

Select Committee on the Sale of the Currawong Property at  
Pittwater

# **Sale of the Currawong Property at Pittwater**

Ordered to be printed 26 June 2014 according to  
Standing Order 231

New South Wales Parliamentary Library cataloguing-in-publication data:

**New South Wales. Parliament. Legislative Council. Select Committee on the Sale of the Currawong Property at Pittwater.**

Sale of the Currawong Property at Pittwater / Select Committee on the Sale of the Currawong Property at Pittwater. [Sydney, N.S.W.] : The Committee, 2014. – x, 60 p., 30 cm. (Report ; 1)

Chair: Hon. Robert Brown MLC.  
“June 2014”

ISBN 9781920788780

**Robertson, John.**

1. Unions NSW.
2. Ministerial responsibility—New South Wales.
3. Conflict of interests—New South Wales.
4. Legislators—New South Wales—Ethics.
5. Cabinet officers—New South Wales—Ethics.
6. Real property—New South Wales—Sydney.
7. Currawong (Sydney, N.S.W.)

I. Title

II. Brown, Robert.

III. Series: New South Wales. Parliament. Select Committee on the Sale of the Currawong Property at Pittwater. Report ; 1.

328.34 (DDC22)

## How to contact the committee

Members of the Select Committee on the Sale of the Currawong Property at Pittwater can be contacted through the Committee Secretariat. Written correspondence and enquiries should be directed to:

---

The Director

---

Select Committee on the Sale of the Currawong Property at Pittwater

---

Legislative Council

---

Parliament House, Macquarie Street

---

Sydney New South Wales 2000

---

Internet [www.parliament.nsw.gov.au/currawong](http://www.parliament.nsw.gov.au/currawong)

---

Email [currawong@parliament.nsw.gov.au](mailto:currawong@parliament.nsw.gov.au)

---

Telephone (02) 9230 3081

---

Facsimile (02) 9230 2981

---

## Terms of reference

1. That a Select Committee inquire into and report on matters surrounding the alleged offer of a bribe in relation to a sale of the property Currawong, Pittwater by Unions NSW including but not limited to the circumstances surrounding:
  - (a) the purchase by the Land and Property Management Authority of the property Currawong from Ecovillages Australia Pty Ltd
  - (b) the ministerial propriety of the actions and statements of Mr John Robertson MP arising from the selling of the property Currawong, owned by Unions NSW, including but not limited to:
    - (i) any answers to questions whilst a Minister and member of the Legislative Council
    - (ii) his obligations, whilst a Minister of the Crown in the Legislative Council, to report offences, or possible offences
    - (iii) whether at any times he breached the Code of Ministerial responsibility in failing to advise Cabinet of matters associated with the sale of Currawong
    - (iv) whether at any times he breached the Code of Ministerial responsibility in failing to advise Cabinet of matters associated with any offer of a bribe by Mr Michael McGurk
    - (v) any conflicts of interests that Mr Robertson may have had
  - (c) the ministerial propriety of the actions and statements of Ministers and Members of the Parliament of New South Wales and the Commonwealth Parliament relating to the sale of the property Currawong, owned by Unions NSW, and
  - (d) any other related matter.
2. That the Committee report by 28 June 2014.<sup>1</sup>

These terms of reference were referred to the Committee by the Legislative Council.

---

<sup>1</sup> *Minutes*, Legislative Council, 26 March 2014, pp 2413-14.

## Committee membership

---

<b>Hon Robert Brown MLC</b>	Shooters and Fishers Party	<i>Chair</i>
<b>Dr John Kaye MLC</b>	The Greens	<i>Deputy Chair</i>
<b>Hon Amanda Fazio MLC</b>	Australian Labor Party	
<b>Hon Adam Searle MLC</b>	Australian Labor Party	
<b>Hon Trevor Khan MLC</b>	The Nationals	
<b>Mr Scot MacDonald MLC</b>	Liberal Party	
<b>Hon Greg Pearce MLC</b>	Liberal Party	

---

### Committee Secretariat

Ms Beverly Duffy, Clerk Assistant - Committees  
Ms Jenelle Moore, Principal Council Officer  
Ms Angeline Chung, Council Officer Assistant

## Table of contents

	<b>Chair’s foreword</b>	<b>viii</b>
	<b>Summary of findings and recommendations</b>	<b>ix</b>
<b>Chapter 1</b>	<b>Introduction</b>	<b>1</b>
	<b>Inquiry background</b>	<b>1</b>
	<b>Terms of reference</b>	<b>1</b>
	<b>Conduct of the inquiry</b>	<b>2</b>
	Submissions	2
	Hearings	2
	<b>Report structure</b>	<b>2</b>
<b>Chapter 2</b>	<b>Background to the sale of Currawong</b>	<b>3</b>
	<b>The Currawong site</b>	<b>3</b>
	<b>Key individuals involved in the sale</b>	<b>3</b>
	<b>The Independent Commission Against Corruption investigation – ‘Operation Napier’</b>	<b>4</b>
	<b>Timeline of events relating to the sale of Currawong and subsequent comments by Mr Robertson</b>	<b>4</b>
<b>Chapter 3</b>	<b>The actions and statements of Mr Robertson following his meetings with Mr McGurk</b>	<b>11</b>
	<b>The meetings between Mr Robertson and Mr McGurk</b>	<b>11</b>
	The conversation between Mr Robertson and Mr McGurk at the second meeting	12
	Committee comment	13
	Should Mr Robertson have reported the inappropriate offer immediately?	14
	Committee comment	15
	<b>Statements made by Mr Robertson in Parliament pertaining to his dealings with Mr McGurk</b>	<b>16</b>
	Answer provided during Question Time in the Legislative Council	16
	Personal explanation made in the Legislative Assembly	17
	Comments made during debate on motions regarding the inappropriate offer	17
	Committee comment	18
	<b>Was there an obligation on Mr Robertson to report the inappropriate offer to the Premier and to Parliament?</b>	<b>18</b>
	Obligations under the <i>Code of Conduct for Ministers of the Crown</i>	19
	Committee comment	21

	Obligations under the <i>Code of Conduct for Members</i>	21
	Committee comment	22
	<b>Purchase by the Land and Property Management Authority of the Currawong property from Eco Villages Australia Pty Ltd</b>	<b>23</b>
<b>Appendix 1</b>	<b>Code of Conduct for Ministers of the Crown as at 2009</b>	<b>25</b>
<b>Appendix 2</b>	<b>Code of Conduct for Members as at 2007</b>	<b>37</b>
<b>Appendix 3</b>	<b>Minutes</b>	<b>39</b>
<b>Appendix 4</b>	<b>Dissenting statements</b>	<b>55</b>

---

## Chair's foreword

In March 2006 the now deceased property developer, Michael McGurk made an 'inappropriate offer' to the former Secretary of Unions NSW, Mr John Robertson in relation to the sale of Currawong, a union owned property located at Pittwater in Sydney's northern beaches.

Seven years later, in October 2013, Mr John Robertson MP who was by now the Leader of the Opposition, revealed the alleged offer to a journalist, whose report of the conversation between Mr McGurk and Mr Robertson generated intense media interest. Mr Robertson was criticised for not immediately reporting the alleged offer to the police or to Unions NSW. Questions were also raised as to whether Mr Robertson, who became a member of Parliament in 2008 and a Minister in 2009, breached his obligations as a member and a minister by not advising the Parliament or the Premier of the offer.

This inquiry has provided an important opportunity for a cross-party committee to conduct a fair but thorough examination of the nature of the inappropriate offer made by Mr McGurk and the reasons for the delay in making the offer known to Mr Robertson's parliamentary colleagues and the authorities.

The committee concludes that while Mr Robertson displayed an error of judgement by failing to immediately report the inappropriate offer to Police and to Unions NSW, the committee did not receive any evidence to suggest that Mr Robertson received any financial gain or reward in relation to the offer.

While the committee has not determined that Mr Robertson contravened the *Code of Conduct for Members* or the *Code of Conduct for Ministers of the Crown*, we do conclude that it would have been prudent for Mr Robertson to have advised the Premier of the offer, especially at the time when Cabinet would have been considering legislation to allow the Independent Commission Against Corruption to use the 'McGurk tapes'.

With this in mind, the committee has recommended that the Privileges Committee of each House inquire into and report on the merits of broadening the Conflict of Interest provisions in the *Code of Conduct for Members*.

On behalf of the committee I thank Mr Robertson and Mr Lennon, the current Secretary of Unions NSW, for giving evidence to the inquiry. I also thank my fellow committee members for their considered approach to this inquiry.

I commend the report to the House.



The Hon Robert Brown MLC  
**Committee Chair**



## Summary of findings and recommendations

- Finding 1** 16  
Mr Robertson displayed an error of judgement in failing to report to Unions NSW and the NSW Police that Mr McGurk had made an inappropriate offer to him in relation to the sale of Currawong. However there is no evidence to suggest that Mr Robertson received any financial gain or reward in relation to the offer.
- Finding 2** 16  
The committee finds that it was inappropriate that Mr Robertson met with Mr McGurk on his own in March 2006.
- Finding 3** 21  
The committee concludes that Mr Robertson did not disclose the conversation with Mr McGurk to the Premier and his Cabinet colleagues.
- Finding 4** 23  
Mr Robertson did not contravene either the *Code of Conduct for Ministers*, the *Code of Conduct for Members* or standing order 113(2) when, in relation to the passage of the *Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill 2009*, he did not advise the Premier or the Parliament that Mr McGurk had made an inappropriate offer to him in 2006.  
Nevertheless, with the benefit of hindsight and in light of the high standards of integrity required by the preamble to the *Code of Conduct for Ministers*, it would have been both reasonable and prudent for Mr Robertson to have disclosed the offer to the Premier and the Parliament.
- Recommendation 1** 23  
That the respective Privileges Committee of each House inquire into and report on the merits of an amendment to the conflict of interest provision in the *Code of Conduct for Members* to include matters pertaining to current or previous financial or business dealings or arrangements, which have the potential to unduly influence a member's actions.



## Chapter 1 Introduction

This chapter provides an overview of the inquiry process and an outline of the report structure.

### Inquiry background

- 1.1 Prior to his election as a member of the Parliament of NSW, Mr John Robertson MP, Member for Blacktown and Leader of the Opposition, held the office of Secretary of Unions NSW between 2001 and October 2008.
- 1.2 During his time as Secretary, Mr Robertson oversaw the tender for the sale of Currawong, a site located in Pittwater on the northern beaches of Sydney, owned and used by Unions NSW for the purposes of providing affordable holiday accommodation to its members and their families. The sale was finalised in January 2011, several years after Mr Robertson's departure from Unions NSW.
- 1.3 In October 2013, Mr Robertson took part in an interview with Mr Andrew Clennell of the *Daily Telegraph*. According to the article, during the interview Mr Robertson had alleged that Mr Michael McGurk, a Sydney businessman and developer now deceased, had 'offered a \$3 million bribe' to him when he was head of Unions NSW 'in an attempt to buy the Currawong site off the Unions'. The article further reported that 'Mr Robertson did not take the alleged attempted bribe to police, saying he was satisfied he had 'shut it down' by making clear to Mr McGurk that such a payment was not on and told him to put and money he was offering in the 'formal bid'.<sup>2</sup> The story went on to become the subject of significant media attention.<sup>3</sup>

### Terms of reference

- 1.4 The inquiry terms of reference were referred by the Legislative Council on 26 March 2014 on the motion of Dr John Kaye. The terms of reference required the committee to inquire into and report on matters surrounding the alleged offer of a bribe in relation to the sale of the Currawong property in Pittwater by Unions NSW. The terms of reference do not provide for the committee to examine the subsequent purchase of the site by the New South Wales Government.
- 1.5 The full terms of reference are reproduced in full on page iv.

---

<sup>2</sup> Andrew Clennell, 'Michael McGurk offered ALP leader John Robertson \$3 million bribe when he was NSW union boss', *Daily Telegraph*, 5 October 2013, p 7.

<sup>3</sup> Anna Patty, Kate McClymont, 'Alleged bribe referred to watchdog', *Sydney Morning Herald*, 7 October 2013, p 5; Andrew Clennell, 'Robertson failed to tell probity audit about bribe offer', *Daily Telegraph*, 10 October 2013, p 7; Sarah Hawke, 'NSW Opposition Leader John Robertson says Labor MPs back his position after Currawong bribery revelation', *ABC News*, 12 October 2013.

## Conduct of the inquiry

### Submissions

- 1.6** The committee called for submissions by way of a media release announcing the inquiry sent to all media outlets in New South Wales. The committee also wrote to key stakeholders inviting them to make a submission to the inquiry. The closing date for submissions was 30 April 2014.
- 1.7** The committee received a total of three submissions, one of which was confidential. Public submissions were received from Mr Allen Linz and Mr Eduard Litver.

### Hearings

- 1.8** The committee held one public hearing at Parliament House on 5 May 2014 at which the following witnesses appeared:
- Mr John Robertson MP, Leader of the Opposition and Shadow Minister for Western Sydney and Secretary of Unions NSW at the time of the sale of the Currawong site.
  - Mr Mark Lennon, current Secretary, Unions NSW and deputy to Mr Robertson at the time of the sale of the Currawong site.
- 1.9** The transcript of proceedings is available on the committee's website [www.parliament.nsw.gov.au/currawong](http://www.parliament.nsw.gov.au/currawong).
- 1.10** The committee also wrote to Mr Moses Obeid inviting him to appear at the hearing on 5 May 2014 if he had information relevant to the committee's terms of reference. Mr Obeid, through his lawyers, declined the committee's invitation.

## Report structure

- 1.11** Chapter 2 sets out the context for the inquiry by providing background to the Currawong property at Pittwater, the key individuals involved in the sale and the circumstances in which the sale was progressed and finalised.
- 1.12** Chapter 3 discusses the evidence received in relation to the inquiry terms of reference, including the committee's key findings and recommendation.

## Chapter 2 Background to the sale of Currawong

This chapter sets out the context for the inquiry by providing background to the Currawong property at Pittwater, the key individuals involved in the sale of the property, first to Eco Villages and then to the Land and Property Management Authority, and the circumstances in which those sales were progressed and finalised. The chapter includes a detailed timeline of the events relating to the sales of the property and their aftermath.

### The Currawong site

- 2.1** The Currawong site is located at the northern end of Pittwater on Sydney's northern beaches. The property was originally purchased in 1949 by the predecessor to Unions NSW, the Labor Council of New South Wales, with a view to providing affordable beachside holiday accommodation to its members. The site occupies approximately 20 hectares of waterfront land.
- 2.2** In evidence to the committee, Mr Mark Lennon, current Secretary of Unions NSW, explained that the Labor Council had intended that Currawong function as a holiday camp along the lines of the Butlin's holiday camps which were popular in the United Kingdom in the 1940s:

The motivation was the fact that in the late 1940s the unions achieved the 40 hour week and two weeks annual leave for workers. Jim Kenny [the Assistant Secretary of the Labour Council of NSW at the time] was looking for opportunities for workers to utilise that time for a decent holiday. For a range of reasons that I will not go into now, his vision never quite materialised during the 1950s. Members can come to Trades Hall to see some of the plans, which are displayed on the walls. It was intended to have recreation halls, ovals and so on. That never eventuated and we ended up with the nine cabins, Midholme House and a few other things on the site.<sup>4</sup>

- 2.3** Mr Lennon informed the committee that in the years since the purchase, 'the original reasons for purchasing the property had long since gone and the site was costing Unions NSW money every year and resources could be better utilised elsewhere on behalf [of] the members'.<sup>5</sup>

### Key individuals involved in the sale

- 2.4** During the period of the tender for the sale of the Currawong property, **Mr John Robertson** was the Secretary of Unions NSW.
- 2.5** Mr Robertson was succeeded by **Mr Mark Lennon** on his appointment to the Legislative Council in October 2008. Mr Lennon remains Secretary of Unions NSW to date. Mr Lennon was Mr Robertson's deputy at the time of the sale to Eco Villages.
- 2.6** The sale of Currawong to Eco Villages was brokered by **Mr David Tanevski** of KWC Capital Partners.

<sup>4</sup> Evidence, Mr Mark Lennon, Secretary, Unions NSW, 5 May 2014, p 1.

<sup>5</sup> Evidence, Mr Lennon, 5 May 2014, p 1.

- 2.7 The property was purchased by Eco Villages Australia Pty Ltd (Eco Villages), the directors of which were **Mr Allen Linz** and **Mr Eduard Litver**.
- 2.8 **Mr Michael McGurk**, a Sydney property developer and director of Garsec Pty Ltd, was one of several individuals and companies who made a bid on the Currawong property during the tender process.

### The Independent Commission Against Corruption investigation – ‘Operation Napier’

- 2.9 In June 2011, the Independent Commission Against Corruption (ICAC) commenced a public inquiry into the actions of the former Minister for Planning, Mr Tony Kelly, and senior departmental officers over their role in the purchase by the Land and Property Management Authority of Currawong in the months prior to the March 2011 election.
- 2.10 In the course of that inquiry, ICAC reviewed certain aspects of the original sale of the property by Unions NSW to Eco Villages, the probity of which was referred to in the subsequent report on the investigation, published in December 2011.<sup>6</sup> The report of the ICAC is referred to throughout this report.

### Timeline of events relating to the sale of Currawong and subsequent comments by Mr Robertson

Date	Event
October 2005	<i>Currawong is listed for sale by Unions NSW</i>  Fifteen expressions of interest are received, including from the Department of Lands, Eco Villages, Macquarie Bank and Mr Michael McGurk of Garsec Pty Ltd. <sup>7</sup>
October 2005 - March 2006	<i>Mr Robertson meets with Mr McGurk</i>  Unions NSW meets with potential buyers of the site. During this period Mr Robertson meets with Mr McGurk on two occasions. According to Mr Robertson and Mr Lennon, the first meeting is also attended by Mr Jeff Priestley, Financial Controller of Unions NSW and two lawyers from firm Maddocks; the second meeting, initiated by Mr McGurk, comprises only Mr Robertson and Mr McGurk. <sup>8</sup>

<sup>6</sup> Independent Commission Against Corruption, *Investigation into the unauthorised purchase of property at Currawong by the Chief Executive of the Land and Property Management Authority*, December 2011.

<sup>7</sup> Independent Commission Against Corruption, *Investigation into the unauthorised purchase of property at Currawong by the Chief Executive of the Land and Property Management Authority*, December 2011, p 10; Tracey Ong, ‘Bidder on union retreat cries foul’, *The Australian*, 5 February 2007, p 4; ‘NSW unions cleared over Currawong sale’, *Sydney Morning Herald*, 19 September 2007.

<sup>8</sup> Evidence, Mr Lennon, 5 May 2014, p 11; Evidence, Mr John Robertson MP, 5 May 2014, p 22, 29, 30.

22 December 2006	<p><i>Unions NSW enters into an agreement with Eco Villages</i></p> <p>Unions NSW enters into a ‘put and call’ option agreement with Eco Villages, the directors of which are Mr Allen Linz and Mr Eduard Litver. Under the agreement, Eco Villages is granted a call option to purchase Currawong for \$15 million by 22 November 2007.<sup>9</sup></p>
February 2007	<p><i>The probity of the sale of Currawong is questioned</i></p> <p>Media reports announce the sale of Currawong. Several individuals, including Mr McGurk, claim that they made significantly higher bids for the property than that ultimately accepted from Eco Villages. Reports also canvass a connection between Mr Tanevski of KWC Partners, the broker of the sale, and Mr Linz and Mr Litver, Director of Eco Villages, who had previously worked together in a property development partnership.<sup>10</sup></p> <p>Mr Robertson tells the media that the offer from Eco Villages was the highest <i>unconditional</i> offer Unions NSW had received, the other offers being dependent on provisos such as development approval for the site.<sup>11</sup> Media reports state that other offers, such as those from Macquarie Bank and the State Government, had been withdrawn prior to the final decision being made.<sup>12</sup></p> <p>The media reports lead to calls for the police and the Independent Commission Against Corruption (ICAC) to investigate the sale. In response, Unions NSW commissions independent auditing firm Deloitte Touche Tohmatsu to investigate the probity of the sale.</p>
February to March 2007	<p><i>Mr Robertson informs Mr Lennon of his conversation with Mr McGurk</i></p> <p>According to his evidence to the committee, at some time in 2007, Mr Robertson informed Mr Mark Lennon, then Deputy Secretary of Unions NSW of the offer made to him by Mr McGurk during their second meeting.<sup>13</sup></p> <p>Mr Lennon advised the committee that at the time of his conversation with Mr Robertson, it was not clear to him from what was relayed that a bribe had been offered. He did not take the matter any further.<sup>14</sup></p>

<sup>9</sup> Independent Commission Against Corruption, *Investigation into the unauthorised purchase of property at Currawong by the Chief Executive of the Land and Property Management Authority*, December 2011, p 10. Under the agreement, \$1 million would be paid to Unions NSW as a security sum which would become the deposit on the purchase if the option was exercised (or refunded in the event that the option was not exercised).

<sup>10</sup> Tracey Ong, ‘Bidder on union retreat cries foul’, *The Australian*, 5 February 2007, p 4; Alex Mitchell, ‘Unions slash \$15m off historic estate’s price’, *The Sun Herald*, 4 February 2007, p. 4; Imre Salusinszky, ‘Abbott cries foul in unions’ asset sale’, *The Australian*, 16 February 2007, p. 3.

<sup>11</sup> Catherine Munro, ‘Land sale a union scam, says Abbott’, *Sydney Morning Herald*, 16 February 2007, p. 1; Alex Mitchell, ‘Turnbull warning to Currawong owners’, *The Sun Herald*, 8 April 2007, p. 33; Imre Salusinszky, ‘Abbott cries foul in unions’ asset sale’, *The Australia*, 16 February 2007, p. 3.

<sup>12</sup> Alex Mitchell, ‘Unions slash \$15m off historic estate’s price’, *The Sun Herald*, 4 February 2007, p. 4.

<sup>13</sup> Evidence, Mr John Robertson, 5 May 2014, pp 31-32.

<sup>14</sup> Evidence, Mr Lennon, 5 May 2014, pp 2, 3, 9, 12, 13, 14.

August 2007	<i>Deloitte reports on the probity of the sale of Currawong to Eco Villages</i>  Deloitte reports on the sale of Currawong. Media reports state that the report finds no evidence that Unions NSW rejected a higher bid from Mr McGurk. Media reports also state that Mr McGurk informed the review that he was not interested in pursuing the matter and that Deloitte recorded a comment from Mr McGurk conceding that the winning bid placed by Eco Villages was better than his original offer. <sup>15</sup>
November 2007 to December 2008	<i>Date for finalisation of the sale of Currawong to Eco Villages extended</i>  Put and call option agreement with Eco Villages is varied to extend the date for purchase; Eco Villages is required to pay additional security deposits. <sup>16</sup>
22 October 2008	<i>John Robertson is elected a member of the Legislative Council, in place of the Hon Michael Costa</i> <sup>17</sup>
30 January 2009	<i>Mr Robertson appointed a Minister</i> <sup>18</sup>
3 August 2009	<i>Eco Villages seeks to terminate sale agreement</i> <sup>19</sup>
3 September 2009	<i>Mr McGurk is shot and killed outside his family home</i>
7 September 2009	<i>'McGurk tapes' revealed</i>  The <i>Daily Telegraph</i> reveals that prior to his death, Mr McGurk made an audio tape recording of conversations which allegedly implicate senior NSW Government figures in bribery and corruption involving land dealings at Badgerys Creek. <sup>20</sup> The allegations result in a referral to the Independent Commission Against Corruption <sup>21</sup> and a parliamentary inquiry into the matter. <sup>22</sup>
9 September 2009	<i>Mr Robertson comments on his contact with Mr McGurk during Question Time</i>  During Question Time in the Legislative Council, Minister Robertson is asked whether his contact with Mr McGurk continued following his appointment as a Minister of the Crown. Minister Robertson replies that he had no further contact with Mr McGurk since the two meetings held during the negotiation of the sale of the Currawong site. <sup>23</sup>

<sup>15</sup> 'NSW unions cleared over Currawong sale', *Sydney Morning Herald*, 19 September 2007.

<sup>16</sup> Independent Commission Against Corruption, *Investigation into the unauthorised purchase of property at Currawong by the Chief Executive of the Land and Property Management Authority*, December 2011, p 10.

<sup>17</sup> *Minutes*, Legislative Council, 22 October 2008, p 830.

<sup>18</sup> *Minutes*, Legislative Council, 3 March 2009, p 992.

<sup>19</sup> Independent Commission Against Corruption, *Investigation into the unauthorised purchase of property at Currawong by the Chief Executive of the Land and Property Management Authority*, December 2011, p 10.

<sup>20</sup> Nick Tabacoff, Peter Gosnell, 'Did he know too much? – Execution bombshell: Political corruption claims', *Daily Telegraph*, 5 September 2009, p 1.

<sup>21</sup> Independent Commission Against Corruption, *Investigation into allegations of corruption made by or attributed to Michael McGurk*, March 2010.

<sup>22</sup> General Purpose Standing Committee No. 4, Report No. 21, *Badgerys Creek land dealings and planning decisions*, November 2009.

<sup>23</sup> *Hansard*, Legislative Council, 9 September 2009, p 17492.



November 2009	<p><i>Parliament legislates to allow ICAC to hear the 'McGurk tapes'</i></p> <p>Premier Nathan Rees announces that he will legislate to allow ICAC to hear the 'McGurk Tapes', which could otherwise not be adduced as evidence as a result of prohibitions imposed by the <i>Surveillance Devices Act 2007</i>, for the purposes of their investigation into the allegations made regarding Badgerys Creek.<sup>24</sup></p> <p>Legislation is introduced into the Legislative Council on 12 November 2009 and passed unanimously by both Houses on 25 November 2009. Mr Robertson does not speak to the bill during debate.<sup>25</sup></p>
26 November 2009	<p><i>Eco Villages enters a new contract with Unions NSW</i></p> <p>Eco Villages and Unions NSW enter into a new contract for the purchase of Currawong.<sup>26</sup></p>
28 January 2011	<p><i>Sale of Currawong finalised</i></p> <p>Eco Villages completes the purchase of the Currawong site for \$11 million (comprising a sale price of \$9.5 million plus an additional \$1.5 million previously forfeited during the termination of the original contract for sale).<sup>27</sup></p>
14-17 February 2011	<p><i>Eco Villages sells Currawong to Land and Property Management Authority</i></p> <p>Following the rejection of several development applications by Pittwater Council, Mr Linz commences negotiations with Mr Warwick Watkins of the NSW Land and Property Management Authority (LPMA) for the sale of Currawong. The sale is finalised on 15 March 2011.</p>
Mid to late March 2011	<p><i>Authority for sale of Currawong to LPMA questioned</i></p> <p>The authority for the purchase of the property by the Government, which occurred during the period in which caretaker conventions operated prior to the March 2011 State Election, is called into question. The matter is referred to ICAC for investigation.</p>
26 March 2011	<p><i>Mr Robertson elected Leader of the Opposition</i></p> <p>Mr Robertson is elected a member of the Legislative Assembly. Following a change of government as a result of the 2011 State Election, on 31 March 2011 Mr Robertson is elected Leader of the Opposition.</p>
20 June 2011	<p><i>Mr Robertson comments on sale of Currawong in the Legislative Assembly</i></p> <p>In reference to the allegations made regarding the sale of Currawong to the Government by Eco Villages, Mr Robertson makes a personal explanation in the</p>

<sup>24</sup> Simon Benson, 'Death tapes out in open: Freed to hear murdered man's corruption claims', *Daily Telegraph*, 10 November 2009, p 1.

<sup>25</sup> *Hansard*, Legislative Council, 24 November 2009, pp 19697-19700.

<sup>26</sup> Independent Commission Against Corruption, *Investigation into the unauthorised purchase of property at Currawong by the Chief Executive of the Land and Property Management Authority*, December 2011, p 10.

<sup>27</sup> Independent Commission Against Corruption, *Investigation into the unauthorised purchase of property at Currawong by the Chief Executive of the Land and Property Management Authority*, December 2011, p 10.

	Legislative Assembly stating that he has had no involvement with Currawong since 2008. <sup>28</sup>
12 December 2011	<p><i>ICAC clears Unions NSW of any wrongdoing in the sale of Currawong to Eco Villages</i></p> <p>ICAC tables its report on the Currawong matter. The report makes negative findings in relation to the conduct of the former minister and senior departmental officers in the purchase of the property from Eco Villages, but finds no evidence of wrongdoing on the part of Unions NSW in the initial sale of the property to Eco Villages.<sup>29</sup></p>
5 October 2013	<p><i>Bribery allegations published by the Daily Telegraph</i></p> <p>Mr Robertson takes part in an interview with Mr Andrew Clennell of the Daily Telegraph to mark the 18 month milestone before the 2015 election.</p> <p>That afternoon, Mr Clennell reports that during the interview, Mr Robertson had revealed that Mr McGurk had offered him ‘a bribe of 10 per cent of the \$30 million he bid for the project’ during the negotiations over the sale of Currawong. Mr Robertson was the Secretary of Unions NSW at the time of the alleged conversation. Mr Clennell reported as follows:</p> <p style="padding-left: 40px;">Asked what Mr McGurk offered him if he sold it to him, Mr Robertson said: ‘From memory I think it was 10 per cent of whatever it was. I think that’s what it was, it was a percentage and my response was ‘mate, whatever you’ve got to offer, put it in the formal bid.’</p> <p style="padding-left: 40px;">‘I can’t remember the exact words. It was words to that effect and my response was very blunt, very forthright: Whatever money’s being offered, put it in the formal bid.’</p> <p style="padding-left: 40px;">Asked later why he didn’t go to police with the bribe allegation, Mr Robertson said: ‘Because I didn’t think much of it, other than sending a very clear message. I just looked at him and ‘Just put it in the bid’.</p> <p style="padding-left: 40px;">‘I was pretty shocked by it. I just don’t expect that sort of stuff and that’s why I was pretty firm and sent him packing.’<sup>30</sup></p>
5-17 October 2013	<i>In the days following, the Honourable Greg Smith, then-Attorney General reports the allegations published in the Daily Telegraph to ICAC</i> <sup>31</sup>
15 October 2013	<p><i>Mr Robertson defends his actions to the Legislative Assembly</i></p> <p>The Legislative Assembly debates a motion moved by Mr Rob Stokes, Member for Pittwater, condemning Mr Robertson for his failure to report the alleged offer from Mr McGurk to authorities. During debate, Mr Robertson reiterates</p>

<sup>28</sup> *Hansard*, Legislative Assembly, 20 June 2011, p 2826.

<sup>29</sup> Independent Commission Against Corruption, *Investigation into the unauthorised purchase of property at Currawong by the Chief Executive of the Land and Property Management Authority*, December 2011, p 11.

<sup>30</sup> Andrew Clennell, ‘Michael McGurk offered ALP leader John Robertson \$3 million bribe when he was NSW union boss’, *Daily Telegraph*, 5 October 2013, p 7.

<sup>31</sup> *Hansard*, Legislative Assembly, 17 October 2013, p 24316 (Greg Smith).

	his previous statement that he had regarded the offer as totally inappropriate and rejected the offer outright <sup>32</sup>
17 October 2013	<i>Mr Robertson again defends his actions to the Legislative Assembly</i>  The Legislative Assembly debates a motion moved by Mr Andrew Constance, Minister for Finance and Services, seeking to censure Mr Robertson for his actions in relation to the alleged offer. Mr Robertson again reiterates that he had rejected Mr McGurk's inappropriate offer outright. <sup>33</sup>
26 March 2014	<i>Committee inquiry established</i>  The Select Committee on the Sale of the Currawong Property at Pittwater is established.

<sup>32</sup> *Hansard*, Legislative Assembly, 15 October 2013, p 23977 (John Robertson).

<sup>33</sup> *Hansard*, Legislative Assembly, 17 October 2013, p 24313 (John Robertson).



## Chapter 3 The actions and statements of Mr Robertson following his meetings with Mr McGurk

This chapter discusses the evidence received in relation to Mr Robertson's actions following his meetings with Mr Michael McGurk in 2005 and 2006 and includes the committee's findings and recommendation.

### The meetings between Mr Robertson and Mr McGurk

**3.1** Mr Robertson and Mr McGurk met on two occasions in the course of negotiations over the sale of Currawong. The first meeting occurred soon after September 2005, following the conclusion of the expression of interest process.<sup>34</sup> In evidence to the committee, Mr Lennon explained that Unions NSW held meetings such as this with prospective bidders in order to discuss their applications:

...five or six tenderers were asked to come into what was known in the circles as a beauty parade, so on a particular day they were all asked to come and present.<sup>35</sup>

**3.2** Those present at the first meeting, in addition to Mr Robertson and Mr McGurk, were solicitors from firms TressCox and Maddocks and the financial controller of Unions NSW, Mr Jeff Priestly.<sup>36</sup>

**3.3** The second meeting took place in or around March 2006 and involved only Mr McGurk and Mr Robertson. According to Mr Robertson, it was at this meeting that Mr McGurk made an 'inappropriate offer' regarding the sale of Currawong.<sup>37</sup>

**3.4** Mr Robertson informed the committee that he had also met with other bidders, but could not recollect whether or not he had met with the other bidders unaccompanied.<sup>38</sup> Mr Robertson also acknowledged that he had received a call from Mr Moses Obeid in relation to Mr McGurk's bid, to which he had replied by advising that Mr Obeid should tell Mr McGurk to go through the formal process.<sup>39</sup>

**3.5** It remains unclear what Moses Obeid's interest was in the transaction. It is noted that the committee extended an invitation to Mr Obeid to make a submission to the inquiry however that invitation was declined.

<sup>34</sup> Evidence, Mr John Robertson, 5 May 2014, p 29, 30.

<sup>35</sup> Evidence, Mr Mark Lennon, 5 May 2014, p 11.

<sup>36</sup> Evidence, Mr Lennon, 5 May 2014, p 11; Evidence, Mr Robertson, 5 May 2014, p 29.

<sup>37</sup> Evidence, Mr Lennon, 5 May 2014, p 11; Evidence, Mr Robertson, 5 May 2014, p 22, 29, 30.

<sup>38</sup> Evidence, Mr Robertson, 5 May 2014, p 30.

<sup>39</sup> Evidence, Mr Robertson, 5 May 2014, p 21.

### **The conversation between Mr Robertson and Mr McGurk at the second meeting**

- 3.6** Mr Robertson informed the committee that at the end of the second meeting between himself and Mr McGurk, Mr McGurk made what he considered to be ‘an inappropriate offer’. Mr Robertson characterised the conversation as follows:

At the conclusion of the meeting [Mr McGurk] said that a percentage of the sale price could be put into a bank account of my choosing... At that point I made it clear that anything that was going to be offered for the purchase of Currawong had to go through the formal tender process. I concluded the meeting at that point. There was no further discussion with Mr McGurk. The reason I concluded the meeting was that I was not going to entertain it. I do not know how serious he was about it...What I know is that it was an inappropriate conversation which I terminated.<sup>40</sup>

- 3.7** Mr Robertson’s description of the conversation correlates with Mr Lennon’s recollection of the terms in which the conversation was relayed to him by Mr Robertson in 2007:

John and I were in his office discussing Mr McGurk's response [to the reported sale of Currawong to Eco-Villages]. He related a story to me about the meeting he had with Mr McGurk where they were discussing the McGurk proposal. Mr McGurk said to Mr Robertson words to the effect of ‘There is plenty of money for this deal. There is even some in it for you.’ John said that he replied, ‘Forget that, mate. If you have any extra money put in the bid.’ That was the extent of the conversation and that is my recollection of it. I cannot say that they were the exact words used between the two individuals, but that is my recollection to the best of my knowledge about what Mr Robertson related to me.<sup>41</sup>

- 3.8** Mr Robertson stated that, contrary to media reports<sup>42</sup>, a precise monetary figure had never featured in the conversation and that the figure alluded to was expressed in the form of a percentage.<sup>43</sup> Mr Lennon does not recall Mr Robertson making any mention of a figure in his representation of the conversation with Mr McGurk.<sup>44</sup>

- 3.9** In response to questions, Mr Robertson advised the committee that he had not taken any notes or minutes of the meeting between himself and Mr McGurk; nor did he make a diary entry or seek any advice on the matter. When asked why, Mr Robertson explained that ‘as far as I was concerned the way I had dealt with it was the end of the matter... It was never the subject of any further interactions with that consortium and I never gave it much thought after that point.’<sup>45</sup>

- 3.10** Mr Robertson rejected suggestions that Mr McGurk had offered him a bribe, preferring to use the term ‘inappropriate offer’ to describe Mr McGurk’s actions at that meeting.<sup>46</sup> Mr Robertson stated:

---

<sup>40</sup> Evidence, Mr Robertson, 5 May 2014, p 22.

<sup>41</sup> Evidence, Mr Lennon, 5 May 2014, p 2.

<sup>42</sup> Andrew Clennell, ‘Michael McGurk offered ALP leader John Robertson \$3 million bribe when he was NSW union boss’, *Daily Telegraph*, 5 October 2013, p 7.

<sup>43</sup> Evidence, Mr Robertson, 5 May 2014, p 26, 28.

<sup>44</sup> Evidence, Mr Lennon, 5 May 2014, p 3.

<sup>45</sup> Evidence, Mr Robertson, 5 May 2014, p 31, 35.

<sup>46</sup> Evidence, Mr Robertson, 5 May 2014, p 22, 28.

No, I have told you my description of it—that it was what I considered to be an inappropriate conversation and I terminated it. As far as I was concerned, that was the end of the matter. I do not know how serious he was. I do not know what you would describe it as. I am not going to get into a debate about what others will describe it as.<sup>47</sup>

...I did not know where it was going and, frankly, it was a conversation that I did not want to be having and that is why I terminated the conversation. I just think I should make clear that I have never found myself in a situation like that before or since. The way I dealt with it at the time was in a manner that I thought was appropriate. That was that I ended the conversation, I thought nothing more of it, it never came up again.<sup>48</sup>

- 3.11** In evidence to the committee, Mr Robertson stressed that he at no stage received any payment or other gift from Mr McGurk.<sup>49</sup> He also stated that throughout the process of the negotiations over the sale, he was conscious of making sure that the process was ‘squeaky clean in regard to how it was dealt with and progressed’.<sup>50</sup>

#### **Committee comment**

- 3.12** While the terms of reference for the committee’s inquiry refer to an ‘alleged offer of a bribe’, the committee is of the view that it is more likely than not that Mr McGurk did make an inappropriate offer to Mr Robertson in relation to the sale of Currawong, whether or not that offer constituted a bribe. Therefore for the remainder of the report the committee does not use the term ‘alleged’ in relation to the inappropriate offer.
- 3.13** Only two people know precisely what transpired at the meeting between Mr Robertson and Mr McGurk in March 2006, one of whom is now deceased. Therefore the committee must rely on the evidence of Mr Robertson, and Mr Lennon’s recollection of a conversation with Mr Robertson, to piece together the relevant facts.
- 3.14** The committee accepts that in March 2006, during the second of two meetings held between Mr Robertson and Mr McGurk in the course of negotiations over the sale of Currawong, Mr McGurk made what Mr Robertson considered to be ‘an inappropriate offer’ in relation to the sale of the property to his consortium.
- 3.15** The committee accepts Mr Robertson’s evidence that he:
- terminated the meeting with Mr McGurk in response to the inappropriate offer made, and
  - informed Mr McGurk that any offer related to the purchase of Currawong must go through the formal tender process.
- 3.16** The committee also acknowledges that Mr McGurk’s consortium was unsuccessful in its bid to purchase Currawong.

<sup>47</sup> Evidence, Mr Robertson, 5 May 2014, p 23.

<sup>48</sup> Evidence, Mr Robertson, 5 May 2014, p 29.

<sup>49</sup> Evidence, Mr Robertson, 5 May 2014, p 26.

<sup>50</sup> Evidence, Mr Robertson, 5 May 2014, p 28.

**3.17** Mr Robertson advised the committee that he did not receive any payment or other gift as a result of his conversation with Mr McGurk. The committee has received no evidence to the contrary.

**Should Mr Robertson have reported the inappropriate offer immediately?**

**3.18** As noted earlier, following his conversation with Mr McGurk, Mr Robertson did not take any further action in relation to the inappropriate offer until the matter came up in conversation with Mark Lennon in 2007.<sup>51</sup>

**3.19** During the course of the inquiry, the committee was cognisant of suggestions previously made<sup>52</sup> that Mr Robertson may have had a duty under s316 of the *Crimes Act 1900* to report his conversation with Mr McGurk to the police. Under the Act, if a person has committed a serious offence, such as offering a ‘corrupt commission or reward’<sup>53</sup>, and another person who has information that may be of material assistance in apprehending or prosecuting the offender fails, without reasonable excuse, to bring that information to the appropriate authorities, that person is liable to imprisonment for a period of two years. In reference to these concerns, in October 2013 the former Attorney General advised parliament that he had referred the matter to ICAC for their consideration and determination.<sup>54</sup>

**3.20** When Mr Robertson was asked why he had chosen not to report the matter to the police, he advised the committee that he did not believe that the exchange between the two ‘was anything other than an inappropriate conversation that I had dealt with in a manner that I considered to be appropriate at that time’.<sup>55</sup>

**3.21** The committee also asked Mr Robertson why he had chosen not to mention the matter during the independent investigation into the sale conducted by auditing firm Deloitte Touche Tohmatsu. (Deloitte was commissioned to inquire into the probity of the sale of Currawong to Eco Villages). Mr Robertson stated that ‘the terms of reference were very clear in that particular inquiry’.<sup>56</sup> This echoed sentiments expressed by Mr Lennon, who stated that:

...the audit report was focusing on the role of Mr Tanevski in this regard. That was the purpose of Deloitte’s report in August 2007. It had nothing to do, as I understand it, with the question of Mr McGurk and his office with regard to the sale of Currawong.<sup>57</sup>

**3.22** However, Mr Robertson did acknowledge that in hindsight, ‘if I had my time over again I would err on the side of caution and report it’ to the authorities.<sup>58</sup>

---

<sup>51</sup> Evidence, Mr Robertson, 5 May 2014, p 31.

<sup>52</sup> *Hansard*, Legislative Assembly, 17 October 2013, p 24316 (Greg Smith).

<sup>53</sup> Within the definition of s249B of the *Crimes Act 1900*.

<sup>54</sup> *Hansard*, Legislative Assembly, 17 October 2013, p 24316 (Greg Smith).

<sup>55</sup> Evidence, Mr Robertson, 5 May 2014, p 24.

<sup>56</sup> Evidence, Mr Robertson, 5 May 2014, p 27.

<sup>57</sup> Evidence, Mr Robertson, 5 May 2014, p 7.

<sup>58</sup> Evidence, Mr Robertson, 5 May 2014, p 23, 27, 29, 36.



3.23 The committee also questioned Mr Robertson as to the circumstances in which the conversation with Mr McGurk had come to be relayed to the *Daily Telegraph*. In particular, the committee sought to determine why, having previously stated that he was unsure of the exact nature or intent of the exchange with Mr McGurk, Mr Robertson had raised the matter with a journalist in 2013. In reply, Mr Robertson stated that it had simply come up during a conversation with Mr Clennell in the corridors of Parliament House and, in his opinion, he felt that this ‘reinforces the fact that I have been open and honest about this. I have not sought to hide it in any way.’<sup>59</sup>

### Committee comment

3.24 While Mr Robertson has stated that he did not believe that Mr McGurk’s suggestion had progressed to the point of a formal offer or inducement, the committee does not accept that Mr Robertson did not need to report the offer simply because he had terminated the conversation with Mr McGurk.

3.25 The incidence of an inappropriate offer was serious and should have been taken as such. Mr Robertson met with Mr McGurk in his capacity as the head of Unions NSW and should have appreciated the potential repercussions of a conversation that he correctly deemed to be ‘inappropriate’. He was correct in ending the conversation and meeting when he did.

3.26 The provisions of s316 of the *Crimes Act 1900* place an obligation upon people to report information and beliefs about serious offences to the police, thereby facilitating the detection and investigation of offences and the apprehension, prosecution and conviction of offenders.

3.27 The committee is not in a position to determine whether Mr Robertson’s actions, in failing to take the matter to the police may have constituted a breach of s316 of the *Crimes Act 1900*.

3.28 The committee finds that Mr Robertson displayed an error of judgement by failing to immediately report the conversation to police, seek further advice, minute or diarise the matters discussed during the meeting or inform Unions NSW of the inappropriate offer made.

3.29 The committee also finds that it was inappropriate that Mr Robertson met with Mr McGurk on his own in March 2006.

3.30 The committee however again notes that Mr Robertson stated that if he had his time over again, he would have erred on the side of caution and reported the matter to the authorities.<sup>60</sup>

3.31 The committee notes that the allegations regarding the conversation between Mr Robertson and Mr McGurk were referred to ICAC in October 2013.<sup>61</sup> As far as the committee is aware, no further action has been taken in relation to this matter. The committee is cognisant that only other person present at the meeting with Mr Robertson is deceased. Therefore it is unlikely that the matter will be further investigated.

---

<sup>59</sup> Evidence, Mr Robertson, 5 May 2014, p 32.

<sup>60</sup> Evidence, Mr Robertson, 5 May 2014, p 22.

<sup>61</sup> *Hansard*, Legislative Assembly, 17 October 2013, p 24316 (Greg Smith).

- 3.32** Mr Robertson told the committee that he did not entertain the possibility that Mr McGurk was seriously offering him a bribe. The committee accepts that Mr Robertson ended the conversation and meeting with Mr McGurk because he correctly formed the view it was heading in an inappropriate direction.
- 

### **Finding 1**

Mr Robertson displayed an error of judgement in failing to report to Unions NSW and the NSW Police that Mr McGurk had made an inappropriate offer to him in relation to the sale of Currawong. However there is no evidence to suggest that Mr Robertson received any financial gain or reward in relation to the offer.

---

### **Finding 2**

The committee finds that it was inappropriate that Mr Robertson met with Mr McGurk on his own in March 2006.

---

## **Statements made by Mr Robertson in Parliament pertaining to his dealings with Mr McGurk**

- 3.33** Mr Robertson commented on his relationship with Mr McGurk on four occasions in the Legislative Council or Legislative Assembly: once in an answer provided during Question Time, once during a personal explanation made regarding his role in the sale of Currawong, and twice in his contributions to debates regarding the inappropriate offer made by Mr McGurk.
- 3.34** The committee notes that Mr Robertson did not make any statements regarding Mr McGurk or the Currawong sale in other records of the House such as the Questions and Answers Paper.

### **Answer provided during Question Time in the Legislative Council**

- 3.35** During Question Time in the Legislative Council on 9 September 2009, Minister Robertson was asked whether he had remained in contact with Mr McGurk since his appointment as a Minister of the Crown, following on from their initial contact during the sale of Currawong. Minister Robertson replied that he had had no further contact with Mr McGurk since the two meetings held during the negotiation of the sale of the Currawong site. Mr Robertson was not asked about the nature of those meetings or the matters discussed and did not make any comment in regards to those matters.<sup>62</sup>

---

<sup>62</sup> *Hansard*, Legislative Council, 9 September 2009, p 17492.

### Personal explanation made in the Legislative Assembly

- 3.36** In June 2011, ICAC announced that it would commence a public inquiry into the actions of the former Minister for Planning, Mr Tony Kelly, and certain departmental officers over their role in the purchase by the Land and Property Management Authority of Currawong in the months prior to the March 2011 election.<sup>63</sup> Later that day, Mr Robertson made a personal explanation in the Legislative Assembly stating that he had had no involvement with Currawong since resigning as Secretary of Unions NSW in 2008. He further stated:

Other than what has been reported in the media, I have no knowledge of the details of the final settlement between Unions NSW and the purchaser as I was not a party to it. In government I had no role in any decisions taken in relation to the site. I have not spoken to Tony Kelly since his resignation, and at no point has Mr Kelly ever discussed Currawong with me. I have not been contacted by the Independent Commission Against Corruption. If I were I would have no issue cooperating with any request. I have always acted with honesty and integrity.<sup>64</sup>

### Comments made during debate on motions regarding the inappropriate offer

- 3.37** On 15 October 2013, Mr Rob Stokes, Member for Pittwater, moved a motion in the Legislative Assembly condemning Mr Robertson for his failure to report the offer from Mr McGurk to authorities. During his contribution to debate, Mr Robertson made the following comments:

Let us cut to the chase. I will repeat exactly what I have said previously and publicly about the reported story. This story is about an offer that I rejected from a man I barely knew and a business deal that I did not engage in. I regarded the offer as totally inappropriate. At the end of the day, I will not know how serious this man was because of the way I dealt with it. But I know that this individual was left in no doubt as to my position and that my integrity was not for sale under any circumstances.

I immediately rejected the offer outright. I made it clear that it was completely unacceptable, and I considered that to be the end of the matter. I have acted with the highest of integrity in dealing with this matter and at all times in my dealings in my career.<sup>65</sup>

- 3.38** Two days later, Mr Andrew Constance, Minister for Finance and Services, moved a motion censuring Mr Robertson for his actions in relation to the offer. During debate, Mr Robertson made the following comments:

I will repeat what I have already put on the public record. The story that appeared in the *Daily Telegraph* was about an inappropriate offer that I rejected from a man I barely knew and a business deal I did not do. I regarded the offer as totally inappropriate. That individual was left in no doubt as to my position. He clearly understood that I could not be bought by some grubby offer and that any offers in relation to

<sup>63</sup> Media release, 'ICAC public inquiry into matters arising from Currawong property purchase', Independent Commission Against Corruption, 20 June 2011.

<sup>64</sup> *Hansard*, Legislative Assembly, 20 June 2011, p 2826.

<sup>65</sup> *Hansard*, Legislative Assembly, 15 October 2013, p 23977 (John Robertson).

Currawong had to go through the formal process. I immediately rejected outright an inappropriate offer and I was satisfied that was the end of the matter.

I make one other point. I had never found myself in a situation like that before and I have never found myself in a situation like that since. What I know is that I sent that individual packing and he was under no illusions that I would never entertain anything like that. I acted with the highest of integrity on this issue and I have always acted with the highest integrity on this issue.<sup>66</sup>

### Committee comment

- 3.39 The committee notes that Mr Robertson's statements in both Houses are consistent with those he made in evidence to the committee and those reported in the media.

## Was there an obligation on Mr Robertson to report the inappropriate offer to the Premier and to Parliament?

- 3.40 Following the murder of Mr McGurk on 3 September 2009, reports emerged that prior to his death, Mr McGurk had made audio tape recordings of conversations which allegedly implicated senior NSW Labor Party identities and NSW Government officials in bribery and corruption in land dealings at Badgerys Creek.<sup>67</sup> The recordings came to be informally known as the 'McGurk tapes'.
- 3.41 Soon after, then-Premier Nathan Rees announced that he would legislate to allow ICAC to hear the tapes for the purposes of their investigation into the purchase of land at Badgerys Creek.<sup>68</sup> Without this legislation, the tapes would have been inadmissible as evidence owing to prohibitions imposed by the *Surveillance Devices Act 2007*.
- 3.42 The draft legislation, entitled the *Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill 2009*, was considered by the Legislative Council on 24 November 2009, during which time Mr Robertson was a member of the Upper House and a Minister of the Crown. Mr Robertson did not make a contribution to the debate on the bill but was present in the Chamber during the vote on the bill which was passed by the Legislative Council unanimously.<sup>69</sup>
- 3.43 The allegations were subsequently referred to ICAC, which found that the allegations investigated were without substance.<sup>70</sup> The allegations were also the subject of a parliamentary inquiry.<sup>71</sup>

---

<sup>66</sup> *Hansard*, Legislative Assembly, 17 October 2013, p 24313 (John Robertson).

<sup>67</sup> Nick Tabakoff, Peter Gosnell, 'Did he know too much? – Execution bombshell: Political corruption claims', *Daily Telegraph*, 5 September 2009, p 1.

<sup>68</sup> Simon Benson, 'Death tapes out in open', *Daily Telegraph*, 10 November 2009, p 1.

<sup>69</sup> *Hansard*, Legislative Council, 24 November 2009, pp 19697-19700.

<sup>70</sup> Independent Commission Against Corruption, *Investigation into allegations of corruption made by or attributed to Michael McGurk*, March 2010.

<sup>71</sup> General Purpose Standing Committee No. 4, Report No. 21, *Badgerys Creek land dealings and planning decisions*, November 2009.

**Obligations under the *Code of Conduct for Ministers of the Crown***

**3.44** The terms of reference for the inquiry required the committee to inquire into any conflicts of interests Mr Robertson may have had, as well as his obligations as a Minister of the Crown. With this in mind, the committee explored whether there was any obligation on Mr Robertson to disclose the inappropriate offer made by Mr McGurk to the Premier in reference to the requirements of Part 3 of the *Code of Conduct for Ministers of the Crown* (Code of Conduct for Ministers) as it applied during that period. A copy of the code as at 2009 is included at Appendix 1.

**3.45** Clause 3.1 of the Code of Conduct for Ministers, as at 2009, provided that:

For the purposes of this Part a Minister shall be taken to have an interest in any matter on which a decision is to be made or other action taken by the Minister in virtue of office, if the range of possible decision or action includes decision or action reasonably capable of conferring a pecuniary or other personal advantage on the Minister... Reference to a conflict of interest is reference to a possible conflict between the interest in question and the Minister's duty as a Minister.

**3.46** Clause 3.3 provided that:

Where in the exercise of office an actual or apparent conflict of interest arises or is likely to arise in the matter, a Minister shall forthwith disclose the nature of that conflict to the Premier.

**3.47** The preamble to the code states that:

It is essential for the maintenance of public confidence in the integrity of the Executive Government of the State that Ministers of the Crown exhibit and be seen to exhibit, the highest standards of probity in the exercise of their offices, and that they pursue, and be seen to pursue, the best interests of the people of New South Wales to the exclusion of any other interest.

It is essential for the proper working of Executive Government that Ministers of the Crown should enjoy and retain the trust and confidence of their ministerial colleagues both in their official dealings and in the manner in which they discharge their official responsibilities.

Accordingly two principles must guide ministerial conduct in office:

1. Ministers will perform their duties honestly and in the best interests of the people of New South Wales.
2. Ministers will be frank and honest in official dealings with their colleagues and will maintain the confidentiality of information committed to their secrecy.

**3.48** To this end, the committee questioned Mr Robertson to determine:

- whether Mr Robertson had considered his obligations under the requirements of the Code of Conduct for Ministers,

- whether Mr Robertson had disclosed the inappropriate offer to the Premier or other Cabinet colleagues during consideration of the *Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill 2009*, or
- whether Mr Robertson may have been obliged to make a declaration of a conflict of interest due to a possibility that he been recorded or mentioned in the ‘McGurk tapes’.

**3.49** Mr Robertson stated in evidence that he had spoken of his conversation with Mr McGurk only to Mr Lennon in 2007 and Mr Clennell in 2013.<sup>72</sup> Mr Robertson advised the committee that, to the best of his knowledge, he did not discuss the offer with anyone else.<sup>73</sup>

**3.50** Mr Robertson did not directly answer the questions put to him by the committee regarding his conversations with Cabinet, citing the requirement for ministers of the Crown to maintain Cabinet confidentiality. Mr Robertson went on to stress that he did not have a conflict of interest in the passage of the bill and that this was evidenced by his vote in favour of the bill:

**Dr JOHN KAYE:** On Tuesday, 24 November 2009 you voted on the Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill, which allowed what is now known as the McGurk tapes to be given to the Independent Commission Against Corruption, despite issues surrounding the legislative bans on doing so.

**Mr JOHN ROBERTSON:** I do not accept that I had a conflict of interest and I voted—

**Dr JOHN KAYE:** You voted for the bill.

**Mr JOHN ROBERTSON:** As the record will show, I voted for the bill. I make the point that I have always supported the Independent Commission Against Corruption getting any of the powers that it needs to do the job that it needs to do in this State... It is something that I feel very strongly about. At no stage did I seek to in any way speak or vote against those laws being granted to give the Independent Commission Against Corruption the powers that it needed to listen to those tapes.

**Dr JOHN KAYE:** You felt no need to reveal to the Parliament at that point that this was a matter which may involve you and that you might actually indeed be on the McGurk tapes?

**Mr JOHN ROBERTSON:** I voted for them.

**Dr JOHN KAYE:** That is a different question. My question to you is straightforward. You did not feel at that point in time the need to reveal the fact that you might somehow or other be on the McGurk tapes?

**Mr JOHN ROBERTSON:** I felt I had nothing to fear about those tapes. As far as I was concerned I wanted the Independent Commission Against Corruption to be able to listen to all of those tapes.

---

<sup>72</sup> Evidence, Mr Robertson, 5 May 2014, pp 31, 32.

<sup>73</sup> Evidence, Mr Robertson, 5 May 2014, p 32.

**Dr JOHN KAYE:** Did you think at that stage it was possible, given what was then known about the McGurk tapes, that you might have been on the McGurk tapes?

**Mr JOHN ROBERTSON:** No.

**Dr JOHN KAYE:** You did not think you could be?

**Mr JOHN ROBERTSON:** No.

**Dr JOHN KAYE:** You thought it was impossible that you were on the McGurk tapes?

**Mr JOHN ROBERTSON:** I did not believe I was on those tapes... You are implying that I should have been worried that I was on these tapes. If I had been worried and I had a conflict, I would have voted completely the opposite way to the way I did.<sup>74</sup>

### Committee comment

**3.51** Mr Robertson advised that he had mentioned his conversation with Mr McGurk only to Mr Lennon in 2007 and Mr Clennell in 2013. The committee concludes on the basis of the available evidence that Mr Robertson did not disclose his conversation with Mr McGurk to either the Premier or his other ministerial colleagues during Cabinet's consideration of the draft *Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill* in 2009.

If Mr Robertson had any suspicion that he might be on the tapes, the matter *may* have fallen within the definition of a conflict of interest under Part 3 of the *Code of Conduct for Ministers*, not in terms of a pecuniary interest, but within the scope of a 'personal advantage'. However, Mr Robertson told the committee that he did not believe that it was possible that he was on the tapes. Nor did he believe that he was even mentioned on the tapes.<sup>75</sup> It is not possible for the committee to conclude he had a conflict of interest under Part 3 of the Ministerial Code of Conduct.

---

### Finding 3

The committee concludes that Mr Robertson did not disclose the conversation with Mr McGurk to the Premier and his Cabinet colleagues.

---

### Obligations under the *Code of Conduct for Members*

**3.52** Two sources of authority provide for the circumstances in which members must make a declaration of a conflict of interest in the Legislative Council:

- Standing order 113 (2) states that

---

<sup>74</sup> Evidence, 5 May 2014, pp 32-33.

<sup>75</sup> Evidence, Mr Robertson, 5 May 2014, p 33.

‘A member may not vote in any division on a question in which the member has a direct pecuniary interest, unless it is in common with the general public or it is on a matter of state policy. If a member does vote, the vote of that member is to be disallowed.’<sup>76</sup>

- The *Code of Conduct for Members*, adopted by both Houses for the purposes of section 9 of the Independent Commission Against Corruption Act 1988, provides that

### 1 Disclosure of conflict of interest

- Members of Parliament must take all reasonable steps to declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their office.
- This may be done through declaring their interests on the Register of Disclosures of the relevant House or through declaring their interest when speaking on the matter in the House or a Committee, or in any other public and appropriate manner.
- A conflict of interest does not exist where the member is only affected as a member of the public or a member of a broad class.<sup>77</sup>

**3.53** A full copy of the Code is included at Appendix 2.

**3.54** Both provisions relate to the requirement to declare only a pecuniary or financial interest, in contrast to the *Code of Conduct for Ministers of the Crown* which applies a broader definition of a conflict of interest to encompass matters that may confer a ‘personal advantage’ to the Minister.

### Committee comment

**3.55** The committee notes Mr Robertson’s suggestion that his vote in support of the *Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill 2009* was indicative that he did not have a conflict of interest in the bill. Mr Robertson stated

‘If I had been worried and I had a conflict, I would have voted completely the opposite way to the way I did’.<sup>78</sup>

**3.56** The committee does not accept that a conflict of interest is necessarily mitigated by a member voting against their interest in a bill.

**3.57** The committee acknowledges that the provisions of section 1(a) of the *Code of Conduct for Members* are narrow and specify only that conflicts of interest between members’ ‘private financial interests and decisions in which they participate in the execution of their office’ must be declared. SO 113(2) similarly applies only to conflicts of a pecuniary nature. The committee did not receive any evidence to suggest Mr Robertson stood to benefit from a pecuniary interest when he did not advise the House of his conversation with Mr McGurk during debate

<sup>76</sup> Standing order 113, *Standing Rules and Orders of the Legislative Council*, May 2004.

<sup>77</sup> The full *Code of Conduct for Members* is reproduced at Appendix 3.

<sup>78</sup> Evidence, 5 May 2014, p 33.



on the *Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill 2009*. There is therefore no evidence to suggest that Mr Robertson contravened the requirements of the *Code of Conduct for Members* or SO 113(2).

- 3.58** The committee also notes that the preamble to the *Code of Conduct for Members* states that ‘Members of Parliament acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity ...’. If Mr Robertson believed there was a chance that he was mentioned on the ‘McGurk tapes’, then it is arguable that he should have raised this during debate on the bill in keeping with the spirit of the preamble to the code. However, as Mr Robertson told the committee under oath that he did not believe he was on the tapes, the committee does not conclude that Mr Robertson acted contrary to the *Code of Conduct for Members*.

---

#### **Finding 4**

Mr Robertson did not contravene either the *Code of Conduct for Ministers*, the *Code of Conduct for Members* or standing order 113(2) when, in relation to the passage of the *Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill 2009*, he did not advise the Premier or the Parliament that Mr McGurk had made an inappropriate offer to him in 2006.

Nevertheless, with the benefit of hindsight and in light of the high standards of integrity required by the preamble to the *Code of Conduct for Ministers*, it would have been both reasonable and prudent for Mr Robertson to have disclosed the offer to the Premier and the Parliament.

- 3.59** As noted above, in the course of its inquiry, the committee has observed that the definition of a conflict of interest under the *Code of Conduct for Members* is particularly narrow. The committee also notes that the scope of the *Code* is determined by resolution of the two Houses.
- 3.60** The committee considers that there may be merit in broadening the scope of the definition of a conflict of interest within the *Code of Conduct for Members* to include matters pertaining to current or previous financial or business dealings or arrangements, which have the potential to unduly influence a member’s actions. The respective Privileges Committee of each House would be best placed to determine the merits of such an amendment to the code.

---

#### **Recommendation 1**

That the respective Privileges Committee of each House inquire into and report on the merits of an amendment to the conflict of interest provision in the *Code of Conduct for Members* to include matters pertaining to current or previous financial or business dealings or arrangements, which have the potential to unduly influence a member’s actions.

---

### **Purchase by the Land and Property Management Authority of the Currawong property from Eco Villages Australia Pty Ltd**

- 3.61** In evidence to the committee, Mr Lennon advised that while Mr Robertson had managed the initial tender process for the sale of Currawong during his tenure as the Secretary of Unions

NSW, he had ceased to have any further involvement in the process following his election to the Legislative Council in October 2008.<sup>79</sup>

**3.62** This is supported by comments made by Mr Robertson during his personal explanation in the Legislative Assembly on 20 June 2011.<sup>80</sup>

**3.63** The sale of Currawong to Eco Villages was finalised in January 2011 and the property was sold on to the Land and Property Management Authority (LPMA) the following month.<sup>81</sup> The committee received no evidence to indicate that Mr Roberston had any involvement in the purchase by the LPMA of the Currawong property from Eco Villages Australia Pty Ltd, or that Mr Robertson's conversation with Mr McGurk was in any way relevant to the facts surrounding the purchase of the property by the LPMA.

**3.64** Mr Robertson repeatedly stated that the sale of Currawong by Unions NSW has been investigated and cleared by ICAC.<sup>82</sup> In support of his statements, Mr Robertson cited ICAC's report on the investigation which found that there was no evidence that Unions NSW or its officers or any person associated with Eco Villages acted corruptly in the sale of the Currawong site to the NSW Government:

The evidence in relation to the dealings between Unions NSW and Eco Villages, including the changes in the price to be paid by Eco Villages and the length of time taken to complete the transaction, demonstrates that decisions between vendor and purchaser were based on rational commercial and legal considerations. There is no evidence that Unions NSW or its officers or any person associated with Eco Villages acted corruptly in the sale of the Currawong site to the NSW Government. The Commission is satisfied that there was nothing untoward in the dealings between Unions NSW and Eco Villages.<sup>83</sup>

---

<sup>79</sup> Evidence, Mr Lennon, 5 May 2014, p 7.

<sup>80</sup> *Hansard*, Legislative Assembly, 20 June 2011, p 2826.

<sup>81</sup> Independent Commission Against Corruption, *Investigation into the unauthorised purchase of property at Currawong by the Chief Executive of the Land and Property Management Authority*, December 2011, p 10.

<sup>82</sup> Evidence, Mr Robertson, 5 May 2014, p 16, 19, 21.

<sup>83</sup> Independent Commission Against Corruption, *Investigation into the unauthorised purchase of property at Currawong by the Chief Executive of the Land and Property Management Authority*, December 2011, p 10.

## Appendix 1 Code of Conduct for Ministers of the Crown as at 2009

### CODE OF CONDUCT FOR MINISTERS OF THE CROWN

It is essential for the maintenance of public confidence in the integrity of the Executive Government of the State that Ministers of the Crown exhibit, and be seen to exhibit, the highest standards of probity in the exercise of their offices, and that they pursue, and be seen to pursue, the best interests of the people of New South Wales to the exclusion of any other interest.

It is essential for the proper working of Executive Government that Ministers of the Crown should enjoy and retain the trust and confidence of their ministerial colleagues both in their official dealings and in the manner in which they discharge their official responsibilities.

Accordingly two principles must guide ministerial conduct in office:

1. MINISTERS WILL PERFORM THEIR DUTIES HONESTLY AND IN THE BEST INTERESTS OF THE PEOPLE OF NEW SOUTH WALES.
2. MINISTERS WILL BE FRANK AND HONEST IN OFFICIAL DEALINGS WITH THEIR COLLEAGUES AND WILL MAINTAIN THE CONFIDENTIALITY OF INFORMATION COMMITTED TO THEIR SECRECY.

This Code of Conduct seeks to uphold these two principles.

#### CODE

##### Introduction

The following is not intended to be a comprehensive statement of the ethical responsibilities of Ministers of the Crown. One cannot anticipate and make provision for every contingency which can raise an ethical issue for Ministers. The requirements and guidelines set out below merely provide the broad framework to aid Ministers in the resolution of ethical issues. It is to be emphasised that each Minister will bear personal responsibility both for the decisions he or she makes on ethical questions and for the manner in which he or she complies with this Code. Any ethical determination on a matter not provided for in this Code should be in conformity with the two principles stated above. In any case of doubt the Minister should refer the matter to the Premier.

Ministers are reminded that, quite apart from their ethical obligations they are subject to the civil and criminal law as holders of public office. In particular they are reminded that they can be held personally responsible in law for (a) their intentional misuse of their office and the powers and duties they have in it; (b)

*Ministerial Code of Conduct – January 2009 - 2 -*

conflicts of interest and the possession of interests which will disqualify them from parliamentary office; (c) the corrupt receipt or solicitation of benefits; and (d) the misuse of confidential information acquired by virtue of office.

### **Part 1. General Obligations**

- 1.1 Ministers will exercise their office honestly and in the public interest.
- 1.2 Ministers should avoid situations in which they have or might reasonably be thought to have a private interest which conflicts with their public duty.
- 1.3 In conformity with their Executive Councillor's oath and the requirement of confidentiality of Cabinet proceedings, Ministers will make no unauthorised use or disclosure of information committed to their secrecy.
- 1.4 A Minister shall be responsible for ensuring that members of his or her staff are made aware of their ethical responsibilities and will require such disclosure or divestment of personal interests by staff members as seems appropriate to the Minister.
- 1.5 A Minister shall be frank and honest in official dealings with colleagues.

### **Part 2. Registration of Ministers' Interests**

- 2.1 A Minister shall comply with the requirements of section 14A of the *Constitution Act 1902* and with any regulation in force under that section. (In this Code such a regulation, as in force at a relevant time, is referred to as "the relevant regulation").
- 2.2 A person accepting an appointment as a Minister of the Crown shall within four weeks of that appointment furnish to the Premier a copy of the return most recently made by him or her under the relevant regulation. If the person has had no occasion yet to furnish a return, then he or she shall furnish the same particulars as he or she would be obliged to furnish in a return made in accordance with the relevant regulation, using the form provided for by the regulation.  
  
In the rest of this Part "return" is used to describe whatever form of document is furnished under this paragraph.
- 2.3 In addition to furnishing the return referred to in paragraph 2.2, the person shall furnish a written declaration supplying the Premier with the following information:-
  - (a) particulars of events which have occurred since the period covered by the return, and which (or the consequences of which) would have to be

*Ministerial Code of Conduct – January 2009 - 3 -*

disclosed in the next return made under the relevant regulation. The particulars are to include changes in the state of affairs disclosed in the return, such as changes in the ownership of real property, as well as new events, such as the receipt of gifts that would be required to be disclosed in a subsequent return;

- (b) such further particulars as the Premier may require of anything dealt with in the return or declaration, or of anything the Premier considers ought to have been dealt with; and
- (c) such particulars as the Premier may require of any other pecuniary interests, direct or indirect, that the person may have in any property or under any contract, arrangement or transaction yielding a material benefit to the person; or of pecuniary interests, similar to those described in the relevant regulation or in this sub-paragraph, that the person's spouse or children may have. The particulars must include such details as the Premier requires of the assets, sources of revenue or transactions of any company or other body in which the person, or the person's spouse or children, may have a direct or indirect pecuniary interest.

2.4 In the rest of this part, the subject-matter of a return, and of a declaration, furnished to the Premier under paragraph 2.2 or paragraph 2.3, including anything relating to a spouse or child of a person, is referred to as the "interests" of that person, and any particular item dealt with in the return or declaration is referred to as an "interest".

2.5 A person proposed to be appointed as a Minister should, at the request of the Premier, divest himself or herself of any interests which could create the impression of a material conflict with the responsibilities to be discharged in the portfolio to which the appointment is to be made.

In any event a Minister shall upon assuming office:-

- (a) resign any directorship of a public company, and of any private company whose interests are such as to be likely to give rise to the appearance of conflicting interests or responsibilities of the Minister; and
- (b) cease to take an active part in any professional practice or in any business in which the Minister was engaged prior to assuming office.

2.6 The returns and declarations furnished to the Premier under paragraphs 2.2 and 2.3 will be kept as a Register of Interests by the Department of Premier and Cabinet.

*Ministerial Code of Conduct – January 2009 - 4 -*

- 2.7 Ministers must, throughout their period in office, furnish to the Premier in writing:-
- (a) particulars of all events which occur after the furnishing of the declaration under paragraph 2.3, and which (or the consequences of which) would have to be disclosed in the return next following the event and made under the relevant regulation; and
  - (b) particulars of any material change in any interests not covered by subparagraph (a) of this paragraph, for example, interests of a spouse or child,
- and shall do so as the event or material change occurs.
- Any such particulars will be recorded in the Register of Interests kept by the Premier.
- 2.8 Whenever there is any significant change in, or addition to, the responsibilities of a Minister, that Minister shall consult with the Premier for the purpose of determining whether that change warrants a divestment of any interests then held by the Minister.
- 2.9 The Premier shall review from time to time the interests and the official responsibilities of each Minister for the purpose of determining whether it would then be appropriate either for those responsibilities to be varied or for interests to be divested so as to avoid the appearance of any conflict of interest.
- 2.10 A Minister who divests interests under this or the following Part shall not transfer those interests to his or her spouse, to a minor child, to a nominee or to any trust, company or association in which the Minister has, or would thereby have, a substantial interest.
- 2.11 The returns and declarations required to be furnished to the Premier under this Part shall not relieve a Minister of any disclosure requirements prescribed in later Parts of this Code.

### **Part 3. Conflict of Interest**

- 3.1 For the purposes of this Part a Minister shall be taken to have an interest in any matter on which a decision is to be made or other action taken by the Minister in virtue of office, if the range of possible decision or action includes decision or action reasonably capable of conferring a pecuniary or other personal advantage on the Minister or the spouse or any child of the Minister; but the Minister shall not be taken to have such an interest if the advantage is no greater than the advantage that would be conferred

*Ministerial Code of Conduct – January 2009 - 5 -*

by the decision or action on any member of the public at large, or any substantial section of the public. Reference to a conflict of interest is reference to a possible conflict between the interest in question and the Minister's duty as a Minister.

"Undisclosed interest" means an interest not disclosed as required under this Part.

3.2 A Minister shall not:-

- (a) use his or her position for the private gain of the Minister or for the improper gain of any other person; or
- (b) have any material or undisclosed interest in any decision or action taken in virtue of office.

So as to ensure that such does not appear to have occurred, a Minister shall avoid situations in which it might reasonably be thought that the ministerial position is being so used, or that a possible conflict of interest has arisen.

3.3 Where in the exercise of office an actual or apparent conflict of interest arises or is likely to arise in the matter, a Minister shall forthwith disclose the nature of that conflict to the Premier.

A record of that disclosure shall be placed upon a Schedule to the Register of Interests.

The Minister shall abstain from further acting in that matter unless and until the relevant interest has been divested or the Premier in writing directs the Minister to continue to act after full disclosure to the Premier.

Where the Minister is unable or unwilling to divest that interest, or where it is otherwise considered to be in the best interests of Executive Government in the State, the Premier may appoint another Minister to act in the matter.

3.4 Where in any meeting of the Executive Council, Cabinet or in any committee or sub-committee of Cabinet an actual or apparent conflict of interest arises or is likely to arise in any matter, the Minister shall, as soon as practicable after the commencement of the meeting, disclose the existence and nature of that conflict.

The disclosure shall be recorded in the minutes of the meeting.

*Ministerial Code of Conduct – January 2009 - 6 -*

The Minister shall abstain from participating in discussion of that matter and from voting on it.

- 3.5 Where a Minister has been authorised under this Part to continue to act in a matter notwithstanding an actual or apparent conflict of interest, any change in circumstances affecting the nature or extent of that conflict shall be disclosed in accordance with, and shall be subject to the provisions of, this Part.
- 3.6 The responsibility for knowing of an actual or apparent conflict of interest rests with the individual Minister.

**Part 4. Confidentiality of Information**

- 4.1 Ministers will uphold their oath of secrecy as Executive Councillors and will maintain the confidentiality of information committed to their secrecy in the Executive Council or in Cabinet.
- 4.2 A Minister shall not use information obtained in office to gain a direct or indirect private advantage for himself or herself, or for any other person.
- A Minister shall not communicate such information to any other person with a view to the private advantage of that other or of any third person unless that communication is authorised by law.
- 4.3 A Minister shall not make investments or enter into dealings in which the Minister might reasonably be thought to have, by virtue of office, access to relevant information not generally available to other persons.
- 4.4 On resignation or retirement a Minister shall maintain the secrecy of information acquired in office which could not properly be used or disclosed by the Minister if the Minister had remained in office.

**Part 5. Misuse of Public Property and Services**

- 5.1 Ministers shall be scrupulous in their use of public property, services and facilities. They should avoid any action or situation which could create the impression that such are being used for their own or for any other person's private benefit or gain.



Ministerial Code of Conduct – January 2009 - 7 -

## Part 6. Gifts and Hospitality

### RECEIVING OF GIFTS:

- 6.1 A Minister shall not solicit or accept any gift or benefit the receipt or expectation of which might in any way tend to influence the Minister in his or her official capacity to show or not to show favour or disfavour to any person.

If any such gift, offer or suggestion thereof is made directly or indirectly to a Minister, the facts shall be reported to the Premier at the first opportunity.

Ministers' attention is drawn to the provisions of Part IVA of the *Crimes Act 1900* and especially to the sections dealing with corrupt rewards.

- 6.2 Ministers shall avoid all situations in which the appearance may be created that any person or body through the provision of hospitality or benefits of any kind is attempting to secure the influence or favour of a Minister.
- 6.3 In those circumstances where the offer of a benefit or gift is an act of goodwill towards the people of New South Wales and where offence might possibly be given by its rejection, such benefit or gift may be received by a Minister.

If the gift is valued at \$500 or above and the Minister wishes to retain that gift, the declaration form (Appendix A) is to be completed and submitted to the Director General of the Department of Premier and Cabinet with a cheque payable to the NSW Treasury being the difference between the valuation limit and the value of the gift and delivered to the Office of Protocol and Special Events, Department of Premier and Cabinet for processing.

The valuation of this gift is to be made by a registered valuer at the wholesale price of the Country of origin. This valuation is to be supplied by the Minister's Office concerned.

All gifts, \$500 and over will be recorded on a register in the Office of Protocol and Special Events and those gifts not retained by the Minister will be located in Galleries, Museums or other appropriate Government Establishments. As such the gifts will become the property of the State under the control of the Director General, Department of Premier and Cabinet.

- 6.4 Overseas gifts received in the course of official duty are to be declared:
- (a) When received overseas, to Australian customs at the point of entry, if the gift falls outside the normal duty free passenger concession or if the gift is subject to quarantine inspection.
  - (b) If an overseas gift does not qualify for duty free entry under the normal passenger concession, customs duty and other relevant taxes are payable at the appropriate rate.
- A record of all reported benefits or gifts, and of the arrangements made concerning them, shall be kept by the Premier in a Schedule to the Register of Interests. These reports should be forwarded to the Office of Protocol and Special Events who will arrange for these details to be recorded in the Register.
- 6.5 Ministers shall take all reasonable steps to ensure that their spouses, their children and their staff members are not the recipients of such benefits or gifts as could give the appearance of an indirect attempt to secure the influence or favour of the Minister.
- 6.6 Gifts of token kind or moderate acts of hospitality (such as a lunch or dinner) may be accepted without the Minister needing to report their offer or receipt. In deciding to accept such benefits a Minister must satisfy himself or herself that ministerial independence will not in any way be compromised or appear to be compromised thereby and the Minister will bear personal responsibility for the decision taken.

#### GIVING OF GIFTS:

- 6.7 Although Australia is not traditionally a gift giving country, other countries customs, good manners and goodwill often necessitate the presentation of gifts. The Office of Protocol and Special Events has in the past selected gifts which are either handed over informally or presented formally as desired. The gifts range from expensive pieces of Australian arts and crafts to modestly priced books. Depending upon the importance of the visitor and what the visitor is likely to present to the host, gifts ranging from expensive pieces of Australian arts and crafts to modestly priced books may be purchased from State funds.

#### *Selection and Purchase*

- 6.8 Gifts are chosen for their craftsmanship and Australian character and, where possible, items are purchased at source. However, for practical reasons, purchases may also be made through galleries and retail outlets.

*Ministerial Code of Conduct – January 2009 - 9 -*

Wherever practicable products should be from New South Wales designers and suppliers.

*Choice of Gifts*

- 6.9 The choice of gifts is at the discretion of the Minister within Ministerial financial allocations, as determined by the nature of individual visits and their importance. Discreet enquiries are made well in advance of visits of likely presentations and their value.
- 6.10 Further, if Ministers are ordinarily to make their own selection and purchase arrangements for gifts, then it may be prudent for advice to be sought on their behalf from the Office of Protocol and Special Events as to the nature and value of an appropriate gift. This may avoid embarrassment, and also ensure that gifts are not overly extravagant.

*Issue of Gifts*

- 6.11 A modest supply of gifts of varying cost and quality are held in the Office of Protocol and Special Events for presentation by the Premier and on infrequent occasions by the Governor and the Departmental Head.
- In the case of a Minister, Parliamentary Secretary or Member formally representing the Premier, the Premier's private staff is to advise Protocol in writing requesting that a gift be made available for presentation;
  - Requests outside the above for gifts from the Office of Protocol and Special Events store are to be made in writing to the Premier, if the Department of Premier and Cabinet is to bear the cost. Protocol staff are available to assist Ministers in selection of gifts, if required;
  - In the normal administration of their portfolios Ministers are to make their own selection and purchase arrangements for presentation of gifts, as is common practice amongst most Ministers;
  - Ministers may purchase from the Protocol store standard items bearing State insignia e.g. ties, cuff links, scarves.

**Part 7. Employment or Engagement**

- 7.1 The full-time nature of Ministerial office effectively precludes Ministers from accepting any form of employment or engagement, or otherwise providing services to third parties, while they remain in office.

- 7.2 Ministers need to be aware of the risks of conflicts of interest, or perceived conflicts of interest, which might arise when considering (either while in office or after leaving office) offers of employment or engagement to be accepted after the Minister leaves office. Similar issues arise in circumstances where a Minister proposes to establish a business to provide services to third parties.
- 7.3 Ministers, while in office or following resignation or retirement, should take care in considering offers of post-separation employment or engagement, or when proposing to otherwise provide services to third parties after they leave office, to avoid a perception that:
- the conduct of the Minister or former Minister while in office is or was influenced by the prospect of the employment or engagement or by the Minister or former Minister's intention to provide services to third parties; or
  - the Minister or former Minister might make improper use of confidential information to which he or she has or had access while in office.
- 7.4 Ministers who, while in office, are considering an offer of post-separation employment or an engagement or who are proposing to provide services after they leave office to third parties (including establishing a business to provide such services) must obtain advice from the Parliamentary Ethics Adviser before accepting any employment or engagement or providing services to third parties which relates or relate to their portfolio responsibilities (including portfolio responsibilities held during the previous two years of Ministerial office).
- 7.5 Former Ministers must also obtain advice from the Parliamentary Ethics Adviser before accepting any employment or engagement or providing services to third parties (including establishing a business to provide such services) within the first 12 months of leaving Ministerial office, which relates or relate to their former portfolio responsibilities during the last two years in which they held Ministerial office. This requirement does not apply to any employment or engagement by the Government.
- 7.6 The requirements in Part 7 apply to Ministers and former Ministers in addition to any requirements that may apply to them in their capacity as a Member of Parliament.

#### **Part 8. Lobbying**

- 8.1 Ministers must comply with the NSW Government Lobbyist Code of Conduct as published on the Department of Premier and Cabinet website at [www.dpc.nsw.gov.au](http://www.dpc.nsw.gov.au).

**APPENDIX A**

**DECLARATION OF AN OFFICIAL GIFT**

DECLARATION OF AN OFFICIAL GIFT EXCEEDING VALUATION LIMIT	
To:	Gifts Officer Office of Protocol and Special Events Department of Premier and Cabinet
From:	The Office of _____
The following gift was received in the course of official duties and its value exceeds the valuation limit of \$500 for a gift.	
Gift (Item or service):	_____
Received by:	_____
Presented by:	_____
Occasion and date:	_____
Current location of gift:	_____
Value (wholesale country of origin):	\$ _____

**Please complete A or B**

A	B
I wish to retain this gift.	I wish to surrender this gift to the Department of Premier and Cabinet and relinquish any future claim to ownership.
Attached are –	My recommendation of the future location/disposal of this gift is –
<ul style="list-style-type: none"> <li>• the valuation certificate (or details of the valuation process).</li> <li>• a cheque, payable to "NSW Treasury", for the amount of \$ _____ being the difference between the valuation limit and the value of the gift and delivered to Office of Protocol and Special Events, Department of Premier and Cabinet.</li> </ul>	Signed: _____
Signed: _____	

*Ministerial Code of Conduct – January 2009 - 12 -*

Minister for _____	Minister for _____
Date: _____	Date: _____

## Appendix 2 Code of Conduct for Members as at 2007



### LEGISLATIVE COUNCIL

*Note:* This Code of Conduct was adopted by the Legislative Council for the purposes of section 9 of the *Independent Commission Against Corruption Act 1988* (NSW) on 21 June 2007.

*LC Minutes (21/6/2007) 148 - 150.*

### CODE OF CONDUCT FOR MEMBERS

1. That this House adopt, for the purposes of section 9 of the *Independent Commission Against Corruption Act 1988*, the following code of conduct:

#### PREAMBLE

- The Members of the Legislative Assembly and the Legislative Council have reached agreement on a Code of Conduct which is to apply to all Members of Parliament.
- Members of Parliament recognise that they are in a unique position of being responsible to the electorate. The electorate has the right to dismiss them from office at regular elections.
- Members of Parliament acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of New South Wales.
- Members of Parliament acknowledge that their principal responsibility in serving as Members is to the people of New South Wales.

#### THE CODE

##### 1 Disclosure of conflict of interest

- (a) Members of Parliament must take all reasonable steps to declare any conflict of interest between their private financial interests and decisions in which they participate in the execution of their office.
- (b) This may be done through declaring their interests on the Register of Disclosures of the relevant House or through declaring their interest when speaking on the matter in the House or a Committee, or in any other public and appropriate manner.
- (c) A conflict of interest does not exist where the member is only affected as a member of the public or a member of a broad class.

##### 2 Bribery

- (a) A Member must not knowingly or improperly promote any matter, vote on any bill or resolution or ask any question in the Parliament or its Committees in return for any remuneration, fee, payment, reward or benefit in kind, of a private nature, which the Member has received, is receiving or expects to receive.

- (b) A Member must not knowingly or improperly promote any matter, vote on any bill or resolution or ask any question in the Parliament or its Committees in return for any remuneration, fee, payment, reward or benefit in kind, of a private nature, which any of the following persons has received, is receiving or expects to receive:
- (i) a member of the Member's family;
  - (ii) a business associate of the Member; or
  - (iii) any other person or entity from whom the Member expects to receive a financial benefit.

- (c) A breach of the prohibition on bribery constitutes a substantial breach of this Code of Conduct.

### **3 Gifts**

- (a) Members must declare all gifts and benefits received in connection with their official duties, in accordance with the requirements for the disclosure of pecuniary interests.
- (b) Members must not accept gifts that may pose a conflict of interest or which might give the appearance of an attempt to improperly influence the Member in the exercise of his or her duties.
- (c) Members may accept political contributions in accordance with part 6 of the *Election Funding Act 1981*.

### **4 Use of public resources**

Members must apply the public resources to which they are granted access according to any guidelines or rules about the use of those resources.

### **5 Use of confidential information**

Members must not knowingly and improperly use official information which is not in the public domain, or information obtained in confidence in the course of their parliamentary duties, for the private benefit of themselves or others.

### **6 Duties as a Member of Parliament**

It is recognised that some members are non-aligned and others belong to political parties. Organised parties are a fundamental part of the democratic process and participation in their activities is within the legitimate activities of Members of Parliament.

### **7 Secondary employment or engagements**

Members must take all reasonable steps to disclose at the start of a parliamentary debate:

- (a) the identity of any person by whom they are employed or engaged or by whom they were employed or engaged in the last two years (but not if it was before the Member was sworn in as a Member);
- (b) the identity of any client of any such person or any former client who benefited from a Member's services within the previous two years (but not if it was before the Member was sworn in as a Member); and
- (c) the nature of the interest held by the person, client or former client in the parliamentary debate.

This obligation only applies if the Member is aware, or ought to be aware, that the person, client or former client may have an interest in the parliamentary debate which goes beyond the general interest of the public.

This disclosure obligation does not apply if a Member simply votes on a matter; it will only apply when he or she participates in a debate. If the Member has already disclosed the information in the Member's entry in the pecuniary interest register, he or she is not required to make a further disclosure during the parliamentary debate.

2. That this resolution has continuing effect unless and until amended or rescinded by resolution of the House.

*Peter Pinmore*

President  
July 2007



## Appendix 3 Minutes

### Minutes No. 1

Monday 7 April 2014

Select Committee on the Sale of the Currawong Property at Pittwater

Room 1153, Parliament House at 11.10 am

#### 1. Members present

Mr Brown, *Chair*

Dr Kaye, *Deputy Chair*

Mr Searle

Mr Khan (*by telephone*)

Mr MacDonald

Mr Pearce

#### 2. Apologies

Ms Fazio

#### 3. Tabling of resolution establishing the Committee

The Chair declared the meeting open.

#### 4. Election of Deputy Chair

The Chair called for nominations for the Deputy Chair.

Mr MacDonald moved: That Dr Kaye be elected Deputy Chair of the Committee.

There being no further nominations, the Chair declared Dr Kaye elected Deputy Chair

#### 5. Procedural resolutions

*Filming, broadcasting and still photography of public proceedings*

Resolved, on the motion of Dr Kaye: That the Committee authorise the filming, broadcasting, webcasting and still photography of the public proceedings of the Committee, in accordance with the resolution of the Legislative Council of 18 October 2007.

*Publishing transcripts of evidence*

Resolved, on the motion of Mr MacDonald: That the Committee authorise the publication of transcripts of evidence taken at public hearings.

*Questions on notice*

Resolved, on the motion of Mr Searle: That the Committee require that answers to questions taken on notice during the hearings be provided to the Secretariat within 14 days.

*Publishing answers to questions on notice*

Resolved, on the motion of Mr Searle: That the Committee authorise the publication of answers to questions on notice.

*Publishing submissions*

Resolved, on the motion of Dr Kaye: That the Committee authorise the publication of all submissions to the Inquiry, subject to the Committee Clerk checking for confidentiality, adverse mention and other issues and, where those issues arise, bringing them to the attention of the Committee for consideration.

*Media statements*

Resolved, on the motion of Mr Searle: That media statements on behalf of the Committee may be made only by the Chair.

*Inviting witnesses*

Resolved, on the motion of Dr Kaye: That arrangements for inviting witnesses are to be left in the hands of the Chair and the Committee Clerk, after consultation with the Committee.

**6. Conduct of the Inquiry**

**6.1 Declaration of interest**

Dr Kaye declared an interest, advising that he had publicly supported the Friends of Currawong group during the period in which the sale of the Currawong property was being negotiated.

**6.2 Media release announcing Inquiry**

Resolved, on the motion of Mr Pearce: That a media release be issued by the Chair announcing the Inquiry, calling for submissions and advising of the proposed hearing date.

**6.3 Stakeholder list**

Resolved, on the motion of Mr MacDonald: That members have until 5pm on Wednesday 9 April 2014 to comment on or amend the draft list of stakeholders, or nominate additional stakeholders to those identified in the draft list.

**6.4 Call for submissions**

Resolved, on the motion of Mr Khan: That the closing date for submissions be Wednesday 30 April 2014.

**6.5 Advertising**

Resolved, on the motion of Dr Kaye: That the inquiry call for submission be advertised through a media release distributed to all media outlets in NSW via Media Monitors, but that advertisements not be placed in the SMH or Daily Telegraph.

**6.6 Hearing dates**

Resolved, on the motion of Mr Khan: That the Committee hold one full day hearing at Parliament House on Monday 5 May 2014 and keep Friday 9 May 2014 in reserve for a possible full day hearing.

**6.7 Witnesses**

Resolved, on the motion of Dr Kaye: That a draft list of witnesses be circulated to the Committee by Thursday 10 April 2014 and members have until 5pm, Monday 14 April 2014 to comment, nominate additional witnesses or delete witnesses and if the witness list cannot be resolved via email the Committee will need to meet to deliberate.

**6.8 Reporting date**

The Chair noted that the terms of reference for the inquiry require the committee to report by 28 June 2014.

**7. Other business**

**8. Adjournment**

The Committee adjourned at 11.30 am until Monday 5 May 2014 (public hearing).

Beverly Duffy  
Clerk to the Committee

## Minutes No. 2

Thursday 17 April 2014

Select Committee on the Sale of the Currawong Property at Pittwater

Room 1153, Parliament House at 2.20 pm

### 1. Members present

Mr Brown, *Chair*

Dr Kaye, *Deputy Chair*

Ms Fazio (*by telephone*)

Mr Khan (*by telephone*)

Mr MacDonald

Mr Searle (*by telephone*)

### 2. Apologies

Mr Pearce

### 3. Previous minutes

Resolved, on the motion of Mr MacDonald: That draft Minutes No. 1 be confirmed.

### 4. Proposed witnesses for the hearing on 5 or 9 May

#### John Robertson

Resolved, on the motion of Mr Khan: That Mr John Robertson be invited to appear at the hearing on 5 May (or 9 May if this date is unsuitable).

#### David Tanevski

Mr Khan moved: That Mr David Tanevski be invited to appear at the hearing on 5 May (or 9 May if this date is unsuitable).

Dr Kaye moved: That the motion of Mr Khan be amended by omitting all words after 'That' and inserting instead: 'the committee write to Mr Tanevski to ask if he was present at the meeting in 2007 where Mr McGurk allegedly offered a bribe to Mr Robertson, or has any other relevant information with respect to the inquiry terms of reference, and if so, the committee would like him to appear at a hearing on the 5 or 9 May.'

Amendment put

Committee divided

Ayes: Dr Kaye, Mr Khan, Mr MacDonald

Noes: Mr Brown, Ms Fazio, Mr Searle

Question resolved in the negative on the casting vote of the Chair

Original question put

Committee divided

Ayes: Dr Kaye, Mr Khan, Mr MacDonald

Noes: Mr Brown, Ms Fazio, Mr Searle

Question resolved in the negative on the casting vote of the Chair.

#### Moses Obeid

Mr Kahn moved: That Mr Moses Obeid be invited to appear at the hearing on 5 May (or 9 May if he is unavailable on 5 May).

Dr Kaye moved: That the motion of Mr Khan be amended by omitting all words after 'That' and inserting instead: 'the committee write to Mr Obeid to ask if he was present at the meeting 2007 where Mr McGurk allegedly offered a bribe to Mr Robertson, or has any other relevant information with respect to the inquiry terms of reference, and if so, the committee would like him to appear at a hearing on the 5 or 9 May.

Amendment put

Committee divided:

Ayes: Dr Kaye, Mr Khan, Mr MacDonald, Mr Brown

Noes: Ms Fazio, Mr Searle

Amendment resolved in the affirmative

Original question, as amended, put:

Committee divided:

Ayes: Mr Brown, Dr Kaye, Mr Khan, Mr MacDonald

Noes: Ms Fazio, Mr Searle

Question, as amended, resolved in the affirmative.

#### **Mark Lennon**

Mr Khan moved: That Mr Mark Lennon be invited to appear at the hearing on 5 May (or 9 May if this date is unsuitable)

Committee divided:

Ayes: Mr Brown, Dr Kaye, Mr Khan, Mr MacDonald

Noes: Ms Fazio, Mr Searle

Question resolved in the affirmative.

#### **Nathan Rees**

Mr Khan moved: That the Hon Nathan Rees be invited to appear at the hearing on 5 May (or 9 May if this date is unsuitable).

Committee divided:

Ayes: Mr Brown, Dr Kaye, Mr Khan, Mr MacDonald

Noes: Ms Fazio, Mr Searle

Question resolved in the affirmative.

Resolved, on the motion of Dr Kaye: That Mr Robertson be offered an opportunity to give evidence in reply at the end of the hearings

Resolved, on the motion of Mr Khan: That Mr Robertson be invited to give evidence for one and a half hours and all other witnesses for one hour, and that the order of appearance for the witnesses be determined by the availability of the witnesses.

#### **5. Pre hearing question to Mr Robertson**

Mr Khan moved: That that the committee include the following pre-hearing question on notice with the letter inviting Mr Robertson to attend the hearing on 5 May, and that he be requested to provide an answer to the committee by noon on Friday 2 May 2014:

*Please identify each of the persons present at the meeting you had with Mr Michael McGurk in 2007 when you allege he offered you a three million dollar bribe to buy the Currawong site from Unions NSW.*

Committee divided:

Ayes: Dr Kaye, Mr Khan, Mr MacDonald

Noes: Mr Brown, Ms Fazio, Mr Searle

Question resolved in the negative on the casting vote of the Chair.

## 6. Adjournment

The Committee adjourned at 2.50pm until 10am Monday 5 May 2014 (public hearing).

Beverly Duffy

**Clerk to the Committee**

## Minutes No. 3

Monday 5 May 2014

Select Committee on the Sale of the Currawong Property in Pittwater

Macquarie Room, Parliament House, Sydney 12.15 pm

### 1. Members present

Mr Brown, *Chair*

Dr Kaye, *Deputy Chair*

Ms Fazio

Mr Khan

Mr MacDonald

Mr Pearce

Mr Searle

### 2. Previous minutes

Resolved on the motion of Mr Khan: That draft Minutes No. 2 be confirmed.

### 3. Correspondence

The Committee noted the following items of correspondence:

#### *Received*

- 24 April 2014 – Letter from Mr Tim Breene, Breene and Breene, Solicitors on behalf of Mr Moses Obeid declining the committee's invitation.
- 30 April 2014 – Email from Ms Megan Saxon, O'Connor Marsden & Associates on behalf of Mr Rory O'Connor advising the Committee of his intention to make a submission.
- 30 April 2014 – From Mr Mark Lennon, Secretary, Unions NSW in response to the Committee's invitation to make a submission and confirming his appearance on 5 May 2014.
- 30 April 2014 – From Mr Eduard Litver, in response to invitation to make a submission.

#### *Sent*

- 17 April 2014 – From the Chair to the Mr John Robertson MP, inviting him to appear at the hearing on 5 May 2014.
- 17 April 2014 – From the Chair to the Hon Rees MP, inviting him to appear at the hearing on 5 May 2014.
- 17 April 2014 – From the Chair to Mr Mark Lennon, inviting him to appear at the hearing on 5 May 2014.
- 17 April 2014 – From the Chair to Mr Moses Obeid, inviting him to appear at the hearing on 5 May 2014 if he has information relevant to the committee's terms of reference.

- 24 April 2014 – From the Chair to Mr John Robertson MP, requesting that he appear on the morning of 5 May 2014 rather than in the afternoon.

**4. Submissions**

Dr Kaye advised that he was aware of the identity of the author of submission no. 1.

Ms Fazio moved: That submission no.1 remain confidential.

Question put.

The committee divided.

Ayes: Mr Brown, Ms Fazio, Mr Khan, Mr MacDonald, Mr Pearce, Mr Searle.

Noes: Dr Kaye.

Question resolved in the affirmative.

Resolved, on the motion of Mr MacDonald: That submissions nos. 2 and 3 be published.

**5. Sequence of questioning**

Ms Fazio moved: That:

- the sequence of questions to be asked during the hearing be government, crossbench and opposition, and
- that if the opposition does not use its time for questions, that time be deducted from the overall time allocated to the hearing.

Question put.

The committee divided.

Ayes: Mr Brown, Ms Fazio, Dr Kaye, Mr Searle.

Noes: Mr Khan, Mr MacDonald, Mr Pearce.

Question resolved in the affirmative.

**6. Questions on notice**

That supplementary questions on notice be submitted by members to the secretariat by 5.00 pm Wednesday 7 May 2014.

**7. Unauthorised disclosure**

Ms Fazio noted the publication of an article in the *Daily Telegraph* on 28 April 2014 that revealed the private deliberations of the committee.

Resolved, on the motion of Ms Fazio: That the Chair write to all committee members to ask whether they were responsible for the disclosure of confidential committee deliberations or are able to provide information that could assist in determining the source of this disclosure.

**8. Public hearing**

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined.

- Mr Mark Lennon, Secretary, Unions NSW

The evidence concluded and the witness withdrew.

The following witness was examined on his oath to his office.

- Mr John Robertson MP, Leader of the Opposition and Shadow Minister for Western Sydney

The evidence concluded and the witness withdrew.

The Public Hearing concluded. The public and the media withdrew.

## 9. Deliberative meeting

### 9.1 Hearing transcript

Resolved, on the motion of Ms Fazio: That obscenities spoken during the hearing appear in abbreviated form in the published transcript

### 9.2 Reserve hearing date

Resolved, on the motion of Mr Searle: That the committee not utilise 9 May as a reserve hearing date.

### 9.3 Committee report

Resolved, on the motion of Ms Fazio: That the proposed timeline and approach to preparing the draft report be adopted by the committee:

- Thu 22 May – answers to QoN and to supplementary questions due
- Fri 30 May – members to send to the secretariat their conclusions, findings and recommendations in relation to each of the inquiry terms of reference
- Friday 13 June – Secretariat to circulate the chairs draft report
- Fri 20 June – report deliberative.

## 10. Adjournment

The committee adjourned at 4.25 pm until Friday 20 June 2014 in Room 1153 at 10.00 am

Beverly Duffy

**Clerk to the Committee**

## Draft Minutes No. 4

Friday 20 June 2014

Select Committee on the Sale of the Currawong Property at Pittwater

Room 1153, Parliament House, Sydney, 10.30 am

### 1. Members present

Mr Brown, *Chair*

Dr Kaye, *Deputy Chair*

Ms Fazio

Mr Khan

Mr MacDonald

Mr Pearce

Mr Searle

### 2. Previous minutes

Resolved on the motion of Dr Kaye: That draft minutes no. 3 be confirmed.

### 3. Correspondence

The Committee noted the following items of correspondence:

#### *Received*

- 7 May 2014 – Email from the Hon Trevor Khan in response to correspondence from the Chair regarding the unauthorised disclosure of committee proceedings.
- 7 May 2014 – Letter from Mr Scot MacDonald in response to correspondence from the Chair regarding the unauthorised disclosure of committee proceedings.
- 7 May 2014 – Letter from the Chair in response to correspondence from the Committee Clerk regarding the unauthorised disclosure of committee proceedings.
- 7 May 2014 – Letter from the Hon Greg Pearce in response to correspondence from the Chair regarding the unauthorised disclosure of committee proceedings.
- 12 May 2014 – Letter from Dr John Kaye in response to correspondence from the Chair regarding the unauthorised disclosure of committee proceedings.
- 12 May 2014 – Email from the Hon Adam Searle in response to correspondence from the Chair regarding the unauthorised disclosure of committee proceedings.
- 13 May 2014 – Letter from the Hon Amanda Fazio in response to correspondence from the Chair regarding the unauthorised disclosure of committee proceedings.
- 25 May 2014 – Letter from Mr Mark Lennon, Secretary, Unions NSW – answers to questions on notice at hearing on 5 May 2014.

#### *Sent*

- 6 May 2014 – Letters from the Chair to the Hon Amanda Fazio, Dr John Kaye, the Hon Trevor Khan, Mr Scot MacDonald, the Hon Greg Pearce and the Hon Adam Searle regarding the unauthorised disclosure of committee proceedings in a media article published in the Daily Telegraph on Monday 28 April 2014.
- 6 May 2014 – Letter from the Committee Clerk to the Chair regarding the unauthorised disclosure of committee proceedings in a media article published in the Daily Telegraph on Monday 28 April 2014.

### 4. Consideration of Chair's draft report

The Chair submitted his draft report entitled 'Sale of the Currawong property at Pittwater' which, having been previously circulated, was taken as being read.

Chapter 1 read.

Resolved, on the motion of Mr MacDonald: That chapter 1 be adopted.

Chapter 2 read.

Resolved, on the motion of Mr Searle: That the paragraph headed '26 March 2011' be amended by omitting 'appointed Leader of the Opposition' wherever occurring and inserting instead 'elected Leader of the Opposition'.

Resolved, on the motion of Mr Pearce: That chapter 2, as amended, be adopted.

Chapter 3 read.

Resolved, on the motion of Mr Khan: That a new paragraph be inserted after paragraph 3.4 to read: 'It remains unclear what Moses Obeid's interest was in the transaction. It is noted that the committee extended an invitation to Mr Obeid to make a submission to the inquiry however that invitation was declined.'

Resolved, on the motion of Dr Kaye: That paragraph 3.7 be amended as follows:

- omit the words 'Both men' before the words 'stated that' and insert instead the words 'Mr Robertson',



- omit the words ‘– Mr Robertson stated that the figure’ after the words ‘had never featured in the conversation’ and insert instead the words ‘and that the figure’,
- omit the words ‘, while’ after the words ‘expressed in the form of a percentage’ and insert instead ‘.’.

Resolved, on the motion of Mr Searle: That paragraph 3.14 be amended by omitting the word ‘assertion’ after the words ‘The committee accepts Mr Robertson’s’ and inserting instead the word ‘evidence’.

Resolved, on the motion of Ms Fazio: That paragraph 3.21 be amended by omitting the words ‘(Although Mr Robertson did not specify which authorities he was referring to.)’ after the words ‘to the authorities’.

Mr Searle moved: That paragraph 3.23 be amended as follows:

- omit the word ‘While’ before the words ‘Mr Robertson has stated’,
- omit the words ‘, the committee does not accept that Mr Robertson did not need to report the offer simply because he had terminated the conversation with Mr McGurk’ after the words ‘formal offer of inducement’, and
- insert the words ‘Mr Robertson’s evidence was that he did not know how serious Mr McGurk was about any offer and, further, that he did not even entertain the possibility in his own mind that Mr McGurk was seriously offering him a bribe. Mr Robertson also stated that he terminated the conversation and meeting with Mr McGurk before he could ascertain what Mr McGurk was doing or how serious he was about what he had said. Mr Robertson said he ended the conversation and meeting with Mr McGurk because he formed the view it was heading in an inappropriate direction. The committee accepts Mr Robertson’s evidence.’ after the words ‘the conversation with Mr McGurk’.

Question put.

The committee divided.

Ayes: Mr Brown, Ms Fazio, Mr Searle.

Noes: Dr Kaye, Mr Khan, Mr MacDonald, Mr Pearce.

Question resolved in the negative.

Mr Khan moved: That paragraph 3.24 be amended by omitting the words ‘If the offer had progressed further the matter could constitute a criminal offence and, in turn, serious penalties could apply to those involved.’ after the words ‘that he correctly deemed to be ‘inappropriate’.’

The committee divided.

Ayes: Ms Fazio, Mr Khan, Mr MacDonald, Mr Pearce, Mr Searle.

Noes: Mr Brown, Dr Kaye.

Question resolved in the affirmative.

Mr Searle moved: That paragraph 3.24 be amended by omitting the words ‘and should have been taken as such. Mr Robertson met with Mr McGurk in his capacity as the head of Unions NSW and should have appreciated the potential repercussions of a conversation that he correctly deemed to be ‘inappropriate’.’ after the words ‘The incidence of an inappropriate offer was serious’.

Question put.

The committee divided.

Ayes: Mr Brown, Ms Fazio, Mr Searle.

Noes: Dr Kaye, Mr Khan, Mr MacDonald, Mr Pearce.

Question resolved in the negative.

Resolved, on the motion of Mr Searle: That paragraph 3.24 be amended by inserting the words 'He was correct in ending the conversation and meeting when he did.' after the words 'he correctly deemed to be 'inappropriate'.'

Mr Khan moved: That a new paragraph be inserted after 3.24 to read: 'The provisions of s.316 of the *Crimes Act 1900* places an obligation upon people to report information and beliefs about serious offences to the police, thereby facilitating the detection and investigation of offences and the apprehension, prosecution and conviction of offenders.'

The committee divided.

Ayes: Mr Brown, Dr Kaye, Mr Khan, Mr MacDonald, Mr Pearce.

Noes: Ms Fazio, Mr Searle.

Question resolved in the affirmative.

Mr Khan moved: That a new paragraph be inserted after 3.24 to read: 'The failure by Mr Robertson to take the information he possessed to the police regarding the inappropriate offer prevented the police from undertaking any such investigation, and if appropriate, prosecution.'

The committee divided.

Ayes: Mr Khan, Mr MacDonald, Mr Pearce.

Noes: Mr Brown, Ms Fazio, Dr Kaye, Mr Searle.

Question resolved in the negative.

Mr Khan moved: That a new paragraph be inserted after 3.24 to read: 'The committee is not in a position to determine whether Mr Robertson's actions, in failing to take the matter to the police may have constituted a breach of s.316 of the *Crimes Act 1900*.'

Question put.

The committee divided.

Ayes: Mr Brown, Dr Kaye, Mr Khan, Mr MacDonald, Mr Pearce.

Noes: Ms Fazio, Mr Searle.

Question resolved in the affirmative.

Mrs Fazio moved:

- That paragraph 3.25, which reads as follows, be omitted: 'The committee consequently finds that Mr Robertson displayed an error of judgement by failing to immediately report the conversation to police, seek further advice, minute or diarise the matters discussed during the meeting or inform Unions NSW of the inappropriate offer made.'
- That Finding 1, which reads as follows, be omitted:

**Finding 1**

'Mr Robertson displayed an error of judgement in failing to report to Unions NSW or the NSW Police that Mr McGurk had made an inappropriate offer to him in relation to the sale of Currawong. However there is no evidence to suggest that Mr Robertson received any financial gain or reward in relation to the offer.'

Question put.

The committee divided.

Ayes: Ms Fazio, Mr Searle.

Noes: Mr Brown, Dr Kaye, Mr Khan, Mr MacDonald, Mr Pearce.

Question resolved in the negative.

Mr Searle moved: That paragraph 3.25 be amended by omitting the words: 'The committee consequently finds that Mr Robertson displayed an error of judgement by failing to immediately report the conversation to police, seek further advice, minute or diarise the matters discussed during the meeting or inform Unions NSW of the inappropriate offer made.', and inserting instead the words: 'The committee accepts that if he had his time over again Mr Robertson would err on the side of caution and report the inappropriate suggestion to the relevant authorities.'

The committee divided.

Ayes: Ms Fazio, Mr Searle.

Noes: Mr Brown, Dr Kaye, Mr Khan, Mr MacDonald, Mr Pearce.

Question resolved in the negative.

Resolved, on the motion of Mr Khan: That a new paragraph be inserted after paragraph 3.25 to read: 'The committee however again notes that Mr Robertson stated that if he had his time over again, he would have erred on the side of caution and reported the matter to the authorities.'

Resolved, on the motion of Mr Khan: That paragraph 3.25 be amended by omitting the word 'consequently' after the words 'The committee'.

Mr Searle moved: That Finding 1 be amended by omitting the words: 'Mr Robertson displayed an error of judgement in failing to report to Unions NSW or the NSW Police that Mr McGurk had made an inappropriate offer to him in relation to the sale of Currawong. However' before the words 'there is no evidence to suggest' and inserting instead the words: 'Mr Robertson did not entertain the possibility that Mr McGurk was seriously offering him a bribe. Mr Robertson ended the conversation and meeting with Mr McGurk because he correctly formed the view it was heading in an inappropriate direction.'

The committee divided.

Ayes: Ms Fazio, Mr Searle.

Noes: Mr Brown, Dr Kaye, Mr Khan, Mr MacDonald, Mr Pearce.

Question resolved in the negative.

Resolved, on the motion of Dr Kaye: That a new paragraph be inserted after paragraph 3.26 to read: 'Mr Robertson told the committee that he did not entertain the possibility that Mr McGurk was seriously offering him a bribe.'

The committee accepts that Mr Robertson ended the conversation and meeting with Mr McGurk because he correctly formed the view it was heading in an inappropriate direction.'

Ms Fazio moved: That Finding 1 be amended by omitting the words 'Mr Robertson displayed an error of judgement in failing' before the words 'to report to' and inserting instead the words 'Mr Robertson should have sought advice on whether'.

The committee divided.

Ayes: Ms Fazio, Mr Searle.

Noes: Mr Brown, Dr Kaye, Mr Khan, Mr MacDonald, Mr Pearce.

Question resolved in the negative.

Mr Khan moved: That Finding 1 be amended by omitting the word 'or' after the words 'Unions NSW' and inserting instead the word 'and'.

The committee divided.

Ayes: Mr Brown, Dr Kaye, Mr Khan, Mr MacDonald, Mr Pearce.

Noes: Ms Fazio, Mr Searle.

Question resolved in the affirmative.

Mr Searle moved: That paragraph 3.29 be amended by omitting the words 'did not make any comment as to' after the words 'Mr Robertson' and inserting instead the words 'was not asked about'.

The committee divided.

Ayes: Ms Fazio, Mr Searle.

Noes: Mr Brown, Dr Kaye, Mr Khan, Mr MacDonald, Mr Pearce.

Question resolved in the negative.

Resolved, on the motion of Dr Kaye: That paragraph 3.29 be amended by omitting the words 'Mr Robertson did not make any comment as to the nature of those meetings or the matters discussed.' after the words 'during the negotiation of the sale of the Currawong site.' and inserting instead the words 'Mr Robertson was not asked about the nature of those meetings or the matters discussed and did not make any comment in regards to those matters.'

Resolved, on the motion of Mr Khan: That paragraph 3.45 be amended by omitting the words 'By inference, it would appear' after the words 'Mr Clennell in 2013.' and inserting instead the words 'The committee concludes on the basis of the available evidence'.

Resolved, on the motion of Mr Khan: That paragraph 3.45 be amended by omitting the word 'declare' after the words 'Mr Robertson did not' and inserting instead the word 'disclose'.

Resolved, on the motion of Mr Searle: That paragraph 3.45 be amended by omitting the words 'However, as Mr Robertson told the committee that he did not believe he was mentioned on the tapes,' before the words 'it is not possible' and inserting instead the words 'However, Mr Robertson told the committee that he did not believe that it was possible that he was on the tapes. Nor did he believe that he was even mentioned on the tapes.'

Mr Searle moved: That paragraph 3.45 be amended by inserting the words 'Furthermore, as Mr Robertson's actions were directed to support the disclosure of the tapes and their content, his actions would have been contrary to any possible 'interest' in the matter. Therefore, there can be no question of his actions conferring any 'personal advantage' on him in breach of the Ministerial Code of Conduct. Consequently,' before the words 'it is not possible for the committee to conclude he had a conflict of interest under Part 3 of the Ministerial Code of Conduct.'

Question put.

The committee divided.

Ayes: Ms Fazio, Mr Searle.

Noes: Mr Brown, Dr Kaye, Mr Khan, Mr MacDonald, Mr Pearce.

Question resolved in the negative.

Mr Khan moved: That a new paragraph be inserted after paragraph 3.45 to read: 'The Committee notes that it is reasonable to conclude that the conversation with Mr McGurk remained in the memory of Mr Robertson from the time of the conversation until it was disclosed to Mr Clennell of the Daily Telegraph. At no stage has Mr Robertson suggested that he had forgotten that the inappropriate offer was made.'

Question put.

The committee divided.

Ayes: Mr Khan, Mr MacDonald, Mr Pearce.

Noes: Mr Brown, Ms Fazio, Dr Kaye, Mr Searle.

Question resolved in the negative.

Mr Khan moved: That a new paragraph be inserted after paragraph 3.45 to read: 'It is equally reasonable to conclude that following the death of Mr McGurk, and the preparation of the Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill 2009, the issue of Mr Robertson's prior involvement would have brought to Mr Robertson's attention the inappropriate offer previously made by Mr McGurk.'

Question put.

The committee divided.

Ayes: Mr Khan, Mr MacDonald, Mr Pearce.

Noes: Mr Brown, Ms Fazio, Dr Kaye, Mr Searle.

Question resolved in the negative.

Mr Khan moved: That a new paragraph be inserted after paragraph 3.45 to read: 'The Committee concludes that the failure to disclose the inappropriate offer to the Premier and his colleagues, in the context of Cabinet's consideration of the Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill 2009 was a conscious and deliberate decision by Mr Robertson.'

Question put.

The committee divided.

Ayes: Mr Khan, Mr MacDonald, Mr Pearce.

Noes: Mr Brown, Ms Fazio, Dr Kaye, Mr Searle.

Question resolved in the negative.

Mr Khan moved: That paragraph 3.45 be amended by omitting the word '*may*' after the words 'the matter' and inserting instead 'would'.

The committee divided.

Ayes: Mr Khan, Mr MacDonald, Mr Pearce.

Noes: Mr Brown, Ms Fazio, Dr Kaye, Mr Searle.

Question resolved in the negative.

Mr Khan moved: That paragraph 3.45 be amended by omitting the word 'perhaps' after the words 'not in terms of a pecuniary interest, but'.

Question put.

The committee divided.

Ayes: Mr Brown, Dr Kaye, Mr Khan, Mr MacDonald, Mr Pearce.

Noes: Ms Fazio, Mr Searle.

Question resolved in the affirmative.

Mr Khan moved: That paragraph 3.45 be amended by omitting the words 'However, as Mr Robertson told the committee that he did not believe he was mentioned on the tapes, it is not possible for the committee to conclude he had a conflict of interest under Part 3 of the Ministerial Code of Conduct.' after the words 'within the scope of a 'personal advantage''.

Question put.

The committee divided.

Ayes: Mr Khan, Mr MacDonald, Mr Pearce.

Noes: Mr Brown, Ms Fazio, Dr Kaye, Mr Searle.

Question resolved in the negative.

Mr Khan moved: That a new finding be inserted after paragraph 3.45 to read: ‘The committee concludes that Mr Robertson did not disclose the conversation with Mr McGurk to the Premier and his Cabinet colleagues.’

Question put.

The committee divided.

Ayes: Mr Brown, Dr Kaye, Mr Khan, Mr MacDonald, Mr Pearce.

Noes: Ms Fazio, Mr Searle.

Question resolved in the affirmative.

Mr Khan moved: That a new finding be inserted after paragraph 3.45 to read: ‘The failure by Mr Robertson to disclose the conversation with Mr McGurk in the context of the consideration by Cabinet of the Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill 2009 was a serious breach of the Code of Conduct for Ministers of the Crown.’

Question put.

The committee divided.

Ayes: Mr Khan, Mr MacDonald, Mr Pearce.

Noes: Mr Brown, Ms Fazio, Dr Kaye, Mr Searle.

Question resolved in the negative.

Resolved, on the motion of Mr Searle: That paragraph 3.51 be amended as follows:

- omit the word ‘However,’ before the words ‘the committee acknowledges’,
- omit the words ‘when he chose not to’ after the words ‘benefit from a pecuniary interest’ and insert instead the words ‘when he did not’.

Mr Khan moved: That paragraph 3.52 be amended by omitting the words ‘However, as Mr Robertson told the committee under oath that he did not believe he was on the tapes, the committee does not conclude that Mr Robertson acted contrary to the *Code of Conduct for Members*.’ after the words ‘in keeping with the spirit of the preamble to the code’.

Question put.

The committee divided.

Ayes: Mr Khan, Mr MacDonald, Mr Pearce.

Noes: Mr Brown, Ms Fazio, Dr Kaye, Mr Searle.

Question resolved in the negative.

Mr Khan moved: That Finding 2 be amended by omitting the words ‘Mr Robertson did not contravene either the *Code of Conduct for Ministers*, the *Code of Conduct for Members* or standing order 113(2) when, in relation to the passage of the *Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill 2009*, he did not advise the Premier or the Parliament that Mr McGurk had made an inappropriate offer to him in 2006.’ before the words ‘Nevertheless, with the benefit of hindsight’ and inserting instead ‘Mr Robertson did not contravene the *Code of Conduct for Members* or standing order 113(2) when he did not advise the House that Mr McGurk had made an inappropriate offer to him in 2006.’

Question put.

The committee divided.

Ayes: Mr Khan, Mr MacDonald, Mr Pearce.

Noes: Mr Brown, Ms Fazio, Dr Kaye, Mr Searle.

Question resolved in the negative.

Mr Searle moved: That Finding 2 be amended by omitting the words ‘Nevertheless, with the benefit of hindsight and in light of the high standards of integrity required by the preambles to the *Code of Conduct for Ministers*, it would have been both reasonable and prudent for Mr Robertson to have disclosed the offer to the Premier.’ after the words ‘had made an inappropriate offer to him in 2006.’

Question put.

The committee divided.

Ayes: Ms Fazio, Mr Searle.

Noes: Mr Brown, Dr Kaye, Mr Khan, Mr MacDonald, Mr Pearce.

Question resolved in the negative.

Resolved, on the motion of Dr Kaye: That Finding 2 be amended by inserting the words ‘and the parliament’ after the words ‘disclosed the offer to the Premier.’

Ms Fazio moved: That the following words be omitted after paragraph 3.58:

**‘The role of KWC Capital**

During the course of the inquiry, concerns were raised regarding a possible conflict of interest arising from a previous business relationship between Mr David Tanevski of KWC Capital (the firm hired by Unions NSW to broker the sale of Currawong), Mr Allen Linz (a director of Eco Villages), and Mr Robertson. The three had previously held positions on the board of directors of company Getonboard.

In a submission to the committee, Mr Linz stated that he was only able to comment on the sale by Eco Villages of Currawong to the Land and Property Management Authority. To that end, Mr Linz referred the committee to the report of ICAC, which found that there was no evidence any person associated with Eco Villages acted corruptly in the sale of the Currawong site to the NSW Government.

Mr Eduard Litver, the second director of Eco Villages, also made a submission to the committee in similar terms.’

Question put.

The committee divided.

Ayes: Mr Brown, Ms Fazio, Dr Kaye, Mr Searle.

Noes: Mr Khan, Mr MacDonald, Mr Pearce.

Question resolved in the affirmative.

Mr Pearce moved: That the following words be inserted after paragraph 3.61: ‘The committee finds that it was inappropriate that Mr Robertson met with Mr McGurk on his own in March 2006.’

Question put.

The committee divided.

Ayes: Mr Brown, Mr Khan, Mr MacDonald, Mr Pearce.

Noes: Dr Kaye, Ms Fazio, Mr Searle.

Question resolved in the affirmative.

Resolved, on the motion of Dr Kaye: That Recommendation 1 be adopted.

Resolved, on the motion of Mr MacDonald: That Chapter 3, as amended, be adopted.

Resolved, on the motion of Dr Kaye:

- That the draft report, as amended, be the report of the committee and that the committee present the report to the House,
- That the transcripts of evidence, submissions, tabled documents, answers to questions on notice, answers to supplementary questions, minutes of proceedings and correspondence relating to the inquiry be tabled in the House with the report, and
- That upon tabling, all transcripts of evidence, submissions, tabled documents, answers to questions on notice, answers to supplementary questions, minutes of proceedings and correspondence relating to the inquiry not already made public, be made public by the committee, except for those documents kept confidential by resolution of the committee.

Resolved, on the motion of Ms Fazio: That dissenting statements be submitted to the secretariat by 5.00 pm, Tuesday 24 June 2014.

Resolved, on the motion of Mr Khan: That electronic signatures be accepted for the purposes of dissenting statements.

Resolved, on the motion of Dr Kaye: That the committee present the report to the Clerk out of session on Thursday 26 June 2014, together with transcripts of evidence, submissions, answers to questions on notice and correspondence relating to the inquiry.

Resolved, on the motion of Dr Kaye: That the committee's report be tabled with the Clerk out of session on Thursday 26 June 2014.

Resolved, on the motion of Dr Kaye: That the committee thank the secretariat for its work and efforts in this inquiry.

## 5. Adjournment

The committee adjourned at 12.40 pm *sine die*.

Beverly Duffy  
Clerk to the Committee



## Appendix 4 Dissenting statements

### **The Hon. Greg Pearce MLC and Mr Scot McDonald MLC, Liberal Party, and The Hon. Trevor Khan MLC, The Nationals**

The Government members of the Committee believe they share with the broader community, a range of concerns regarding the events that led to the sale of the property Currawong, and subsequently the actions of the now Opposition Leader, Mr John Robertson. Based upon the evidence received by the Committee the Government members believe it reasonable to conclude that:

1. There is no dispute that prior to meeting with the so-called businessman, Michael McGurk, Mr Robertson, as then head of Unions NSW received a telephone call from Moses Obeid, requesting that he (Mr Robertson) meet with Mr McGurk.

It is a matter of public record that Moses Obeid is the son of the then sitting Labor powerbroker, Eddie Obeid and that both have been the subject of findings of corruption before the ICAC.

To this time Mr Robertson has not explained his relationship with Mr Moses Obeid. Similarly, Mr Moses Obeid's involvement in the tender process with Mr McGurk remains unexplained to this day.

It is noted that the Committee extended an invitation to Mr Moses Obeid to make a submission to the Inquiry however that invitation was declined.

2. Despite the tender process for the Currawong site being underway, Mr Robertson chose to meet with Mr Michael McGurk alone without any other officer of Unions NSW or legal representative being present.

The Government members share with other Committee members a concern that this action demonstrated a lack of judgement.

3. In the circumstances in which the meeting took place (including the telephone call from Moses Obeid, and the absence of any other persons apart from Mr Robertson and Mr McGurk) that the so-called "inappropriate offer" was indeed an attempted bribe offered to Mr Robertson and designed by Mr McGurk to influence the outcome of the sale process.
4. Whilst Mr Robertson has repeatedly sought to absolve his conduct by referring to the ICAC Inquiry into the actions of former Minister Mr Tony Kelly, and Mr Warwick Watkins, in the months prior to the 2011 elections, the ICAC did not inquire into the actions of Mr Robertson, and nor did the ICAC absolve Mr Robertson.
5. The conversation with Mr McGurk remained in the memory of Mr Robertson from the time of the conversation until it was disclosed to Mr Clennell of the Daily Telegraph. At no stage has Mr Robertson suggested that he had forgotten that the inappropriate offer was made.
6. Following the death of Mr McGurk, and the preparation of the Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill 2009, the issue of Mr Robertson's prior involvement would have brought to Mr Robertson's attention the inappropriate offer previously made by Mr McGurk.

7. The failure to disclose the inappropriate offer to the then Premier, Kristina Keneally, and his colleagues, in the context of Cabinet's consideration of the Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill 2009 was a conscious and deliberate decision by Mr Robertson.
8. The preamble to the Ministerial Code of Conduct states:  
"Members of Parliament acknowledge their responsibility to maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of New South Wales."

In failing to disclose his interactions with Mr McGurk, Mr Robertson failed to demonstrate the appropriate degree of honesty and integrity sufficient to maintain the public trust placed in him.

9. Further, it can be reasonably argued that the failure by Mr Robertson to disclose the conversation with Mr McGurk, in the context of the consideration by Cabinet of the Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill 2009, was a serious breach of the Code of Conduct for Minister of the Crown.
10. During the Committee's initial deliberations, Government members sought unsuccessfully to invite Mr David Tanevski to appear to give evidence before the committee about the relationship between Mr Tanevski, Mr Robertson and Mr Allen Linz and so it was not possible to clarify the nature of the relationship between the parties.

The concerns raised regarding the conflict of interest between Mr David Tanevski of KWC Capital (hired by Unions NSW to broker the sale of Currawong), Mr Allen Linz (a director of Eco Villages) and Mr Robertson remain unresolved.

All three key players in the Currawong transaction had previously been directors on the board of the company Getonboard.

The taint of possible collusion therefore remains.

**The Hon Adam Searle MLC and The Hon Amanda Fazio MLC, Australian Labor Party**

This Inquiry was established as a political stunt to be used against the Australian Labor Party and its Leader, the Hon. John Robertson MP (“Mr Robertson”), as Parliament moves towards the State Election in March 2015.

It concerns events that occurred well before Mr Robertson became a Member of Parliament and a public official and which have already been well ventilated.

The sum total of the information gathered by the Committee regarding this matter was, in substance, no greater than before the Committee was established and is consistent with what was already on the public record.

Even on the Committee majority’s strained logic regarding the matter, there is no suggestion that Mr Robertson did anything that was illegal or improper.

The Committee majority has not been able to find that Mr Robertson breached any of the rules or regulations that govern the conduct of Members of Parliament or Ministers of the Crown.

Nor has the Committee majority been able to find that Mr Robertson had an obligation of any kind to report what was said to him by Mr McGurk.

In our view, the Inquiry was no more than a political ploy to attack the ALP and its Leader and to distract the community from any difficulties experienced by the Government arising from ICAC inquiries (which as events unfolded have been serious, involving the resignation of a Premier, Ministers and a number of MP’s being suspended from the Liberal Party).

Mr Robertson gave evidence to the Committee on 5 May 2014. Not one Committee member suggested to him that his evidence was wrong or not honestly given. In our view, the Committee must accept Mr Robertson’s evidence as truthful and correct. Instead, in a number of places in the report, the Committee notes that “*Mr Robertson stated that ...*” which conveys that there may be some doubt as to the accuracy/truth of what he said when there is no evidence upon which to do so.

In lieu of being able to find any actual wrongdoing on the part of Mr Robertson, the Committee majority has adopted an overly critical tone (reflected, for example in the first sentence of Finding 1, Finding 2 and in the second paragraph of Finding 4) and has also failed to properly accept uncontradicted evidence that was in Mr Robertson’s favour. In our view, this reveals the essentially partisan nature of the inquiry.

The Labor Members of the Committee disagree with three of the findings made by the Committee, for the reasons we set out below.

### 5.1 Finding 1 and prior Committee comment

Based on the evidence before it, the Committee should have accepted that Mr Robertson did not even entertain the possibility that Mr McGurk was seriously offering him a bribe.<sup>1</sup>

The Committee unanimously accepted that Mr Robertson ended the meeting with Mr McGurk because he correctly formed the view that it was heading in an inappropriate direction. The Committee also found that Mr Robertson was correct to end the meeting and conversation with Mr McGurk when he did.

The Committee majority then criticise Mr Robertson for not reporting Mr McGurk's comments to Unions NSW and the police, but fail to identify the source of any obligation to do so.

The inclusion by the Committee majority of a reference to s316 of the *Crimes Act* 1900 (NSW) is prejudicial to Mr Robertson. It implies some wrongdoing without naming it and fails to identify what 'serious offence' could have been disclosed. In this regard, it is also contrary to Mr Robertson's uncontradicted evidence that he did not believe Mr McGurk was seriously offering him a bribe. Furthermore, this matter was never raised with Mr Robertson by any Committee member.

Consequently, the Labor Members do not believe there is a proper basis for the first sentence in Finding 1.

### 5.2 Finding 2

This was not a matter that Mr Robertson was given a fair opportunity to answer during his evidence to the Committee. It was raised by Dr Kaye but not pursued by him after an interjection by the Hon. Greg Pearce MLC. There was a further interjection by the Hon. Greg Pearce MLC while Mr Robertson was answering another question.<sup>2</sup> No committee member asked Mr Robertson about this matter in a fair or orderly manner.

It was also not asked of him by way of a Question on Notice, subsequent to his evidence.

We are of the view that this finding is unfair to Mr Robertson and should not be a finding when it was not properly explored with him.

### 5.3 Finding 4 and prior Committee comment

There is an implied criticism of Mr Robertson for not disclosing, in answer to a question in Parliament, the nature of the meeting with Mr McGurk and the matters discussed when it was not asked of him. It was also not a matter that any of the majority Committee members took Mr Robertson to during his evidence or questioned him about. In the view of the Labor Members of the Committee, this commentary is both petty and unfair.

The first paragraph of Finding 4 is consistent with evidence before the Committee regarding Mr Robertson's actions and the *Code of Conduct for Ministers of the Crown* and the *Code of Conduct for Members*.

However, the Committee majority have inserted the second paragraph of Finding 4 as a criticism of Mr Robertson when they were unable to identify any actual wrongdoing on his part. In the view of the Labor Members, this is unbecoming a Parliamentary Committee and again reveals that this exercise is essentially partisan rather than a genuine effort to identify the facts in a controversy.

---

<sup>1</sup> Transcript, 5 May 2014, pp28, 29, 36. Note the grudging acceptance of the Committee at 3.27, that, “Mr Robertson told the committee that he did not entertain the possibility that Mr McGurk was seriously offering him a bribe.” (Underlining added).

<sup>2</sup> Transcript, 5 May 2014, p36

