11 September 2006	Meeting held between the then Planning Minister, the Hon Frank Sartor MP; Mr Roy Medich; Planning Director General, Mr Sam Haddad; Mr Bob Meyer from Cox Richardson and Mr Tom Forrest; where Mr Medich and Mr Meyer request that the Medich site be designated as employment land. <sup>53</sup>

<sup>44</sup> Submission 7, p 31

<sup>45</sup> Submission 7, p 31

<sup>46</sup> Submission 10, p 3

<sup>47</sup> NSW Government's Metropolitan Strategy, <<http://www.metrostrategy.nsw.gov.au/dev/ViewPage.action?siteNodeId=28&languageId=1&contentId=-1>> (accessed 14 October 2009)

<sup>48</sup> Submission 7, pp 20-21

<sup>49</sup> Tabled document, Mr Roy Medich, *Badgerys Creek Chronology*, p 1

<sup>50</sup> Submission 10, p 3

<sup>51</sup> Submission 7, p 32

<sup>52</sup> Submission 7, p 32

<sup>53</sup> Tabled document, Mr Roy Medich, *Letter from Cox Richardson to the Hon Frank Sartor, Minister for Planning – 8 December 2006*, p 1

Date	Event
8 December 2006	Cox Richardson writes to the then Planning Minister requesting that consideration be given to designating the Medich and University of Sydney lands for employment purposes, to allow the landowners to proceed with infrastructure planning. <sup>54</sup>
20 February 2007	Meeting held between Mr Haddad, Mr Roy Medich, <sup>55</sup> Mr Michael File and the Planning Workshop Australia <sup>56</sup> consultancy to discuss Badgerys Creek employment lands. <sup>57</sup>
5 March 2007	Medich Holdings writes to Department of Planning confirming their interest in progressing the rezoning of their land for employment purposes as a Major Project under Part 3A of the <i>Environmental Planning and Assessment Act 1979</i> (NSW) (EPA Act). <sup>58</sup>
6 March 2007	NSW Government releases the ' <i>Employment Lands for Sydney Action Plan</i> '. <sup>59</sup> The Action Plan puts forward a number of initiatives for Government action regarding the provision of employment lands, and identifies the Western Sydney Employment Lands Investigation Area (WSELIA) as potential employment lands.  The 7,000 hectare egg-shaped investigation area includes the Medich site. <sup>60</sup>
13 March 2007 <sup>61</sup>	In response to the 8 December 2006 letter from Cox Richardson, a briefing note is prepared by the Department of Planning to the then Minister stating that the proposal 'is considered appropriate in principle as the land is within the Investigation Area'. <sup>62</sup>  The briefing note is not endorsed by either the Director General or the then Minister. <sup>63</sup>

<sup>54</sup> Tabled document, Mr Roy Medich, *Letter from Cox Richardson to the Hon Frank Sartor, Minister for Planning – 8 December 2006*, p 2

<sup>55</sup> Mr Roy Medich's attendance at the meeting was ascertained by the Committee in: Return to order for papers, 8 October 2009, Land in or around Badgerys Creek, NSW Department of Planning, Box 13, Volume A: Non-privileged documents, Document (4) (created 20/02/07, Norma Shankie-Williams)

<sup>56</sup> Planning Workshop Australia was hired by the Medich Property Group to provide consultancy services.

<sup>57</sup> Answers to additional questions on notice, 29 September 2009, NSW Department of Planning, Question 43, p 7; Tabled document, Mr Roy Medich, *Letter from Mr Roy Medich to Mr Sam Haddad – 5 March 2007*, p 1

<sup>58</sup> Submission 7, p 33

<sup>59</sup> NSW Government's Metropolitan Strategy, *Action Plan for Sydney's Employment Lands*, 6 March 2007, <<http://www.metrostrategy.nsw.gov.au/dev/ViewPage.action?siteNodeId=59&languageId=1&contentId=579>> (accessed 7 October 2009)

<sup>60</sup> Submission 7, pp 22-24

<sup>61</sup> The briefing note was endorsed by Mr Peter Goth, Regional Director Sydney North West on 9 March 2007, then Ms Gail Connolly, Executive Director Metropolitan Planning on 13 March 2007.

Date	Event
29 March 2007	<p>Department of Planning responds to the 5 March 2007 letter from Medich Holdings indicating that any Part 3A application would need to be informed by the broader investigations being undertaken as part of the NSW Government's <i>Employment Lands for Sydney Action Plan</i>.</p> <p>The letter indicates that whilst the Department is 'sympathetic' to the request, investigation of the site would only be supported in context with and parallel to the strategic work underway.<sup>64</sup></p>
19 April 2007	<p>Preliminary focus meeting held between Department of Planning, Fairfield and Penrith City Councils and Western Sydney Regional Organisation of Councils to discuss the future of the WSELIA. The need to undertake detailed investigation work is identified. It is noted that once the investigations are complete it will allow the Department to consider some Part 3A proposals within the area.<sup>65</sup></p>
29 May 2007	<p>Planning Workshop Australia writes to Department of Planning on behalf of the Badgerys Creek Consortium requesting that the Minister declare the Consortium's land holdings to be a State Significant Site under Part 3A. The letter outlines a project vision for employment lands with a total capital investment of over \$1 billion.<sup>66</sup></p>
29 June 2007	<p>Sydney Region West of Department of Planning sends comments to the Strategic Assessments Branch regarding the Badgerys Creek Consortium's request for Part 3A consideration. The memo outlines the outcomes of the focus meeting on 19 April 2007, and notes that the Department advised Planning Workshop Australia that it would prefer for any future consideration of the Consortium's land under Part 3A to wait until investigation work had been completed.<sup>67</sup></p>
17 July 2007	<p>First meeting of the Badgerys Creek Consortium Board is held.<sup>68</sup> The Board is headed by an independent chair, Mr Peter Lowry, and includes a management committee chair and project director.<sup>69</sup></p>
July/August	<p>Mr Joe and Mr Daniel Damjanovich join the Badgerys Creek Consortium.<sup>70</sup></p>

(Answers to additional questions on notice, 19 October 2009, NSW Department of Planning, Question 6, p 1)

<sup>62</sup> Submission 7, p 33

<sup>63</sup> Answers to additional questions on notice, 19 October 2009, NSW Department of Planning, Question 6, p 1

<sup>64</sup> Submission 7, p 33

<sup>65</sup> Submission 7, p 34

<sup>66</sup> Submission 7, p 34

<sup>67</sup> Submission 7, p 34

<sup>68</sup> Tabled document, Mr Roy Medich, *Badgerys Creek Chronology*, p 2

<sup>69</sup> Mr Roy Medich, Evidence, 29 September 2009, pp 29-30

Date	Event
15 August 2007	Meeting held between the then Planning Minister and Badgerys Creek Consortium representatives. <sup>71</sup> The proponents request to have their land declared State significant, and seek the Minister's agreement to commence a rezoning process for the land and approve the assessment of their concept application parallel to the WSELIA study. <sup>72</sup>
20 August 2007 <sup>73</sup>	Briefing note provided by Department of Planning to the then Planning Minister recommends listing the entire WSELIA (including the Consortium's land) as a potential State Significant Site. <sup>74</sup>
21 August 2007	Medich Property Group writes to the then Planning Minister to follow-up the meeting of 15 August 2007.  The letter states: <i>'We are pleased to hear your comment that 30 June 2008 was an achievable time frame for the gazettal of the BCJVL [Badgerys Creek Joint Venture Lands] lands as part of a state significant site and for obtaining a determination on the Concept Plan Application.'</i> <sup>75</sup>
29 October 2007	In October the NSW Government allocates \$2 million to Department of Planning for the rapid delivery of employment lands in Sydney. In response to this, on 29 October the then Planning Minister endorses the Department's recommendation from August 2007 <sup>76</sup> and the Department prepares for the investigations of the 7,000 hectare WSELIA. <sup>77</sup>
14 December 2007	Meeting held between the then Planning Minister, Mr Haddad, Mr Roy Medich, Mr Jason Perica from Department of Planning, Ms Sonja Lyneham

<sup>70</sup> Mr Roy Medich advised the Committee that the Damjanovich brothers joined the Consortium 'in or about late July or early August 2007'. (Answers to additional questions on notice, 29 September 2009, Mr Roy Medich, Question 3, p 3)

<sup>71</sup> Tabled document, Mr Roy Medich, *Badgerys Creek Chronology*, p 2

<sup>72</sup> Tabled document, the Hon Frank Sartor MP, *Meetings with the Medich Consortium and its Consultants*, p 2

<sup>73</sup> The briefing note was endorsed by Peter Goth, Regional Director, Sydney North West on 20 August 2007; Gail Connolly, Executive Director, Metropolitan Planning, on 23 August 2007; Jason Perica, Executive Director, Strategic Sites and Urban Renewal, on 24 August 2007; Sam Haddad, Director General (undated) and Minister Sartor on 29 October 2007. (Answers to additional questions on notice, 19 October 2009, NSW Department of Planning, Question 8, pp 1-2)

<sup>74</sup> Submission 7, p 35

<sup>75</sup> Tabled document, Mr Roy Medich, *Badgerys Creek Chronology*, p 2

<sup>76</sup> Submission 7, p 35

<sup>77</sup> Mr Sam Haddad, Director General, NSW Department of Planning, Evidence, 29 September 2009, p 5

Date	Event
	from Planning Workshop Australia, and Mr Angus Dawson from the Growth Centres Commission, to discuss the Badgerys Creek Consortium's land. <sup>78</sup>
January 2008	Department of Planning commences technical and planning investigations for the WSELIA. It is anticipated that the investigations, rezoning and relevant infrastructure investigations will be complete by mid 2008. <sup>79</sup>
11 February 2008	Informal meeting held at a coffee shop between Department of Planning consultant Mr Norman Johnston and Mr Graham Richardson to discuss employment lands in Western Sydney. <sup>80</sup>
14 February 2008	Planning Workshop Australia writes to the then Planning Minister on behalf of Badgerys Creek Consortium proposing to develop the Consortium's land, and seeking the Minister's declaration that the proposal be assessed under Part 3A of the EPA Act. <sup>81</sup>
March 2008	As a result of the 29 May 2007 request from Planning Workshop Australia for the Minister to declare the Badgerys Creek Consortium's land to be a State Significant Site, Department of Planning writes to stakeholders <sup>82</sup> pursuant to section 75F(4) of the EPA Act <sup>83</sup> to consult in preparation of the Director-General Requirements. <sup>84</sup>
9 and 11 April 2008	Penrith City Council responds to the Department of Planning letter of March 2008 to recommend matters for inclusion in the Director General's requirements. The Council expresses the view that the WSELIA planning process should be completed prior to approval of a Concept Plan for specific proposals within the WSELIA. <sup>85</sup>
April 2008	Department of Planning prepares a brief to the then Minister recommending that the Minister declare the proposed development by the Badgerys Creek Consortium from 14 February 2008 to be a Part 3A project, and to authorise the proponent to submit a Concept Plan. <sup>86</sup>

<sup>78</sup> Tabled document, the Hon Frank Sartor MP, *Meetings with the Medich Consortium and its Consultants*, p 2

<sup>79</sup> Submission 7, p 35

<sup>80</sup> Mr Norman Johnston, Head of Western Sydney Employment Lands Investigation Area, Evidence, 19 October 2009, pp 60-61

<sup>81</sup> Submission 7, p 36

<sup>82</sup> Consisting of State and Local Government authorities.

<sup>83</sup> Under Section 75F(4), when an application is made for the Minister's approval for a project, the Director-General must prepare environmental assessment requirements. These are called the Director-General Requirements.

<sup>84</sup> Submission 7, p 36

<sup>85</sup> Submission 10, p 5

<sup>86</sup> Submission 7, p 37



Date	Event
5 May 2008	Meeting held between the then Planning Minister, Mr Haddad, Mr Roy Medich, Ms Lyneham and Mr Dawson, to discuss the Badgerys Creek Consortium's land. <sup>87</sup>  On the same day the Minister meets with Mr Haddad to discuss the Department's April 2008 briefing note. <sup>88</sup> Neither the Minister nor Mr Haddad endorse the recommendation to declare the proposal a Part 3A project. <sup>89</sup>
6 May 2008	A file note written by Mr Haddad on the April 2008 brief indicates that any long-term decision made on WSELIA should be in the context of the broader investigations being undertaken by the Department. <sup>90</sup>
28 May 2008	Department of Planning writes to the Badgerys Creek Consortium advising that the Department is currently undertaking a strategic investigation into the WSELIA, and stating that it would be premature to progress development of the Consortium's site in isolation of the wider area. The letter states that the outcomes of the WSELIA work are expected to be clarified in the 'next few months', and that should the Minister at a future date form the opinion that the proposed development is a major project under Part 3A, the proposal must be consistent with the WSELIA investigations and framework. <sup>91</sup>
19 March to 28 April 2008 <sup>92</sup>	NSW Government exhibits a draft State Environmental Planning Policy for the Western Sydney Employment Hub (which excludes the Medich site). <sup>93</sup>
August 2008	Series of telephone calls made between Mr Graham Richardson and Mr Norman Johnston throughout the month of August. <sup>94</sup>
25 August 2008	Badgerys Creek Consortium submits a letter and report titled ' <i>Employment Lands – A Case for Competition and Affordability</i> ' to Department of Planning to support their application for the early release and rezoning of their land. <sup>95</sup>
12 September 2008	Department of Planning responds to the Badgerys Creek Consortium's letter of 25 August 2008 stating that the Western Sydney Employment Lands

<sup>87</sup> Tabled document, the Hon Frank Sartor MP, *Meetings with the Medich Consortium and its Consultants*, p 3

<sup>88</sup> Answers to additional questions on notice, 29 September 2009, NSW Department of Planning, Question 4, p 1 (Attachment 3, p 1)

<sup>89</sup> Mr Haddad, Evidence, 19 October 2009, p 55

<sup>90</sup> Submission 7, p 37

<sup>91</sup> Submission 7, p 37

<sup>92</sup> Answers to additional questions on notice, 19 October 2009, NSW Department of Planning, Question 10, p 2

<sup>93</sup> Submission 7, p 29

<sup>94</sup> Answers to questions on notice taken during evidence, 29 September 2009, NSW Department of Planning, Question 11, p 2 (Attachment 9, pp 2-3 and p 6)

<sup>95</sup> Return to order for papers, 8 October 2009, Land in or around Badgerys Creek, NSW Department of Premier and Cabinet, Document e(4)

Date	Event
	matter has been given priority by the Department and is nearing formal consideration by the NSW Government. The letter acknowledges the Consortium's Part 3A application and advises that they will be contacted once a decision has been made. <sup>96</sup>
28 October 2008	Penrith City Council commences exhibition of draft Penrith LEP 2008 (Stage 1), which includes Penrith's rural lands. The draft LEP proposes a rural landscape zone for the Medich site, and also applies 'scenic and landscape values' to the land. <sup>97</sup>
December 2008	The Federal Government officially announces that it will not proceed with the airport at Badgerys Creek. <sup>98</sup>
January 2009	Worley Parsons <sup>99</sup> consultancy makes a submission to Penrith City Council on behalf of the Badgerys Creek Consortium in response to the exhibition of the draft Penrith LEP 2008. The submission requests that the scenic and landscape values 'overlay' be removed from the draft LEP pending: a) exhibition of the WSELIA outcomes, and b) declaration by the Planning Minister of the Consortium's Concept Plan application as a Part 3A major project. <sup>100</sup>
May 2009 <sup>101</sup>	<p>Investigation of the WSELIA concludes. Key outcomes of the investigation include identification of infrastructure constraints in the southern area of the investigation area (referred to as Stage 3, which includes the Medich site), and the need to further investigate the relationship of the Stage 3 area with the South West Growth Centre and Badgerys Creek airport site (particularly given the indications that the Federal Government would not be progressing with the airport in this location).<sup>102</sup></p> <p>The NSW Government resolves not to rezone the entire WSELIA, and only endorses Stage 1 and Stage 2 of the WSEA for release. In light of the infrastructure requirements for the Stage 3 lands, the NSW Government resolves to undertake further work on funding and delivery of essential infrastructure.<sup>103</sup></p>

<sup>96</sup> Tabled document, Mr Roy Medich, *Badgerys Creek Chronology*, p 3

<sup>97</sup> Submission 10, pp 5-6

<sup>98</sup> Department of Infrastructure, Transport, Regional Development and Local Government, 'National Aviation Policy Green Paper: Flight Path to the Future', December 2008, p 17

<sup>99</sup> Worley Parsons acquired Planning Workshop Australia in November 2008. <<http://www.planningworkshop.com.au/>> (accessed 12 October 2009)

<sup>100</sup> Submission 10, p 6

<sup>101</sup> Answers to additional questions on notice, 19 October 2009, NSW Department of Planning, Question 9, p 2

<sup>102</sup> Submission 7, p 27

<sup>103</sup> Submission 7, pp 28-29

Date	Event
13 July 2009	Penrith City Council considers a report on the draft Penrith LEP 2008 which recommends that in regard to the Consortium's land, no change be made to the draft LEP at this time. <sup>104</sup>
11 August 2009	<p>Representatives from Worley Parsons and the Badgerys Creek Consortium meet Penrith City Council officers regarding the proposed draft rezoning of the Consortium's land. The key issues raised in the meeting are the Consortium's requested deferral of the land from draft Penrith LEP 2008 (Stage 1) and the perceived restriction on future development imposed by the Landscape and Scenic Values map.</p> <p>Penrith City Council officers undertake to re-confirm with Department of Planning that the Department requires inclusion of the Consortium's land in the draft Penrith LEP 2008 (Stage 1), with zones and planning controls consistent with Council's adopted policy position (i.e. the <i>Rural Lands Strategy</i>).<sup>105</sup></p>
12 August 2009	NSW Government announces that approximately 800 hectares of the WSEA will be rezoned for employment uses. The Medich site, being part of the Stage 3 lands, is not included in the rezoning due to servicing and infrastructure constraints. However the Government indicates that the area south of the rezoned land (which does include the Medich site) will be considered in future planning for employment lands. It also indicates that opportunity exists for landowners to seek development in areas adjacent to the zoned employment area via a Precinct Acceleration Protocol process <sup>106</sup> or Part 3A application, on the condition that there is no cost to the NSW Government. <sup>107</sup>
25 August 2009	Department of Planning advises Penrith City Council to proceed with exhibiting the rural zone for the Consortium's land until the NSW Government releases its proposals for the WSELIA. <sup>108</sup>
28 August 2009	The State Environmental Planning Policy (Western Sydney Employment Area) is gazetted. <sup>109</sup> The SEPP creates a consistent zoning system for existing employment lands and zones including 826 new hectares of new employment lands, mainly in the Ropes Creek area and south of the Sydney Water pipelines. The Stage 3 lands are not included as part of the rezoned lands. <sup>110</sup>

<sup>104</sup> Submission 10, p 6

<sup>105</sup> Submission 10, pp 6-7

<sup>106</sup> The Precinct Acceleration Protocol allows landholders to have the release of a precinct within the Growths Centres accelerated earlier than proposed by the Department.

<sup>107</sup> Submission 7, p 38

<sup>108</sup> Submission 10, p 7

<sup>109</sup> *NSW Government Gazette*, Nos 115, 116, 117, 28 August 2009, p 4880

<sup>110</sup> Submission 7, pp 29-30

Date	Event
2 September 2009	Mr Haddad and other Department of Planning representatives meet with Mr Richardson and Mr Roy Medich to discuss the recent NSW Government decision on the WSEA. <sup>111</sup> Clarification is sought as to why the Badgerys Creek area was not included as part of the recent rezoning. Advice is given that Stage 3 areas have not been rezoned primarily due to significant unresolved infrastructure and servicing issues. <sup>112</sup>
3 September 2009	Mr Michael McGurk is shot and killed outside his family home. It is later revealed that prior to his death Mr McGurk made an audio tape recording of a conversation between himself and Mr Ron Medich, <sup>113</sup> which Mr McGurk alleged implicates senior NSW Government figures in bribery and corruption involving land dealings at Badgerys Creek. <sup>114</sup>
7 September 2009	NSW Police report the 'Michael McGurk matter' to the Independent Commission Against Corruption. The Commission begins a preliminary investigation of the matter. <sup>115</sup>
9 September 2009	General Purpose Standing Committee No. 4 adopts terms of reference for the current Inquiry into Badgerys Creek land dealings and planning decisions. <sup>116</sup>
14 November 2009	Premier Rees announces that the Planning Minister is to develop new guidelines governing meetings held between departmental officers, lobbyists, developers and others; a ban on developer donations to the NSW Labor Party; and referral of donations and public funding issues to the Joint Standing Committee on Electoral Matters. <sup>117</sup>

<sup>111</sup> Mr Haddad, Evidence, 29 September 2009, p 3

<sup>112</sup> Submission 7, p 39

<sup>113</sup> 'McGurk "would have blackmailed Medich"', *Daily Telegraph*, 7 September 2009, p 5

<sup>114</sup> 'Did he know too much? – Execution bombshell: Political corruption claims', *Daily Telegraph*, 5 September 2009, p 1

<sup>115</sup> 'Statement regarding Michael McGurk matter', Independent Commission Against Corruption, 7 September 2009, <<http://www.icac.nsw.gov.au/index.cfm?objectID=977B35DC-AAA1-079B-83E51EEA0AA54C55>> (accessed 15 October 2009)

<sup>116</sup> LC *Minutes* No 114, 9 September 2009, Item 229, Page 1355

<sup>117</sup> Address by Premier Nathan Rees, NSW Labor Party State Conference, 14 November 2009, pp 12-14

## Chapter 2 Major projects & employment lands in western Sydney

This Chapter considers the planning process relating to State Significant Sites. As noted in the timetable in Chapter 1, the Planning Minister was asked to declare the Medich site as State significant, and thereby allow the proposed re-development of the site to be considered under the provisions of Part 3A of the *Environmental Planning and Assessment Act 1979* (EPA Act). This Chapter also considers the strategic planning undertaken by the Department of Planning to identify land in the Sydney metropolitan region that has the potential to be used for employment purposes, and the recent NSW Government decision to rezone land in western Sydney.

### State Significant Sites

- 2.1 The EPA Act is an Act to institute a system of environmental planning and assessment for New South Wales. The Act is the principal instrument governing planning and development in this State.<sup>118</sup>
- 2.2 In June 2005, the EPA Act was amended in regards to the ‘... land-use planning and development assessment and approval system, particularly as it relates to major infrastructure and other significant development’.<sup>119</sup> According to the Department of Planning, the primary objectives of these changes included the simplification and standardisation of local environment plans, and clarification of environmental assessment requirements.
- 2.3 In relation to the assessment of major projects, the amendments provided for ‘... a separate streamlined and integrated development assessment and approvals regime for major infrastructure and other projects of significance to the State and to facilitate the delivery of critical infrastructure under Part 3A’.<sup>120</sup>
- 2.4 Part 3A of the Act ‘provides the principal mechanism for the Department to assess major projects and is specifically designed to deal with the complexity of such projects.’<sup>121</sup>
- 2.5 Part 3A constitutes a single assessment and approval process and ‘... applies to major State government infrastructure projects, development that was previously classified as State

<sup>118</sup> Department of Planning website, <<http://www.planning.nsw.gov.au/PlanningSystem/Legislationandplanninginstruments/tabid/67/Default.aspx>> (accessed 6 November 2009)

<sup>119</sup> NSW Department of Planning, *NSW Planning Reforms – Part 3A and the planning reforms*, Fact Sheet 1, August 2005, p 1 <[http://www.planning.nsw.gov.au/planning\\_reforms/p/fs1\\_overview\\_01aug05.pdf](http://www.planning.nsw.gov.au/planning_reforms/p/fs1_overview_01aug05.pdf)> (accessed 16 November 2009)

<sup>120</sup> NSW Department of Planning, *NSW Planning Reforms – Part 3A and the planning reforms*, Fact Sheet 1, August 2005, p 1 <[http://www.planning.nsw.gov.au/planning\\_reforms/p/fs1\\_overview\\_01aug05.pdf](http://www.planning.nsw.gov.au/planning_reforms/p/fs1_overview_01aug05.pdf)> (accessed 16 November 2009)

<sup>121</sup> Submission 7, Department of Planning, p 12

significant development and other projects, plans or programs declared by the Minister for Infrastructure and Planning'.<sup>122</sup>

**2.6** The Department of Planning said that these changes to the EPA Act would result in:

- an efficient, sustainable and competitive planning approval system
- early resolution of environmental and community issues
- greater certainty and streamlined assessment of individual development proposals, with less red tape and fewer delays
- timely delivery of major projects to support economic development.<sup>123</sup>

**2.7** As a consequence of these changes, the State Environmental Planning Policy (Major Development) 2005 enables the Minister for Planning to declare a site to be State significant '... because of its social, economic or environmental characteristics'.<sup>124</sup> To be declared State significant, a site must meet one or more of several assessment criteria that demonstrate its State or regional importance due to:

- strategic location, importance to a particular industry sector or employment strategy, or its employment, infrastructure, service delivery or redevelopment significance in meeting government policy objectives
- environmental conservation or natural resource importance
- amenity, cultural, heritage or historical significance
- the need for alternative planning or consent arrangements where additional transparency in decision-making is required or more than one local council will be affected by the decision.<sup>125</sup>

**2.8** A site may be nominated as State significant either by the Planning Minister initiating the process, or through a proponent initiating the process by '... requesting that the Minister nominate their site to be a State Significant Site'.<sup>126</sup> A proponent is a person proposing to carry out the development, comprising all or any part of the project.

**2.9** The proposed site will then be subject to investigation by the Department of Planning, with the Director General making a recommendation to the Minister regarding the significance of

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<sup>122</sup> NSW Department of Planning, *NSW Planning Reforms – Part 3A and the planning reforms*, Fact Sheet 1, August 2005, p 2  
<[http://www.planning.nsw.gov.au/planning\\_reforms/p/fs1\\_overview\\_01aug05.pdf](http://www.planning.nsw.gov.au/planning_reforms/p/fs1_overview_01aug05.pdf)> (accessed 16 November 2009)

<sup>123</sup> NSW Department of Planning, *NSW Planning Reforms – Part 3A and the planning reforms*, Fact Sheet 1, August 2005, p 4  
<[http://www.planning.nsw.gov.au/planning\\_reforms/p/fs1\\_overview\\_01aug05.pdf](http://www.planning.nsw.gov.au/planning_reforms/p/fs1_overview_01aug05.pdf)> (accessed 16 November 2009)

<sup>124</sup> Submission 7, p 12

<sup>125</sup> Submission 7, Attachment B: Guidelines for State Significant Sites under the Major Projects SEPP, p 1

<sup>126</sup> Submission 7, p 12

the site, the suitability of the site for the proposed use, and the implications of any change in land use.<sup>127</sup> An independent panel may be established at any time during the process to provide advice in relation to the assessment of the site.<sup>128</sup>

- 2.10** If a site is determined to be of State significance, the State Environmental Planning Policy (Major Development) 2005 will be amended to reflect the changed status of the site.<sup>129</sup>

#### **Committee comment**

- 2.11** Section 75B(1) of the EPA Act, however, allows the Minister to declare, by way of an order published in the NSW Government Gazette, that a development is a Part 3A project. The discretion of the Minister to make such a declaration on the grounds that the Minister has formed an opinion to that effect has led to community disquiet that the power has been or may be exercised in a partial manner.

#### **Standing Committee on State Development Inquiry into the planning framework**

- 2.12** The NSW Legislative Council Standing Committee on State Development is currently conducting a wide-ranging Inquiry into the NSW planning framework. The Inquiry was established in June 2008 and the Committee is required to report by December 2009.
- 2.13** The State Development Committee is investigating the need for further development of the planning legislation in New South Wales, and the principles that should guide any future development of the planning system. The Committee has received a substantial amount of evidence on potential changes to the planning system, including the process by which certain development applications are considered under Part 3A of the EPA Act.
- 2.14** This Inquiry is not intended to cover the same ground as the evidence considered by the State Development Committee. In speaking to the motion to establish this Inquiry into Badgerys Creek land dealings and planning decisions, the Hon Greg Pearce MLC noted that there is no intention for this Inquiry to be a wide-ranging examination of the planning system,
- 2.15** This report therefore does not consider broader issues relating to the NSW planning system, such as the Part 3A approval process for major projects and State Significant Sites. These issues will instead be considered in the State Development Committee's report on the NSW planning framework, which is expected to be tabled by the end of 2009.

<sup>127</sup> Submission 7, Attachment B: Guidelines for State Significant Sites under the Major Projects SEPP, p 3

<sup>128</sup> Submission 7, Attachment B: Guidelines for State Significant Sites under the Major Projects SEPP, p 3

<sup>129</sup> Submission 7, Attachment B: Guidelines for State Significant Sites under the Major Projects SEPP, p 3

**Committee comment**

- 2.16** Based on the published evidence to the State Development Committee Inquiry, it is clear that there is strong support for an overhaul of the NSW planning framework. The Committee agrees that there is a need for significant reform of the State's planning system. If the State Development Committee was to make recommendations for reform of the planning framework, the report could be an important step towards an overhaul of the NSW planning system.
- 2.17** Without anticipating any recommendations that may be made in the State Development Committee's report, this Committee recommends that upon the tabling of that report, the NSW Government should respond quickly to implement the Committee's recommendations, in particular any recommendations designed to reform the NSW planning framework.
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**Recommendation 1**

That upon the tabling of the report of the NSW Legislative Council Standing Committee on State Development on the NSW planning framework, the NSW Government should respond quickly to any recommendations made in the report, in particular any recommendations designed to reform the NSW planning framework.

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**Strategic planning for employment lands in western Sydney**

- 2.18** One of the primary functions of the Department of Planning is to '... undertake short and long term strategic planning for the Sydney metropolitan region, regional centres, coastal and rural areas'.<sup>130</sup> As part of this role, the Department has undertaken extensive strategic planning work in western Sydney over the past 20 years to ensure that a sufficient amount of employment land is available.<sup>131</sup>
- 2.19** In February 1988, *Sydney Into its Third Century* was released, outlining a strategy to direct development in the Sydney region. This plan was updated in 1989 in response to '... new circumstances and opportunities ...'.<sup>132</sup> One of the changes was the identification of South Creek Valley corridor as an area that could support future growth opportunities, with the exact location of the corridor to be determined '... after detailed investigation and the preparation of a regional environmental plan'.<sup>133</sup>
- 2.20** The *South Creek Valley Regional Environmental Study* was released in 1991 and identified potential employment land areas around what was then the proposed airport site at Badgerys Creek, which included the Medich site and adjoining lands. In the early 1990s, the NSW Government

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<sup>130</sup> Submission 7, p 9

<sup>131</sup> Submission 7, p 16

<sup>132</sup> Submission 7, p 16

<sup>133</sup> Submission 7, p 16



deferred further investigation of the South Creek Valley ‘... due to concerns over air quality and water quality’.<sup>134</sup>

- 2.21** In 1995 *Cities for the 21st Century – Integrated Urban Management for Sydney, Newcastle, the Central Coast and Wollongong* identified a number of future growth areas, including South Creek Valley (which included the Medich site).<sup>135</sup>
- 2.22** Then, in 2005, the NSW Government released the *Metropolitan Strategy for Sydney* which ‘... provided the framework for sustainable growth, development and conservation across the Sydney metropolitan region.’<sup>136</sup> The Strategy predicted that an additional 7,500 hectares of industrial land would be needed by 2031 in response to forecasts of 1.1 million new residents requiring new jobs and new homes, half of which are planned for western Sydney.<sup>137</sup>
- 2.23** A high-level Employment Lands Task Force was established in February 2006 and was jointly chaired by the Department of Planning and the Department of State and Regional Development. The work of the Task Force was used to develop the *Employment Lands for Sydney – Action Plan*, released in March 2007, which set out a strategy to secure additional employment land in the Sydney metropolitan region, particularly in western Sydney. As part of the Action Plan, the Western Sydney Employment Hub was identified as being ‘... significant to the State for employment and investment’.<sup>138</sup>
- 2.24** The Action Plan also indicated that the Department of Planning would consider ‘... the designation of a Western Sydney Employment Lands Investigation Area in the area between the Western Sydney Employment Hub and Badgerys Creek to the north of Elizabeth Drive’.<sup>139</sup>

### **Western Sydney Employment Lands Investigation Area**

- 2.25** In late 2007/early 2008, the Department began to explore the potential of the Western Sydney Employment Lands Investigation Area (WSELIA) to meet expected employment land needs as identified in the Action Plan.<sup>140</sup> The Department advised that ‘[t]he investigation involved an assessment of environmental constraints, potential lands for development and infrastructure servicing requirements’.<sup>141</sup> A map of the WSELIA is at Appendix 4.
- 2.26** Following the conclusion of the investigation, the Department recommended that a development staging program should be used in the Western Sydney Employment Area, with

<sup>134</sup> Submission 7, p 19

<sup>135</sup> Submission 7, pp 19-20

<sup>136</sup> Submission 7, p 9

<sup>137</sup> Submission 7, pp 9-10

<sup>138</sup> Submission 7, p 11. The Western Sydney Employment Hub encompasses lands in the vicinity of the M4 and M7 Motorway interchange.

<sup>139</sup> Submission 7, p 23

<sup>140</sup> Submission 7, p 25

<sup>141</sup> Submission 7, p 27

land released over 30 years in three stages. These stages were:

- Stage 1 – consisting of land in North Greystanes, Huntingwood, Eastern Creek and Erskine Park, much of which was already zoned for industrial use
- Stage 2 – consisting of land in the Ropes Creek area and the area located near the Eastern Creek and Erskine Park lands known as ‘South of Warragamba Pipeline’
- Stage 3 – consisting of land in the Kemps Creek, Badgerys Creek and Cosgrove Creek areas, and including the Medich site.<sup>142</sup>

**2.27** The Department identified that the Stage 3 lands, which included the Medich site:

... required further assessment in relation to the supply and demand for employment land in the area, the proximity to existing and planned residential areas as well as proximity to the Badgerys Creek airport site, and infrastructure requirements, particularly water, sewerage, electricity, telecommunications, and transport.<sup>143</sup>

**2.28** The NSW Government did not rezone the entire Western Sydney Employment Lands Investigation Area, only approving the release of Stage 1 and Stage 2 lands. The release and rezoning of Stage 3 lands, including the Medich site, was not endorsed.<sup>144</sup>

**2.29** The Department advised that ‘in light of the infrastructure requirements for the Stage 3 lands, the Government resolved to undertake further work on funding and delivery of critical infrastructure.’<sup>145</sup>

### **Support for release of additional employment lands**

**2.30** In evidence to the Inquiry, industry bodies emphasised the pressing need to release additional land for employment purposes, to meet the needs of industry. For example, the Property Council of Australia (NSW) highlighted the need for the release of additional employment lands in Western Sydney ‘...to accommodate Sydney’s employment growth and development needs in the long term’.<sup>146</sup>

**2.31** The Property Council continued to say that ‘... it is strategically and economically vital to continue to progress planning for the future release of land in the Western Sydney Employment Lands Investigation Area ...’.<sup>147</sup>

**2.32** The Urban Taskforce Australia also noted that ‘[t]here is a clear need to plan for the release of significant additional employment lands if the Metropolitan Strategy’s goals are to be met’.<sup>148</sup>

<sup>142</sup> Submission 7, p 28

<sup>143</sup> Submission 7, p 28

<sup>144</sup> Submission 7, p 28

<sup>145</sup> Submission 7, pp 28-29

<sup>146</sup> Submission 3, Property Council of Australia (NSW), p 4

<sup>147</sup> Submission 3, p 4

<sup>148</sup> Submission 11, Urban Taskforce Australia, p 9

The Urban Taskforce suggested that the Metropolitan Strategy had not identified a sufficient amount of new employment lands, meaning that '[t]he shortfall will need to be met through land releases that are additional to those flagged in the Metropolitan Strategy itself'.<sup>149</sup>

**2.33** Mr Ken Morrison, NSW Executive Director, Property Council of Australia, described the Council's concerns in relation to employment lands as follows:

There is not enough new stock of employment lands being created. As a result, industrial land is too expensive in New South Wales. To give some context, the price of industrial land in Sydney is around twice that of industrial land in Melbourne. Planning assessment processes are too complex and slow. Infrastructure servicing and coordination processes are very inefficient, and there are very high infrastructure costs which are pushed to the applicant and therefore to the end price of the built product.<sup>150</sup>

**2.34** Mr Norman Johnston, Head of WSELIA, noted his personal view as a planning professional that 'other states do it better'<sup>151</sup> when it comes to land release planning. He said:

We are not integrating planning decision-making with infrastructure decision-making and economic development priorities sufficiently in this State.

... basically we are not performing as a State. That is putting us behind both in employment terms and economic development terms, and fiscal revenues. As I said, I am not talking on behalf of the Department at the moment. This is my professional opinion.<sup>152</sup>

### Committee comment

**2.35** Industry bodies gave evidence illustrating the urgent need to release more employment land in the Sydney metropolitan area, particularly in western Sydney, to support employment growth and economic development. The Committee was concerned to hear that witnesses felt that other states are better at integrating planning in relation to land release and infrastructure decisions. The Committee recommends that the NSW planning framework be amended to incorporate principles to guide the integration of planning decision-making with infrastructure planning and economic development priorities.

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## Recommendation 2

That the NSW Government ensure that the State's planning framework is amended to incorporate principles to guide the integration of planning decision-making with infrastructure planning and economic development priorities.

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<sup>149</sup> Submission 11, p 5

<sup>150</sup> Mr Ken Morrison, Executive Director, Property Council of Australia (NSW), Evidence, 19 October 2009, p 24

<sup>151</sup> Mr Norman Johnston, Head of Western Sydney Employment Lands Investigation Area, Evidence, 19 October 2009, p 57

<sup>152</sup> Mr Johnston, Evidence, 19 October 2009, p 57



## Chapter 3 Meetings and communications

As outlined in Chapter 1, prior to his death Mr Michael McGurk made an audio tape recording of a conversation between himself and Mr Ron Medich, which Mr McGurk alleged contains evidence of bribery and corruption involving senior NSW Government figures in relation to the Medich site at Badgerys Creek.

This Chapter examines key meetings and communications involving Department of Planning officials, Mr Ron Medich, Mr Roy Medich, representatives of the Medich brothers (such as professional lobbyists), and members of the NSW Parliament in relation to the site. It also considers the potential involvement of NSW members of Parliament with the Medich brothers, Mr McGurk or Mr Richardson.

### Key meetings and communications involving Department of Planning officials

- 3.1** Since 2006 there have been numerous meetings held and communications exchanged between Department of Planning officials and members or representatives of the Medich Property Group and Badgerys Creek Consortium in regard to their respective landholdings. These are examined in the following section.
- 3.2** A comprehensive timeline of events relating to the Medich and Consortium's sites is provided at the end of Chapter 1, on p 6.

#### 11 September 2006 meeting

- 3.3** On 11 September 2006, a meeting was held at the Minister for Planning's office to discuss the Medich site.<sup>153</sup> Attendees at the meeting included the former Planning Minister, the Hon Frank Sartor MP; the Director General of Planning, Mr Sam Haddad; Mr Roy Medich and Mr Bob Meyer from Cox Richardson Architects & Planners.<sup>154</sup>
- 3.4** The meeting, requested by the proponents of the Badgerys Creek Consortium,<sup>155</sup> was held to discuss their application to have their joint land designated for employment purposes.<sup>156</sup> According to Mr Sartor, the meeting was a '... listening exercise. The matter was left with the Department for examination. No commitments were made.'<sup>157</sup>

<sup>153</sup> Tabled document, the Hon Frank Sartor MP, *Meetings with the Medich Consortium and its Consultants*, p 1

<sup>154</sup> Cox Richardson was engaged by the Medich Property Group to provide consultancy services. (Mr Roy Medich, Evidence, 29 September 2009, p 26)

<sup>155</sup> The Consortium at that stage consisted of the Medich Property Group and the University of Sydney. (Tabled document, Mr Roy Medich, *Badgerys Creek Chronology*, p 1)

<sup>156</sup> Answers to questions on notice taken during evidence, 29 September 2009, NSW Department of Planning, Question 4, p 1 (Attachment 3, p 1); Tabled document, *Meetings with the Medich Consortium and its Consultants*, p 1

<sup>157</sup> Tabled document, *Meetings with the Medich Consortium and its Consultants*, p 1

### 20 February 2007 meeting

- 3.5 On 20 February 2007, Mr Haddad met with Planning Workshop Australia, who were engaged as consultants by the Badgerys Creek Consortium to provide technical advice, to discuss the Consortium's proposals.<sup>158</sup> Mr Roy Medich was also present at the meeting,<sup>159</sup> as was Mr Michael File,<sup>160</sup> Team Leader from the Strategic Assessments branch at the Department of Planning.<sup>161</sup>

### 15 August 2007 meeting

- 3.6 A second meeting involving Mr Sartor and Mr Roy Medich was held on 15 August 2007. Other attendees included Badgerys Creek Consortium representatives Mr Peter Lowry (Consortium Chair) and Ms Sonja Lyneham from Planning Workshop Australia.<sup>162</sup>
- 3.7 Among other matters, discussions included the Consortium's request to have their site declared State significant under Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW). They also sought the agreement of the then Minister to commence a rezoning process for the land, and for him to approve the assessment of their concept application parallel to the study of the Western Sydney Employment Lands Investigation Area (WSELIA). Ms Lyneham presented a proposed timetable to the Department with a conclusion date of June 2008.<sup>163</sup> According to Mr Sartor, he advised that in relation to the proposed end date:

... while it was theoretically possible, a condition precedent was for the Department to undertake a strategic study of the broader area (WSELIA) and that only if this was positive in respect of the Medich/University of Sydney site, could an application even be considered ... [The proponents were] also advised that a request to the Treasurer for funding of the necessary strategic study was still under consideration.<sup>164</sup>

- 3.8 Meeting notes provided by Mr Sartor to the Committee described the outcome of the meeting as follows:

In relation to the Badgerys Creek site the Minister indicated that it would be premature to lodge any application prior to the completion of the strategic study. Minister also advised that any decision to release such land would have to go to Cabinet for approval. There was no agreement to allow the land to enter the development assessment process.<sup>165</sup>

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<sup>158</sup> Tabled document, Mr Roy Medich, *Letter from Mr Roy Medich to Mr Sam Haddad – 5 March 2007*, p 1

<sup>159</sup> Tabled document, *Letter from Mr Roy Medich to Mr Sam Haddad – 5 March 2007*, p 1

<sup>160</sup> Answers to additional questions on notice, 29 September 2009, NSW Department of Planning, Question 43, p 7

<sup>161</sup> Mr File's position and title were provided to the Committee in: Answers to additional questions on notice, 29 September 2009, NSW Department of Planning, Question 36, p 7

<sup>162</sup> Tabled document, *Meetings with the Medich Consortium and its Consultants*, p 1

<sup>163</sup> Tabled document, *Meetings with the Medich Consortium and its Consultants*, p 2

<sup>164</sup> Tabled document, *Meetings with the Medich Consortium and its Consultants*, p 2

<sup>165</sup> Tabled document, *Meetings with the Medich Consortium and its Consultants*, p 2

### 21 August 2007 letter

- 3.9 Following the 15 August meeting, on 21 August 2007 the Medich Property Group sent a letter to the then Minister stating:

We are pleased to hear your comment that 30 June 2008 was an achievable time frame for the gazettal of the BCJV [Badgerys Creek Joint Venture] lands as part of a state significant site and for obtaining a determination on the Concept Plan Application.<sup>166</sup>

- 3.10 In response to questioning as to why the letter indicated that he had said that June 2008 was an achievable timeframe, Mr Sartor replied:

[Sonja Lyneham] just rolled out this timetable and said, “Can it be done by whatever?” I said, “In theory it can, but it's got preconditions ... I want the study done and the study has to persuade me that I can address these key issues before we get ourselves set up.” Most developers are optimists by nature and it would not be the first time a developer has walked out of a meeting thinking that the consent authority has said X when in fact it has said Y. There was no commitment given and the people at that meeting have the same memory as me. It simply said, “Look, it's theoretically possible, all other things being equal, if all these preconditions are met.”

It was an ambitious timetable, but if we had done the study and found it was a really good idea then why would we try to hold it up? ... The reality is that I consistently had reservations and ... I was not going to budge until these preconditions were met. If they had been met, maybe the timetable would have been met. As it turns out, it clearly was not.<sup>167</sup>

### 14 December 2007 meeting

- 3.11 On 14 December 2007, a third meeting was held between the then Minister and Mr Roy Medich where the Consortium's site at Badgerys Creek was discussed. Other meeting attendees included Mr Haddad; Mr Jason Perica, Executive Director, Strategic Sites and Urban Renewal, Department of Planning;<sup>168</sup> Ms Lyneham and Mr Angus Dawson (former Chief Executive Officer of the former Growths Centre Commission).<sup>169</sup>
- 3.12 A brief meeting note provided by Mr Sartor states that in relation to Badgerys Creek, [Roy] Medich was advised that no development would be considered ... until the WSELIA study was completed and only if it was favourable.<sup>170</sup>

<sup>166</sup> Tabled document, Mr Roy Medich, *Letter from Medich Property Group and University of Sydney to Minister for Planning, 21 August 2007*, p 1

<sup>167</sup> Hon Frank Sartor MP, Former Minister for Planning, Evidence, 19 October 2009, p 13

<sup>168</sup> Mr Perica's title and position were provided to the Committee in: Answers to additional questions on notice, 19 October 2009, NSW Department of Planning, Question 8, p 1

<sup>169</sup> Tabled document, *Meetings with the Medich Consortium and its Consultants*, p 2

<sup>170</sup> Tabled document, *Meetings with the Medich Consortium and its Consultants*, p 3

### 24 January 2008 – 6 January 2009 meetings and communications

- 3.13** Mr Norman Johnston was first hired as a planning consultant for the Department of Planning in January 2008<sup>171</sup> to coordinate and manage the WSELIA project on a contractual basis.<sup>172</sup> Between 24 January 2008 and 6 January 2009, a series of 21 communications were exchanged between Mr Johnston and Planning Workshop Australia (primarily Ms Lyncham) regarding the Badgerys Creek Consortium's proposals.<sup>173</sup> Issues surrounding Mr Johnston's employment are discussed later in this Chapter.
- 3.14** The Committee was advised that the 21 communications consisted of meetings, emails and telephone conversations. The details of these are provided at **Appendix 5**.

### 11 February 2008 meeting

- 3.15** The Committee received evidence from Mr Johnston that he met with Mr Graham Richardson, registered lobbyist for Medich Property Holdings, at a coffee shop on 11 February 2008 to discuss the Badgerys Creek Consortium's lands.<sup>174</sup> He noted that property developer Mr Lang Walker was also present at the meeting. However Mr Johnston advised that Mr Walker had no involvement with land at Badgerys Creek, and was only present to discuss other projects with Mr Richardson.<sup>175</sup>
- 3.16** Mr Richardson initially did not recall this during evidence.<sup>176</sup> The Committee informed Mr Richardson that Mr Johnston's personal notebook, submitted as evidence during the Inquiry, stated:

Met with Graham Richardson and Lang Walker at GR request. Said he was representing Roy Medich, which Mr Medich did confirm. I emphasised the action we were taking in government on the rapid delivery program. I explained how the concurrent approach was to follow. Also discussed Darwin and projects ...<sup>177</sup>

- 3.17** Upon hearing this information, Mr Richardson responded: 'Yes, it was Darwin. I do not recall anything being discussed about Badgerys Creek. We met with Lang Walker primarily to

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<sup>171</sup> Answers to additional questions on notice, 29 September 2009, NSW Department of Planning, Question 27, p 5

<sup>172</sup> Answers to additional questions on notice, 29 September 2009, NSW Department of Planning, Question 6, p 3

<sup>173</sup> Answers to additional questions on notice, 29 September 2009, NSW Department of Planning, Question 33, pp 6-7

<sup>174</sup> Mr Norman Johnston, Head of Western Sydney Employment Lands Investigation Area, Evidence, 19 October 2009, pp 60-61

<sup>175</sup> Mr Johnston, Evidence, 19 October 2009, p 61

<sup>176</sup> Mr Graham Richardson, Evidence, 19 October 2009, p 43

<sup>177</sup> Answers to questions on notice taken during evidence, 29 September 2009, NSW Department of Planning, Question 11, p 2 (Attachment 9, p 1)



discuss whether he was going to be involved in a large project that Norm had something to do with in Darwin.<sup>178</sup>

**3.18** Mr Richardson subsequently conceded that Roy Medich's name may have been raised during the conversation. However he maintained that the main purpose of the meeting was to discuss projects in Darwin and the Middle East.<sup>179</sup>

**3.19** Mr Haddad advised the Committee that he was unaware of the meeting until after it had taken place. Upon being informed about its occurrence, he advised Mr Johnston that it was inappropriate for him to meet with Mr Richardson, and that Mr Richardson 'should make representations to the Department through the normal process.'<sup>180</sup> Mr Haddad said:

The reason that I did that was basically I think maybe that was just my judgement that it is really inappropriate for him [Johnston] as a contractor to be dealing with him [Richardson]. His job was basically to coordinate the study. Rightly or wrongly my judgement is to deal with stakeholders, whatever, or departmental officers, and that was what was in my thinking, because I really wanted him just to coordinate the study as he was brought in to do.<sup>181</sup>

**3.20** It was noted by the Department that at the time of this meeting Mr Johnston was not bound to follow the guidelines in the Lobbyist Code of Conduct, as the Code did not come into effect until February 2009.<sup>182</sup>

**3.21** Issues regarding due process of meetings will be considered later in this Chapter.

### **5 May 2008 meeting**

**3.22** A fourth meeting involving the then Planning Minister and Mr Roy Medich was held on 5 May 2008. Other attendees included Mr Haddad, Ms Lyneham and Mr Dawson.<sup>183</sup>

**3.23** While the meeting was primarily held to discuss the Lowes Creek precinct, the Medich site at Badgerys Creek was also raised. Mr Sartor's notes in regard to the latter read: 'Medich was advised that no application would be considered until the WSELIA study was completed and if it was favourable, as per previous advice given.'<sup>184</sup>

<sup>178</sup> Mr Richardson, Evidence, 19 October 2009, p 45

<sup>179</sup> Mr Richardson, Evidence, 19 October 2009, pp 45-46

<sup>180</sup> Mr Sam Haddad, Director General, NSW Department of Planning, Evidence, 29 September 2009, p 22

<sup>181</sup> Mr Sam Haddad, Director General, NSW Department of Planning, Evidence, 19 October 2009, p 54

<sup>182</sup> Answers to additional questions on notice, 29 September 2009, NSW Department of Planning, Question 50(g), p 9

<sup>183</sup> Tabled document, *Meetings with the Medich Consortium and its Consultants*, p 3

<sup>184</sup> Tabled document, *Meetings with the Medich Consortium and its Consultants*, p 3

**August – October 2008 telephone conversations**

- 3.24** A series of telephone conversations were held between Mr Richardson and Mr Johnston during August 2008.
- 3.25** The first was on 14 August, when Mr Richardson phoned Mr Johnston to discuss the progress of the WSELIA study for his client, Mr Roy Medich. According to Mr Johnston's notes, he advised Mr Richardson that the release of the land would be subject to servicing capacity, and that while some capacity existed within the south-west sector, the proponent would have to provide all of the services.<sup>185</sup>
- 3.26** A second conversation was held on 20 August, when Mr Johnston cancelled a meeting scheduled for the next day with Roy Medich. Mr Johnston advised Mr Richardson that the policy matters raised in previous discussions regarding infrastructure costs, timing and contributions for employment land were being considered by the NSW Government, and that there was therefore '[n]o point discussing [the] matter at present'.<sup>186</sup>
- 3.27** On 25 August, Mr Richardson phoned to ask whether Mr Johnston had received a letter and submission sent from the Chairman of the Badgerys Creek Consortium, and to discuss 'affordability issues'.<sup>187</sup> Mr Richardson rang again a few days later to 'follow up on business' with the NSW Government.<sup>188</sup> The final record of a phone call between Mr Johnston and Mr Richardson was on 8 October, where Mr Richardson left a message for Mr Johnston to return his call. The call was not returned.<sup>189</sup>
- 3.28** In response to questioning from the Committee as to why there was a high volume of phone calls during this period, Mr Richardson replied:

I cannot recall but I suspect that around that time I was told it might be going to Cabinet and I was told his report was being finalised. So I was trying to make sure that what was going in his report was something that we could live with and, secondly, to find out when he was going to finish it. I think I failed miserably on both of those missions, but that was what I was attempting.<sup>190</sup>

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<sup>185</sup> Answers to questions on notice taken during evidence, 29 September 2009, NSW Department of Planning, Question 11, p 2 (Attachment 9, p 2)

<sup>186</sup> Answers to questions on notice taken during evidence, 29 September 2009, NSW Department of Planning, Question 11, p 2 (Attachment 9, p 3)

<sup>187</sup> Answers to questions on notice taken during evidence, 29 September 2009, NSW Department of Planning, Question 11, p 2 (Attachment 9, p 4)

<sup>188</sup> Answers to questions on notice taken during evidence, 29 September 2009, NSW Department of Planning, Question 11, p2 (Attachment 9, p 5)

<sup>189</sup> Answers to questions on notice taken during evidence, 29 September 2009, NSW Department of Planning, Question 11, p 2 (Attachment 9, p 6)

<sup>190</sup> Mr Richardson, Evidence, 19 October 2009, p 36

**9 March 2009 meeting**

- 3.29** On 9 March 2009 a meeting was held between Mr Haddad, Mr Richardson, and Ms Veronica Young from the Department of Planning. A brief discussion was held regarding the status of a range of projects, including the land owned by the Badgerys Creek Consortium. According to a departmental file note, Mr Haddad advised Mr Richardson that the proposal was subject to a Cabinet decision, and that it was ‘[l]ikely to be considered soon.’<sup>191</sup>

**15 June 2009 meeting**

- 3.30** Mr Haddad met with Mr Richardson on 15 June 2009 to again discuss the status of a range of projects. Departmental officer Mr Michael Comminos was also present at the meeting.<sup>192</sup>

- 3.31** In regard to the WSELIA, meeting notes provided by the Department read:

Mr Richardson commented that the Western Sydney Employment Area work commissioned some time ago should be completed and he did not understand why things took so long. Mr Haddad reiterated the point that timing for Cabinet Minutes and Cabinet Decisions are issues for the Minister and the Cabinet, not the public service.<sup>193</sup>

- 3.32** The note concludes that no further action was taken in regard to the investigation area.<sup>194</sup>

**2 September 2009 meeting**

- 3.33** The last recorded meeting involving Mr Haddad, Mr Richardson and Mr Medich where the Badgerys Creek Consortium’s land was discussed was on 2 September 2009. Mr Andrew Abbey, Acting Director, Special Projects, Department of Planning, was also in attendance.<sup>195</sup>

- 3.34** The development proponents requested the meeting to seek clarification as to why the Badgerys Creek area, including the Medich site, was not included as part of the NSW Government’s announcement on 12 August 2009 to rezone 800 hectares of the Western Sydney Employment Area for employment purposes.<sup>196</sup> The proponents were advised that the key reasons for not rezoning Stage 3 areas (which includes the Consortium’s land – see

<sup>191</sup> Answers to questions on notice taken during evidence, 29 September 2009, NSW Department of Planning, Question 1, p 1 (Attachment 1, p 3)

<sup>192</sup> Answers to questions on notice taken during evidence, 29 September 2009, NSW Department of Planning, Question 1, p 1 (Attachment 1, p 4)

<sup>193</sup> Answers to questions on notice taken during evidence, 29 September 2009, NSW Department of Planning, Question 1, p 1 (Attachment 1, p 4)

<sup>194</sup> Answers to questions on notice taken during evidence, 29 September 2009, NSW Department of Planning, Question 1, p 1 (Attachment 1, p 4)

<sup>195</sup> Answers to questions on notice taken during evidence, 29 September 2009, NSW Department of Planning, Question 1, p1 (Attachment 1, p 6)

<sup>196</sup> Submission 7, NSW Department of Planning, p 38

Chapter 2) for employment purposes were based on ‘significant unresolved infrastructure and servicing issues.’<sup>197</sup>

- 3.35** Meeting notes further indicate that the proponents sought clarification as to what options were available to them to address the issues, and that they were advised that they could write to the Department outlining how they thought the issues could be addressed.<sup>198</sup> In their submission to the Inquiry, the Department emphasised that in relation to the infrastructure and servicing constraints (particularly sewerage and roads), ‘[i]t was made clear that unless, and until those issues can be addressed, progressing the release of the Stage 3 lands would not be justified.’<sup>199</sup>

### **Week of 7 – 11 September 2009 teleconference**

- 3.36** A teleconference was held between Mr Richardson, Mr Abbey and Mr Comminos during the week of 7 – 11 September 2009. The Committee was told that Mr Richardson phoned due to the media events that had arisen as a result of Mr McGurk’s death, to enquire about the potential impact of the events on the WSELIA.<sup>200</sup>
- 3.37** According to Mr Abbey’s notes, the Department advised Mr Richardson that ‘as with all matters before the Department, issues are dealt with on their merits.’<sup>201</sup>

### **Other meetings involving Departmental officials and Mr Graham Richardson**

- 3.38** A number of other meetings have also been held over the past year involving Planning officials and Mr Graham Richardson, where the Medich site at Badgerys Creek was not discussed.
- 3.39** In early December 2008, Mr Richardson met with Mr Abbey and Mr Comminos, where Mr Comminos outlined the role of new project managers in the Department as part of a recently announced NSW Government initiative.<sup>202</sup>
- 3.40** On 16 December 2008, Mr Richardson met with Mr Haddad and Mr Abbey to discuss sites at Maldon, Leppington East and Macarthur South.<sup>203</sup>

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<sup>197</sup> Submission 7, p 39

<sup>198</sup> Answers to questions on notice taken during evidence, 29 September 2009, NSW Department of Planning, Question 1, p 1 (Attachment 1, p 6)

<sup>199</sup> Submission 7, p 39

<sup>200</sup> Tabled document, Mr Andrew Abbey, *Graham Richardson meeting details with Andrew Abbey (DoP)*, 19 October 2009, p 8

<sup>201</sup> Tabled document, *Graham Richardson meeting details with Andrew Abbey (DoP)*, 19 October 2009, p 8

<sup>202</sup> Tabled document, *Graham Richardson meeting details with Andrew Abbey (DoP)*, 19 October 2009, p 2

<sup>203</sup> Tabled document, *Graham Richardson meeting details with Andrew Abbey (DoP)*, 19 October 2009, p 3

- 3.41 Another meeting was held between Mr Richardson and Mr Abbey on 15 January 2009, which Departmental officer Mr Michael Woodland also attended. Maldon, Macarthur South and the Hunter Economic Zone were considered at the meeting,<sup>204</sup> which was held at a coffee shop.<sup>205</sup>
- 3.42 Mr Richardson, Mr Abbey and Mr Woodland met over coffee again in July 2009<sup>206</sup> to consider issues relating to Leppington East and a ceramics factory in the Hunter.<sup>207</sup>
- 3.43 On 22 July 2009, Mr Richardson met with Mr Haddad and Mr Abbey to further discuss the site at Leppington East, as well as Sanctuary Villages and Macarthur South.<sup>208</sup>

### Did the meetings influence planning decisions regarding the Medich site?

- 3.44 A key question raised during the Inquiry was whether or not any of the meetings outlined in this Chapter, particularly those with professional lobbyist Mr Graham Richardson, influenced any of the Department's planning decisions regarding the Medich site.
- 3.45 This was denied by Mr Haddad, who told the Committee during a hearing for the 2009-2010 Budget Estimates Inquiry:

Mr Richardson acts on behalf of clients that are registered on the lobbyist register. Irrespective of his acting on behalf of those clients, I can inform the Committee that the outcome of any matters that come before me, or the department for that matter, is not affected whatsoever.<sup>209</sup>

- 3.46 Mr Haddad maintained that regardless of meetings between planning officials and lobbyists, all planning decisions are assessed on their merits. He insisted: 'There is a thorough assessment process that we go through and advice is given to government independently on the merits of the case.'<sup>210</sup> Mr Haddad added that this applies equally to representations from members of Parliament, whom he deals with on a regular basis as the Director General.<sup>211</sup> Further, in regard to planning decisions made subsequent to meetings with proponents and their representatives, Mr Haddad advised:

... as a matter of fact, what we try to do in many cases, because of the issue of perception in a sense, before advising the final outcome I tend to advise a probity

<sup>204</sup> Tabled document, *Graham Richardson meeting details with Andrew Abbey (DoP)*, 19 October 2009, p 4

<sup>205</sup> Mr Andrew Abbey, Acting Director, Special Projects, NSW Department of Planning, Evidence, 19 October 2009, p 48

<sup>206</sup> Mr Abbey, Evidence, 19 October 2009, p 48

<sup>207</sup> Tabled document, *Graham Richardson meeting details with Andrew Abbey (DoP)*, 19 October 2009, p 5

<sup>208</sup> Answers to questions on notice taken during evidence, 29 September 2009, NSW Department of Planning, Question 1, p 1 (Attachment 1, p 5)

<sup>209</sup> Mr Sam Haddad, Director General, NSW Department of Planning, Evidence, Budget Estimates [Planning Redfern Waterloo], 16 September 2009, p 2

<sup>210</sup> Mr Haddad, Evidence, 16 September 2009, p 3

<sup>211</sup> Mr Haddad, Evidence, 16 September 2009, p 4

check on the process that has been adopted through the department as well as an independent evaluation of the outcome ...<sup>212</sup>

**3.47** The fact that the Medich site has not been rezoned, despite the concerted efforts of the proponents and their representatives, was reiterated by the NSW Planning Minister the Hon Kristina Keneally MP, former Planning Minister Frank Sartor, and Mr Haddad, and was central to their argument that the meetings in question did not affect or influence any planning decisions.<sup>213</sup> Mr Sartor pointed out:

Despite four meetings with the Medich group, I was not convinced that the land should be released and that their development concept should be allowed into the assessment process under part 3A.<sup>214</sup>

**3.48** In regard to lobbying by Mr Richardson, Minister Keneally said: ‘His [Richardson’s] client’s land was declined as State significant because decisions were made on their merits.’<sup>215</sup>

**3.49** Although the Medich site was not rezoned, there were unendorsed recommendations from within the Department to release the land for employment purposes. In March 2007 a briefing note drafted by Departmental Planning Officer, Ms Anna Johnston,<sup>216</sup> to the then Planning Minister, was prepared in response to a request from Cox Richardson Architects & Planners (on behalf of Mr Roy Medich) that consideration be given to designating the Medich and University of Sydney lands for employment purposes. The brief, endorsed by Mr Peter Goth, Regional Director, Sydney North West, and Ms Gail Connolly, Executive Director, Metropolitan Planning,<sup>217</sup> stated that ‘[t]he Cox Richardson proposal is considered appropriate in principle as the land is within the [Western Sydney Employment Lands] Investigation Area.’<sup>218</sup> However, the briefing note was not endorsed by either the Director General or the then Minister.<sup>219</sup>

**3.50** Another brief was prepared in April 2008 by Mr File to the then Minister, this time in response to a proposal from Planning Workshop Australia (on behalf of the Badgerys Creek Consortium) to develop the Consortium’s land.<sup>220</sup> The brief recommended that the Minister

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<sup>212</sup> Mr Haddad, Evidence, 16 September 2009, p 3

<sup>213</sup> For example, Hon Kristina Keneally MP, Minister for Planning, Evidence, 29 September 2009, p 35; Hon Frank Sartor MP, Evidence, 19 October 2009, p 2; Mr Haddad, Evidence, 29 September 2009, p 2

<sup>214</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 2

<sup>215</sup> Hon Kristina Keneally MP, Minister for Planning, Evidence, Budget Estimates [Planning Redfern Waterloo], 16 September 2009, p 19

<sup>216</sup> Answers to questions on notice taken during evidence, 29 September 2009, NSW Department of Planning, Question 6, p 1

<sup>217</sup> Answers to additional questions on notice, 19 October 2009, NSW Department of Planning, Question 6, p 1

<sup>218</sup> Submission 7, p 33

<sup>219</sup> Answers to additional questions on notice, 19 October 2009, NSW Department of Planning, Question 6, p 1

<sup>220</sup> Submission 7, p 37

declare the proposed development to be a Part 3A project and authorise the proponent to submit a Concept Plan.<sup>221</sup>

- 3.51** Once again however, the briefing note was not endorsed by the Director General or the former Minister. Mr Sartor explained that there were several reasons behind his decision not to endorse the brief. The first was that he was not satisfied that the release of the land would be consistent with the South-West Growth Centre strategy. Second, the Consortium's site was not contiguous with the western Sydney employment hub, which led to infrastructure concerns. Third, at the time there was still uncertainty surrounding the Federal Government's plans for a second Sydney airport at Badgerys Creek. Finally, insufficient independent advice existed regarding environmental implications that could potentially arise from developing the site. Mr Sartor said:

It was for this reason that I insisted on waiting for the WSELIA study to be completed. Despite the enthusiasm of Medich and his consultants, I determined not to allow them to lodge an application until two pre-conditions were met: that the WSELIA study was completed and that the WSELIA study satisfied me that the development of their parcel of land was both feasible and desirable in the context of other lands that might be released in the 7,000-hectare WSELIA study area.<sup>222</sup>

- 3.52** Similarly, Mr Haddad explained to the Committee that his reasoning for not wanting to endorse the April 2008 briefing note was that:

It became apparent ... in the second quarter of 2008 that further progressing consideration of rezoning the Medich consortium site was not appropriate nor possible without finalising studies into the entire area, particularly by way of setting parameters at the strategic level for infrastructure and service requirements. The proponents were advised accordingly and the rezoning request was discontinued.<sup>223</sup>

- 3.53** Although neither Mr Haddad nor Mr Sartor endorsed the briefing note's recommendation to investigate listing the site concurrently to the WSELIA study, Mr Haddad noted that concurrent examinations of sites are not unusual, particularly where there is strategic context to the matter.<sup>224</sup> He added:

The potential use of the ex-CSIRO land for employment purpose is consistent with the broader investigation strategy for employment land use in this area and for such cases there are precedents where concurrent considerations of such rezonings take place.<sup>225</sup>

- 3.54** The fact that the Badgerys Creek area has consistently been identified since 1991 as potential employment land was outlined in Chapter 2.

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<sup>221</sup> Submission 7, p 37

<sup>222</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 2

<sup>223</sup> Mr Haddad, Evidence, 29 September 2009, p 2

<sup>224</sup> Mr Haddad, Evidence, 29 September 2009, p 14

<sup>225</sup> Mr Haddad, Evidence, 29 September 2009, p 2

- 3.55** Mr Haddad advised that for these reasons the Department has not ruled out the future rezoning of the Medich site, which remains part of the Stage 3 lands, provided that the infrastructure and servicing constraints are addressed.<sup>226</sup>

#### **Committee comment**

- 3.56** The Committee concludes that there is no clear evidence that the meetings or communications between Planning officials and proponents and representatives of the Badgerys Creek Consortium influenced planning decisions regarding the Medich site. The Consortium's land has not been rezoned, and the efforts of the landowners and their representatives, particularly lobbyist Mr Richardson, have to date been unsuccessful in achieving any commitment to rezone in the near future.
- 3.57** However, as raised in Chapter 1, this Inquiry has provided some evidence of a public perception that planning decisions are influenced by professional lobbyists such as Mr Richardson, if they receive special access to senior government officials. The Committee acknowledges that Mr Haddad has acted to restrict access on at least one occasion when he considered inappropriate access was given to Mr Richardson.
- 3.58** The Committee considers that one way in which public confidence in the planning process can be improved is to address concerns regarding due process of meetings. This is discussed below. The Committee also believes that public confidence in the planning system can be improved by the NSW Government strengthening reform laws relating to political donations and tightening regulation of lobbyists. These issues are examined in Chapter 4.

### **Due process of meetings with development proponents and their representatives**

- 3.59** An important issue to emerge as a result of the Inquiry is the need for due process of meetings. While the Committee received evidence that the current and former Planning Ministers and Director General applied their own protocols to meetings with proponents and their representatives (including professional lobbyists), it is apparent that no protocols have applied to similar meetings involving Departmental officers.

#### **Protocols for meetings involving the Minister and Director General**

- 3.60** Former Planning Minister Frank Sartor informed the Committee that his policy, while in office, was that all meetings between himself and proponents and their representatives would only occur with Departmental representatives and ministerial staff present. He asserted that he did not discuss merit issues of developments with lobbyists, preferring instead to deal with technical advisors.<sup>227</sup>
- 3.61** Additionally, Mr Sartor said that he avoided discussing substantive matters relating to specific developments with proponents at functions, and that if he was approached by a developer to discuss planning matters he would advise them to lodge a formal meeting request outlining the

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<sup>226</sup> Mr Haddad, Evidence, 29 September 2009, p 2

<sup>227</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 3



matters to be raised at the meeting.<sup>228</sup> The former Minister suggested that the same rules could also be applied to Departmental officers:

With the benefit of hindsight ... there may be some benefit in the department adopting a similar policy to me ... I did not require that in my department at the time ... But perhaps that simple rule that I followed in my office might actually help the department as well.<sup>229</sup>

- 3.62** Planning Minister Kristina Keneally advised that while she does ‘... not often meet with proponents’, on the occasions that she does there is always a Departmental officer present to record the discussion, and ministerial staff who also take their own meeting notes.<sup>230</sup> Ms Keneally said that it would be uncommon for any of her staff to meet with a proponent without her being present. However, the Minister was adamant that when such meetings do occur she is always informed about them at her weekly staff meetings.<sup>231</sup>
- 3.63** Minister Keneally advised the Committee that neither she nor any of her staff have ever met with Mr Richardson,<sup>232</sup> while Mr Sartor disclosed that he had ‘probably encountered Graham Richardson about once a year, but never about planning matters.’<sup>233</sup>
- 3.64** However, as outlined earlier, Mr Haddad informed the Committee that he had met with Mr Richardson on four occasions in 2009 to discuss planning developments.<sup>234</sup> Mr Haddad advised that he is accompanied to meetings with proponents and lobbyists by a Departmental officer (usually the project manager for that matter<sup>235</sup>) who records the minutes. He further advised that all of his meetings with Mr Richardson and Mr Roy Medich took place within the Department’s Bridge Street offices.<sup>236</sup>
- 3.65** It was noted during the Inquiry that the Departmental officers who attended Mr Haddad’s meetings with Mr Richardson in 2009 were Ms Veronica Young (9 March), Mr Michael Comminos (15 June), and Mr Andrew Abbey (22 July and 2 September).<sup>237</sup> It was revealed during a Budget Estimates hearing by the Committee that Mr Abbey had previously worked as an adviser for the former Planning Minister Frank Sartor.<sup>238</sup> Mr Haddad rejected the suggestion that this was a conflict of interest, noting that Departmental officers are routinely seconded to the Minister’s office to work as liaison officers or advisers before returning to the

<sup>228</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 1

<sup>229</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 4

<sup>230</sup> Hon Kristina Keneally MP, Evidence, 29 September 2009, pp 40-41

<sup>231</sup> Hon Kristina Keneally MP, Evidence, 29 September 2009, pp 41-42

<sup>232</sup> Hon Kristina Keneally MP, Evidence, 29 September 2009, p 41

<sup>233</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 3

<sup>234</sup> Answers to questions on notice taken during evidence, 29 September 2009, NSW Department of Planning, Question 1, p 1

<sup>235</sup> Mr Haddad, Evidence, 16 September 2009, p 3

<sup>236</sup> Mr Haddad, Evidence, 16 September 2009, p 3

<sup>237</sup> Answers to questions on notice taken during evidence, 29 September 2009, NSW Department of Planning, Question 1, p 1 (Attachment 1, pp 3-5)

<sup>238</sup> Mr Haddad, Evidence, 16 September 2009, p 18

Planning Department to resume their substantive positions.<sup>239</sup> A media article published during the Inquiry also highlighted that Ms Young had previously been employed as an adviser to Mr Sartor, as had Mr Comminos, who was also an adviser to Premier Nathan Rees.<sup>240</sup>

- 3.66** In addition to meetings, the Committee received evidence (outlined earlier in this Chapter) of numerous phone calls made between Departmental officers and proponents and their representatives. Mr Haddad noted that only some phone conversations are logged in a book, and acknowledged that ‘telephone calls are dealt with in a less disciplined way than formal meetings.’<sup>241</sup>

### **Protocols for meetings involving Departmental officers**

- 3.67** There did not appear to be any protocols that applied to Departmental officers meeting with proponents or their representatives. This was evident by the fact that a number of meetings between Planning officials and Mr Richardson were held in coffee shops.

- 3.68** In regard to the 11 February 2008 coffee shop meeting between Mr Johnston, Mr Richardson and Mr Walker, Mr Johnston told the Committee:

I generally did not have meetings in the office. I made it a rule ... for three reasons. First, I was having a lot of meetings and the office was very small. By about two months in, I had a lot of plans and I had plans all around the office ... It made it really awkward. If I had representatives from the Department of Planning who knew about it, it was okay, but you could not have people just walking in because they would see all the plans. Thirdly, we sometimes did book the meeting rooms, but if they were 10-minute, quarter-hour or half-hour meetings at most, it is so easy just to go down to the coffee shop, have a meeting, and come back again.<sup>242</sup>

- 3.69** Mr Richardson commented that the only person within the Planning Department that he met with formally was Mr Haddad, and that his other meetings with Mr Johnston, Mr Abbey and Mr Comminos would have been held casually over coffee (at his suggestion).<sup>243</sup> In response to questioning regarding the informal nature of these meetings, Mr Richardson declared:

You are living in cloud cuckoo land if you think that does not happen every day. People from my clients meet with people in the department – and there are plenty of those meetings on a one-on-one basis all the time. The big companies have 100 people working for them and there will be someone talking to someone in some department on a daily basis. There are telephone calls and meetings and there will not be minutes of every one of them. So what?<sup>244</sup>

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<sup>239</sup> Mr Haddad, Evidence, 16 September 2009, p 18

<sup>240</sup> ‘Planning officials accused of conflict’, *Sydney Morning Herald*, 15 October 2009 p 5

<sup>241</sup> Mr Haddad, Evidence, 16 September 2009, pp 18-19

<sup>242</sup> Mr Johnston, Evidence, 19 October 2009, p 61

<sup>243</sup> Mr Richardson, Evidence, 19 October 2009, p 38

<sup>244</sup> Mr Richardson, Evidence, 19 October 2009, p 44

- 3.70** During evidence Mr Abbey maintained that it was normal for him as a Departmental official to meet with stakeholders. However, he admitted that it was ‘not particularly usual’ for him to meet proponents or lobbyists over coffee.<sup>245</sup> Although Mr Abbey was accompanied by a third party ‘to make sure there was no confusion about what was said’, he conceded that in hindsight, meeting at a coffee shop was probably ‘not the best move.’<sup>246</sup>

### **Committee comment**

- 3.71** The Committee notes the evidence that the current and former Planning Ministers and Director General of the Department of Planning developed their own practice for meetings with proponents and their representatives. The Committee believes that protocols should urgently be developed to apply to Departmental officers. This is a vital step toward ensuring transparency and accountability in the planning system, as well as providing guidance and protection for the officers themselves.
- 3.72** The coffee shop meetings between Departmental officials and Mr Richardson raises concerns regarding due process, with informal meetings providing an opening for special access to be granted to certain individuals. To prevent the repeat of such situations in the future, the Committee recommends that the new protocols entail guidelines regarding appropriate venues for meetings to be held, such as Departmental offices, and proper records of meetings to be kept on file. All meetings with development proponents and their representatives should be recognised as formal activities of the Department.
- 3.73** The Committee further notes that the Lobbyist Code of Conduct does not contain any guidelines regarding conduct of meetings. This will be considered further in Chapter 4.

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### **Recommendation 3**

That the Minister for Planning establish protocols to be applied to all meetings between Departmental officers with development proponents and their representatives. At a minimum, the meeting protocols should contain guidelines regarding venues, properly recorded minutes and the requirement for the third party presence of at least two Departmental officers.

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- 3.74** We also note the evidence regarding the ad hoc manner in which telephone conversations between Departmental officials and proponents and their representatives are logged. The Committee is of the view that maintaining proper records of these telephone calls is important, and recommends that guidelines be established for recording the details of such calls.
- 3.75** The Committee also notes that, on the weekend before this report was due to be tabled, the Premier, the Hon Nathan Rees MP, in his address to the 2009 NSW ALP Conference, said he had ‘every confidence’ in the Department of Planning and:

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<sup>245</sup> Mr Abbey, Evidence, 19 October 2009, p 53

<sup>246</sup> Mr Abbey, Evidence, 19 October 2009, p 53

Like planning departments everywhere, to do its job properly our department must engage directly with business and the community.

But there is a clear perception that outside influences have attempted to take advantage of the need for genuine industry consultation.<sup>247</sup>

**3.76** Mr Rees announced that ‘the Planning Minister will develop new guidelines to govern meetings held between departmental officers and developers, lobbyists, community groups and opponents of particular projects’. Mr Rees said that the new guidelines will ensure that:

- Meetings occur on official premises, other than those involving site visits
- At least two departmental officers are present
- Full minutes are taken and retained
- All meetings and their purposes are carefully recorded.<sup>248</sup>

**3.77** The Committee believes it to be timely, in light of evidence received during this Inquiry, that the Premier has acknowledged that new meeting guidelines must be developed. The Committee believes that these reforms should extend also to telephone and informal conversations.

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#### **Recommendation 4**

That the Minister for Planning establish record-keeping guidelines to be applied to all telephone conversations between Departmental officers and development proponents and their representatives.

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### **Improved Departmental processes**

**3.78** In addition to due process of meetings, there are two additional areas in which the Committee considers that the Department of Planning should strengthen its processes if the evidence of this Inquiry is indicative of general practices: firstly, awarding of consultancy work; and secondly, providing timely advice to development proponents.

#### **Awarding of consultancy work**

**3.79** As noted earlier, Mr Norman Johnston was first employed as a consultant by the Department of Planning in January 2008. Mr Johnston gained his employment with the Department after submitting an expression of interest to undertake work in relation to the WSELIA. No tender process was undertaken because the initial work, involving the preparation of a project plan

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<sup>247</sup> Address by Premier Nathan Rees, NSW Labor Party State Conference, 14 November 2009, p 14

<sup>248</sup> Address by Premier Nathan Rees, NSW Labor Party State Conference, 14 November 2009, p 14

for the WSELIA study, was estimated to cost less than \$30,000, and therefore a tender was not required under the Department's procurement policy.<sup>249</sup>

**3.80** However, Mr Johnston continued to work for the Department after he completed the project plan for the WSELIA study. Mr Johnston's work subsequent to the initial phase was billed on an hourly basis, at a rate of \$285 per hour plus GST. As at 15 October 2009, he had been paid over \$667,000.<sup>250</sup> Despite the escalation in costs, no tender process was ever undertaken.

**3.81** In relation to the process for employing Mr Johnston, the Department advised that:

There was a short deadline for the WSELIA project. The Department made the decision to engage Mr Johnston, as the best qualified specialist available to meet the deadline. Advice was that a tender was not required under the procurement policy as the quantum for the initial phase of the project was not expected to exceed \$30,000. It was intended that an open tender would follow.<sup>251</sup>

**3.82** The Department described the omission of a tender process as a 'serious Departmental oversight'.<sup>252</sup>

**3.83** Mr Haddad gave evidence that when he became aware that a tender process had not been undertaken '... I did immediately take action within the Department to institute much stronger procurement arrangements in that regard'.<sup>253</sup> The Department indicated that:

The Department has since adopted a comprehensive, up-to-date Procurement Policy. It ... assists the Department to achieve best value for money in the expenditure of public funds, while being fair, ethical and transparent in its tendering processes.

A dedicated team has also been placed centrally to manage procurement processes across the whole organisation.<sup>254</sup>

### Committee comment

**3.84** The Committee concludes that the failure to conduct an open tender process for the WSELIA Project Manager position may be attributable to weak procurement processes within the Department at the time of Mr Johnston's engagement. Given that Mr Johnston has been paid over \$667,000 to date, the Committee is of the view that the implementation of best-practice

<sup>249</sup> Answers to additional questions on notice, 29 September 2009, NSW Department of Planning, Question 7, p 3

<sup>250</sup> Answers to additional questions on notice, 29 September 2009, NSW Department of Planning, Question 5, p 3

<sup>251</sup> Answers to additional questions on notice, 29 September 2009, NSW Department of Planning, Question 7, p 3

<sup>252</sup> Answers to additional questions on notice, 19 October 2009, NSW Department of Planning, Question 50, p 8

<sup>253</sup> Mr Haddad, Evidence, 19 October 2009, p 63

<sup>254</sup> Answers to additional questions on notice, 19 October 2009, NSW Department of Planning, Question 50 p 8

procurement processes must be accorded a high priority, to ensure appropriate expenditure of public funds, and to avoid any perception of bias in the awarding of consultancy work.

- 3.85** The Committee notes Mr Haddad's evidence that he has already acted to strengthen the Department's procurement procedures. The Committee urges Mr Haddad to maintain a close watch on procurement procedures, to ensure that the Department does not repeat the situation of awarding a consultancy ultimately worth over \$667,000 on the basis of inviting a single person to submit an expression of interest.
- 3.86** The Committee believes that, in the interests of transparency and accountability, the Department of Planning's procurement procedures should be made public if they are not already public. Moreover, the Committee believes that where there are circumstances under which it is justifiable that those procedures not be adhered to, these should also be made public. The Committee recommends that disclosures along these lines should appear in the Department's annual report, along with other disclosures relating to consultancies.
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### **Recommendation 5**

That the Minister for Planning ensure that the Department of Planning's procurement procedures are publicly available, and that where there are circumstances under which it is justifiable that procurement procedures are not adhered to, that these should also be made public. Disclosures relating to procurements and consultancies should appear in the Department of Planning's annual report.

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### **Timely advice to development proponents**

- 3.87** As can be seen from the timeline in Chapter 1, proponents of development applications can wait for lengthy periods before receiving a response from the Department of Planning in regard to their proposals. According to the Mr Sartor:

Lobbyists, government relations people and public relations people can try to track a development process, help find where it is up to, because they do get lost in black holes. Rightly, people who want to invest a lot of money need to know where they are and what is happening ...<sup>255</sup>

- 3.88** Mr Ken Morrison, NSW Executive Director, Property Council of Australia, suggested that development proponents may be less inclined to employ lobbyists if the planning system was more efficient and transparent, and if proponents were confident of receiving timely advice from the Department:

What you would prefer to see would be a system where, whether it is a rezoning application or a major project application, there was some sort of certainty about the time frames in which that was to be considered, and hopefully those time frames could be quite efficient – obviously, the bigger the project, the longer it will take to assess – and there would be opportunities for you to hear what the reasons for not proceeding with your rezoning request, if that were the case, through some sort of

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<sup>255</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 4

formal channel. It would be better not to have to knock on the door and ask for that advice; it should be advice that came to the applicant.<sup>256</sup>

- 3.89** Mr Haddad advised that: ‘When they [proponents and consultants] ask the Department for advice I think it is also important to furnish them with information in a timely manner.’<sup>257</sup>

#### **Committee comment**

- 3.90** The Committee considers it necessary for proponents of development applications to receive regular updates on the progress of their applications. Regular and timely advice from the Department of Planning on the progress of development applications would introduce greater rigour and transparency to the planning process, and may assist in making the planning system less complex. It may also reduce pressure from some lobbyists and developers seeking meetings or making phone calls to inquire into the progress of their application.

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#### **Recommendation 6**

That the Minister for Planning ensure that development proponents are provided with regular and timely updates on the progress of their proposals.

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### **Conduct of other members of Parliament**

- 3.91** During the Inquiry there was considerable speculation, particularly in the media, concerning a number of members of NSW Parliament and their potential involvement with either Mr Ron Medich, Mr Roy Medich, Mr McGurk, Mr Richardson, or land at Badgerys Creek.

#### **Hon Joseph Tripodi MP**

- 3.92** Witnesses were questioned as to whether the Hon Joseph Tripodi MP, former Minister for the portfolios of Finance, Infrastructure, Regulatory Reform, and Ports and Waterways, had an interest in rezoning the Medich site.
- 3.93** Mr Tripodi’s name was raised due to his relationship with Mr Michael Daniele, who is reported to be the sole director of Mr Tripodi’s private company, NewArm Investments.<sup>258</sup> An article in the *Sydney Morning Herald* stated that Mr Daniele took out a \$5 million option several months ago to buy a block of land at Badgerys Creek earmarked for rezoning by the NSW

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<sup>256</sup> Mr Ken Morrison, Executive Officer, Property Council of Australia (NSW), Evidence, 19 October 2009, p 26

<sup>257</sup> Mr Haddad, Evidence, 29 September 2009, p 2

<sup>258</sup> ‘Mamma mia, you know too much’ – Tripodi mate linked to Medich deal’, *Sydney Morning Herald*, 16 September 2009, p 1

Government, claiming that '[t]he land, which is worth less than half that amount, is estimated to be worth \$25 million if rezoned.'<sup>259</sup>

- 3.94** During a Budget Estimates hearing the Committee questioned both Minister Keneally and Mr Haddad as to whether they have ever had discussions with Mr Tripodi concerning land owned by Mr Daniele or by the Badgerys Creek Consortium. Both witnesses said that while they have discussed the broader WSELIA with the former Minister in regard to infrastructure needs, neither have ever discussed specific blocks of land with Mr Tripodi.<sup>260</sup> Minister Keneally and Mr Haddad also rejected suggestions that Mr Tripodi has ever lobbied for the rezoning of land at Badgerys Creek.<sup>261</sup>
- 3.95** When asked by the Committee as to whether he had ever been lobbied in respect to planning developments by Mr Tripodi or the Hon Eddie Obeid MLC, Mr Sartor replied:
- All I can say to you is if any member raised issues in relation to specific developments they were very rare and very inconsequential and very minor. There was no pressure brought to bear on me by either of those two [Mr Tripodi or Mr Obeid].<sup>262</sup>
- 3.96** Questions concerning Mr Obeid's involvement in planning developments are discussed below.
- 3.97** Mr Tripodi's relationship with Mr Ron Medich and Mr Roy Medich was also examined. During a hearing into the Budget Estimates 2009-2010 Inquiry, the former Minister advised: 'I have known Ron Medich and the Medich family for quite a while and whenever I see him, we exchange pleasantries. That could be at charity functions, political functions, social events, yes.'<sup>263</sup>
- 3.98** Both Medich brothers informed the Committee that they had met Mr Tripodi at various functions in his capacity as the member for Fairfield.<sup>264</sup> Additionally, Mr Ron Medich advised that he once was seated at the same table as Mr Tripodi at a wedding;<sup>265</sup> and Mr Roy Medich advised that he requested a meeting with the former Minister in mid-2009 to discuss infrastructure in western Sydney, which never eventuated.<sup>266</sup>

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<sup>259</sup> 'Mamma mia, you know too much' – Tripodi mate linked to Medich deal', *Sydney Morning Herald*, 16 September 2009, p 1

<sup>260</sup> Hon Kristina Keneally MP, Evidence, 16 September 2009, p 32; Mr Haddad, Evidence, 16 September 2009, p 45

<sup>261</sup> Mr Haddad, Evidence, 16 September 2009, pp 44-45

<sup>262</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 11

<sup>263</sup> Hon Joseph Tripodi MP, Minister for Finance, Minister for Infrastructure, Minister for Regulatory Reform, and Minister for Ports and Waterways, Evidence, Budget Estimates [Ports and Waterways], 14 September 2009, p 10

<sup>264</sup> Mr Roy Medich, Evidence, 29 September 2009, p 25; Mr Ron Medich, Evidence, 29 September 2009, p 62

<sup>265</sup> Mr Ron Medich, Evidence, 29 September 2009, p 62

<sup>266</sup> Mr Roy Medich, Evidence, 29 September 2009, p 25



### **Hon John Robertson MLC**

- 3.99** After Mr McGurk's death, the Hon John Robertson MLC, Minister for Climate Change and the Environment, Minister for Energy, Minister for Corrective Services, Minister for Public Sector Reform and Special Minister of State, disclosed that he had met with Mr McGurk.
- 3.100** Minister Robertson affirmed that while he was Secretary of Unions NSW, he met Mr McGurk on two occasions when he was bidding to buy the union-owned Currawong retreat at Pittwater on behalf of Mr Ron Medich.<sup>267</sup> After Mr McGurk's bid was unsuccessful he had no further contact with Minister Robertson.<sup>268</sup>

### **Hon Eddie Obeid MLC**

- 3.101** Mr Haddad was questioned about his dealings with the Hon Eddie Obeid MLC. Mr Haddad disclosed that he had held 'one or two conversations' with Mr Obeid over the last six months.<sup>269</sup> However, he maintained that no aspect of Badgerys Creek or even the Western Sydney Employment Lands was raised during those conversations. Mr Haddad added that he has never been lobbied by Mr Obeid regarding any development application or rezoning before the Planning Department.<sup>270</sup>
- 3.102** Questions were also raised about the potential involvement of Mr Obeid's son, Mr Moses Obeid. Mr Haddad acknowledged having met Mr Moses Obeid through his father. However, he commented that '[i]t was basically an introduction ... I cannot recall him talking about any particular planning issue or any projects or any rezoning or anything like this.'<sup>271</sup>
- 3.103** Likewise, Mr Ron Medich advised the Committee that he had met Mr Moses Obeid briefly twice, but refuted that they ever had any business dealings together.<sup>272</sup>

### **Hon Ian Macdonald MLC**

- 3.104** During evidence, Mr Ron Medich disclosed that he had met the former Minister for the portfolios of Primary Industries, Mineral Resources and State Development, the Hon Ian Macdonald MLC, on two occasions.
- 3.105** The first was while they were having lunch at the same restaurant. Mr Medich told the Committee that he asked the restaurateur, who was acquainted with both parties, for an

<sup>267</sup> 'The murky world of Mr McGurk', *Sydney Morning Herald*, 19-20 September 2009, p 5

<sup>268</sup> *NSWPD (Legislative Council)*, 9 September 2009, p 17492

<sup>269</sup> Answers to questions on notice taken during evidence, 16 September 2009, Budget Estimates [Planning Redfern Waterloo], NSW Department of Planning,, Question 2, p 4

<sup>270</sup> Mr Haddad, Evidence, 16 September 2009, p 19

<sup>271</sup> Mr Haddad, Evidence, 16 September 2009, p 5

<sup>272</sup> Mr Ron Medich, Evidence, 29 September 2009, pp 60-61

introduction. Mr Medich stated that he spoke to Mr Macdonald in his capacity as the then State Development Minister to request funding for a company involved in cancer treatment.<sup>273</sup>

- 3.106** On the second occasion they were again having lunch at the same restaurant, when, according to Mr Medich, Mr Macdonald called him over to discuss the amalgamation of two horse racing clubs, as one of Mr Medich's close friends was on the Australian Jockey Club committee.<sup>274</sup>

### **Hon Phillip Costa MP**

- 3.107** The Hon Phillip Costa MP, Minister for Water, and Minister for Regional Development, was mentioned in passing during the Inquiry in regard to a meeting that he had with Roy Medich and Australia Water Holdings in June 2009.<sup>275</sup> Mr Medich advised that the formal meeting, held at the Minister's office, was held to discuss the possibility of the Badgerys Creek Consortium and Australian Water entering into a joint-venture agreement with the Water Board.<sup>276</sup>

### **Other members of NSW Parliament**

- 3.108** Mr Sartor said that in addition to being lobbied by registered lobbyists, 'I also was concerned about MPs lobbying the Department'.<sup>277</sup>
- 3.109** Mr Haddad told the Committee: 'I do meet and have contact and representations from members of Parliament on both sides of Parliament on a reasonably regular basis. That is a part of my job'.<sup>278</sup> Of his interaction with members over the last six months, Mr Haddad said:

... I have spoken to several Members of Parliament from different parts of NSW approximately more than ten times ... As Director General, I receive many representations from Members of Parliament. I consider discussing matters of broad policy and strategy with Members of Parliament a necessary part of the role of the Director General. Each representation however, is dealt with on its merits.<sup>279</sup>

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<sup>273</sup> Mr Ron Medich, Evidence, 29 September 2009, p 51

<sup>274</sup> Mr Ron Medich, Evidence, 29 September 2009, p 52

<sup>275</sup> Answers to questions on notice taken during evidence, 29 September 2009, Mr Roy Medich, Question 1, p 1

<sup>276</sup> Mr Roy Medich, Evidence, 29 September 2009, p 31

<sup>277</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 6

<sup>278</sup> Mr Haddad, Evidence, 16 September 2009, p 4

<sup>279</sup> Answers to questions on notice taken during evidence, 16 September 2009, Budget Estimates[Planning Redfern Waterloo], NSW Department of Planning, Question 2, p 4

**Committee comment**

- 3.110** The Committee received no evidence during this Inquiry to demonstrate corrupt or improper conduct of members of the NSW Parliament in relation to the Medich site, or planning developments in New South Wales generally.
- 3.111** There nonetheless appears to remain a public perception, at least in media reporting, that well-connected property developers are able to secure favourable planning decisions. In order to restore public confidence in the planning system, stricter protocols regarding meetings with proponents, lobbyists and other representatives need to be adopted to ensure transparency and accountability in decision-making.
- 3.112** The apparent negative public perception surrounding the State's planning system also appears to be enforced by the existence of political donations by developers. This will be considered in the following Chapter, which also examines the regulation of lobbyists in greater detail.



## Chapter 4 Transparency in decision-making

This Inquiry has come about due to allegations that property developers and their representatives, including professional lobbyists such as Mr Graham Richardson, exert undue influence on planning decisions. It was suggested that the substantial political donations made by property developers such as Mr Ron Medich and Mr Roy Medich are a means to secure favourable planning outcomes. This Chapter will examine these claims, and outline proposals to strengthen the Lobbyist Code of Conduct and reform the NSW election finance scheme.

### Lobbyists

- 4.1** The involvement of lobbyists was raised as a key issue during the Inquiry, and in particular, the suspicion that lobbyists can favourably influence the outcome of planning decisions. Inquiry participants were questioned on the services that lobbyists provide to their clients, and whether lobbyists play a valuable role in the planning system. There was close scrutiny of the lobbyist services provided to the clients of Mr Graham Richardson.
- 4.2** Lobbyists in New South Wales, and indeed in all the States and Territories and at the Federal level, are now required to abide by Lobbyist Codes of Conduct in their dealings with government officials. Chapter 3 discussed dealings between NSW Department of Planning officials and development proponents and their representatives, including professional lobbyists. The media scrutiny of these dealings has shown that lobbyists are perceived as having greater access to planning officials than other persons involved in the planning system, creating a suspicion that lobbyists exercise undue influence over planning decisions. This section will conclude by discussing whether dealings between lobbyists and government officials should be more tightly regulated through the NSW Lobbyist Code of Conduct.

### Services provided by lobbyists

- 4.3** Inquiry participants were questioned on the role played by lobbyists in assisting clients to interact with government. The Committee heard that lobbyists engaged by proponents of development applications provide advice on government decision-making processes, as well as the steps involved in the planning process. Lobbyists also track and seek updates on the progress of development applications. It was suggested that some property developers may believe that lobbyists can influence the outcome of planning decisions.
- 4.4** The Hon Frank Sartor MP said that lobbyists and other advisors can play a role in advising clients about the workings of government:

... government relations people, public relations people and lobbyists can play a role in advising their clients, for example, about the process of government, because I find some developers had no understanding of the processes of government – the role of Cabinet, the way things actually worked in government.<sup>280</sup>

<sup>280</sup> Hon Frank Sartor MP, Former Minister for Planning, Evidence, 19 October 2009, pp 3-4

- 4.5 Mr Ken Morrison, NSW Executive Director, Property Council of Australia, corroborated the lack of understanding of government processes among business people: ‘... I am constantly surprised by the lack of understanding of government processes that exists in some sections of the business community’.<sup>281</sup>
- 4.6 To assist the Committee to understand why proponents of development applications employ lobbyists, Mr Sam Haddad, Director General, Department of Planning, advised the Committee that:
- ... on a number of occasions, when I have had visits from lobbyists and proponents I have asked the proponents, “Why did you come with the lobbyists? Why did you not come alone?” The response that I get basically is, “The planning system is too complex; we need somebody to explain it to us” ... Other proponents may see it differently. They may think that a lobbyist should be able to drive the outcome in a different way.<sup>282</sup>
- 4.7 In evidence, Mr Sartor explained to the Committee that he made a distinction between the people providing the development proponent with technical advice and the ‘... whole bunch of people who give them other advice, like public relations companies, government relations people, lobbyists and so on’.<sup>283</sup>
- 4.8 Commenting on the role played by lobbyists, Mr Sartor added that: ‘... in my view they did not add any value in discussions on merit matters’.<sup>284</sup> According to Mr Sartor, ‘... I always found that you got a lot better results by dealing with the applicant directly, with your technical people there. They had their technical people there. They would have their debate across the table, and things could be advanced’.<sup>285</sup>

#### **Services provided by lobbyist Mr Graham Richardson**

- 4.9 As noted in Chapter 2, Mr Graham Richardson was engaged by Mr Roy Medich in July 2005 to act as a lobbyist for the rezoning of the land owned by the Medich brothers at Badgerys Creek. Mr Roy Medich advised that Mr Richardson ‘... basically provided services of political advice’.<sup>286</sup> Mr Medich elaborated: ‘For example, he would say, “You need to draw those matters to the attention of the Premier’s Department.” ... primarily I would given him reports when they were completed, and I would be given updates and I would expect him to promote those in a proper way’.<sup>287</sup>

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<sup>281</sup> Mr Ken Morrison, Executive Director, Property Council of Australia (NSW), Evidence, 19 October 2009, p 30

<sup>282</sup> Mr Sam Haddad, Director General, NSW Department of Planning, Evidence, 19 October 2009, p 67

<sup>283</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 3

<sup>284</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 4

<sup>285</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 3

<sup>286</sup> Mr Roy Medich, Evidence, 29 September 2009, p 24

<sup>287</sup> Mr Roy Medich, Evidence, 29 September 2009, p 32

- 4.10** While noting that his brother Roy was mainly responsible for dealings relating to the Medich site, Mr Ron Medich said that Mr Richardson ‘... was supposed to be lobbying, you know, and dealing with the Planning Department, and liaising to find out what was going on’.<sup>288</sup>
- 4.11** Mr Richardson described the services that he provides to his clients as follows:
- In terms of advising my clients, I have been in and around government for 40 years, so I think I have a lot more experience than most in how it works, what is likely to fly and what is not. I think I have been of some assistance but, as I said, over the past couple of years it has been a bit of a battle – I have lost more than I have won.<sup>289</sup>
- 4.12** As outlined in Chapter 3, Mr Haddad met Mr Richardson four times during 2009 in relation to the future of the land owned by the Badgerys Creek Consortium. Mr Haddad explained that his discussions with Mr Richardson were about process: ‘Process means where is it at? Why is it taking so long? When is it going to finish? We have addressed all the issues, what do we need to do more?’<sup>290</sup>
- 4.13** When questioned on why he believed it necessary to employ Mr Richardson as a lobbyist, Mr Roy Medich said that ‘... it is not an easy task these days to bring your matter before the Government. Sometimes you need to get advice on which is the best way forward on a particular project’.<sup>291</sup>
- 4.14** Mr Roy Medich emphasised that ‘... at all times I asked him [Mr Richardson] to deal with my matters on merit and they had to be in a transparent way’.<sup>292</sup> Mr Medich added that ‘I could pass things by him [Mr Richardson] so that I would have a better understanding myself if I was doing something that was not as it should be in the way I was approaching Government’.<sup>293</sup>
- 4.15** For his services, Mr Richardson was paid \$5,000 per month plus GST. There was no success fee involved,<sup>294</sup> nor was there a formal contract between Mr Roy Medich and Mr Richardson.<sup>295</sup> Mr Richardson would submit a monthly invoice to Mr Medich, which requested payment but did not detail the work undertaken in that month.<sup>296</sup>

### **Role of lobbyists in the planning system**

- 4.16** There was a view among some Inquiry participants that lobbyists had greater access to planning officials, and thereby could exercise undue influence over planning decisions. Other

<sup>288</sup> Mr Ron Medich, Evidence, 29 September 2009, p 51

<sup>289</sup> Mr Graham Richardson, Evidence, 19 October 2009, p 42

<sup>290</sup> Mr Haddad, Evidence, 19 October 2009, p 55

<sup>291</sup> Mr Roy Medich, Evidence, 29 September 2009, p 24

<sup>292</sup> Mr Roy Medich, Evidence, 29 September 2009, p 24

<sup>293</sup> Mr Roy Medich, Evidence, 29 September 2009, p 24

<sup>294</sup> Mr Roy Medich, Evidence, 29 September 2009, p 24

<sup>295</sup> Mr Richardson, Evidence, 19 October 2009, p 43

<sup>296</sup> Mr Richardson, Evidence, 19 October 2009, p 36

Inquiry participants claimed however that because lobbyists are a legitimate part of the system, they have a right to meet with government officials to represent their clients' interests.

**4.17** One Inquiry participant perceived lobbyists to have special access to planning officials, which they claimed unfairly disadvantages those opposed to a development: '... when there is no right of appeal and the official does not provide an opportunity to the other side there is obviously real bias in the system'.<sup>297</sup>

**4.18** Mr Richardson refuted the suggestion that he as a lobbyist enjoyed a special relationship with Mr Haddad, which gave him greater access to the Director General than other stakeholder groups. In support of this assertion he cited the frequency with which his meeting with Mr Haddad were postponed. Of his relationship to Mr Haddad, he said:

I had no special access or special relationship. I have never met him socially – not for a drink, a coffee, a lunch or a dinner. As someone employed by some very large developers dealing in very large projects, seeing the Director of the Department of Planning is my job. I am sure that part, albeit a very small part, of his job is to see people like me.<sup>298</sup>

**4.19** Mr Haddad emphasised that 'without meetings with stakeholders, including development proponents ... I believe exercising the Director General's function would be inefficient and impractical'.<sup>299</sup> According to Mr Haddad:

I believe it is important to reiterate to the Committee that as Director General, it is appropriate and essential that I meet from time to time with a variety of stakeholders including proponents and their advisers. This is essential, as without such discussions, it is not possible to obtain an appreciation of the relevant issues associated with development proposals, nor to be properly informed.

Despite discussions with proponents, consultants or lobbyists, in all cases, proposals are assessed by the Department on their merit consistent with Government policy and legislative requirements. To ensure transparency in decision making, all assessment reports and decisions are placed on the Department's website.<sup>300</sup>

**4.20** In relation to the pressure exerted by lobbyists to achieve favourable outcomes for their clients, Mr Sartor said: '... in my opinion the Department came under more pressure from objectors and community groups and from the media on development matters than they probably ever did from lobbyists'.<sup>301</sup>

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<sup>297</sup> Submission 1, Name suppressed, p 1

<sup>298</sup> Submission 14, Mr Graham Richardson, p 2

<sup>299</sup> Answers to questions on notice taken during evidence, 19 October 2009, NSW Department of Planning, cover letter p 1

<sup>300</sup> Answers to questions on notice taken during evidence, 19 October 2009, NSW Department of Planning, cover letter p 1, emphasis as per original

<sup>301</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 4



## NSW Lobbyist Code of Conduct

- 4.21** In order to ‘ensure that contact between Lobbyists and Government Representatives is conducted in accordance with public expectations of transparency, integrity and honesty’,<sup>302</sup> the NSW Government in February 2009 introduced a Lobbyist Code of Conduct and associated register of professional lobbyists.<sup>303</sup>
- 4.22** The Lobbyist Code of Conduct applies to ministers and parliamentary secretaries and their staff, staff of public sector agencies, and government members of Parliament and their staff. It also applies to staff engaged or contracted to public sector agencies. The Lobbyist Register is published online. The Code defines a lobbyist as follows:
- “Lobbyist” means a person, body corporate, unincorporated association, partnership or firm whose business includes being contracted or engaged to represent the interests of a third party to a Government Representative. “Lobbyist” does not include:
- (a) an association or organisation constituted to represent the interests of its members;
  - (b) a religious or charitable organisation; or
  - (c) an entity or person whose business is a recognised technical or professional occupation which, as part of the services provided to third parties in the course of that occupation, represents the views of the third party who has engaged it to provide their technical or professional services.<sup>304</sup>
- 4.23** The Code requires NSW Government officials to only have contact with lobbyists listed on the Lobbyist Register.<sup>305</sup> Lobbying is taken to include contact by phone, email, written mail, and face-to-face meetings. When making contact with a NSW Government representative, lobbyists are required to disclose that they are a lobbyist, the name of their client, and the issue that they wish to raise.
- 4.24** On 17 June 2009, and again later that month, Mr Haddad directed all Planning Department staff to complete online training on their obligations under the Lobbyist Code of Conduct.<sup>306</sup> Staff were again instructed to complete the online training in September 2009. According to Mr Haddad:

<sup>302</sup> NSW Government, *NSW Government Lobbyist Code of Conduct*, <[www.dpc.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0017/32066/NSW\\_Government\\_Lobbyist\\_Code\\_of\\_Conduct.pdf](http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0017/32066/NSW_Government_Lobbyist_Code_of_Conduct.pdf)> (accessed 26 October 2009)

<sup>303</sup> NSW Government, Premier’s Memorandum 2009/03 *Lobbyist Code of Conduct and Register*, <[www.dpc.nsw.gov.au/publications/memos\\_and\\_circulars/ministerial\\_memoranda/2009/m2009-03\\_lobbyist\\_code\\_of\\_conduct\\_and\\_register](http://www.dpc.nsw.gov.au/publications/memos_and_circulars/ministerial_memoranda/2009/m2009-03_lobbyist_code_of_conduct_and_register)> (accessed 26 October 2009)

<sup>304</sup> NSW Government, Premier’s Memorandum 2009/03 *Lobbyist Code of Conduct and Register*, <[www.dpc.nsw.gov.au/publications/memos\\_and\\_circulars/ministerial\\_memoranda/2009/m2009-03\\_lobbyist\\_code\\_of\\_conduct\\_and\\_register](http://www.dpc.nsw.gov.au/publications/memos_and_circulars/ministerial_memoranda/2009/m2009-03_lobbyist_code_of_conduct_and_register)> (accessed 26 October 2009)

<sup>305</sup> NSW Government, *NSW Government Lobbyist Code of Conduct*, <[www.dpc.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0017/32066/NSW\\_Government\\_Lobbyist\\_Code\\_of\\_Conduct.pdf](http://www.dpc.nsw.gov.au/__data/assets/pdf_file/0017/32066/NSW_Government_Lobbyist_Code_of_Conduct.pdf)> (accessed 26 October 2009)

<sup>306</sup> Answers to additional questions on notice, 29 September 2009, NSW Department of Planning, Question 11a, pp 3-4

I have indicated that the Department's planners and executives will not communicate with a lobbyist who is not listed on this register and that all staff have been advised that when contacted by a lobbyist they are to check the register.<sup>307</sup>

**4.25** Mr Haddad advised that in consequence of this Inquiry:

... I will make sure that staff are continuously updated, monitored, trained, or whatever possible in relation to the code of conduct ... I will instruct the relevant executive directors to make sure that there is an ongoing reminder to staff about all these practices as long as it is government policy to have them.<sup>308</sup>

**4.26** While the Code regulates conduct between lobbyists and government officials, it does not provide direction about the manner in which meetings are to be held. The issue of due process for holding meetings was discussed in Chapter 3. As noted earlier, the Code also does not apply to 'lobbying' by organisations constituted to represent the interests of their members, or to persons or businesses engaged for the purposes of providing technical or professional services to a third party.

### **Should ministers be informed of meetings between Departmental officers and lobbyists?**

**4.27** The Lobbyist Code of Conduct is silent on the issue of whether ministers should be aware of contact between departmental officials and lobbyists. In relation to the Department of Planning, Minister the Hon Kristina Keneally MP advised that:

Mr Haddad does not brief me on any of his conversations with lobbyists. It is not his job to present the views of lobbyists to the Government. It is his job, as the Director General of the Department of Planning, to present the Department's view on the merits of proposals ...<sup>309</sup>

**4.28** Minister Keneally gave evidence that she was only aware of Mr Haddad's meetings with Mr Richardson from media reports.<sup>310</sup> Mr Haddad did not raise the meetings with her, and Minister Keneally did not raise these meeting with Mr Haddad after she became aware that the meetings had occurred. Minister Keneally explained that:

I do not discuss with the Director General the content of his meetings with lobbyists. I do not direct him who he should meet with. I do not look at his diary and give permission for specific meetings. I do not ask him to provide advice on specific meetings with specific individuals. Do you recommend, Madam Chair, does the Opposition recommend that I as a Minister require him to clear every meeting with me, to ask him that he provide me with the minutes of every meeting that he has?<sup>311</sup>

<sup>307</sup> Mr Sam Haddad, Director General, NSW Department of Planning, Evidence, Budget Estimates [Planning Redfern Waterloo], 16 September 2009, pp 30-31

<sup>308</sup> Mr Haddad, Evidence, 19 October 2009, p 52

<sup>309</sup> Hon Kristina Keneally MP, Minister for Planning, Evidence, Budget Estimates [Planning Redfern Waterloo], 16 September 2009, p 31

<sup>310</sup> Hon Kristina Keneally MP, Minister for Planning, Evidence, 29 September 2009, p 36

<sup>311</sup> Hon Kristina Keneally MP, Evidence, 29 September 2009, p 36

**4.29** According to Minister Keneally, it would be ‘political interference’ for a minister to attempt to restrict the meetings held by their Director General, or to require the Director General to report on all meetings. Minister Keneally added:

... I think it would be grossly inappropriate for a minister of one political party, for example, to require a director general to provide notes of meetings that the director general might have had with the political party of members of the Opposition.<sup>312</sup>

**4.30** As with current Planning Minister Ms Keneally, the former Planning Minister Mr Sartor also did not require the Director General to advise him of meetings between himself or Departmental officers and lobbyists. When questioned on whether he was responsible for the actions of the Department of Planning when he was the Planning Minister, Mr Sartor observed that: ‘There is a big distinction between acting and meddling. And it is very important for a Minister not to meddle’.<sup>313</sup>

**4.31** In response to a question on whether she was happy not to know which lobbyists had met with Departmental officers, Minister Keneally said:

I am happy to know, under the leadership of Mr Haddad, that the Department of Planning adheres to the Lobbyists Register and the Code of Conduct and that Mr Haddad has taken steps to ensure that everyone in the Department of Planning is trained in the use of that register and that they abide by it.<sup>314</sup>

**4.32** Minister Keneally indicated that she has ‘full confidence’ in the manner in which Mr Haddad had dealt with lobbyists:

I want to put on the record here today my estimation of Mr Sam Haddad ... Sam Haddad is a man of utmost integrity. He is a man of strong character. As a member of Parliament, I respect him. As a Minister, I have full confidence in him.<sup>315</sup>

### **Regulation of lobbyists across Australia**

**4.33** The Federal Government and the six States have developed Lobbyist Codes of Conduct to regulate the interactions between lobbyists and government representatives. The content of each Code is largely similar, and includes provisions such as establishing and maintaining a publicly available Register of Lobbyists, outlining principles of engagement, and prohibiting contact between government representatives and unregistered lobbyists.<sup>316</sup>

**4.34** However, there are some features of lobbyist codes in other jurisdictions that distinguish these codes from that of New South Wales. The Federal, Queensland, Victorian and Tasmanian Codes prohibit ex-government representatives from becoming a registered lobbyist for a

<sup>312</sup> Hon Kristina Keneally MP, Evidence, 29 September 2009, p 43

<sup>313</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 5

<sup>314</sup> Hon Kristina Keneally MP, Evidence, 16 September 2009, p 31

<sup>315</sup> Hon Kristina Keneally MP, Evidence, 29 September 2009, p 35

<sup>316</sup> Answers to questions on notice taken during evidence, 19 October 2009, NSW Department of Planning, Attachment – *Summary of Provisions applying to Government Representatives in Lobbyist Codes of Conduct*, p 2

certain period of time after they leave office. The time period varies between jurisdictions.<sup>317</sup> For example, the Victorian Code of Conduct states that ex-government representatives are prohibited from becoming a registered lobbyist for a period of 12-18 months depending on their former position, while the Tasmanian Code prohibits lobbying for a standard period of 12 months.<sup>318</sup>

- 4.35** The Federal and Tasmanian Codes also require government representatives who are aware of breaches of the respective Codes to ‘... report details of the breach to the [Departmental] Secretary’.<sup>319</sup>
- 4.36** The NSW Code does not have any requirement prohibiting ex-government representatives from becoming a registered lobbyist, nor does it oblige government representatives to report breaches of the Code.<sup>320</sup>
- 4.37** Queensland has several additional initiatives that seek to regulate the conduct of registered lobbyists, including provisions relating to bans on:
- the payment of success fees to registered lobbyists
  - members of Parliament ‘... attending intimate party fundraisers with business people’
  - registered lobbyists being ‘... appointed to government boards or to other significant positions paid for by the Queensland Government’.<sup>321</sup>
- 4.38** Further, in November 2009, the Queensland Premier, the Hon Anna Bligh MP, announced that the State’s Integrity Commissioner will be given additional responsibility for oversight of the Queensland Register of Lobbyists.<sup>322</sup>
- 4.39** At the Federal level, the *Australian Public Service Commission: Guidance for Australian Public Service* advises public sector employees to ‘... be aware of and to manage any actual or perceived conflict of interest between their official duties and their relationship with lobbyists’.<sup>323</sup>

<sup>317</sup> Answers to questions on notice taken during evidence, 19 October 2009, NSW Department of Planning, Attachment – *Summary of Provisions applying to Government Representatives in Lobbyist Codes of Conduct*, p 2

<sup>318</sup> Answers to questions on notice taken during evidence, 19 October 2009, NSW Department of Planning, Attachment – *Summary of Provisions applying to Government Representatives in Lobbyist Codes of Conduct*, p 39 and p 41

<sup>319</sup> Answers to questions on notice taken during evidence, 19 October 2009, NSW Department of Planning, Attachment – *Summary of Provisions applying to Government Representatives in Lobbyist Codes of Conduct*, p 15 and p 41

<sup>320</sup> Answers to questions on notice taken during evidence, 19 October 2009, NSW Department of Planning, Attachment – *Summary of Provisions applying to Government Representatives in Lobbyist Codes of Conduct*, p 33

<sup>321</sup> Answers to questions on notice taken during evidence, 19 October 2009, NSW Department of Planning, Attachment – *Summary of Provisions applying to Government Representatives in Lobbyist Codes of Conduct*, p 36

<sup>322</sup> Hon Anna Bligh MP, QLD Premier and Minister for the Arts, ‘Sweeping reforms deliver Queensland strong integrity and accountability,’ *Media Release*, 10 November 2009

- 4.40 None of the Codes of Conduct outline how meetings between lobbyists and government representatives should be conducted or recorded.

### **Effectiveness of lobbyist regulation in New South Wales**

- 4.41 Various means were suggested to strengthen the NSW Lobbyist Code of Conduct and increase the transparency of the role of lobbyists, particularly in relation to planning decisions. For example, one Inquiry participant recommended that ‘there should be a requirement that every approach to an official is carefully recorded and a report of it is sent to the other side’.<sup>324</sup>

- 4.42 In relation to planning decisions, the submission from the Greens NSW recommended:

Publishing on the Department of Planning website a register of any meeting between an officer of the Department of Planning or staff member of the Minister for Planning or the Minister with any lobbyist or representative of any person or company supporting or opposing a specific development. The register should note the date, time, location, who attended, subjects discussed and outcomes of any meeting.<sup>325</sup>

- 4.43 The submission from the Coffs Harbour Jetty Action Group went further, and asked: ‘Considering that the public has no way of competing with them [lobbyists], is it time they were abolished?’<sup>326</sup>

- 4.44 However, Mr Sartor noted that it would be difficult to restrict lobbyists’ access to government officials without also limiting the participation of other stakeholders to the planning process:

It [further regulation of lobbyists] should be well crafted; it cannot just apply to lobbyists. It has to apply to government relations people, PR people, and all the people other than technical ones – the technical expert that meets with the department bureaucrat to talk about impacts on native vegetation or threatened species. Clearly, they should be able to have free discourse with the department ... We just have to be sensible about this, or we will scare away all investment from the State.<sup>327</sup>

### **Committee comment**

- 4.45 The Committee is of the view that it is unusual for a minister to take the position adopted by Minister Keneally that she does not need to be informed of contact between the Director-General of the Department of Planning and professional lobbyists, including Mr Richardson. The Committee believes that the working relationship of a minister with the head of their department should more appropriately be as that described in *Australian Mandarins*:

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<sup>323</sup> Answers to questions on notice taken during evidence, 19 October 2009, NSW Department of Planning, Attachment – *Summary of Provisions applying to Government Representatives in Lobbyist Codes of Conduct*, p 18

<sup>324</sup> Submission 1, p 1

<sup>325</sup> Submission 13, The Greens NSW, pp 2-3

<sup>326</sup> Submission 6, Coffs Harbour Jetty Action Group, p 2

<sup>327</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 5

Secretaries ha[ve] a duty to keep the minister informed of any matter in the running of the department that could have some sensitivity for the minister.<sup>328</sup>

- 4.46** The Committee is also of the view that steps must be taken to ensure that the advice given from the Department of Planning to the Minister is not, and cannot be perceived to be, unduly influenced by professional lobbyists.
- 4.47** While the evidence to the Committee concerns the role played by lobbyists in the planning system, the Committee believes that concerns about lobbyists are relevant to all government agencies. The Committee therefore recommends three changes to the Lobbyist Code of Conduct to ensure the highest standards of probity and integrity in dealings between lobbyists and NSW Government officials.
- 4.48** First, the Lobbyist Code of Conduct should require that a minister be informed of contact between lobbyists and government representatives, including meetings, phone conversations, emails and written mail. This may assist in ensuring that responsibility for a department's actions, including contact with lobbyists, properly remains with the minister. The Committee also recognises that it would be difficult for a minister to exercise effective control over their department, if the minister is not fully informed about the department's operations. To ensure that there is a comprehensive record of all approaches by lobbyists, all government representatives will need to inform the relevant director general or minister of any contact with lobbyists.
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### **Recommendation 7**

That the Premier strengthen the NSW Lobbyist Code of Conduct to require that each minister is informed at regular intervals of contact between government representatives and registered lobbyists.

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- 4.49** Second, the details of contact between lobbyists and government representatives should be made public. This will ensure greater transparency in, and facilitate scrutiny of, government decisions, and address the perception that lobbyists have special access to government officials. The Premier should ensure that a report is published on the internet at regular intervals on contact between lobbyists and government representatives. The record should include the name of the lobbyist, date of contact, meeting attendees (if applicable), and a summary of the issues discussed.
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### **Recommendation 8**

That the Premier strengthen the NSW Lobbyist Code of Conduct by publishing a report on the internet at regular intervals detailing contact between government representatives and registered lobbyists. The report should include the name of the lobbyist, date of contact, meeting attendees (if applicable) and issues discussed.

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<sup>328</sup> Hyslop R, *Australian Mandarins, Perceptions of the Role of Departmental Secretaries*, Canberra, AGPS Press in association with the Public Service Commission, 1993, p 17

- 4.50** Third, the Lobbyist Code of Conduct should regulate the manner in which meetings are conducted between lobbyists and NSW Government officials. Recommendation 3 in Chapter 3 called for regulation of the manner in which meetings are conducted between proponents and their representatives (including lobbyists) and Department of Planning officers. The Committee recommends that this regulation be extended to all NSW Government agencies.

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### **Recommendation 9**

That the Premier strengthen the NSW Lobbyist Code of Conduct by establishing protocols to be applied to all meetings between government representatives and registered lobbyists. At a minimum, the meeting protocols should contain guidelines regarding venues, properly recorded minutes and the requirement for the third party presence of at least one government representative.

- 4.51** Further, the Committee notes that while the NSW Lobbyist Code of Conduct is largely similar to the Codes in other States and at the Federal level, there are some significant differences. For example, four of the other jurisdictions' Codes prohibit ex-government representatives from becoming a registered lobbyist for a certain period of time after they leave office. Two of the Codes require government representatives to report breaches of the Codes. The Queensland Code prohibits lobbyists from being paid success fees, prohibits members of Parliament from attending intimate party fundraisers with business people, and prohibits lobbyists from being appointed to boards or positions paid for by the Queensland Government. Further, the State's Integrity Commissioner is now to be given responsibility of overseeing the Queensland Register of Lobbyists.
- 4.52** The evidence to this Inquiry does not allow the Committee to determine whether the provisions in place in other jurisdictions' Codes would be of use in the New South Wales context. However, the Committee believes that the Premier should direct the Planning Minister, in developing new guidelines, to review the additional provisions provided in Lobbyist Codes of Conduct in other Australian jurisdictions, and consider whether any of those provisions could be incorporated into the NSW Lobbyist Code of Conduct. The Premier should then report to Parliament on the outcomes of the review and any proposed changes to the Code.

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### **Recommendation 10**

That the Premier direct the Minister for Planning, in developing a new NSW Lobbyist Code of Conduct, to review Lobbyist Codes of Conduct in other Australian jurisdictions. The Planning Minister should consider whether any of the provisions contained in these Codes should be incorporated into the NSW Lobbyist Code of Conduct, and report to Parliament on the outcomes of that review and changes the Premier proposes to make to the Code.

## Political donations

**4.53** In addition to the potential influence of lobbyists on planning decisions, another key issue in the Inquiry was whether political donations influence planning decisions. Mr Ron Medich and Mr Roy Medich are substantial donors to the Australian Labor Party (ALP), and members questioned whether this had assisted them to secure favourable outcomes for their land at Badgerys Creek. Questions were also raised about political fundraising events, and whether attendees had greater access to ministers and could therefore influence NSW Government decisions.

**4.54** In the weekend before this report was to be tabled, Premier Rees addressed the NSW ALP Conference and spoke of the Government's reforms to the NSW planning system over the past four years. He went on to say:

But all the reforms in the world cannot erase the taint that comes from political donations.<sup>329</sup>

**4.55** This section concludes by considering reform of the electoral funding scheme in New South Wales.

### Political donations by Medich Property Group

**4.56** Mr Ron Medich and Mr Roy Medich are substantial donors to the ALP. Records published by the NSW Election Funding Authority indicate that in the four-year period prior to the 2007 State Election the Medich Property Group made political donations of \$166,000, of which \$2,500 was donated to the Liberal Party and the remainder to the ALP.<sup>330</sup>

**4.57** Commenting on the amount of money that Mr Ron Medich and Mr Roy Medich had donated to the ALP, Mr Richardson said:

In the case of Roy Medich, you said he has donated \$300,000 in the last decade. He has given more than that to charity. These people are not poor ... they are able to make donations to political parties and to charities that are far greater than the rest of us could ever dream of.<sup>331</sup>

**4.58** In response to questioning on whether he had advised Mr Roy Medich to donate to the ALP, Mr Richardson said:

In the case of Roy Medich you would never have had to make that statement because he has always been a pretty strong Labor supporter. I think I first met him at Labor Party functions probably a quarter of a century ago, a long, long time ago, in the

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<sup>329</sup> Address by Premier Nathan Rees, NSW Labor Party State Conference, 14 November 2009, p 11

<sup>330</sup> NSW Election Funding Authority, *Declarations lodged by Donors – Summary Report 16 February 2009* <[www.efa.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0020/50285/Donors\\_Summary\\_Published\\_090216.pdf](http://www.efa.nsw.gov.au/__data/assets/pdf_file/0020/50285/Donors_Summary_Published_090216.pdf)> *Declarations lodged by Donors – Detailed Report 23 February 2009* (accessed 26 October 2009) <[www.efa.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0012/50313/Donors\\_Details\\_Published\\_090223.pdf](http://www.efa.nsw.gov.au/__data/assets/pdf_file/0012/50313/Donors_Details_Published_090223.pdf)> (accessed 26 October 2009)

<sup>331</sup> Mr Richardson, Evidence, 19 October 2009, p 39



western suburbs. He has been a long-term Labor supporter and has continued to so be.<sup>332</sup>

**4.59** When questioned on whether he generally advises his clients to make political donations, Mr Richardson said: ‘I always tell them they should donate. I also tell them they should donate to the other side as well’. In response to a subsequent question on why he advised his clients to make political donations, he said: ‘I do not think it is a great secret around the table that I am a Labor supporter. I think that is fairly well known’.

**4.60** Mr Sartor was asked whether during his tenure as Minister for Planning he or his staff had advised any person or group to make a donation to the ALP, or attend an ALP fundraising event. Mr Sartor responded:

Not in relation to any planning decision ... But it is likely that when Labor Party fundraisers are scheduled that they come up in conversation with a variety of people including fellow MPs. All political candidates are engaged in fundraising at some stage.<sup>333</sup>

**4.61** In evidence to the Budget Estimates Inquiry 2009-2010, Minister Keneally was asked whether she had ever discussed the issue of political donations with proponents or opponents of Part 3A projects. Minister Keneally replied: ‘Certainly not with proponents. I cannot recall that any opponent has raised it, but certainly not with proponents.’<sup>334</sup> Further, Minister Keneally then advised the Committee that she had never had any discussions with ALP officials about political donations by property developers.<sup>335</sup>

### **Did political donations influence planning decisions regarding the Medich site?**

**4.62** The submission from the Greens NSW observed that there had been a substantial increase in donations from Medich Property Group in 2005, at the time they were applying for their land at Badgers Creek to be rezoned:

Electoral Funding Authority records show that at the time the Medich Group was preparing its rezoning proposal and had engaged Graham Richardson as a political adviser and lobbyist, the Group’s donations to the NSW ALP increased massively, from an average of around \$7,000 per year prior to September 2005 to a total of over \$200,000 in the three years from September 2005 to September 2008, at an average annual expenditure of around \$70,000 per annum. This represents a tenfold increase ...<sup>336</sup>

<sup>332</sup> Mr Richardson, Evidence, 19 October 2009, p 34

<sup>333</sup> Answers to additional questions on notice, 19 October 2009, Hon Frank Sartor MP, Question 14, p 3

<sup>334</sup> Hon Kristina Keneally MP, Evidence, 16 September 2009, p 22

<sup>335</sup> Hon Kristina Keneally MP, Evidence, 16 September 2009, p 22

<sup>336</sup> Submission 13, The Greens NSW, p 14

**4.63** The submission argued that ‘the public has every right to be suspicious about the timing and quantity of these donations ... The public knows that businesses do not make donations of this magnitude without any expectation of a return on their investment’.<sup>337</sup>

**4.64** When Mr Roy Medich was questioned on whether the increase in political donations by Medich Property Group was linked to efforts to rezone the land at Badgerys Creek, he said:

I can tell you this: I have no connection in the way that you are inferring it. Under Labor’s Business Dialogue, which I am a member of, they hold various events and functions and they coincided with those periods. That would be the answer. If you took a corporate table it would be \$15,000 ... I am staggered to think that those amounts are that high, but you are talking about many years.<sup>338</sup>

**4.65** Mr Ron Medich also denied any connection between the timing of the increased political donations and efforts to develop the land at Badgerys Creek.<sup>339</sup>

**4.66** Mr Roy Medich advised that he was notified of the Business Dialogue events by circular. He said that he had not been approached by a minister or member of Parliament, or their staff, to attend an ALP function.<sup>340</sup>

**4.67** Mr Roy Medich explained that he made political donations because:

... I have been a supporter of the Labor Party all of my life. My father, as I have said, was a member for 25 years before his passing. Gough Whitlam lived around the corner and I went to school with his son. I was very friendly with the Bedford family and his daughters back then in those days. So I sort of grew up with the Labor movement and all my life has been spent in greater western Sydney ...<sup>341</sup>

**4.68** When questioned on the benefit to his clients from making political donations, Mr Richardson responded: ‘Thus far it has proven to be to their detriment – if you donate you get punished’.<sup>342</sup>

### **Do developer donations influence planning decisions in New South Wales?**

**4.69** The submission from the Greens NSW claimed that ‘planning policies are driven by the property development industry that pours millions of dollars into the major parties’ election campaign coffers.’<sup>343</sup> The submission asserted that:

... particularly in the last ten years, the State’s planning laws have swung radically in favour of developers. The role of political donations in this reversal of government

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<sup>337</sup> Submission 13, p 14

<sup>338</sup> Mr Roy Medich, Evidence, 29 September 2009, p 27

<sup>339</sup> Mr Ron Medich, Evidence, 29 September 2009, p 54

<sup>340</sup> Mr Roy Medich, Evidence, 29 September 2009, p 28

<sup>341</sup> Mr Roy Medich, Evidence, 29 September 2009, p 33

<sup>342</sup> Mr Richardson, Evidence, 19 October 2009, p 39

<sup>343</sup> Submission 13, p 4

priorities has given rise to significant community concern and has seriously undermined public confidence in the integrity of the planning system.<sup>344</sup>

- 4.70** However, Mr Ron Medich refuted the suggestion that developer donations are motivated by a desire to influence government decisions: ‘I certainly do not make political donations in order to improve my chances of getting projects approved. I make political donations to support a political party and the policies of that party’.<sup>345</sup>
- 4.71** Mr Roy Medich supported his brother’s assertion: ‘In my particular case I can honestly and sincerely say to you those contributions have not been put there as a point of influence’.<sup>346</sup>
- 4.72** The former Planning Minister, Mr Sartor, said that he was not aware of the amounts of money donated by property developers such as Mr Ron Medich and Mr Roy Medich until political donations started to be the subject of media attention.<sup>347</sup> Mr Sartor argued that ‘if Medich gave donations expecting something back, they failed dismally. They did not get anything’.<sup>348</sup>

### **Fundraising events**

- 4.73** It was suggested that attendance at political fundraising events gave property developers an unfair advantage over those who could not afford to attend such events, as they resulted in unequal access to ministers and members of Parliament.
- 4.74** In relation to his attendance at ALP functions, Mr Ron Medich said: ‘I find that they are very good networking places, to meet other people ... you meet other property developers, bankers – all sorts of people’.<sup>349</sup> Mr Ron Medich explained that he would not attend every fundraising dinner for which he and his brother bought a table, but they ‘... might send representatives or friends to go to them’.<sup>350</sup>
- 4.75** Mr Ron Medich noted that ‘on the odd occasion’ a minister or member of Parliament had been seated at his table at a fundraising event, but ‘I have never ever heard any business ever discussed at any one of them’.<sup>351</sup>
- 4.76** Minister Keneally advised that she had not attended any ALP fundraising events since becoming the Minister for Planning, except for one occasion when she was the speaker at a one-hour Business Dialogue event.<sup>352</sup> Before attending the event, the Minister sought an assurance that specific planning proposals would not be discussed.

<sup>344</sup> Submission 13, p 6

<sup>345</sup> Answers to additional questions on notice, 29 September 2009, Mr Ron Medich, Question 14, p 3

<sup>346</sup> Mr Roy Medich, Evidence, 29 September 2009, p 28

<sup>347</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 5

<sup>348</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 6

<sup>349</sup> Mr Ron Medich, Evidence, 29 September 2009, p 54

<sup>350</sup> Mr Ron Medich, Evidence, 29 September 2009, p 54

<sup>351</sup> Mr Ron Medich, Evidence, 29 September 2009, p 54

<sup>352</sup> Hon Kristina Keneally MP, Evidence, 29 September 2009, p 42

**4.77** As noted in Chapter 3, in relation to his attendance at ALP fundraising events while he was the Minister for Planning, Mr Sartor said: ‘... if encounters with developers occurred at functions I avoided discussing substantive matters relating to any specific development.’<sup>353</sup> He added that:

I found it really unhelpful for developers to come up and try – and some would try and get in your ear about things – at the business dialogue functions. Sometimes they would say, “so and so wants to talk to you”. Then I would just direct them to approach the office. It just was not helpful; it never advanced their projects. They are much better off coming into a room with the bureaucrats present, because there are always two sides to these arguments.<sup>354</sup>

### **Reforms of NSW electoral funding scheme**

**4.78** There was considerable support among Inquiry participants for reform of the electoral funding scheme to ensure that political donations do not influence government decisions, particularly planning decisions.

**4.79** Mr Morrison observed that some property developers may view political donations as a means to achieve favourable planning outcomes:

Where we sit at the moment in New South Wales is our processes are very complex, and they are also very, very slow. So whether you are talking about development application processes or rezoning processes, these are very complex matters where you can put an application in and you can literally not hear a result for some years. In that environment obviously you will look for how you can get better results than that out of the system. When you have processes which are not transparent or efficient, then there will be some people who will believe that it is better to be seen to be doing the right thing by the prevailing political party to assist with that process.<sup>355</sup>

**4.80** Mr Morrison added that: ‘I do not think we have a situation in New South Wales where you need to be a political donor to have your application assessed.’<sup>356</sup>

**4.81** Mr Ron Medich described political donations as:

... part of business life. Honestly, say the Liberals were in in two years time, or whatever, and suddenly from head office I get an invitation to go [to a fundraising event] ... I probably would go to them as well ... Do you mean to tell me that if they send you that, you do not go?<sup>357</sup>

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<sup>353</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 1

<sup>354</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 4

<sup>355</sup> Mr Morrison, Evidence, 19 October 2009, p 26

<sup>356</sup> Mr Morrison, Evidence, 19 October 2009, p 26

<sup>357</sup> Mr Ron Medich, Evidence, 29 September 2009, p 59

**4.82** The submission from the Greens NSW made six recommendations for the removal of ‘actual, potential and perceived conflicts of interest’ from the planning system. The first recommendation was for:

The imposition of a ban on political parties or candidates accepting donations from any person or company with a direct or indirect financial interest in the outcome of a development, rezoning or other planning related application being assessed by a council or state government.<sup>358</sup>

**4.83** However, Mr Morrison argued against implementing targeted restrictions on developer donations: “Those of ill will will be able to run rings around whatever system is set up which tries to define “developer” and therefore exclude a category called “developer””.<sup>359</sup> Mr Morrison said that if corporate donations were to be banned, there would need to be a much higher level of public funding for elections.

**4.84** Minister Keneally was questioned about whether confidence in the NSW planning system would be enhanced if proponents and opponents of development applications were banned from making political donations while the relevant applications are being assessed by a council or State government body. The Minister responded by describing measures that the NSW Government is taking to enhance the transparency of the planning system. These measures include the introduction of the Planning Assessment Commission and the Joint Regional Planning Panels, publication of a monthly update on the Department’s website on major project determinations, publication of the Department’s recommendations and the Minister’s assessments of major projects, and a tracking system to following the progress of rezoning proposals.

**4.85** In relation to political donations, Minister Keneally highlighted the:

New political donation disclosure laws that came into effect in 2008, imposing obligations on applicants making applications for project approval from 1 October 2008 to disclose all reportable political donations (if any) made by anyone with a financial interest in the application within the period commencing two years before the application is made and ending when the application is determined.<sup>360</sup>

**4.86** Mr Sartor argued in support of substantial reform of the electoral funding scheme, including the capping of political donations:

... there should be caps so that you can never have a situation where there is \$100,000 for any political party. It should be a few thousand dollars per annum perhaps. The amount of money any developer can give in any four-year period would be, at most, \$10,000 or \$20,000, and possibly it should be limited to individuals ... in that way any amount of money that a political party could receive is trivial in the context of their total budget ...

<sup>358</sup> Submission 13, p 2

<sup>359</sup> Mr Morrison, Evidence, 19 October 2009, p 25

<sup>360</sup> Answers to questions taken on notice taken during evidence, 29 September 2009, Hon Kristina Keneally MP, Question 1, p 1

But you need to get to the point where people have a right to support whom they want to but the quantum is such that you cannot infer anything else from what they do. That is my view. It should happen sooner rather than later because I think this is a distraction.<sup>361</sup>

**4.87** In response to questioning on whether he supported the current political donations system, Mr Ron Medich said:

I do not have any problems with the existing system, but to say I “support” it is going a bit far. If the system is part of the law, I will comply with its requirements. Donations to support a particular candidate or political party are a normal part of a democracy ... I do not like the fact that real estate developers are singled out for special treatment. There are many vested issues in the community and many issues which are affected by government decision-making. It should not make any difference if donations come from developers, registered clubs, publicans, unions, big business, conservationists, churches or any other interest group. They should all be treated the same way.<sup>362</sup>

**4.88** Mr Roy Medich also advised that he would abide by any change to the law surrounding political donations. When questioned on whether he would support reform to the electoral funding scheme, he said: ‘In some ways I possibly would – that there would be a limit on donations, yes I would’.<sup>363</sup>

**4.89** In relation to the future of political donations, Mr Richardson said: ‘Going the public funding route is inevitable now. I cannot see how we can do anything else ...’.<sup>364</sup>

**4.90** In November 2009, the Queensland Government announced an overhaul of its political donations and campaign funding laws, regardless of whether or not the Commonwealth would act on the matter. The Queensland Premier said:

The transparency of relationships between elected officials and political donors is a matter of public interest and the regulation of political donations is currently being examined at a federal level. However, if the Commonwealth does not act on this issue by July 2010 we will lead the nation by introducing a cap on political donations. In the consultations, the overwhelming level of support was for a cap of the \$1,000 mark and that is where we will move to in the absence of any developments at the Commonwealth level.<sup>365</sup>

### **Committee comment**

**4.91** The Committee supports wide-ranging reform of the NSW electoral funding scheme, and in particular, tighter regulation of political donations. The Committee believes that election

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<sup>361</sup> Hon Frank Sartor MP, Evidence, 19 October 2009, p 11

<sup>362</sup> Answers to additional questions on notice, 29 September 2009, Mr Ron Medich, Question 15, p 3

<sup>363</sup> Mr Roy Medich, Evidence, 29 September 2009, p 28

<sup>364</sup> Mr Richardson, Evidence, 19 October 2009, p 42

<sup>365</sup> Hon Anna Bligh MP, Ministerial Statement, ‘Integrity and Accountability Framework’, *QLDPD (Legislative Assembly)*, 10 November 2009, p 3135

finance reform is urgently needed to restore confidence in the integrity of the planning process, and the political process as a whole. To achieve this end, the Committee supports the model proposed by the NSW Legislative Council Select Committee on Electoral and Political Party Funding in New South Wales in its report of June 2008.

- 4.92** The Select Committee on Electoral and Political Party Funding in New South Wales made 47 recommendations for policy change that, if implemented, would result in significant changes to the NSW election finance model. The Committee recommended that political donations by corporations and other organisations be banned, and that only small individual donations be permitted. Election spending would be capped at a reasonable level. Political donations and election spending would be disclosed in a timely, transparent and accessible manner. There would be greater policing of the electoral funding scheme, and tougher penalties for non-compliance.
- 4.93** The NSW Government responded to the report in December 2008 and agreed to implement 19 of the Committee's recommendations in whole or in part. The NSW Government response argues that a co-ordinated, national approach to campaign reform is needed to overcome the complex constitutional, jurisdictional, and practical issues that the NSW Government believed prevented it from implementing most of the Committee's recommendations. These included recommendations on banning political donations by corporations and other organisations, capping political donations from individuals, and capping election spending. The NSW Government undertook to consider the Committee's recommendations for significant election finance reform in the context of the Federal Government's proposed electoral finance reforms.
- 4.94** To date the Federal Government has released two green papers on electoral reform. The first paper canvassed political donations, funding and expenditure, and was released in December 2008. The second paper, covering a broad range of electoral matters, was released in September 2009 and submissions are due by 27 November 2009. Recent media coverage has suggested that the Federal Government is seriously considering significant reform of the electoral finance system, including a ban on political donations by corporations and other organisations.<sup>366</sup>
- 4.95** The Committee does not accept that New South Wales cannot implement significant reforms until the Federal Government takes action on this issue. New South Wales acted alone when it introduced the first comprehensive election finance scheme in 1981, and the Committee believes that the State should again take a leading role on election finance reform. The Committee notes that the Queensland Government has decided to overhaul its political donations and campaign funding laws regardless of whether or not the Commonwealth will take action on this matter. The Committee believes that it is regrettable that the NSW Government is dragging the chain on this issue.
- 4.96** The Committee notes that, on the weekend before this report was to be tabled, Premier Rees announced that the NSW Labor Party will ban donations from developers and 'the whole issue of donations and public funding' will be referred to the Joint Standing Committee on Electoral Matters.<sup>367</sup>

<sup>366</sup> Coorey P, 'Labour may end union funding', *Sydney Morning Herald*, 16 October 2009, p 1

<sup>367</sup> Address by Premier Nathan Rees, NSW Labor Party State Conference, 14 November 2009, p 13

**4.97** The Committee notes that the NSW Legislative Council Select Committee on Electoral and Political Party Funding, which reported in June 2008, had wide terms of reference for its Inquiry, namely:

To inquire into and report on the funding of, and disclosure of donations to, political parties, and candidates in state and local government elections, and in particular:

- all matters associated with electoral funding and disclosure
- the advantages and disadvantages of banning all donations from corporations, unions and organisations to parties and candidates
- the advantages and disadvantages of introducing limits on expenditure in election campaigns.
- the impact of political donations on the democratic process and
- any related matters.<sup>368</sup>

**4.98** The Committee believes that any further delay in implementing comprehensive reform of NSW election funding laws would be regrettable.

**4.99** As to the Premier's announcement that: 'From today, the NSW Labor Party will ban donations from developers',<sup>369</sup> the Committee notes media comments from two groups which represent the interests of the property industry.

**4.100** The Chief Executive of the Urban Taskforce, Mr Aaron Gadiel, was reported as saying:

We've been asking for a complete ban on all political donations from anyone for a number of years.

Of course such a ban has had to be accompanied by a very significant increase in public funding for election campaigns.

Frankly this (the banning of developer donations) is just a sideshow measure. This ban only applies to property developers and the community's concern doesn't just relate to property developers, it relates to the mining industry, the tobacco industry, the liquor industry, the gambling sector.

To pretend that the issue is only about property developers is simply a sideshow.<sup>370</sup>

**4.101** Mr Gadiel and Mr Morrison pointed to the problem of defining a property developer. Mr Morrison was reported as repeating his remarks<sup>371</sup> to this Committee, namely, that any

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<sup>368</sup> Legislative Council *Minutes*, 27 June 2007, item 8, amended by Legislative Council *Minutes*, 23 October 2007, Item 2

<sup>369</sup> Address by Premier Nathan Rees, NSW Labor Party State Conference, 14 November 2009, p 12

<sup>370</sup> Mr A Gadiel, interview with Deborah Cameron, ABC 702, 16 November 2009

<sup>371</sup> Mr Morrison, Evidence, 19 October 2009, p 25



development company of ‘ill will’ that wanted to donate would be able to ‘ride around’ the ban.<sup>372</sup>

- 4.102** The Committee therefore calls on the NSW Premier to adopt the model for reform of the NSW electoral funding scheme proposed by the Select Committee on Electoral and Political Party Funding, and implement the Committee’s recommendations in full.

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### Recommendation 11

That the Premier adopt the model for funding of the NSW electoral scheme proposed by the NSW Legislative Council Select Committee on Electoral and Political Party Funding, and implement the Committee’s recommendations in full. The key provisions of the model are to:

- ban political donations by corporations and other organisations
  - cap individual donations
  - cap election spending
  - make disclosure of donations and election spending more timely and transparent
  - introduce greater policing of the electoral funding scheme, and tougher penalties for non-compliance.
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### Impact of public perceptions on the property development industry in NSW

- 4.103** As raised in Chapter 1, during the course of the Inquiry, participants told the Committee of public dissatisfaction with the planning system. Participants attributed this dissatisfaction to the perception (whether justified or not) that developers have undue influence over planning decisions.<sup>373</sup> Such sentiments were also evident in the widespread media coverage of property dealings following the murder of Mr Michael McGurk.

- 4.104** The submission from Wollongong Against Corruption reflected the suspicion that property developers exercise undue influence on planning decisions: ‘Residents across NSW have prepared enormous amounts of material ... that certainly shows corruption of planning process and land acquisitions based on insider knowledge and fraud’.<sup>374</sup>

- 4.105** Concerns were also raised about local planning issues by a resident of Bringelly:

Myself and other local residents feel that there is a corruptive influence by developers to DOP [Department of Planning] and LCC [Liverpool City Council] which allow them to subdivide and build housing estates and yet we the current landowners and residents are being restricted.<sup>375</sup>

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<sup>372</sup> ‘Developers cry foul over Labor’s ban on donations’, *Sydney Morning Herald*, 16 November 2009

<sup>373</sup> Hon Kristina Keneally MP, Evidence, 16 September 2009, p 26

<sup>374</sup> Submission 5, Wollongong Against Corruption, p 1

<sup>375</sup> Submission 2, Partially Confidential, p 2

- 4.106** However, other Inquiry participants argued that negative public perceptions of the property development industry were unfair, and that there should be greater recognition of the industry's contribution to the NSW economy. Mr Ron Medich said:

If governments choose to make real estate development difficult and expensive in New South Wales and hold enquiries without any basis for alleging wrong-doing on our part, all that will happen is opportunities will be taken up in other States, which are competing with NSW for investment.<sup>376</sup>

- 4.107** According to Mr Richardson:

Perhaps the most disturbing aspect of the media frenzy to which I have already referred is the notion that developers, per se, are somehow corrupt and must be always kept at arms length. The SMH [Sydney Morning Herald] in particular seem to believe that it is wrong for developers to make profits. In NSW this is becoming a real problem ...

This disparagement of developers will not create jobs or build houses for our ever growing population. A few crooks in Wollongong should not be used as an excuse to further restrict the activities of those who are prepared to invest in our future.<sup>377</sup>

- 4.108** Commenting on the personal impact of the corruption allegations arising following the murder of Mr McGurk, Mr Roy Medich said:

It has been frightening. I could not believe the impact this has had on my life ... it has been very stressful on my family ... those scurrilous allegations that have been made by the person who has made them are just unfair and they have led to a kind of witch-hunt amongst the media that I have never experienced in my life. After all these years of community service it has been very hard to take I can say to this Committee.<sup>378</sup>

- 4.109** When Mr Ron Medich was asked about whether the corruption allegations would have an impact on the future of the Badgerys Creek land, he said:

I am frightened that it will, because the first thing that happens when you get publicity like this is that everyone runs for cover. All this is totally unfair because this is a site that we have worked on for many years and it is a site that should be rezoned, I believe, and employment created in the west ... Victoria and Queensland have had releases of this magnitude, 4,000 hectares. I am not favouring just my site; I think the whole 4,000 should be released.<sup>379</sup>

- 4.110** Mr Morrison argued that with an improved planning system, property developers would have greater certainty, and this would remove some of the speculation from the NSW property industry:

If you have a planning system that has a pretty clear strategic direction about what it wants to see happen and it makes decisions a lot faster than ours does, then you will

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<sup>376</sup> Answers to additional questions on notice, 29 September 2009, Mr Ron Medich, Question 15, p 3

<sup>377</sup> Submission 14, p 2

<sup>378</sup> Mr Roy Medich, Evidence, 29 September 2009, p 30

<sup>379</sup> Mr Ron Medich, Evidence, 29 September 2009, p 60

see less of that speculation or perhaps the speculative behaviour will be less of an issue for those speculators too. At the moment there is a lot of risk in punting a decision of government.<sup>380</sup>

### **Committee comment**

- 4.111** The Committee recognises the important economic contribution made by the property development industry in New South Wales. The Committee believes that reforms are urgently needed to ensure that there is greater public confidence in the integrity of planning decisions, as well as decision-making processes across all public sector agencies. The Committee has identified two key areas for reform: tighter regulation of professional lobbyists, and significant changes to the electoral funding system.
- 4.112** In addition, the Committee supports reform of the NSW planning system to make the system more transparent, accountable, efficient and effective. As noted in Chapter 2, the NSW Legislative Council Standing Committee on State Development is currently conducting an Inquiry into the NSW planning framework. The Committee eagerly awaits the report of the State Development Committee and any recommendations on the future of the State's planning system, and calls on the NSW Government to act expeditiously to implement reforms to the NSW planning framework.

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<sup>380</sup> Mr Morrison, Evidence, 19 October 2009, p 33

## Chapter 5 Outstanding issues

This Chapter examines an outstanding issue that was not resolved at the time of the preparation of this report. The issue in question is the answering of questions placed on notice to professional lobbyist Mr Graham Richardson.

### Questions on notice

- 5.1 Witnesses took a substantial number of questions on notice during the hearings. Committee members also submitted a number of written questions on notice to witnesses after each hearing. Witnesses provided a response to each question on notice, with the exception of Mr Richardson.
- 5.2 Mr Richardson appeared as a witness at the hearing of 19 October 2009. Subsequent to his evidence at the hearing, on 21 October 2009 the Committee Secretariat wrote to Mr Richardson to seek answers to a question taken on notice during the hearing, as well as written questions on notice from Committee members that were submitted after the hearing. Mr Richardson was requested to respond to the questions on notice by 28 October 2009. No response was received by this date.
- 5.3 On 4 November 2009 Mr Richardson verbally indicated to the Committee Secretariat that he would not be providing a response to the questions on notice. The Committee did not receive written confirmation from Mr Richardson regarding this matter.
- 5.4 On 11 November 2009, following a resolution of the Committee,<sup>381</sup> the Committee Chair wrote to Mr Richardson to request that he answer the questions on notice by 19 November 2009. The Committee also submitted an additional written question on notice to Mr Richardson, which he was requested to answer by 19 November 2009. In this letter, Mr Richardson was advised that should he decline to answer the questions on notice, the Committee would consider whether to issue him with a summons under section 4 of the *Parliamentary Evidence Act 1901* (NSW) to attend a hearing to give further evidence.
- 5.5 Mr Richardson provided an interim response to the questions placed on notice on 15 November 2009 and questioned the authority under which the Committee was acting. The Committee Chair responded to Mr Richardson the same day detailing the Committee's authority to seek answers to questions on notice.

### Reporting date

- 5.6 The Committee believes that the answers to the questions given to Mr Richardson may add to or change the outcomes of the Inquiry. The failure to respond makes it problematic for the Committee to complete the task given to it by the House.

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<sup>381</sup> NSW Legislative Council, General Purpose Standing Committee No. 4 Minutes No. 42, 11 November 2009, Item 3

- 5.7** When the Inquiry's terms of reference were referred to the Committee by the Legislative Council, the House resolved that the Committee report by 20 November 2009. The Committee therefore has resolved to table this Report on 20 November 2009 and to advise the House that the Committee requires additional time to follow up on these outstanding issues.
- 5.8** The Committee Chair has a motion on the Notice Paper for 24 November 2009<sup>382</sup> seeking an extension of the reporting date to 25 February 2010 to allow these outstanding issues to be resolved and for the Committee to prepare a supplementary report, if necessary.
- 5.9** If the House agrees to the motion seeking an extension of the reporting date to 25 February 2010, the intention of the Committee is to meet and consider whether to invite Mr Richardson to attend a hearing to answer questions from the Committee.

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<sup>382</sup> Private Members Business 238, Notice Paper No. 127, 24 November 2009

## Appendix 1 Submissions

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No	Author
1	Name Suppressed
2	Name Suppressed
3	Property Council of Australia (NSW)
4	Confidential
5	Wollongong Against Corruption
6	Coffs Harbour Jetty Action Group
7	NSW Department of Planning
8	Ms Jill Walker
9	Confidential
10	Penrith City Council
11	Urban Taskforce Australia
12	Mr Mark A. Stevens
13	The Greens NSW
14	Mr Graham Richardson
15	Ms Sonya McKay

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## Appendix 2 Hearings and site visits

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Monday 21 September 2009</b> <b>Site visit to Badgerys Creek and the Western Sydney and the Western Sydney Employment Hub</b>	Mr Ian Reynolds	Deputy Director General, Strategies and Land Release, NSW Department of Planning
	Mr Peter Goth	Regional Director, North West Region, NSW Department of Planning
	Mr Mark Skelsey	Media unit, NSW Department of Planning
<b>Tuesday 29 September 2009</b> <b>Jubilee Room</b> <b>Parliament House</b>	Mr Sam Haddad	Director General, NSW Department of Planning
	Mr Richard Pearson	Deputy Director General, Development Assessments, NSW Department of Planning
	Mr Ian Reynolds	Deputy Director General, Strategies and Land Release, NSW Department of Planning
	Mr Michael File	Director, Strategic Assessments, NSW Department of Planning
	Mr Norman Johnston	Head of Western Sydney Employment Lands Investigation Area
	Mr Roy Medich	
	Hon Kristina Keneally MP Mr Ron Medich	Minister for Planning
<b>Monday 19 October 2009</b> <b>Room 814-815</b> <b>Parliament House</b>	Hon Frank Sartor MP	Member of the Legislative Assembly and Member for Rockdale Former Minister for Planning
	Mr Angus Dawson	Former Chief Executive Officer, Former Growth Centres Commission
	Mr Ken Morrison	Executive Director, Property Council of Australia (NSW)
	Mr Graham Richardson	Lobbyist
	Mr Sam Haddad	Director General, NSW Department of Planning
	Mr Michael File	Director, Strategic Assessments, NSW Department of Planning
	Mr Norman Johnston	Head of Western Sydney Employment Lands Investigation Area
	Mr Peter Goth	Regional Director, North West Region, NSW Department of Planning

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<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Mr Jason Perica	Former Executive Director, Strategic Sites and Urban Renewal, NSW Department of Planning
	Mr Andrew Abbey	Acting Director, Special Projects, NSW Department of Planning

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## Appendix 3 Tabled documents

**Monday 21 September 2009**

**Site visit to Badgerys Creek and the Western Sydney Employment Lands Investigation Area**

1. Maps of the Western Sydney Employment Lands Investigations Area, *tendered by Mr Ian Reynolds, Deputy Director General, Strategies and Land Release, NSW Planning, 21 September 2009*

**Tuesday 29 September 2009**

**Jubilee Room, Parliament House, Sydney**

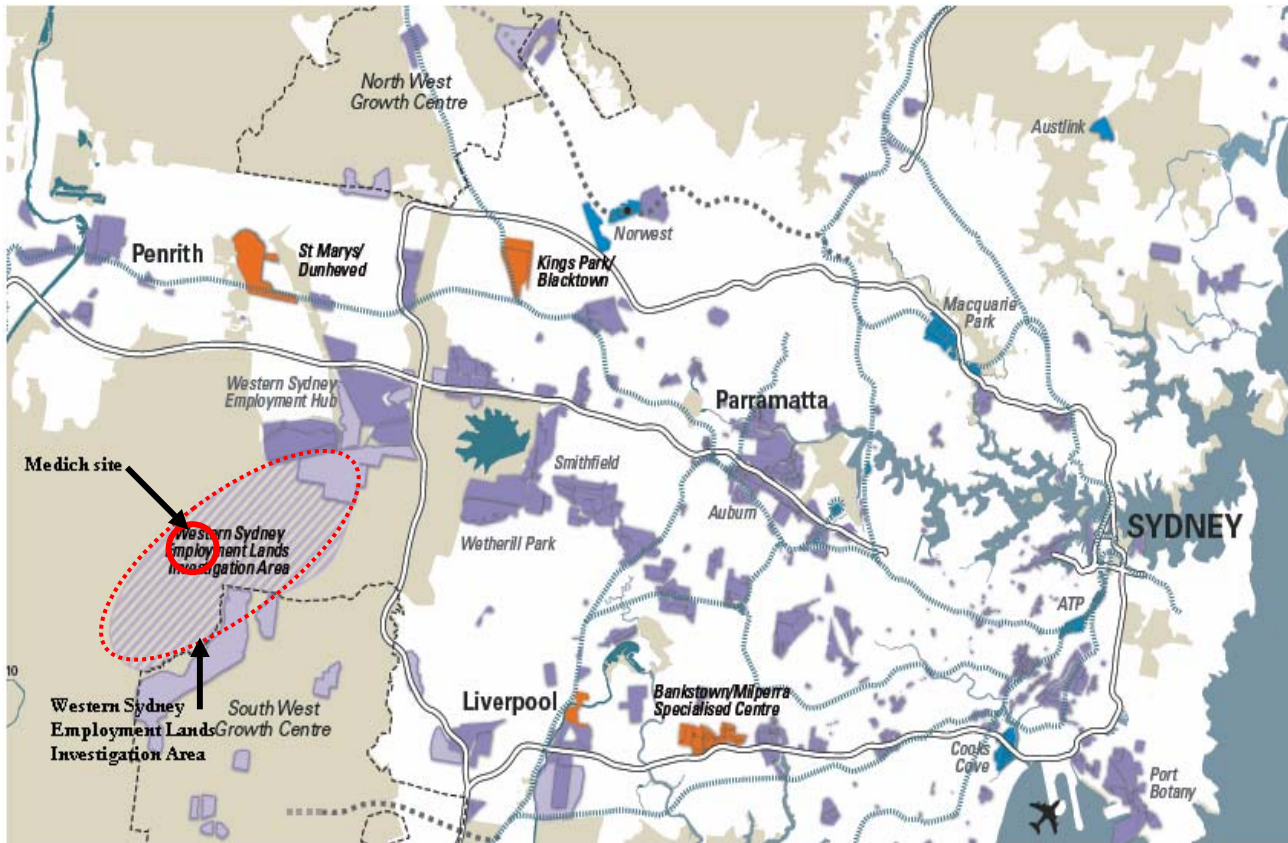
2. Correspondence received from 9 January 2006 to 12 September 2009 between Mr Roy Medich and the Department of Planning, *tendered by Mr Roy Medich, 29 September 2009.*
3. Mr Roy Medich OAM CLO JP, Managing Director of the Medich Group of Companies curriculum vitae, *tendered by Mr Roy Medich, 29 September 2009.*
4. Badgerys Creek Chronology, *tendered by Mr Roy Medich, 29 September 2009.*

**Monday 19 October 2009**

**Room 814-815, Parliament House, Sydney**

5. Meetings with the Medich Consortium and its Consultants, *tendered by The Hon Frank Sartor MP, Former Minister for Planning, 19 October 2009.*
6. Employment Land Rapid Delivery Plan, *tendered by Mr Norman Johnston, Head of Western Sydney Employment Lands Investigation Area, 19 October 2009*
7. Chronology of meetings with Mr Richardson, *tendered by Mr Andrew Abbey, Acting Director, Special Projects, NSW Planning, 19 October 2009*

## Appendix 4 Map of Western Sydney Employment Lands Investigation Area



Based on map provided by the Department of Planning, Submission 7, p 24

## Appendix 5      **Communications between Mr Norman Johnston and Planning Workshop Australia**

<b>Date</b>	<b>Communications</b>
24 January 2008	Meeting with Sonja Lyneham and Roy Medich
6 February 2008	Telephone conversation between Norman Johnston and Sonja Lyneham
12 February 2008	Telephone conversation between Norman Johnston and Sonja Lyneham
14 February 2008	Email from Sonja Lyneham to Norman Johnston and Liz Gonzales (DoP)
3 March 2008	Meeting with Planning Workshop, Joe Langley (SKM), Terry Eastoe (SKM) and Norman Johnston
6 March 2008	Meeting/phone conversation between Norman Johnston and Sonja Lyneham
	Letter from Norman Johnston to Sonja Lyneham
14 March 2008	Presentation by Medich/Sydney University to Department of Planning
28-29 March 2008	Telephone conversation between Norman Johnston and Sonja Lyneham
31 March 2008	Telephone conversation between Norman Johnston and Sonja Lyneham
4 April 2008	Email from Sonja Lyneham to Joe Langley (SKM) and Norman Johnston
21 April 2008	Emails between Norman Johnston and Sonja Lyneham
22 April 2008	Emails between Norman Johnston and Sonja Lyneham
1 May 2008	Emails from Sonja Lyneham to Norman Johnston and Joe Langley (SKM)
2 May 2008	Email from Sonja Lyneham to Norman Johnston
6 May 2008	Emails between Norman Johnston, Sonja Lyneham and Joe Langley (SKM)
17 June 2008	Telephone conversation between Norman Johnston and Sonja Lyneham
29 September 2008	Telephone conversation between Norman Johnston and Sonja Lyneham
6 January 2009	Telephone conversation

Answers to additional questions on notice, 29 September 2009, NSW Department of Planning, Question 33, p 6

## Appendix 6 Minutes

### Minutes No. 27

Thursday 10 September 2009

General Purpose Standing Committee No. 4

Members' Lounge, Parliament House, Sydney at 1:06 pm

#### 1. Members present

Miss Jenny Gardiner (*Chair*)

Ms Amanda Fazio (*Tsang*)

Ms Kayee Griffin

Ms Sylvia Hale

Mr Greg Pearce (*Clarke*)

Mr Roy Smith

Mr Mick Veitch (*Voltz*)

#### 2. Substitutions

The Chair advised that she had received written advice of the following substitutions for the duration of the Inquiry:

- Ms Fazio for Mr Tsang
- Mr Veitch for Ms Voltz
- Mr Pearce for Mr Clarke.

#### 3. Inquiry into Badgerys Creek land dealings and planning decisions

The Chair tabled the following terms of reference which were referred by the House on 9 September 2009:

1. That General Purpose Standing Committee No. 4 inquire into and report on land dealings and planning decisions relating to land or interests in land held solely or jointly by Ron Medich Properties Pty Ltd and Roy Medich Properties Pty Ltd in or around Badgerys Creek, and in particular:

- a. identification of land or interests in land in or around Badgerys Creek held solely or jointly by Ron Medich Properties Pty Ltd and Roy Medich Properties Pty Ltd or any company or body or individual associated with such companies and/or what is referred to in the Department of Planning documents as the Medich Property Group,
- b. the roles of the Minister for Planning, the office of the Minister for Planning, any other Minister, the Department of Planning, and any other NSW Government department or agency past or present, or any individual within the said entities, in decisions or assessments relating to that land, including, but not limited to, decisions or assessments on the Western Sydney Employment Lands Investigation Area,
- c. the roles of any member of Parliament, the office of any member of Parliament or any other party in dealing with the land,
- d. the roles and activities of the State Labor party head office and any other registered political party office and any lobbyist in relation to these matters,
- e. legislative reforms to enhance the integrity of, and public confidence in, the planning and development assessment system, and
- f. other relevant matters arising from the Government's planning policies and decisions.

2. That the Committee report by 20 November 2009.

### ***Advertising***

Resolved, on the motion of Mr Pearce: That the Inquiry and the call for submissions be advertised on the earliest practicable date in *The Sydney Morning Herald*, *The Daily Telegraph*, *The Liverpool Leader* and *The Liverpool Champion*

### ***Submissions***

Resolved, on the motion of Mr Pearce: That the closing date for submissions be Friday 25 September 2009.

### ***Hearings***

Resolved, on the motion of Mr Pearce:

- That a half-day hearing be held on Tuesday 29 September from 1:00 pm until 5:30 pm, followed by a deliberative meeting.
- That a full day hearing be held on Monday 19 October 2009.
- That Friday 23 October be reserved for a second full day hearing, if required, including a deliberative meeting. The Committee may use the deliberative meeting to discuss a possible extension to the reporting date.

### ***Site visit***

Ms Fazio moved: That consideration of the need for a site visit be deferred until the next deliberative meeting.

Ms Hale moved: That the motion of Ms Fazio be amended by omitting all words after ‘That’ and inserting instead: the Committee conduct a site visit to the Western Sydney Employment Lands Investigation Area at Badgerys Creek on Monday 21 September 2009.

Amendment put.

The Committee divided.

Ayes: Miss Gardiner, Ms Hale, Mr Pearce, Mr Smith

Noes: Ms Fazio, Ms Griffin, Mr Veitch.

Question resolved in the affirmative.

Original question put as amended: That the Committee conduct a site visit to the Western Sydney Employment Lands Investigation Area at Badgerys Creek on Monday 21 September 2009.

The Committee divided.

Ayes: Miss Gardiner, Ms Hale, Mr Pearce, Mr Smith

Noes: Ms Fazio, Ms Griffin, Mr Veitch.

Question resolved in the affirmative.

***Inquiry stakeholders***

Resolved, on motion of Ms Hale:

- That members provide the Secretariat with a list of possible stakeholders to invite submissions by Monday 14 September 2009.
- That the Secretariat circulate the aggregated list of proposed stakeholders to members on the morning of Tuesday 15 September.
- That members provide any comments on the proposed stakeholder list by cob Tuesday 15 September.

***Witnesses***

Resolved, on the motion of Mr Pearce: That the following persons be invited to attend the first hearing, or a subsequent hearing if unavailable:

- Department of Planning (to appear for 90 minutes):
  - Mr Sam Haddad – Director General
  - Mr Michael File – Director, Strategic Assessments
  - Mr Ian Reynolds – Deputy Director General, Strategies and Land Release
  - Mr Richard Pearson - Deputy Director General – Development Assessments
  - Mr Norman Johnston – Head of Western Sydney Employment Lands Investigation Area (WSELIA)
  - Any other planning officials dealing with the subject land.
- Mr Graham Richardson
- Mr Ron Medich and Mr Roy Medich
- Minister Kristina Keneally
- Mr Frank Sartor
- Mr Angus Dawson, former Chief Executive, Growth Centres Commission (Reserve witness)

***Media release***

Resolved, on the motion of Mr Pearce: That the Committee Chair issue a media release regarding the initial hearing dates and closing date for submissions.

**4. Adjournment**

The Committee adjourned at 1:45 pm until Wednesday 16 September 2009 at 9:00 am (Budget Estimates).

Beverly Duffy

**Clerk to the Committee**

**Minutes No. 35**

Monday 21 September 2009

General Purpose Standing Committee No. 4

Parliament House, Sydney at 12 pm

**1. Members present**

Miss Jenny Gardiner (*Chair*)

Ms Sylvia Hale

Mr Greg Pearce (*Clarke*) (from 2pm)  
Mr Roy Smith

**2. Apologies**

Ms Amanda Fazio (*Tsang*)  
Ms Kayee Griffin  
Mr Mick Veitch (*Voltz*)

**3. Site visit: Badgerys Creek and surrounds**

The Committee conducted a driving tour of the land on Elizabeth Road, Badgerys Creek owned by Roy Medich Pty Ltd and/or Ron Medich Properties Pty Ltd; the Western Sydney Employment Lands Investigation Area; and the Western Sydney Employment Hub.

The Committee was accompanied by the following officers from the Department of Planning: Mr Ian Reynolds, Deputy Director General – Strategies and Land Release; Mr Peter Goth, Regional Director, North West Region; and Mr Mark Skelsy, Media Unit.

**4. Adjournment**

The Committee adjourned at 3.30 pm.

Madeleine Foley  
**Clerk to the Committee**

**Minutes No. 36**

Tuesday 22 September 2009  
General Purpose Standing Committee No. 4  
Members' Lounge, Parliament House, Sydney at 7 pm

**1. Members present**

Miss Jenny Gardiner (*Chair*)  
Mr David Clarke (Pearce)  
Ms Amanda Fazio  
Ms Kayee Griffin  
Ms Sylvia Hale  
Mr Mick Veitch

**2. Apologies**

Mr Roy Smith

**3. Substitutions**

The Chair advised that she had received written advice from the Opposition Whip that Mr Clarke would be substituting for Mr Pearce for the purposes of the meeting.

**4. Previous minutes**

Resolved, on the motion of Ms Fazio: That Draft Minutes No. 27 be confirmed

Resolved, on the motion of Mr Clarke: That Draft Minutes No. 26 be confirmed.

Resolved, on the motion of Ms Hale: That Draft Minutes No. 28 be confirmed.

Resolved, on the motion of Ms Griffin: That Draft Minutes No. 29 be confirmed.

Resolved, on the motion of Ms Fazio: That Draft Minutes No. 30 be confirmed.

Resolved, on the motion of Ms Hale: That Draft Minutes No. 31 be confirmed.

Resolved, on the motion of Ms Griffin: That Draft Minutes No.'s 32, 33 and 34 be confirmed.

Resolved, on the motion of Ms Hale: That Draft Minutes No. 35 be confirmed.

## **5. Correspondence**

The Committee noted the following item of correspondence received:

- 18 September 2009 – From Mr Peter Briggs, Partner and Mr Harshane Kahagalle, Senior Counsel, Freehills, acting for Mr Roy Medich, requesting that Mr Roy Medich give evidence separately from Mr Ron Medich, and requesting further information about the hearing.

The Committee noted the following item of correspondence sent:

- 16 September 2009 – Letters to stakeholders inviting them to make a submission to the Inquiry, namely the Property Council of Australia, Urban Taskforce Australia, Urban Development Institute of Australia, Penrith City Council and Liverpool City Council.

## **6. Mr Roy Medich's scheduled appearance on 29 September**

Resolved, on the motion of Ms Fazio: That the Committee agree to the request by Mr Roy Medich to give evidence separately from Mr Ron Medich. Further, that the Committee approve the draft response to Freehills, acting for Mr Roy Medich, as prepared by the Secretariat, subject to the following words being omitted: 'In light of your letter ... by XX.'

## **7. Public hearings: Witness update**

The Committee noted the draft notice of hearing for Tuesday 29 September, and received an update on witnesses for the hearing on Monday 19 October.

## **8. Other business**

The Chair advised the Committee of her intention to tomorrow give notice of a motion in the House to order the production of papers relating to Badgerys Creek land dealings and planning decisions.

## **9. Adjournment**

The Committee adjourned at 7.15 pm until 1.45 pm Tuesday 29 September 2009.

Madeleine Foley  
**Clerk to the Committee**



**Minutes No. 37**

Tuesday 29 September 2009

General Purpose Standing Committee No. 4

Jubilee Room, Parliament House, Sydney at 1.00 pm

**1. Members present**

Miss Jenny Gardiner (*Chair*)

Ms Amanda Fazio (Tsang)

Ms Kayee Griffin

Ms Sylvia Hale

Mr Greg Pearce (Clarke)

Mr Mick Veitch (Voltz)

Mr Roy Smith

**2. Participating members**

The Chair advised that Mr Trevor Khan would be attending the hearing as a participating member.

**3. Previous minutes**

Resolved, on the motion of Ms Fazio: That Draft Minutes No. 36 be confirmed.

**4. Correspondence**

The Committee noted the following items of correspondence received:

- 21 September 2009 – Email from the author of submission No. 1 to the Chair in regard to Part 3A projects, name suppressed as per submission.
- 25 September 2009 – Letter from Clayton Utz, representing Mr Ron Medich, to the Chair, requesting that Mr Medich be permitted to have legal counsel present to assist him in an advisory capacity when appearing before the Committee.

The Committee noted the following item of correspondence sent:

- 25 September 2009 – Letter from Clerk Assistant to Freehills, Mr Roy Medich's solicitors, in response to questions regarding Mr Medich's scheduled appearance before the Committee on Tuesday 29 September 2009.

Resolved, on the motion of Ms Fazio: That when Mr Ron Medich and Mr Roy Medich appear before the Committee, a legal representative be permitted to sit beside them to assist them in an advisory capacity.

**5. Publication of submissions**

Resolved, on the motion of Ms Hale: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of Submissions No. 3, 5, 6 and 7, and Attachment E to Submission No. 7.

Resolved, on the motion of Mr Smith: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223 (1), the Committee authorise the partial publication of Submissions No. 1 and 2 with names and other identifying information suppressed at the request of the author.

Resolved, on the motion of Ms Fazio: That the Committee keep confidential Submissions No. 4 and 9 at the request of the author.

Ms Fazio moved: That consideration of publication of Submission No. 8 be deferred until a later date.

Ms Hale moved: That the motion of Ms Fazio be amended to state: 'That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the partial publication of Submission No. 8 with the suppression of potential adverse mention.'

Amendment put.

Committee divided.

Ayes: Miss Gardiner, Ms Hale, Mr Pearce and Mr Smith

Noes: Ms Fazio, Ms Griffin and Mr Veitch

Question resolved in the affirmative.

Original question, as amended, put.

Ayes: Miss Gardiner, Ms Hale, Mr Pearce and Mr Smith

Noes: Ms Fazio, Ms Griffin and Mr Veitch

Question resolved in the affirmative.

Resolved, on the motion of Mr Pearce: That late submissions be accepted by the Committee until 19 October 2009.

## 6. **Timing of questions**

Resolved, on the motion of Ms Fazio: That for the hearings into the Badgerys Creek Inquiry, the timing for questioning be distributed equally between the Opposition, Cross Bench and Government members.

## 7. **Return of answers to questions taken on notice**

Resolved, on the motion of Ms Hale: That in relation to this hearing:

- members be required to submit written questions on notice within 24 hours from the distribution of the transcript
- witnesses be requested to provide answers to questions taken on notice during the hearing, and questions on notice lodged following the hearing, within 14 days of the date on which the questions are sent to witnesses.

## 8. **Request for live online streaming of hearing**

The Clerk Assistant-Committees informed the Committee of a request from the *Sydney Morning Herald* to be permitted to webcast the public hearing live on their website.

The Committee deliberated.

Ms Fazio moved: That the Committee decline the request from the Sydney Morning Herald to webcast the public hearing live on their news website.

Question put.

The Committee divided.

Ayes: Ms Fazio, Ms Griffin and Mr Veitch

Noes: Miss Gardiner, Ms Hale, Mr Pearce and Mr Smith

Question resolved in the negative.

Ms Hale moved: That the Committee authorise the Sydney Morning Herald, and any other news outlet accredited by the Parliamentary Press Gallery, to webcast the public proceedings of any of the hearings of the Badgerys Creek Inquiry live on their news websites.

Question put.

The Committee divided.

Ayes: Miss Gardiner, Ms Hale, Mr Pearce and Mr Smith

Noes: Ms Fazio, Ms Griffin and Mr Veitch

Question resolved in the affirmative.

## 9. Public hearing – Badgerys Creek land dealings and planning decisions

Witnesses, the public and media were admitted.

Mr Khan joined the meeting as a participating member.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters including the *sub judice* convention, immunity of proceedings from questioning in the courts, the ICAC and police investigations, and adverse mention.

The following witnesses from the Department of Planning were sworn and examined:

- Mr Sam Haddad, Director General
- Mr Richard Pearson, Deputy Director General, Development Assessments
- Mr Ian Reynolds, Deputy Director General, Strategies and Land Release
- Mr Michael File, Director, Strategic Assessments
- Mr Norman Johnston, Head of Western Sydney Employment Lands Investigation Area.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Roy Medich.

Mr Medich was accompanied by his legal representative in an advisory capacity, as authorised by the Committee.

Mr Medich tendered the following documents:

- Correspondence between the Department of Planning and Mr Roy Medich
- Curriculum vitae for Mr Roy Medich
- Chronology of dealings with the Department of Planning.

The evidence concluded and the witness withdrew.

The Hon Kristina Keneally MP was admitted. The Chair advised the Minister that she did not need to be sworn, as she had sworn an oath to her office as a Member of Parliament.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Ron Medich.

Mr Medich was accompanied by his legal representative in an advisory capacity, as authorised by the Committee.

The evidence concluded and the witness withdrew.

The public hearing concluded at 5.46 pm. The public and media withdrew.

#### **10. Deliberative meeting: Publication of tabled documents**

Resolved, on the motion of Ms Fazio: That the Committee accept and publish, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the following documents tendered during the public hearing:

- Correspondence between the Department of Planning and Mr Roy Medich
- Curriculum vitae for Mr Roy Medich
- Chronology of dealings with the Department of Planning.

#### **11. Witnesses for the next public hearing – 19 October**

Resolved, on the motion of Mr Veitch: That the following witnesses be invited to attend the hearing on 19 October 2009:

- Mr Ken Morrison, NSW Executive Director, Property Council of Australia (45 mins)
- Planning Workshop Australia, including Sonja Lyneham (45 mins)
- Mr Richie Vereker (45 mins)
- Department of Planning (1.5 hours):
  - Mr Sam Haddad, Director General
  - Mr Michael File, Director, Strategic Assessments
  - Mr Norman Johnston, Head of Western Sydney Employment Lands Investigation Area
  - Mr Peter Goth, Regional Director, North West Region
  - Mr Jason Perica
  - Mr Andrew Abbey.

- Mr Angus Dawson, former Chief Executive Officer, Growth Centres Commission (45 mins).

## 12. Adjournment

The Committee adjourned at 6.15 pm until 9.00 am Monday 19 October 2009.

Madeleine Foley

**Clerk to the Committee**

## Minutes No. 38

Monday 19 October 2009

General Purpose Standing Committee No. 4

Room 814-815, Parliament House, Sydney at 9.00 am

### 1. Members present

Miss Jenny Gardiner (*Chair*)  
 Ms Amanda Fazio (Tsang) (9.30 am)  
 Ms Kayee Griffin  
 Ms Sylvia Hale  
 Mr Greg Pearce (Clarke)  
 Mr Mick Veitch (Voltz)  
 Mr Roy Smith  
 Mr Trevor Khan (9.30 am)

### 2. Participating members

The Chair advised that Mr Trevor Khan would be attending the hearing as a participating member.

### 3. Request to give evidence *in camera*

Resolved, on the motion of Mr Veitch: That the Committee be briefed *in camera* by Person A, and that Person B accompany Person A to provide assistance if required.

### 4. *In camera* hearing: Badgerys Creek land dealings and planning decisions

The Committee proceeded to take evidence *in camera*.

Persons present other than members of the Committee: Mr Steven Reynolds, Ms Madeleine Foley, Ms Teresa McMichael, Ms Christine Nguyen, Hansard reporters and Chamber and Support staff.

The briefing concluded and the witnesses withdrew.

### 5. Deliberative meeting: Previous minutes

Resolved, on the motion of Mr Pearce: That Draft Minutes No. 37 be confirmed.

### 6. Correspondence

The Committee noted the following items of correspondence received:

- 9 October 2009 – From Ms Leanne Maxwell, General Counsel, WorleyParsons, advising that Ms Sonja Lynham was unable to appear as a witness to the Inquiry on Monday 19 October 2009.
- 15 October 2009 – Answers to questions taken on notice from:
  - Mr Sam Haddad, Director General, NSW Department of Planning
  - The Hon Kristina Keneally MP, Minister for Planning
  - Mr Roy Medich
  - Mr Ron Medich.

The Committee noted the following items of correspondence sent:

- 1 October 2009 – From A/Director – Committees requesting answers to questions on notice by 15 October 2009, to:
  - Mr Sam Haddad, Director General, NSW Department of Planning
  - The Hon Kristina Keneally MP, Minister for Planning
  - Mr Roy Medich
  - Mr Ron Medich.

#### **7. Publication of answers to questions on notice**

Resolved, on the motion of Ms Hale: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of the answers to questions on notice provided by:

- Minister Kristina Keneally, Mr Roy Medich and Mr Ron Medich
- Mr Sam Haddad, with the exception of the attachments to the answers.

Resolved, on the motion of Mr Smith: That the Committee meet in the lunchbreak to consider the request made by the NSW Department of Planning to keep confidential certain sections of the attachments to the answers to questions on notice.

#### **8. Publication of submissions**

Resolved, on the motion of Mr Pearce: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of Submissions No. 10, 11, 12, 13 and 14.

Resolved, on the motion of Mr Veitch: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the partial publication of Submissions No. 8, with the omission of potential adverse mention as identified by the Secretariat.

#### **9. Return date for answers to questions taken on notice**

Resolved, on the motion of Mr Pearce: That in relation to this hearing:

- members be required to submit written questions on notice within 24 hours from the distribution of the transcript
- witnesses be requested to provide answers to questions taken on notice during the hearing, and questions on notice lodged following the hearing, within 7 days of the date on which the questions are sent to witnesses.

#### **10. Webcasting of public hearings**

The Committee noted that the public hearing would be webcast on the *Sydney Morning Herald* website.

Resolved, on the motion of Mr Veitch: That the Committee Clerks brief the *Sydney Morning Herald* about the obligations of media organisations in reporting the proceedings of parliamentary committees, as provided for under the Broadcasting Resolution.

**11. Public hearing – Badgerys Creek land dealings and planning decisions**

Witnesses, the public and media were admitted.

Ms Fazio joined the meeting. Mr Khan joined the meeting as a participating member.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters including the *sub judice* convention, immunity of proceedings from questioning in the courts, the police investigation, and adverse mention.

The Chair reminded the Hon Frank Sartor that he did not need to be sworn, as he had sworn an oath to his office as a member of Parliament.

Mr Sartor tendered the following document:

- Meetings with the Medich Consortium and its Consultants.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Angus Dawson, former Chief Executive Officer, former Growth Centres Commission.

The evidence concluded and the witness withdrew.

The public and the media withdrew.

**12. Deliberative meeting: Publication of answers to questions on notice**

Resolved, on the motion of Mr Pearce: That according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of the attachments to the answers to questions on notice provided by Mr Sam Haddad, with the exception of those sections which the NSW Department of Planning has requested be kept confidential. Further, that the Committee consider at a later date whether to publish those sections which the Department has requested be kept confidential.

**13. Public hearing – Badgerys Creek land dealings and planning decisions**

The following witness was sworn and examined:

- Mr Ken Morrison, Executive Director, Property Council of Australia (NSW)

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Graham Richardson, registered lobbyist, Medich Property.

The evidence concluded and the witness withdrew.

The following witnesses from the Department of Planning were examined on former oath:

- Mr Sam Haddad, Director General
- Mr Michael File, Director, Strategic Assessments
- Mr Norman Johnston, Head of Western Sydney Employment Lands Investigation Area.

The following witnesses from the Department of Planning were sworn and examined:

- Mr Peter Goth, Regional Director, North West Region
- Mr Jason Perica, Former Executive Director, Strategic Sites and Urban Renewal
- Mr Andrew Abbey, Acting Director, Special Projects.

Mr Johnston tendered the following document:

- Employment Land Rapid Delivery Plan.

Mr Abbey tendered the following document:

- Chronology of meetings with Mr Richardson.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 5.10 pm. The public and media withdrew.

**14. Deliberative meeting: Publication of tabled documents**

Resolved, on the motion of Ms Fazio: That the Committee accept and publish, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the following documents tendered during the public hearing:

- Meetings with the Medich Consortium and its Consultants
- Employment Land Rapid Delivery Plan
- Chronology of meetings with Mr Richardson.

**15. Further hearing**

Resolved, on the motion of Ms Hale: That the Chair, on behalf of the Committee, reply to the letter of 9 October 2009 from Ms Leanne Maxwell, General Counsel, WorleyParsons, noting that Ms Sonja Lyneham declined the invitation to appear as a witness to the Inquiry on Monday 19 October 2009, and that the Committee had chosen not to press Ms Lyneham to give evidence, notwithstanding the Committee's power to do so.

Ms Fazio moved: That the Committee hold no further hearings for the Inquiry into Badgerys Creek land dealings and planning decisions.

Ms Hale moved: That the Committee hold a further hearing for the Inquiry into Badgerys Creek land dealings and planning decisions, and that the following witnesses be invited: Mr Sartor, Mr Haddad, Mr File, Mr Johnston, Mr Perica, Mr Goth and Mr Abbey.

Motion of Ms Fazio put and passed.

Consequently, motion of Ms Hale lapsed.

Resolved, on the motion of Ms Fazio: That the Committee meet at 2.15 pm on Wednesday 21 October 2009 in the Members' Lounge, to consider whether to publish those sections of the



attachments to the questions on notice provided by the NSW Department of Planning which the Department has requested be kept confidential.

**16. Adjournment**

The Committee adjourned at 5.20 pm until 2.15pm Wednesday 21 October 2009.

Madeleine Foley  
**Clerk to the Committee**

**Minutes No. 39**

Wednesday 21 October 2009  
 General Purpose Standing Committee No. 4  
 Members' Lounge, Parliament House, at 2.15 pm

**1. Members present**

Miss Jenny Gardiner (*Chair*)  
 Ms Amanda Fazio  
 Ms Kayee Griffin  
 Ms Sylvia Hale  
 Mr Greg Pearce  
 Mr Roy Smith  
 Mr Mick Veitch

**2. Publication of answers to questions on notice**

Resolved, on the motion of Mr Pearce: That the Committee publish Attachment 9 to the questions on notice provided by the NSW Department of Planning.

**3. Publication of submission**

Resolved, on the motion of Ms Hale: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and standing order 223(1), the Committee authorise the publication of Submission No. 15.

**4. Report timeline**

Resolved, on the motion of Ms Fazio: That the Committee meet on Tuesday 17 November 2009 to consider the Chair's draft report.

**5. Adjournment**

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Madeleine Foley  
**Clerk to the Committee**

**Minutes No. 41**

Thursday 29 October 2009  
 General Purpose Standing Committee No. 4  
 Members' Lounge, Parliament House, Sydney, at 6.20 pm

**1. Members present**

Ms Jenny Gardiner (*Chair*)  
Ms Amanda Fazio  
Ms Kayee Griffin  
Ms Sylvia Hale  
Mr Greg Pearce  
Mr Roy Smith  
Mr Mick Veitch

**2. Correspondence**

The Committee noted the following items of correspondence received:

- 28 October 2009 – Answers to questions taken on notice related to the hearing on 19 October 2009, from:
  - Mr Sam Haddad, Director General, NSW Department of Planning
  - Mr Angus Dawson, Former Chief Executive Officer, Growth Centres Commission.

**3. Publication of answers to questions on notice**

Resolved, on the motion of Ms Fazio: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of the answers to questions on notice provided by Mr Haddad and Mr Dawson.

Resolved, on the motion of Ms Hale: That, according to section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and Standing Order 223(1), the Committee authorise the publication of any outstanding answers to questions on notice, including those to be provided by Mr Sartor and Mr Richardson, except those answers for which confidentiality is requested, after these answers have been circulated to committee members.

**4. Adjournment**

The Committee adjourned at 6.25 pm until 10 am, Tuesday 17 November in Room 1136 (Badgerys Creek report deliberative)

Madeleine Foley

**Clerk to the Committee**

**Minutes No. 42**

Wednesday 11 November 2009

General Purpose Standing Committee No. 4

Parkes Room, Parliament House, Sydney, at 1.05 pm

**1. Members present**

Miss Jenny Gardiner (*Chair*)  
Ms Amanda Fazio  
Ms Kayee Griffin  
Ms Sylvia Hale  
Mr Greg Pearce  
Mr Roy Smith  
Mr Mick Veitch

**2. Previous minutes**

Resolved, on the motion of Ms Hale: That Draft Minutes No. 40 be confirmed.

Resolved, on the motion of Ms Fazio: That Draft Minutes No. 41 be confirmed.

**3. Questions on notice for Graham Richardson**

The Committee noted that Mr Graham Richardson had not provided a response to the questions taken on notice from the hearing on 19 October 2009. Further, the Committee noted that Mr Richardson had provided verbal advice to the secretariat that he was not going to provide answers to the questions on notice. The Committee noted that Mr Richardson had not yet confirmed this in writing.

Ms Fazio moved: That the Committee take no further action in relation to the questions on notice to Mr Richardson from the hearing of 19 October 2009.

Question put and negatived.

Ms Hale moved: That the Committee write to Mr Richardson to:

- remind him of his obligation to answer the questions on notice from the hearing of 19 October 2009
- advise him that should he decline to answer the questions on notice, the Committee will consider whether to issue him with a summons under section 4 of the *Parliamentary Evidence Act 1901* (NSW) to attend a hearing to give further evidence.

The Committee divided.

Ayes: Miss Gardiner, Ms Hale, Mr Pearce, Mr Smith

Noes: Ms Fazio, Ms Griffin, Mr Veitch

Question resolved in the affirmative.

Ms Hale moved: That the Committee Chair move a motion in the House to request that the Legislative Council grant an extension of the reporting date to 25 February 2010.

The Committee divided.

Ayes: Miss Gardiner, Ms Hale, Mr Pearce, Mr Smith

Noes: Ms Fazio, Ms Griffin, Mr Veitch

Question resolved in the affirmative.

Mr Smith moved: That the Committee request that Mr Richardson provide a response to the questions on notice by 5 pm Thursday 19 November 2009.

The Committee divided.

Ayes: Miss Gardiner, Ms Hale, Mr Pearce, Mr Smith

Noes: Ms Fazio, Ms Griffin, Mr Veitch

Question resolved in the affirmative.

Mr Pearce moved: That notwithstanding the Committee's decision in relation to its deliberative meeting of 19 October 2009 that members be required to submit written questions on notice within 24 hours from the distribution of the transcript, and taking into account that Mr Richardson has not provided answers to those questions on notice and that further information has subsequently become available to the Committee, that a further written question on notice be submitted to Mr Richardson as follows:

In sworn evidence to the Inquiry into Badgerys Creek land dealings and planning decisions you said that you do not keep a diary to keep track of appointments with clients and Department of Planning officials.

However, before that, in evidence to the murder trial of Gordon Wood, you reportedly referred to your diaries to confirm your whereabouts.

How do you explain the difference between what you told the court and what you told the Committee?

The Committee divided.

Ayes: Miss Gardiner, Ms Hale, Mr Pearce, Mr Smith

Noes: Ms Fazio, Ms Griffin, Mr Veitch.

Question resolved in the affirmative.

Ms Hale moved: That should Mr Richardson fail to provide the answers to the questions on notice by 5pm Thursday 19 November 2009, that the Committee authorise the Clerk of the Committee to publish the questions on notice.

Question put and negatived.

#### 4. **Adjournment**

The Committee adjourned at 1.25 pm until 10 am Tuesday 17 November 2009.

Madeleine Foley

**Clerk to the Committee**

### **DRAFT Minutes No. 43**

Tuesday 17 November 2009

General Purpose Standing Committee No. 4

Room 1136, Parliament House, Sydney, at 10.00 am

#### 1. **Members present**

Miss Jenny Gardiner (*Chair*)

Ms Amanda Fazio (10.15 am)

Ms Kayee Griffin

Ms Sylvia Hale  
 Mr Greg Pearce  
 Mr Roy Smith  
 Mr Mick Veitch

**2. Previous minutes**

Resolved, on the motion of Ms Hale: That Draft Minutes No. 42 be confirmed.

**3. Correspondence**

The Committee noted the following items of correspondence sent:

- 11 November 2009 – From the Chair to Mr Graham Richardson, in regard to Mr Richardson not providing answers to the questions on notice from the hearing on 19 October 2009, and submitting an additional written question on notice.
- 16 November 2009 – From the Chair to Mr Graham Richardson, thanking him for his answers to two questions on notice, and providing advice from the Clerk of the Parliaments on the powers of committees to compel answers to questions.

The Committee noted the following item of correspondence received:

- 16 November 2009 – From Mr Graham Richardson to the Chair, in response to the Chair's letter of 11 November, providing answers to two questions on notice, and requesting advice on the basis of the powers of committees to compel answers to questions.

Resolved, on the motion of Ms Hale: That consideration of the correspondence be deferred until the Committee considers the Draft Interim Report and Ms Fazio's proposed amendments to the Interim Report.

**4. Draft interim report**

Resolved, on the motion of Mr Smith: That the Committee continue to pursue answers to the questions on notice submitted to Mr Richardson.

Resolved, on the motion of Mr Pearce: That the Committee proceed to consideration of the Chair's draft report

**5. Consideration of Chair's Draft Report: Badgerys Creek land dealings and planning decisions**

The Chair tabled her draft report no. 21 entitled *Badgerys Creek land dealings and planning decisions*, which, having been previously circulated, was taken as being read.

The Committee proceeded to consider the draft report in detail.

Chapter 1 read.

Resolved, on the motion of Mr Pearce: That an additional paragraph be inserted following paragraph 1.17, to read:

'After the Committee's public hearings, and on the weekend before this Inquiry report was due to be tabled, the Premier, the Hon Nathan Rees MP, confirmed that these perceptions exist. In his

address to the 2009 NSW Labor Party State Conference he referred to the Department of Planning and said:

Like planning departments everywhere, to do its job properly our department must engage directly with business and the community.

But there is a clear perception that outside influences have attempted to take advantage of the need for genuine industry consultation. (FOOTNOTE: Address by Premier Nathan Rees, NSW Labor Party State Conference, 14 November 2009, p 14)

Resolved, on the motion of Mr Pearce: That an additional entry be inserted at the end of the timeline (p 15), to read: ‘14 November 2009: Premier Rees announces that the Planning Minister is to develop new guidelines governing meetings held between departmental officers, lobbyists, developers and others; a ban on developer donations to the NSW Labor Party; and referral of donations and public funding issues to the Joint Standing Committee on Electoral Matters.’ (FOOTNOTE: Address by Premier Nathan Rees, NSW Labor Party State Conference, 14 November 2009, pp 12-14)

Resolved, on the motion of Ms Griffin: That the adoption of Chapter 1 be deferred until the Committee has considered the new Chapter 5 proposed by Ms Fazio.

Chapter 2 read.

Resolved, on the motion of Ms Hale: That a new Committee Comment section be inserted after paragraph 2.10, to read: ‘Section 75B(1) of the EPA Act, however, allows the Minister to declare, by way of an order published in the NSW Government Gazette, that a development is a Part 3A project. The discretion of the Minister to make such a declaration on the grounds that the Minister has formed an opinion to that effect has led to community disquiet that the power has been or may be exercised in a partial manner.’

Resolved, on the motion of Ms Hale: That the word ‘implement’ be omitted from Recommendation 1.

Resolved on the motion of Ms Hale: That the words ‘witnesses felt that’ be inserted in the second sentence of paragraph 2.34 after ‘The Committee was concerned to hear that’, and that the word ‘therefore’ be omitted from the third sentence following ‘The Committee’.

Resolved, on the motion of Mr Veitch: That Chapter 2, as amended, be adopted.

Chapter 3 read.

Resolved, on the motion of Mr Pearce: That the words ‘a Departmental officer’ be omitted in the second sentence of Recommendation 3 and the following words be inserted instead: ‘at least two Departmental officers’.

Resolved, on the motion of Mr Pearce: That additional paragraphs be inserted following paragraph 3.74, to read:

‘The Committee also notes that, on the weekend before this report was due to be tabled, the Premier, the Hon Nathan Rees MP, in his address to the 2009 NSW ALP Conference, said he had ‘every confidence’ in the Department of Planning and:

Like planning departments everywhere, to (do) its job properly our department must engage directly with business and the community.

But there is a clear perception that outside influences have attempted to take advantage of the need for genuine industry consultation. (FOOTNOTE: Address by Premier Nathan Rees, NSW Labor Party State Conference, 14 November 2009, p 14)

Mr Rees announced that ‘the Planning Minister will develop new guidelines to govern meetings held between departmental officers and developers, lobbyists, community groups and opponents of particular projects’. Mr Rees said that the new guidelines will ensure that:

- Meetings occur on official premises, other than those involving site visits
- At least two departmental officers are present
- Full minutes are taken and retained
- All meetings and their purposes are carefully recorded’ (FOOTNOTE: Address by Premier Nathan Rees, NSW Labor Party State Conference, 14 November 2009, p 14)

The Committee believes it to be timely, in light of evidence received during this Inquiry, that the Premier has acknowledged that new meeting guidelines must be developed. The Committee believes that these reforms should extend also to telephone and informal conversations.’

Resolved, on the motion of Ms Hale: That an additional paragraph be inserted following paragraph 3.82, to read:

‘The Committee believes that, in the interests of transparency and accountability, the Department of Planning’s procurement procedures should be made public if they are not already public. Moreover, the Committee believes that where there are circumstances under which it is justifiable that those procedures not be adhered to, these should also be made public. The Committee recommends that disclosures along these lines should appear in the Department’s annual report, along with other disclosures relating to consultancies.’

Resolved, on the motion of Ms Hale: That a new Recommendation be inserted to reflect the additional paragraphs inserted following paragraph 3.82, to read: ‘That the Minister for Planning ensure that the Department of Planning’s procurement procedures are publicly available, and that where there are there are circumstances under which it is justifiable that procurement procedures are not adhered to, that these should also be made public. Disclosures relating to procurements and consultancies should appear in the Department of Planning’s annual report.’

Ms Hale moved: That the following words be inserted at the end of Recommendation 5, to read: ‘and that those updates be made public’.

Question put and negatived.

Resolved, on the motion of Mr Pearce: That Chapter 3, as amended, be adopted.

Chapter 4 read.

Ms Hale moved: That a new paragraph be inserted following the first sentence of paragraph 4.45, to read: ‘The Minister’s view expressed at a Budget Estimates hearing on 29 September 2009 in answer to a question, to the effect that she does not need to be informed of contact between the Director General of the Department of Planning and lobbyists, (FOOTNOTE: ‘My advice comes from the Department. That is how the Westminster system of government works. Departments in the Westminster system of government need to be able to provide ministers with fearless and frank advice, not on the views of specific individuals or lobbyists, but on the merits of proposals.’ Evidence, 29 September 2009) represents a fundamental misunderstanding of the nature of accountability under the Westminster system of responsible government. Under the Westminster system, ministers account to Parliament for their decisions and for the performance of their departments. Ultimate responsibility for the activities of departmental officials rests with the relevant minister.’

Question put.

The Committee divided.

Ayes: Miss Gardiner, Ms Hale, Mr Pearce

Noes: Ms Fazio, Ms Griffin, Mr Smith, Mr Veitch

Question resolved in the negative.

Resolved, on the motion of Mr Pearce: That the word ‘a’ be omitted from the second sentence in Recommendation 8 following the words ‘the third party presence of’, and the following words inserted instead: ‘at least one’.

Resolved, on the motion of Mr Pearce: That the following words be inserted in the second sentence of paragraph 4.52 following ‘the Premier should’ to read: ‘direct the Planning Minister, in developing new guidelines, to’.

Resolved, on the motion of Mr Pearce: That Recommendation 9 be amended to read: ‘That the Premier direct the Minister of Planning, in developing a new NSW Lobbyist Code of Conduct, to review Lobbyist Codes of Conduct in other Australian jurisdictions. The Planning Minister should consider whether any of the provisions contained in these Codes should be incorporated into the NSW Lobbyist Code of Conduct, and report to Parliament on the outcomes of that review and changes the Premier proposes to make to the Code.’

Resolved, on the motion of Mr Pearce: That the final sentence be omitted from paragraph 4.53, and that the an additional paragraph be inserted following paragraph 4.53, to read: ‘In the weekend before this report was to be tabled, Premier Rees addressed the NSW ALP Conference and spoke of the Government’s reforms to the NSW planning system over the past four years. He went on to say: “ But all the reforms in the world cannot erase the taint that comes from political donations.”’ (FOOTNOTE: Address by Premier Nathan Rees, NSW Labor Party State Conference, 14 November 2009, p 11)

Resolved, on the motion of Mr Pearce: That the final sentence from paragraph 4.53 be inserted at the end of the new paragraph inserted following paragraph 4.53.



Mr Pearce moved: That additional paragraphs be inserted following paragraph 4.93, to read:

“The Committee notes that, on the weekend before this report was to be tabled, Premier Rees announced that the NSW Labor Party will ban donations from developers and “the whole issue of donations and public funding” will be referred to the Joint Standing Committee on Electoral Matters. (FOOTNOTE: Address by Premier Nathan Rees, NSW Labor Party State Conference, 14 November 2009, p 13)

The Committee notes that the Legislative Council Select Committee on Electoral and Political Party Funding, which reported in June 2008, had wide terms of reference for its Inquiry, namely,

To inquire into and report on the funding of, and disclosure of donations to, political parties, and candidates in state and local government elections, and in particular:

- all matters associated with electoral funding and disclosure
- the advantages and disadvantages of banning all donations from corporations, unions and organisations to parties and candidates
- the advantages and disadvantages of introducing limits on expenditure in election campaigns
- the impact of political donations on the democratic process and
- any related matters. (FOOTNOTE: Legislative Council Minutes, 27 June 2007, item 8, amended by Legislative Council Minutes, 23 October 2007, Item 2)

The Committee believes that a further delay in implementing comprehensive reform of NSW election funding laws is regrettable.

As to the Premier’s announcement that “From today, the NSW Labor Party will ban donations from developers” (FOOTNOTE: Address by Premier Nathan Rees, NSW Labor Party State Conference, 14 November 2009, p 12), the Committee notes media comments from two groups which represent the interests of the property industry.

The Chief Executive of the Urban Taskforce, Mr Aaron Gadiel, was reported as saying:

“We’ve been asking for a complete ban on all political donations from anyone for a number of years.

Of course such a ban has had to be accompanied by a very significant increase in public funding for election campaigns.

Frankly this (the banning of developer donations) is just a sideshow measure. This ban only applies to property developers and the community’s concern doesn’t just relate to property developers, it relates to the mining industry, the tobacco industry, the liquor industry, the gambling sector.

To pretend that the issue is only about property developers is simply a sideshow. (FOOTNOTE: Mr A. Gadiel, interview with Deborah Cameron, ABC 702, 16 November, 2009)

Mr Gadiel and Mr Morrison pointed to the problem of defining a property developer. Mr Morrison was reported as repeating his remarks (FOOTNOTE: Mr Morrison, Evidence, 19 October 2009, p 62) to this Committee, namely, that any development company of 'ill will' that wanted to donate would be able to 'ride around' the ban. (FOOTNOTE: 'Developers cry foul over Labor's ban on donations', *Sydney Morning Herald*, 16 November 2009)

Resolved, on the motion of Mr Smith: That the motion of Mr Pearce be amended to omit 'The Committee believes that a further delay in implementing comprehensive reform of NSW election funding laws is regrettable' and to insert instead: 'The Committee believes that any further delay in implementing comprehensive reform of NSW election funding laws would be regrettable.'

Original question, as amended, put and passed.

Ms Hale moved: That the words 'in full' be omitted from Recommendation 10.

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Ms Fazio, Miss Gardiner, Ms Griffin, Mr Pearce, Mr Smith, Mr Veitch

Question resolved in the negative.

Ms Hale moved: That the words 'cap election spending' be omitted from Recommendation 10 and the following words inserted instead: 'a strict cap on individual donations.'

Question put.

The Committee divided.

Ayes: Ms Hale

Noes: Ms Fazio, Miss Gardiner, Ms Griffin, Mr Pearce, Mr Smith, Mr Veitch

Question resolved in the negative.

Resolved, on the motion of Mr Pearce: That Chapter 4, as amended, be adopted.

Resolved, on the motion of Ms Fazio: That a new Chapter 5 entitled 'Outstanding issues' be inserted in the report to read:

'This Chapter examines an outstanding issue that was not resolved at the time of the preparation of this report. The issue in question is the answering of questions placed on notice to professional lobbyist Mr Graham Richardson.'

### Questions on notice

**5.1** Witnesses took a substantial number of questions on notice during the hearings. Committee members also submitted a number of written questions on notice to witnesses after each hearing. Witnesses provided a response to each question on notice, with the exception of Mr Richardson.

**5.2** Mr Richardson appeared as a witness at the hearing of 19 October 2009. Subsequent to his evidence at the hearing, on 21 October 2009 the Committee Secretariat wrote to Mr Richardson to seek answers to a question taken on notice during the hearing, as well as written questions on notice from Committee members that were submitted after the hearing. Mr Richardson was requested to respond to the questions on notice by 28 October 2009. No response was received by this date.

**5.3** On 4 November 2009 Mr Richardson verbally indicated to the Committee Secretariat that he would not be providing a response to the questions on notice. The Committee did not receive written confirmation from Mr Richardson regarding this matter.

**5.4** On 11 November 2009, following a resolution of the Committee (FOOTNOTE: GPSC No. 4 Minutes No. 42, 11 November 2009, Item 3), the Committee Chair wrote to Mr Richardson to request that he answer the questions on notice by 19 November 2009. The Committee also submitted an additional written question on notice to Mr Richardson, which he was requested to answer by 19 November 2009. In this letter, Mr Richardson was advised that should he decline to answer the questions on notice, the Committee would consider whether to issue him with a summons under section 4 of the *Parliamentary Evidence Act 1901* (NSW) to attend a hearing to give further evidence.

**5.5** Mr Richardson provided an interim response to the questions placed on notice on 15 November 2009 and questioned the authority under which the Committee was acting. The Committee Chair responded to Mr Richardson the same day detailing the Committee's authority to seek answers to the questions on notice.

### Reporting date

**5.6** The Committee believes that the answers to the questions given to Mr Richardson may add to or change the outcomes of the Inquiry. The failure to respond makes it problematic for the Committee to complete the task given to it by the House.

**5.7** When the Inquiry's terms of reference were referred to the Committee by the Legislative Council, the House resolved that the Committee report by 20 November 2009. The Committee therefore has resolved to table this Report on 20 November 2009 and to advise the House that the Committee requires additional time to follow up on these outstanding issues.

**5.8** The Committee Chair has a motion on the Notice Paper for 24 November 2009 (FOOTNOTE: Private Members Business 238, Notice Paper No. 127, 24 November 2009) seeking an extension of the reporting date to 25 February 2010 to allow these outstanding issues to be resolved and for the Committee to prepare a supplementary report, if necessary.

**5.9** If the House agrees to the motion seeking an extension of the reporting date to 25 February 2010, the intention of the Committee is to meet and consider whether to invite Mr Richardson to attend a hearing to answer questions from the Committee.'

Resolved, on the motion of Ms Fazio: That Chapter 5 be adopted.

Resolved, on the motion of Ms Fazio: That a new paragraph be inserted following paragraph 1.24, to read: ‘**Chapter 5** examines an outstanding issue that was not resolved at the time of the preparation of this report. The issue in question is the answering of questions placed on notice to Mr Graham Richardson, an extension of the reporting date and the possibility of preparing a supplementary report dealing with the answers given by Mr Richardson.’

Resolved, on the motion of Ms Griffin: That Chapter 1, as amended, be adopted.

Resolved, on the motion of Ms Fazio: That the Committee authorise the Secretariat to update the Committee Comments sections as required to reflect any changes to the Recommendations.

The Clerk Assistant-Committees advised the Committee that Mr Richardson had indicated verbally to him that he was willing to attend a hearing to give further evidence in relation to the written questions on notice from Committee members submitted after the hearing on 19 October 2009.

Resolved, on the motion of Ms Fazio: That the Committee meet on Tuesday 24 November in the dinner break to consider whether to invite Mr Richardson to appear as a witness and give evidence to the Committee, subject to the House agreeing to extend the Committee’s reporting date.

Resolved, on the motion of Mr Pearce: That the draft report, as amended, be the report of the Committee.

Resolved, on the motion of Mr Smith: That the Committee present the report to the House, together with transcripts of evidence, submissions, tabled documents, answers to questions on notice, minutes of proceedings and correspondence relating to the Inquiry, except for in camera evidence and documents kept confidential by resolution of the Committee.

Resolved, on the motion of Ms Hale: That any dissenting statements be submitted to the Secretariat by 12 pm on Wednesday 18 November 2009.

Resolved, on the motion of Ms Fazio: That the Chair’s Foreword be circulated to the Committee.

## **6. Adjournment**

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Madeleine Foley  
**Clerk to the Committee**

## Appendix 7 Dissenting statements

### DISSENTING STATEMENT – SYLVIA HALE

The Inquiry's origins lie in media reports of the late Michael McGurk's taping of conversations between himself and Mr Ron Medich that allegedly contained references to senior NSW Government figures being involved in corrupt land dealings at Badgerys Creek.

At the heart of the community's disquiet about the allegations was the apprehension that decisions may have been made, not on their merits but on the basis of influence wielded by politically well connected lobbyists and substantial donors to the NSW Labor Party, and that the Badgerys Creek dealings were but one example of the way in which the integrity of the planning system in this State had been compromised.

Material presented to the Committee provides abundant evidence of lax or non-existent protocols in relation to meetings between proponents of a development proposal, their lobbyists, and officers of the Department of Planning and/or departmental consultants, and in relation to the hiring of consultants. The deficiencies were such that a specific recommendation of the Inquiry is that "the Premier strengthen the Lobbyist Code of Conduct to require that each minister is informed at regular intervals of contact between government representatives and registered lobbyists".

I find it disturbing that it was even necessary to make such a recommendation. A central tenet of the Westminster system of responsible government is that ministers are accountable to parliament for the activities of their departments and departmental personnel. Individual ministerial responsibility means that a minister and not a departmental employee, no matter how highly placed, takes credit for departmental policies when things go well. By the same token, when things go badly, the minister shoulders the blame. Individual ministerial responsibility is the mechanism whereby the parliament holds ministers of the government to account. It facilitates detailed scrutiny of the executive branch of government and encourages ministers to closely monitor the activities of their departments.

Unfortunately, the Minister for Planning appears to have a fundamental misunderstanding of the Westminster system and what is required of her. In answer to a question during the Inquiry's hearing on 29 September 2009, Ms Keneally said,

"My advice comes from the department. That is how the Westminster system of government works. Departments in the Westminster system of government need to be able to provide Ministers with fearless and frank advice, not on the views of specific individuals or lobbyists, but on the merits of proposals"

She reiterated this view in an interview on the ABC's Stateline program in September when she said:

"We need to understand that there's a Westminster system of government, and it's a longstanding principle in a Westminster system of government that ministers do not interfere with the running of departments. It is not up to me as a minister to direct the Director General as to who he should meet with or who he shouldn't meet with."

It appears that the Minister for Planning is unaware of an essential difference between the Westminster system of government and a presidential system such as exists in the United States of America. In a presidential system, the executive body is completely separate from and unaccountable to the legislature. The executive cannot be dismissed by the legislature (other than in very rare cases, by impeachment). In a presidential system, the legislature does not interfere with executive and the conduct of departments.

New South Wales, however, does not operate under a presidential system. Had the Minister been more conscious of this fact, she may have been more mindful in the execution of her parliamentary and legal responsibilities and less inclined to countenance the activities of developers and their lobbyists, activities that have undermined the integrity of, and public confidence in, the planning and development system of this State. Ministerial indifference to a department's day-to-day affairs, its procedures and employment policies, may actually subvert the provision to ministers of "fearless and frank advice".

Ms Sylvia Hale MLC