

I·C·A·C

INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES



INVESTIGATION INTO THE CONDUCT OF THREE FORMER COUNCILLORS OF FORMER HURSTVILLE CITY COUNCIL, NOW PART OF GEORGES RIVER COUNCIL, AND OTHERS

(OPERATION GALLEY)

**ICAC REPORT
AUGUST 2023**






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ISBN 978-1-922581-07-5

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Mr President
Mr Speaker

In accordance with s 74 of the *Independent Commission Against Corruption Act 1988* (the ICAC Act) I am pleased to present the Commission's report on its investigation into the conduct of three former councillors of former Hurstville City Council, now part of Georges River Council, and others (Operation Galley).

Commissioner Stephen Rushton SC presided at the public inquiry held in aid of this investigation.

I draw your attention to the recommendation that the report be made public forthwith pursuant to s 78(2) of the *Independent Commission Against Corruption Act 1988*.

Yours sincerely

A handwritten signature in black ink, reading 'John Hatzistergos'.

The Hon John Hatzistergos AM
Chief Commissioner

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Summary of investigation and outcomes

This investigation by the NSW Independent Commission Against Corruption (“the Commission”) examined the conduct of then councillors Vincenzo Badalati, Constantine Hindi and Philip Sansom in making decisions in relation to planning applications regarding two developments in Hurstville, and the conduct of three individuals – Ching Wah (or Philip) Uy, Wensheng Liu and Yuqing Liu – in their interactions with those councillors. The Commission also examined the conduct of Mr Hindi’s wife, Mireille (or Miray) Hindi, in relation to the developments.

In particular, the investigation examined whether:

- between 2014 and 2021, then Hurstville City Council (HCC) and later Georges River Council (GRC) councillors Constantine Hindi and Vincenzo (Vince) Badalati, and then HCC councillor Philip Sansom, sought and/or accepted benefits as an inducement or reward for partially and dishonestly exercising their official functions to favour the interests of Ching Wah (Philip) Uy, Wensheng Liu and Yuqing Liu, in relation to planning matters affecting 1–5 Treacy Street and 1 Hill Road, Hurstville (“the Treacy Street development”); and 53–57 Forest Road, 108–126 Durham Street and 9 Roberts Lane, Hurstville (“the Landmark Square development”)
- also between 2014 and 2021, councillors Hindi, Badalati and Sansom deliberately failed to declare or properly manage any conflict of interest arising from their relationships with Mr Uy, Wensheng Liu and Yuqing Liu
- also between 2014 and 2021, Mr Uy, Wensheng Liu and Yuqing Liu provided benefits, including overseas flights and accommodation, to councillors Badalati, Hindi and Sansom, as a reward or inducement to favour their interests in relation to council decisions regarding planning matters affecting the Treacy Street and Landmark Square developments

- between 16 November 2011 and 9 July 2012, Mr Uy corruptly gave \$10,000 cash to then HCC councillor Hindi, as a reward or inducement for councillor Hindi to partially and dishonestly exercise his official functions to favour the interests of Mr Uy and Wensheng Liu in relation to land bounded by Gloucester Road, Carrington Avenue and Garthons Lane, Hurstville (“the Gloucester Road Carpark development”).

Corrupt conduct findings

Mr Badalati

The Commission found that Mr Badalati engaged in serious corrupt conduct by:

- travelling to Tangshan, China, in April 2016 in circumstances where he knew his status as a public official with HCC would be misused for the purpose of endorsing and promoting the Treacy Street and Landmark Square developments in the interests of One Capital Group Pty Ltd, Wensheng Liu, Yuqing Liu and Mr Uy (chapter 5)
- accepting the following benefits associated with his trip to China in April 2016:
 - (i) payment by Mr Uy for his accommodation at the Beijing International Hotel on the nights of 10 and 13 April 2016 in the amount of about \$150 per night (approximately \$300 total)
 - (ii) payment by Mr Uy for his flight from Shenzhen to Beijing on 10 April 2016 in the amount of about \$363
 - (iii) payment by Yuqing Liu or his company, Tangshan Xinfeng Thermoelectric Group Co Ltd (“Xinfeng”), for his accommodation

at the Tangshan Grand Metropark Guofeng Hotel on the nights of 11 and 12 April 2016 in the amount of about \$200 per night (approximately \$400 in total)

- (iv) payment by Yuqing Liu or Xinfeng for his return transfers in luxury cars between Beijing and Tangshan on 11 and 13 April 2016 and meals in Tangshan between 11 and 12 April 2016

in circumstances where he knew such payments were intended as an inducement or reward to use his position as a councillor of HCC to favour the interests of Mr Uy and the proponents of the Treacy Street and Landmark Square developments (chapter 5)

- attending a meeting of HCC on 19 November 2014 at which the Treacy Street Voluntary Planning Agreement (VPA) proposal was considered and voting in favour of the Treacy Street VPA proposal but deliberately failing to disclose his significant non-pecuniary interest in the development by virtue of his relationship with Mr Uy (chapter 5)
- attending a meeting of HCC on 20 April 2016 at which the Landmark Square planning proposal and the VPA offer for the Treacy Street modification application were considered and voting in favour of the Landmark Square planning proposal and the Treacy Street modification but deliberately failing to disclose his significant non-pecuniary interest in the developments by virtue of his relationship with Mr Uy and Wensheng Liu (chapter 5)
- attending a meeting of the Sydney East Joint Regional Planning Panel (JRPP) on 4 May 2016 at which the Treacy Street modification was considered and voting in favour of the

Treacy Street modification but deliberately failing to disclose his significant non-pecuniary interest in the development by virtue of his relationship with Mr Uy and Wensheng Liu (chapter 5)

- accepting the sum of \$70,000 from Mr Uy in 2015 in relation to the Treacy Street development and \$100,000 in 2018 in relation to the Landmark Square development in each case as an inducement or reward to use, or for having used, his position as a councillor of HCC and later GRC to favour the interests of Mr Uy and the proponents of the Treacy Street and Landmark Square developments (chapter 6)
- attending a meeting of GRC on 25 June 2018 at which both the Landmark Square planning proposal and another modification application for the Treacy St development were considered and voting in favour of the Landmark Square planning proposal and the modification application for the Treacy Street development but deliberately failing to disclose his significant non-pecuniary interest in the developments by virtue of his relationship with Mr Uy and Wensheng Liu (chapter 8).

Mr Hindi

The Commission found that Mr Hindi engaged in serious corrupt conduct by:

- travelling to Tangshan, China, in April 2016 in circumstances where he knew his status as a public official with HCC would be misused for the purpose of endorsing and promoting the Treacy Street and Landmark Square developments in the interests of One Capital, Wensheng Liu, Yuqing Liu and Mr Uy (chapter 5)
- accepting the following benefits associated with his trip to China in April 2016:

- (i) payment by Mr Uy for the accommodation of himself and his wife at the Beijing International Hotel on the nights of 10 and 13 April 2016 in the amount of about \$150 per night (approximately \$300 total)
- (ii) payment by Mr Uy for the flights of himself and his wife from Shenzhen to Beijing on 10 April 2016 in the amount of about \$363 (approximately \$726 total)
- (iii) payment by Yuqing Liu or Xinfeng for the accommodation of himself and his wife at the Tangshan Grand Metropark Guofeng Hotel on the nights of 11 and 12 April 2016 in the amount of about \$200 per night (approximately \$400 total)
- (iv) payment by Yuqing Liu or Xinfeng for the return transfers in luxury cars of himself and his wife between Beijing and Tangshan on 11 and 13 April 2016 and meals in Tangshan between 11 and 12 April 2016

in circumstances where he knew such payments were intended as an inducement or reward to use his position as a councillor of HCC to favour the interests of Mr Uy and the proponents of the Treacy Street and Landmark Square developments (chapter 5).

- attending a meeting of HCC on 20 April 2016 at which the Landmark Square planning proposal and the VPA offer for the Treacy Street modification application were considered and voting in favour of the Landmark Square planning proposal and the Treacy Street modification application but deliberately failing to disclose:
 - (i) his pecuniary interest in the Landmark Square planning proposal, by virtue of Mrs Hindi's interest in that development pursuant to a Buyer's Agency Agreement (BAA) between One Capital and Mrs Hindi's real estate agency under which Mrs Hindi stood to gain \$500,000 ex GST
 - (ii) his significant non-pecuniary interest in the developments by virtue of his relationship with Mr Uy and Wensheng Liu (chapter 5)
- attending a meeting of the JRPP on 4 May 2016 at which the Treacy Street modification application was considered and voting in favour of the Treacy Street modification but deliberately failing to disclose:
 - (i) his pecuniary interest in the Landmark Square planning proposal, by virtue of

Mrs Hindi's interest in that development pursuant to a BAA under which Mrs Hindi stood to gain \$500,000 ex GST

- (ii) his significant non-pecuniary interest in the development by virtue of his relationship with Mr Uy and Wensheng Liu (chapter 5).

- accepting the sum of approximately \$70,000 from Mr Uy in 2015 in relation to the Treacy Street development and \$100,000 in 2018 in relation to the Landmark Square development in each case as an inducement or reward to use, or for having used, his position as a councillor of HCC and later GRC to favour the interests of Mr Uy and the proponents of the Treacy Street and Landmark Square developments (chapter 6)
- attending a meeting of GRC on 25 June 2018 at which both the Landmark Square planning proposal and another modification application for the Treacy Street development were considered and voting in favour of the Landmark Square planning proposal and the modification application for the Treacy Street development but deliberately failing to disclose his significant non-pecuniary interest in the developments by virtue of his relationship with Mr Uy and Wensheng Liu (chapter 8).

Mr Sansom

The Commission found that Mr Sansom engaged in serious corrupt conduct by:

- attending a meeting of HCC on 19 November 2014 at which the Treacy Street VPA proposal was considered and voting in favour of the Treacy Street VPA proposal but deliberately failing to disclose his significant non-pecuniary interest in the development by virtue of his relationship with Mr Uy (chapter 5)
- attending a meeting of HCC on 20 April 2016 at which the Landmark Square planning proposal and the VPA offer for the Treacy Street modification application were considered and voting in favour of the Landmark Square planning proposal and the Treacy Street modification but deliberately failing to disclose his significant non-pecuniary interest in the developments by virtue of his relationship with Mr Uy and Wensheng Liu (chapter 5)
- accepting payment from Mr Uy for his and Mr Sansom's partner Wang Hui's return flights for a trip to China in March and April 2014 in circumstances where he knew such payment was intended to influence him in carrying

out his official functions including in relation to the Treacy Street and Landmark Square developments (chapter 5).

Mr Uy

The Commission found that Mr Uy engaged in serious corrupt conduct by:

- providing the following benefits to Mr Badalati and Mr and Mrs Hindi:
 - (i) payment for accommodation for Mr Badalati and Mr and Mrs Hindi at the Beijing International Hotel on the nights of 10 and 13 April 2016 in the amount of about \$150 per room per night (approximately \$600 total)
 - (ii) payment for the flights for Mr Badalati and Mr and Mrs Hindi from Shenzhen to Beijing on 10 April 2016 in the amount of about \$363 per person (approximately \$1,089 total)
- in circumstances where he intended the payments to be an inducement or reward to Mr Badalati and Mr Hindi to use their position as councillors of HCC to favour the interests of Mr Uy and the proponents of the Treacy Street and Landmark Square developments (chapter 5)
- paying for Mr Sansom and his partner Wang Hui's return flights for the trip to China departing 23 March 2014 and returning 6 April 2014 in circumstances where he knew such payment was intended to influence Mr Sansom in carrying out his official functions including in relation to the Treacy Street and Landmark Square developments (chapter 5)
 - paying the sum of \$70,000 to Mr Badalati in 2015 in relation to the Treacy Street development and \$100,000 in 2018 in relation to the Landmark Square development in each case as an inducement or reward to use, or for having used, his position as a councillor of HCC to favour the interests of Mr Uy and the proponents of the Treacy Street and Landmark Square developments (chapter 6)
 - paying the sum of approximately \$70,000 to Mr Hindi in 2015 in relation to the Treacy Street development and \$100,000 in 2018 in relation to the Landmark Square development in each case as an inducement or reward to use, or for having used, his position as a councillor of HCC to favour the interests of Mr Uy and the proponents of the Treacy Street and Landmark Square developments (chapter 6).

Section 74A(2) statements

Statements are made pursuant to s 74A(2) of the *Independent Commission Against Corruption Act 1988* ("the ICAC Act") that the Commission is of the opinion that consideration should be given to obtaining the advice of the Director of Public Prosecutions (DPP) with respect to the prosecution of the following persons.

Vincenzo Badalati

- for an offence of receiving benefits from Mr Uy and Yuqing Liu being the cost of flights, accommodation, meals and transfers in respect of travel within China in April 2016 contrary to s 249B(1) of the *Crimes Act 1900* ("the Crimes Act") (chapter 5)
- for an offence of giving false or misleading evidence contrary to s 87 of the ICAC Act in respect of his evidence:
 - (i) that he did not know prior to arriving in Tangshan, China, in April 2016 that there was to be a signing ceremony of an agreement concerning the Treacy Street and Landmark Square developments (chapter 5)
 - (ii) that he believed he attended Tangshan, China, in April 2016 in relation to a proposed waste-to-energy project (chapter 5)
 - (iii) that he did not know there was to be a signing ceremony in Tangshan, China, before arriving or that the agreement to be signed concerned the Treacy Street and Landmark Square developments (chapter 5)
 - (iv) that he reimbursed Mr Uy in respect of the cost of his accommodation at the Beijing International Hotel on 10 April 2016 (chapter 5)
 - (v) concerning his lack of knowledge that One Capital had retained a financial interest in the Landmark Square development following the sale of the site to Prime Hurstville Pty Ltd in 2017 (chapter 8).

Constantine Hindi

- for an offence of receiving the sum of approximately \$70,000 from Mr Uy in 2015 contrary to s 249B(1) of the Crimes Act (chapter 6)
- for an offence of receiving the sum of \$100,000 from Mr Uy in 2018 contrary to s 249B(1) of the Crimes Act (chapter 6)

- for offences of misconduct in public office in relation to his corrupt involvement in the Treacy Street and Landmark Square developments including receiving the sums of approximately \$70,000 and \$100,000 and other benefits from Mr Uy (chapter 6) and in relation to voting on 25 June 2018 in relation to the Landmark Square planning proposal and modification application for the Treacy Street development without disclosing his significant non-pecuniary conflict of interest in both developments (chapter 8)
- for offences of receiving other benefits from Mr Uy and Yuqing Liu being the cost of flights, accommodation, meals and transfers in respect of travel within China in April 2016 contrary to s 249B(1) of the Crimes Act (chapter 5)
- for offences of giving false or misleading evidence contrary to s 87 of the ICAC Act in respect of his evidence:
 - (i) concerning a practice whereby Mrs Hindi did not disclose to him information concerning her business dealings (chapter 3)
 - (ii) that the existence of the Buyers Agency Agreement (BAA) dated 24 July 2014 was not disclosed to him by Mrs Hindi (chapter 3)
 - (iii) that he did not know prior to arriving in Tangshan, China, in April 2016 there was to be a signing ceremony of an agreement concerning the Treacy Street and Landmark Square developments (chapter 5)
 - (iv) that he believed he attended Tangshan, China, in April 2016 in relation to a proposed waste-to-energy plant (chapter 5)
 - (v) concerning the payment for the cost of his accommodation and that of Mrs Hindi at the Tangshan Grand Metropark Guofeng Hotel on 11 and 12 April 2016 (chapter 5)
 - (vi) concerning the reasons why he attended a meeting at Addisons lawyers concerning the Landmark Square development in June 2017 (chapter 7)
 - (vii) concerning his lack of knowledge that One Capital had retained a financial interest in the Landmark Square development following the sale of the site to Prime Hurstville in 2017 (chapter 8).

Mireille Hindi

For giving false or misleading evidence contrary to s 87 of the ICAC Act in respect of her evidence:

- (i) concerning a practice whereby she did not disclose information concerning her business dealings to Mr Hindi (chapter 3)
- (ii) concerning the use of her son's name and her son's involvement in the creation of the BAA (chapter 3)
- (iii) that the existence of the BAA was not disclosed to Mr Hindi (chapter 3)
- (iv) that the Landmark Square development was not discussed at all during her trip to Tangshan, China, in April 2016 (chapter 5)
- (v) that the Landmark Square development was not brought up during the trip to Tangshan, China, in April 2016 (chapter 5)
- (vi) that it did not occur to her that the agreement signed in Tangshan had anything to do with Landmark Square (chapter 5)
- (vii) that she reimbursed Mr Uy in respect of the cost of her travel and that of Mr Hindi from Shenzhen to Beijing on 10 April 2016 (chapter 5)
- (viii) concerning her payment for the cost of her accommodation and that of Mr Hindi at the Beijing International Hotel on 10 April 2016 (chapter 5)
- (ix) that she reimbursed Mr Uy in respect of the cost of her accommodation and that of Mr Hindi at the Beijing International Hotel on 13 April 2016 (chapter 5)
- (x) concerning the payment for the cost of her accommodation and that of Mr Hindi at the Tangshan Grand Metropark Guofeng Hotel on 11 and 12 April 2016 (chapter 5)
- (xi) concerning the reasons why she attended a meeting at Addisons lawyers concerning the Landmark Square development in June 2017 and a number of meetings thereafter (chapter 7)
- (xii) concerning the reasons why she communicated and met with Elaine Tang (Ms Tang) on a number of occasions following the trip to China in April 2016 (chapter 7).

Ching Wah (Philip) Uy

- for an offence of paying the sum of approximately \$70,000 to Mr Hindi in 2015 contrary to s 249B(2) of the Crimes Act (chapter 6)
- for an offence of paying the sum of \$70,000 to Mr Badalati in 2015 contrary to s 249B(2) of the Crimes Act (chapter 6)
- for an offence of paying the sum of \$100,000 to Mr Badalati in 2015 contrary to s 249B(2) of the Crimes Act (chapter 6)
- for an offence of paying the sum of \$100,000 to Mr Hindi in 2018 contrary to s 249B(2) of the Crimes Act (chapter 6)
- for offences of paying the cost of flights and accommodation for Mr Badalati in respect of travel within China in April 2016 contrary to s 249B(1) of the Crimes Act (chapter 5)
- offences of paying the cost of flights and accommodation for Mr Hindi in respect of travel within China in April 2016 contrary to s 249B(1) of the Crimes Act (chapter 5)
- for an offence of aiding, abetting, counselling, and procuring offences of misconduct in public office committed by Mr Badalati and Mr Hindi in relation to their corrupt involvement in the Treacy Street and Landmark Square developments including their receipt of the sums of approximately \$70,000 and \$100,000 in the case of Mr Hindi and \$70,000 and \$100,000 in the case of Mr Badalati together with other benefits provided by him (chapter 6)
- for giving false or misleading evidence contrary to s 87 of the ICAC Act in respect of his evidence:
 - (i) that Mr Badalati and Mrs Hindi reimbursed him for the cost of travel from Shenzhen to Beijing on 10 April 2016 (chapter 5)
 - (ii) concerning the reasons why he obtained receipts from a travel agent in respect of the cost of the travel undertaken by Mr Badalati and Mr and Mrs Hindi from Shenzhen to Beijing on 10 April 2016 (chapter 5)
 - (iii) that Mrs Hindi reimbursed him in respect of the cost of her accommodation and that of Mr Hindi at the Beijing International Hotel on 10 and 13 April 2016 (chapter 5)
 - (iv) that Mr Badalati reimbursed him in respect of the cost of his accommodation at the Beijing International Hotel on 10 and 13 April 2016 (chapter 5).

Philip Sansom

For an offence in relation to receiving a benefit from Mr Uy, namely, the cost of his travel to and from China in March 2014 contrary to s 249B(1) of the Crimes Act (chapter 5).

Recommendations for corruption prevention

Chapter 9 of this report sets out the Commission's review of the corruption risks present at the time the relevant conduct occurred. The Commission has made the following recommendations:

Recommendation 1

That the Department of Planning and Environment ("the DPE") issues guidelines under s 23A of the *Local Government Act 1993* addressing:

- approval and reporting requirements for overseas travel by councillors in an official capacity
- governance and probity guidance about councillors travelling overseas in an official council capacity, including related funding arrangements.

Recommendation 2

That the Department amends the Model Code of Conduct to prohibit council officials, including councillors, from accepting gifts and benefits (including hospitality and contributions to travel) from property developers. An exemption should be considered for situations where the receipt of hospitality is in connection with a councillor's attendance at industry briefing, educational, professional development and training events – such as workshops, conferences, seminars, symposiums – that are provided, organised or sponsored by a property developer.

Recommendation 3

That the Department provides guidelines for councils stating that, when they propose to form an informal committee consisting of councillors, they should establish:

- (i) clear terms of reference and objectives for the group, including its role
- (ii) governance arrangements, accountability and transparency measures (including proper record-keeping requirements and ensuring the group cannot direct staff)
- (iii) an obligation to report in a timely manner on the deliberations of the group to other councillors

- (iv) that the group does not have a decision-making function normally carried out through other council processes or activities.

Recommendation 4

That the DPE also provides guidelines for councils in relation to when it is appropriate or inappropriate to establish informal working groups. For example, whether they should be convened to deal with statutory and administrative decisions including planning and other regulatory and procurement matters.

Recommendation 5

That the DPE amends the *Model Code of Meeting Practice for Local Councils in NSW* to require a council's governing body to provide reasons for approving or rejecting development applications, planning proposals and planning agreements where decisions depart from the recommendations of staff. These reasons should refer to the relevant merits criteria and explain why the decision is more meritorious than the recommended outcome.

Recommendation 6

That the DPE seeks amendment of the Environmental Planning & Assessment Regulation 2021 to require councils and other planning authorities to demonstrate that the following have been considered before entering into a planning agreement:

- the fundamental principles (2.1) in the *Planning Agreements Practice Note 2021*
- the acceptability test (2.5) in the *Planning Agreements Practice Note 2021*
- the methodology or structure that was used to determine the reasonableness of the proposed contribution and its real value
- the public interest.

Recommendation 7

That the DPE produces guidelines and provides training to assist councillors regarding the proper exercise of their decision-making role in respect of planning agreements.

Recommendation 8

That the DPE develops guidance on the essential information that must be submitted with an offer of a planning agreement to a council or other planning authority.

Recommendation 9

That the DPE:

- conducts regular risk-based audits of planning agreements negotiated by councils
- establishes guidelines for conducting risk-based audits
- publishes audit outcomes
- uses the outcomes from audits to improve the processes and procedures governing negotiation and execution of planning agreements.

Recommendation 10

That the DPE seeks amendment of s 375A of the *Local Government Act 1993* to include planning agreements in the definition of planning decisions that require a register of votes to be kept.

Recommendation 11

That the DPE issues advice to councils and other planning authorities about the need to consider any proposed instrument, including any draft local environmental plan (LEP), when determining a development application. The advice should address the:

- case law and principles established by the courts
- weight to attribute to a draft LEP, with particular regard to its imminence and certainty.

These recommendations are made pursuant to s 13(3) (b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to the DPE (Office of Local Government) and the responsible minister.

As required by s 111E(2) of the ICAC Act, the DPE must inform the Commission in writing within three months (or such longer period as the Commission may agree to in writing) after receiving the recommendations whether it proposes to implement any plan of action in response to the recommendations and, if so, details of the proposed plan of action.

In the event a plan of action is prepared, the DPE is required to provide a written report to the Commission of its progress in implementing the plan 12 months after informing the Commission of the plan. If the plan has not been fully implemented by then, a further written report must be provided 12 months after the first report.

The Commission will publish the DPE's response to its recommendations, any plan of action and progress reports on its implementation on the Commission's website at www.icac.nsw.gov.au.

Recommendation this report be made public

Pursuant to s 78(2) of the ICAC Act, the Commission recommends that this report be made public forthwith. This recommendation allows either Presiding Officer of a House of Parliament to make the report public, whether or not Parliament is in session.

Chapter 1: Background

This chapter sets out some background information about the investigation, including information about:

- the origins and conduct of the investigation
- the former Hurstville City Council (HCC), which amalgamated with Kogarah City Council to form Georges River Council (GRC)
- the relevant duties and obligations of local government councillors under the applicable codes of conduct and the NSW planning framework.

How the investigation came about

On 19 March 2019, the Commission received a written report about the conduct of former HCC and subsequently GRC councillors, Mr Hindi and Mr Badalati, concerning alleged misconduct by them in their dealings with a developer between 2014 and 2018. The report was sent to the Commission by Gail Connolly, general manager of GRC.

The allegations set out in Ms Connolly's report had been referred to her by a third party in February 2019. After receiving those allegations, Ms Connolly conducted a preliminary review of relevant files and subsequently formed a reasonable suspicion that corrupt conduct may have occurred. She referred the matter to the Commission, as she was bound to do, pursuant to s 11(2) of the ICAC Act. This section provides that a principal officer of a public authority is under a duty to report to the Commission any matter that the person suspects on reasonable grounds concerns or may concern corrupt conduct. As general manager, Ms Connolly was the principal officer of GRC and was therefore under a duty to make the report.

Ms Connolly's report included allegations that over a period of four years former councillors Mr Hindi and Mr Badalati voted on a development application and

a planning proposal (rezoning) without declaring any pecuniary or other conflicts of interest, despite having a relationship with the developer for both sites. The report also alleged that the former councillors attended a dinner at a Chinatown restaurant with the developer for a "signing ceremony" of an MOU prior to any approvals being obtained for the sites and subsequently travelled to Tangshan, China, in April 2016 to attend a formal signing ceremony. The report alleged that no declarations of interest were made by Mr Hindi or Mr Badalati at any time during their dealings with the matters at council and the Sydney East Joint Regional Planning Panel (JRPP). The report noted that GRC was obliged under the *Local Government Act 1993* to commence an investigation in relation to these matters to determine whether any misconduct had occurred.

On 31 May 2019, the Commission informed GRC it would not be investigating the matter, because GRC had advised of its intention to investigate it. Further, it appeared GRC was well placed to complete such an investigation. The Commission requested a copy of the investigation report be provided as soon as it was available.

On 7 June 2019, the Commission received another report from Ms Connolly pursuant to s 11(2) of the ICAC Act. This report included a number of relevant and related matters which had occurred since Ms Connolly's initial report in March 2019, including:

- (i) On 2 April 2019, the *Sydney Morning Herald* newspaper published an article on page 1 in relation to Mr Hindi and Mr Badalati concerning a signing ceremony and dinner in Chinatown in March 2016 hosted by a developer (Wensheng Liu) and an investor in those developments (Yuqing Liu). The article also reported that Mr Hindi and Mr Badalati had travelled to Tangshan, China with the same developer and his investor and had their accommodation paid by the

investor's company in China. The *Sydney Morning Herald* published further articles on 4 April, 6 April, 22 April and 23 April 2019.

- (ii) On 23 April 2019, GRC resolved to "request the Commission and the NSW Office of Local Government to immediately commence an investigation into the claims published in the *Sydney Morning Herald* on 2, 4, 6, 22 and 23 April 2019 regarding the allegations to determine whether any legislation has been breached" by Mr Hindi and Mr Badalati. At the time of the resolution, GRC had not commenced any formal investigation.

On 29 November 2019, the Commission determined to conduct a preliminary investigation of these matters. The evidence gathered during the preliminary investigation tended to corroborate the matters brought to the Commission's attention by GRC and suggested the likelihood that serious corrupt conduct had occurred. Accordingly, the matter was escalated to a full investigation on 23 March 2020.

Why the Commission investigated

One of the Commission's principal functions, as specified in s 13(1)(a) of the ICAC Act, is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

- (i) *corrupt conduct, or*
- (ii) *conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or*
- (iii) *conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur.*

The role of the Commission is explained in more detail in Appendix 1. Appendix 2 sets out the approach taken by

the Commission in determining whether corrupt conduct has occurred.

The Commission has jurisdiction to investigate allegations concerning the conduct of public officials that constitutes or involves the dishonest or partial exercise of their official functions or that constitutes or involves a breach of public trust. For the purposes of the ICAC Act, councillors are public officials and GRC and HCC are public authorities.

The conduct reported to the Commission, if established, might have involved a breach of public trust. That was particularly so if the exercise of planning functions were infected by an improper purpose, or by dishonesty obscured from public scrutiny.

The Commission also has jurisdiction to investigate allegations concerning any conduct of any person whether or not a public official that adversely affects or could adversely affect, either directly or indirectly, the honest or impartial exercise of public official functions by any public official, any group or body of public officials, or any public authority. The conduct reported to the Commission suggested that others may have engaged in conduct that had adversely affected or had the capacity to have adversely affected the honest or impartial exercise of official functions.

Conduct of the investigation

During the investigation, the Commission:

- (i) obtained documents from various sources by issuing 95 notices pursuant to s 22 of the ICAC Act and 14 summonses pursuant to s 35 of the ICAC Act requiring the production of documents
- (ii) obtained two statements of information from GRC by issuing notices pursuant to s 21 of the ICAC Act

- (iii) interviewed and obtained statements from numerous witnesses
- (iv) conducted 19 compulsory examinations following the service of summonses pursuant to s 35 of the ICAC Act
- (v) executed six search warrants.

The Commission also lawfully intercepted telecommunications sent to and from mobile telephones used by Mr Badalati, Mr Hindi and Mr Uy, and obtained access to call charge records for relevant periods under the *Telecommunications (Interception and Access) Act 1979* (Cth).

The public inquiry

After taking into account the matters set out in s 31(2) of the ICAC Act, the Commission determined that it was in the public interest to hold a public inquiry. In making that determination, among the other matters specified in s 31(2) of the ICAC Act, the Commission had regard to:

- the seriousness of the alleged conduct, including the seniority of the affected persons within the council (all of whom had held the position of mayor at least once during their time on council)
- the scale of the developments (the estimated construction costs were \$30 million for the Treacy Street development and \$191 million for the Landmark Square development)
- that the conduct involved three councillors from three different political parties exercising their official functions to favour these developments over a number of years.

The Commission also obtained cogent evidence during the investigation indicating the likelihood of corrupt conduct. Further, the Commission had regard to the significant corruption prevention issues raised by the investigation. These included the integrity of the NSW planning system and the vulnerability of senior staff in local government to pressure and influence from individual councillors in the exercise of their functions.

The Commission considered that while there was a risk of prejudice to the reputations of the affected persons as a consequence of holding a public inquiry, there was also a reputational risk from not holding a public inquiry given that some of the matters being investigated had already been aired in public. The Commission considered it important that the facts be established, including for the purpose of avoiding incorrect conclusions being drawn from information already in the public domain. The Commission determined that the public interest in exposing the conduct outweighed the public interest in preserving the privacy of the persons concerned.

Commissioner Stephen Rushton SC presided at the public inquiry. Zelig Heger appeared as Counsel Assisting the Commission. The public inquiry commenced on 14 June 2022 and continued for a total of 25 days, as follows:

- 14 to 15 June 2022
- 22 June 2022 to 8 July 2022 (no witness gave evidence on 8 July 2022)
- 12 to 20 July 2022
- 1 to 3 August 2022.

A total of 19 witnesses gave evidence.

At the conclusion of the public inquiry, Counsel Assisting prepared detailed written submissions setting out the evidence, and the findings and recommendations she contended the Commission could make based on the evidence. Where Counsel Assisting's submissions concerning the relevant facts reflect the Commission's own assessment, the Commission has adopted those submissions in this report.

Following submissions from the Commission and Counsel Assisting, relevant parties were provided with an opportunity to make submissions in response:

- Counsel Assisting's submissions were provided to all relevant parties on 9 September 2022.
- Written submissions in response were received by 16 October 2022.
- Counsel Assisting prepared submissions in reply, which were provided to relevant parties on 9 November 2022.
- Submissions in reply to the response were received by 2 December 2022.
- While preparing this report, additional potential adverse findings were identified. Relevant parties were advised of the potential adverse findings affecting them on 27 March 2023 and provided with an opportunity to make submissions in response.
- The last submission in response was received on 28 April 2023.

All submissions have been taken into account in preparing this report. All relevant parties were invited to request that a summary of their response to the adverse findings contended for by Counsel Assisting in their submissions be included in the report in the event the Commission made such findings. Two parties took up that invitation. Further information is provided in Appendix 3.

Hurstville City Council (HCC) and Georges River Council (GRC)

On 12 May 2016, HCC amalgamated with Kogarah City Council to form GRC. This investigation examined, among other things, the conduct of then councillors of HCC and GRC in relation to planning applications in their council area.

Hurstville City Council

HCC comprised an area of 23 square kilometres across suburbs including Beverly Hills, Hurstville, Kingsgrove, Lugarno, Mortdale, Narwee, Oatley, Peakhurst, Peakhurst Heights, Penshurst and Riverwood.

HCC was constituted under the *Local Government Act 1993* ("the LGA"). The governing body of HCC comprised 12 elected councillors. HCC was divided into three wards: Hurstville Ward, Peakhurst Ward and Penshurst Ward. Electors in each ward were responsible for electing four councillors.

Constantine Hindi

Mr Hindi was a Liberal Party councillor of HCC from 2004 until 12 May 2016, when HCC went into administration. Between 11 September 2014 and 9 September 2015, Mr Hindi served as mayor of HCC. He was elected to the newly formed GRC on 9 September 2017 and remained a councillor until December 2021.

Mr Hindi was also member of the JRPP, including between 2014 and 2016 when it made decisions in relation to the Treacy Street development at various times. The significance of regional planning panels like the JRPP to planning and development in NSW is explained in more detail below (see the section titled "Planning framework").

Mr Hindi was also a full-time engineer at Ausgrid during his time on council, until he took a redundancy in about October 2019.

Mireille Hindi

Mireille Hindi has been married to Mr Hindi for about 30 years. Since 2011, Mrs Hindi has been a licensed real estate agent, trading as Sydney Realty. She was a councillor of Kogarah City Council between 2008 and 2012.

Vincenzo (Vince) Badalati

Mr Badalati was an Australian Labor Party (Labor Party) councillor of HCC from 1999 until 12 May 2016, when HCC went into administration. Mr Badalati was elected

to the newly formed GRC on 9 September 2017 and remained a councillor until December 2021, when he did not stand for re-election.

Mr Badalati was mayor of HCC on multiple occasions, including between 9 September 2015 and 12 May 2016, when HCC went into administration. Mr Badalati was also a member of the JRPP, which made decisions in relation to the Treacy Street development.

Mr Badalati retired in approximately 2005. Previously, he worked as an accountant for Qantas between June 1969 and July 2000. Between 2000 and 2003, he worked as a political advisor to the Hon Morris Iemma. Between 2003 and 2005, Mr Badalati worked for the Hon Tony Burke MP.

Philip Sansom

Mr Sansom served as an HCC councillor for 25 years, from 1991 until 12 May 2016, when HCC went into administration. He was initially a Labor Party representative. Between 2012 and 2016 he served as an independent. Mr Sansom held the position of mayor of HCC on three occasions, including between 1999 and 2000 and between 2009 and 2011. In 2011, in recognition of his serving as mayor on three occasions, he was given the title of Emeritus Mayor, which he still retains and uses.

Mr Sansom ran as an independent in the September 2017 GRC election but was not re-elected. The Commission's investigation examined Mr Sansom's conduct to 12 May 2016, when HCC went into administration.

On 11 September 2013, Mr Sansom also became a member of the JRPP, which made decisions in relation to the Treacy Street development.

Mr Sansom worked for many years and retired in approximately 2014. He started his career as a high school teacher before working in a non-teaching role in the Department of Education.

Hurstville City Council from 2012 to 2016

On 8 September 2012, five Labor councillors including Mr Badalati (Hurstville Ward), four Liberal councillors including Mr Hindi (Penshurst Ward), two independents, including Mr Sansom (Peakhurst Ward) and one Unity Party councillor were elected to HCC.

Georges River Council

On 12 May 2016, the Local Government (Council Amalgamations) Proclamation 2016 made under the LGA was proclaimed and HCC amalgamated with Kogarah City Council to form GRC. All councillors were removed from their positions. An administrator was appointed and the council remained in administration until new

councillors were elected to GRC following an election on 9 September 2017.

GRC is located in the St George region of Sydney, about 17 kilometres south of the CBD, and serves approximately 163,000 residents. GRC is divided into five wards: Blakehurst Ward, Hurstville Ward, Kogarah Bay Ward, Mortdale Ward and Peakhurst Ward. In 2017, electors in each ward elected three councillors, amounting to a total 15 councillors elected to GRC.

The LGA sets out the roles of councillors and the mayor.

Georges River Council from 2017 to 2021

The newly formed GRC comprised six Labor Party councillors including Mr Badalati (Hurstville Ward), five Liberal Party councillors including Mr Hindi (Mortdale Ward), three independent councillors and one Kogarah Residents' Association councillor. Mr Sansom, who ran as an independent, was not re-elected to GRC.

Mr Hindi and Mr Badalati served as GRC councillors until December 2021. They did not stand for re-election in the December 2021 local government elections.

Between 23 September 2019 and 28 September 2020, Mr Hindi was deputy mayor of GRC.

The code of conduct

Under s 440 of the LGA, councillors are required to comply with a code of conduct. The applicable codes of conduct were those adopted by HCC in March 2013 ("the HCC Code of Conduct") and GRC in September 2017 ("the GRC Code of Conduct"). Both codes of conduct were based on, and were in similar terms to, the *Model Code of Conduct for Local Councils in NSW* ("the Model Code of Conduct") promulgated under the Local Government (General) Regulation 2005.

The principles of integrity and impartiality are of critical importance to the role of local councillors in the exercise of their official functions. Those principles are reflected in the Model Code of Conduct, which requires that councillors be vigilant in identifying conflicts of interest and avoiding or appropriately managing them. It also requires that councillors avoid situations that give rise to the appearance that a person, through the provision of gifts or benefits or hospitality, is attempting to secure favourable treatment. Councillors are prohibited from accepting gifts or benefits that may be perceived as an attempt to influence them in the exercise of their official functions. These principles are explained in more detail below.

Under both the HCC and GRC codes of conduct, councillors were required to identify and avoid, or appropriately manage, conflicts of interest (clause 4.2). Under those codes of conduct, a conflict of interest was said to exist where a reasonable and informed person would perceive that a councillor could be influenced by a private interest when carrying out their public duty (clause 4.1). The codes of conduct provided that conflicts of interest could be pecuniary or non-pecuniary:

- A **pecuniary interest** was an interest a person had in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or to a spouse, de facto partner, relative, employer, company or other body of which they, a nominee, partner or employer were a member (clauses 4.5 and 4.6; see also s 442 and s 443 of the LGA). Councillors were required by the codes of conduct to lodge initial and annual disclosures of pecuniary interests that could potentially conflict with their duties, disclose the interest at a council meeting and refrain from participating in council meetings on matters in which they had a pecuniary interest (clause 4.7; see also s 449, s 451 and s 459 of the LGA).
- A **non-pecuniary interest** was a private or personal interest that did not amount to a pecuniary interest. It could arise out of family or personal relationships or associations (clause 4.10). Where a non-pecuniary interest conflicted with a councillor's public duty, the councillor was required by the codes of conduct to disclose that interest fully and in writing, even if the conflict was not significant (clause 4.12). If the interest was significant, the conflict was required to be managed by removing the source of conflict or by having no involvement in the relevant matter (clause 4.16). Even if the councillor determined that the non-pecuniary conflict of interest was less than significant and did not require further action, the councillor was required to provide an explanation of why they considered the conflict of interest did not require further action (clause 4.17).

As a general rule, a non-pecuniary conflict of interest would be significant where it involved a relationship that was particularly close, such as relatives or friendships and business relationships (clause 4.15). Closeness was defined by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship (clause 4.15(b)).

The HCC and GRC codes of conduct also required councillors to avoid situations that gave rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind either to the councillors or to their immediate family members, was attempting to secure favourable treatment from them or the council (clause 5.1 of the HCC Code of Conduct; clause 5.2 of the GRC Code of Conduct).

Councillors were also required not to seek or accept a bribe or improper inducement or accept any gift or benefit that might create a sense of obligation on their part or might be perceived to be intended or likely to influence them in carrying out their public duties (clause 5.5).

Gifts of more than a token value were not to be received unless approved by the general manager (clause 5.5(d)). Gifts of more than a token value included free or discounted travel (clause 5.4). Under the GRC Code of Conduct, even the receipt of token gifts required approval (clause 5.7). That code (clause 5.8) specified that:

gifts and benefits of value will rarely be approved for retention by the General Manager, because they almost inevitably would give rise to perceptions that there would be some form of reciprocal action expected of the Council official who accepted the gift.

During the public inquiry Mr Hindi, Mr Badalati and Mr Sansom all confirmed that by March 2013, they understood their obligations in relation to both conflicts of interest and gifts and benefits. It is more likely than not that Mr Hindi, Mr Badalati and Mr Sansom were aware of their obligations well before 2013. In his capacity as mayor of HCC, Mr Badalati had approved the preface to the 2007 HCC Code of Conduct, which stated:

MESSAGE FROM THE MAYOR AND GENERAL MANAGER

Hurstville City Council is committed to carrying out its functions in the public interest with efficiency, impartiality and integrity.

Acting with honesty and openness when representing the Council, reinforces the expectations that the community and other businesses and government representatives rightly have when dealing with local government.

This Code of Conduct has been adopted by Council to demonstrate the high standards of conduct and ethics that will be applied by Councillors, Staff and Council's delegates in their public and professional duties.

As previously noted, Mr Hindi, Mr Badalati and Mr Sansom all served as members of the JRPP from time to time. The JRPP had its own Code of Conduct dated September 2012 ("the JRPP Code of Conduct").

It contained similar obligations to those set out in the HCC and GRC codes of conduct.

Planning framework

Since the allegations against the three former councillors concerned the exercise of their official functions in making planning decisions regarding the Treacy Street and Landmark Square developments, it is necessary to explain the legislative regime pursuant to which those decisions were made.

The primary law regulating planning decisions in NSW is the *Environmental Planning and Assessment Act 1979* ("the EP&A Act"). While this legislation has been amended various times over the period under investigation – 2011 to 2020 – the key provisions discussed below have remained essentially the same. References below to particular sections of the EP&A Act are to the sections that currently apply. Sections that previously applied at the relevant time are also identified.

Local environmental plans

Part 3 of the EP&A Act provides the statutory framework for the contents and preparation of environmental planning instruments (EPIs), including local environmental plans (LEPs). LEPs are prepared at the local government level but are "made" (approved and finalised) by the minister responsible for the planning portfolio (or their delegate) unless the minister authorises the local council to make the proposed instrument.

Each local government must have its own LEP and it must be in a standard form. The LEP is intended to guide the process of development in the areas to which they apply, in two ways.

First, the LEP identifies different land use zones operating within the local government area. Each land use zone specifies what development is permissible without consent, permissible only with consent or prohibited in the zone

Secondly, the LEP identifies development standards and other provisions that apply to land within the local government area. These provisions may include principal development standards, such as to establish the maximum height of buildings and permissible floor space ratio (FSR). The FSR is defined in each LEP as the "ratio of the gross floor area of all buildings within the site to the site area".¹

¹ Clause 4.5(2), Standard Instrument – Principal Local Environmental Plan (2006 EPI 155a)

Planning proposals

A planning proposal is a document prepared by a council when seeking to make an LEP or amend an existing LEP. The purpose of the planning proposal is to explain the intended effect of the proposed or amended LEP and set out the justification for why it should be made. A planning proposal may, among other things, seek to change land use zones or development controls that apply to one or more sites in the council's LEP. A council's planning proposal may be informed by a draft proposal requested by a proponent.

After a planning proposal is prepared, the council may forward it to the minister responsible for the planning portfolio to seek a key decision called a "gateway determination". The purpose of the gateway determination is to ensure there is sufficient justification early in the process to continue to commit resources and time to a planning proposal and to prevent proposals without strategic planning merit from proceeding. The NSW Department of Planning and Environment ("the DPE") has delegated authority from the minister in respect of making a gateway determination and whether it should proceed (with or without variation), whether it should be resubmitted for any reason (including for further studies or other information) and the minimum period for public exhibition.

The gateway determination usually specifies the minimum public exhibition period for the planning proposal. Otherwise, the minimum period is 28 days. During that exhibition period, the planning proposal must be made publicly available so that the public has the opportunity to review and comment on it. Any person may make a written submission about the proposal during the exhibition period and, if the minister (or their delegate) determines community consultation is required, the LEP is not to be made unless the community has been given an opportunity to make submissions and those submissions have been considered.

Once the community consultation is complete, the council reviews any submissions received and decides whether to proceed with the proposal, revise it or not proceed with it at all. If the council decides to proceed with a revised proposal, it must be forwarded to the minister for another gateway determination, which can result in a further period of community consultation. Accordingly, there can be multiple versions of a planning proposal prepared for the council to decide upon and which the minister may need to determine.

The decision on whether to make the LEP is made by the minister or their delegate. The delegate of the minister is announced as part of the gateway determination. Once the LEP has been approved it is published on the NSW

legislation website and becomes law. This was described in various materials tendered in this public inquiry as "gazetted".

A proponent who has unsuccessfully requested a planning proposal may seek a non-statutory review if no gateway determination has been made. This includes where council does not support the planning proposal, has failed to indicate its support within a certain time period or has failed to forward it for gateway determination within a certain period after having indicated its support. This review is performed by an independent planning panel to evaluate whether the proposal should proceed to gateway determination.

Development control plans

The EP&A Act provides that a planning authority, such as a council, may create a development control plan (DCP). Among other things, the purpose of a DCP is to provide guidance on carrying out development in an EPI (including an LEP) to give effect to the aims of the EPI, facilitate development permitted under the EPI, and achieve the land zone objectives in the EPI. This means its guidance can be directed to issues like car parking, setbacks, landscaping requirements and facade treatments.

As one council officer put it, a DCP essentially provides the "meat on the bones" for an LEP.

A DCP may also reflect "a council's expectation for parts of its area, which may be a large area or confined to an individual site".² Council staff gave evidence that a DCP was important for a development like Landmark Square and that no other planning proposal of that scale within the city centre had proceeded without one.

The procedure for making DCPs, which includes a community consultation process, is set out in Part 3 of the EP&A Act. A DCP does not involve approval by the minister and, importantly, is not an EPI. The effect is that, relative to an LEP, a DCP does not have a determinative weight in the assessment of development. Instead, a DCP will be given more weight if:

- the community was well consulted on it
- it has been consistently applied by council
- it provides sensible planning outcomes that are consistent with existing policies goals
- it supports the goal of consistency in decision-making, which can be assisted by "the adoption of development control plans and the making of

² *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472 at [87]

decisions in individual cases which are consistent with them”.³

The evidence shows that the principal development standards for height and FSR were contained in a DCP for the Hurstville City Centre. The fact that a DCP cannot contain a non-discretionary development standard, along with its non-determinative weight, meant non-compliance with such a standard was easier to seek and achieve. The Commission understands the current position of the DPE (held for many years) is that, where a council adopts principal development standards for buildings height and FSR, these standards must be contained in an LEP.

Development applications, consents and modifications

A development application (DA) seeks consent from the relevant consent authority to authorise development on a particular site. Development has a broad definition under s 1.5 of the EP&A Act and includes the use of land, the erection of buildings, the carrying out of work and the demolition of a building or work.

The statutory framework for the DA process is set out in Part 4 of the EP&A Act. Crucially, this requires that, before a determination is made, a DA is evaluated against:

- mandatory considerations at s 4.15 (formerly section 79C) of the EP&A Act
- the provisions of any applicable EPIs (including the LEPs the relevant council has had gazetted for its government area)
- any DCPs
- the likely environmental, social and economic impacts of the development
- the suitability of the site
- any submissions made in respect of the DA
- the public interest.

Generally, the consent authority for a DA is the council. However, relevant to the Commission’s investigation, between March 2012 and 1 March 2018, development with a capital investment value of \$20 million or more had been declared to be of regional planning significance and must be determined by a regional planning panel.

Regional planning panels are intended to involve independent experts in decision-making on significant developments. They also include the appointment of members by the relevant local council and those appointed by the local council may include councillors.

The JRPP, the regional planning panel which voted on the Treacy Street development, at various times included Mr Hindi, Mr Sansom and/or Mr Badalati as council’s representatives.

Once a consent has been issued for a development, the proponent may, if needed, apply for a modification of that consent. Unless the modification is to correct minor errors, misdescriptions or miscalculations, a key matter the relevant decision-maker must be satisfied with when approving the modification is whether it is “substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)”. In determining modification applications, the consent authority is again required to take into account the relevant mandatory considerations at s 4.15 of the EP&A Act.

In March 2018 and during the investigation, the NSW Government amended the EP&A Act to prohibit councillors for Sydney metropolitan councils determining DAs and any modification of a development consent previously issued. From that point, decisions would be made by a local planning panel consisting of independent experts or council officials exercising delegated authority. This prohibition applied to GRC.

Planning agreements

Planning agreements are provided for under the EP&A Act (sections 7.4–7.10). They are entered into by a developer on a voluntary basis with a council or other planning authority to “dedicate land free of cost, pay a monetary contribution or provide any other material public benefit, or any combination of them” for a “public purpose”. Section 7.5 of the EP&A Act identifies that, without limitation, a “public purpose” includes

- providing, or recouping the cost of providing, or funding the recurrent expenditure of:
 - public amenities and public services
 - affordable housing
 - transport or other infrastructure
- the monitoring of the planning impacts of development
- the conservation or enhancement of the natural environment.

The voluntary basis for planning agreements means they are sometimes referred to as “voluntary planning agreements” or “VPAs”. The acronym, VPA, is used in this report when referring to planning agreements.

The minister administering the EP&A Act has broad powers to determine or direct a planning authority with

³ *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472 at [87]



regards to a planning agreement. The minister's directions may determine:

- the procedures to be followed in negotiating a planning agreement
- the publication of those procedures
- the method of determining the extent of public benefit a developer must provide under a planning agreement
- other standard requirements with respect to planning agreements.

Clause 25B of the Environmental Planning & Assessment Regulation 2000 makes the following provisions in relation to the form and subject matter of planning agreements:

- Planning agreements must be in writing and signed by the parties to the agreement.
- Planning agreements must be lodged on the NSW Planning Portal and accompanied by the prescribed fee.
- The secretary of the DPE may prepare a practice note "to assist parties" in preparing planning agreements.
- A council that is negotiating, or entering into, a planning agreement must consider any relevant practice note. (This requirement only commenced from February 2021).

Planning agreements were a feature of the Commission's investigation into the Treacy Street and Landmark Square planning proposals. The Commission discusses planning agreements in chapter 9 and has made specific recommendations in respect of them.

Chapter 2: Early interactions between Mr Badalati, Mr Hindi, Mr Sansom, Wensheng Liu and Mr Uy

This chapter outlines the early interactions, from 2005 to 2015, between then councillors Mr Badalati, Mr Hindi and Mr Sansom, and Wensheng Liu and Mr Uy.

These early interactions include, in the case of Mr Badalati and Mr Sansom, overseas trips with Wensheng Liu and Mr Uy. This chapter also sets out the involvement of Wensheng Liu and Mr Uy in multiple DAs lodged with HCC.

Ching Wah (Philip) Uy

Mr Uy's Chinese name is Ching Wah Uy. He was also known as "Faye" to Mr and Mrs Hindi and Wensheng Liu. He was known more generally as Philip.

Mr Uy is a real estate agent and property developer. He established Hurstville Real Estate Agency in the 1990s, which was located at 206 Forest Road in Hurstville. In 2012, he established a building company called Gencorp Pty Ltd of which he was the sole director, secretary and shareholder. Gencorp was the builder for the Treacy Street development. It was anticipated Gencorp would also build the residential component of the Landmark Square development. Both these developments are discussed in more detail in chapter 3, as is Gencorp's role and Mr Uy's interest in them.

Several witnesses, including Nigel Dickson (of architects and planners Dickson Rothschild), Mr Hindi, Mrs Hindi and Elaine Tang (a Gencorp representative) said that Mr Uy spoke some English but not particularly well. Mr Uy said he spoke basic English. He is a native Cantonese speaker. His evidence was taken by the Commission through a Cantonese interpreter.

Length of Mr Uy's relationship with Mr Badalati, Mr Hindi, Mrs Hindi and Mr Sansom

Mr Badalati and Mr Sansom told the Commission they had known Mr Uy for at least 15 years. Mr Badalati's evidence was that he first met Mr Uy at a Chinese function in approximately 2002. He recalled Mr Uy ran a real estate agency at that time. From at least 2014, Mr Badalati considered Mr Uy to be a friend.

Mr Sansom's evidence was that although he could not recall his first meeting with Mr Uy, he had known him since at least 2007. He recalled Mr Uy worked for a real estate agency at the time they met. From at least 2013, Mr Sansom considered Mr Uy to be a friend, although he did not consider their friendship to be particularly close.

Mr Uy has known Mr Hindi since at least 2015. He has known Mrs Hindi since at least July 2014, when Mrs Hindi referred the Landmark Square properties to him and they arranged for Wensheng Liu's company, One Capital Group Pty Ltd, to enter a Buyer's Agency Agreement (BAA) with Mrs Hindi's real estate agency, Sydney Realty.

Mr Uy's interactions with Mr and Mrs Hindi and Mr Badalati continued until August 2020, when the planning proposal for the Landmark Square development was gazetted. Mr Uy's interactions with Mr Sansom ceased soon after Mr Sansom's time on council ended in May 2016.

Wensheng Liu

Wensheng Liu is a property developer. He was associated with three companies of interest to the Commission's investigation:

1. GR Capital Pty Ltd, of which his wife Lan Liu was director and shareholder and he was the general manager. He was not a shareholder of GR Capital.

In 2011, GR Capital lodged an expression of interest with HCC to develop a property known as the Gloucester Road Carpark, a property bounded by Gloucester Road, Carrington Street and Garthons Lane. The expression of interest was rejected but the carpark was taken to a public tender process. In 2012, GR Capital lodged a tender but was ultimately unsuccessful. These matters are addressed in chapter 6.

2. GR Capital Group Pty Ltd, of which he was the sole director, secretary and shareholder. Wensheng Liu registered the company on 5 December 2013. In October 2014, GR Capital Group lodged a development application for 1–5 Treacy Street. GR Capital Group went into administration in October 2018. As is noted above, Gencorp built the Treacy Street development.
3. The One Capital Group Pty Ltd (“One Capital”) of which he was also the sole director, secretary and shareholder. One Capital was registered on 21 July 2014 and also went into administration in October 2018. One Capital was the initial proponent of the Landmark Square planning proposal. As noted above, Gencorp was to build the residential component of that project but this never occurred.

Wensheng Liu’s primary language is Mandarin. He said he spoke basic English. Witnesses including Mr Sansom and Malcolm Gunning gave evidence that Wensheng Liu did not speak English well. Mr Sansom said he seldom spoke with Wensheng Liu because of this. Wensheng Liu gave evidence through a Mandarin interpreter.

Length of Wensheng Liu’s relationship with Mr Badalati, Mr Hindi, Mrs Hindi and Mr Sansom

Mr Badalati, Mr and Mrs Hindi, and Mr Sansom all gave evidence they were introduced to Wensheng Liu by Mr Uy.

Mr Badalati said he first met Wensheng Liu following an introduction by Mr Uy at a Chinese function in Hurstville around 2013.

Although Mr Sansom could not recall first meeting Wensheng Liu, he thought it occurred via Mr Uy shortly before he caught a flight with Wensheng Liu to China in March 2014.

Mr Hindi said he first met Wensheng Liu in 2015 or 2016. At the latest they met on 18 March 2016, when they both attended a dinner in Chinatown. Mrs Hindi’s evidence was that Mr Uy introduced her to Wensheng Liu in 2014, shortly after she first met Mr Uy. This introduction was prior to 21 July 2014, when One Capital entered into the

BAA with Mrs Hindi on behalf of her real estate agency, Sydney Realty.

Wensheng Liu continued to meet with Mr Hindi and Mr Badalati while HCC was in administration during 2016 and 2017. There is no evidence he met with them at any time thereafter.

2005 to 2009: Mr Uy’s involvement in development applications lodged with HCC

Between 2005 and 2009, Mr Uy was involved with at least three DAs lodged with HCC. The three developments referred to below and the conduct of the former councillors voting in favour of those developments are not part of the scope and purpose of this investigation. There is also no evidence that Mr Badalati, Mr Hindi or Mr Sansom were aware of Mr Uy’s involvement in any of these DAs at the time of voting. However, the evidence does demonstrate that Mr Uy, Mr Badalati and Mr Sansom had associated with each other at times when Mr Uy was seeking to progress DAs lodged with HCC.

The first record of Mr Uy being involved with a DA before HCC was in relation to 8–12 Coleridge Street, Riverwood. On 24 October 2004, a DA was lodged by Kurt Vegners for a \$2.5-million development of that site. Mr Vegners was a builder and an associate of Mr Uy. The owner listed on the DA was Shun Li & Company Pty Ltd (“Shun Li”). Mr Uy was a director of Shun Li until 10 May 2020. On 7 September 2005, the Development Assessment Committee (DAC), of which Mr Badalati, Mr Hindi and Mr Sansom were members, decided to grant a deferred consent to this DA.

The second DA before HCC involving Mr Uy was in relation to 260 Belmore Road, Riverwood. The DA was lodged on 26 November 2007 for a \$2-million development of that site. The owner of that property was Belarus Investments Pty Ltd. Mr Uy was a director of that company until 21 August 2011. On 7 May 2008, Mr Badalati, Mr Sansom and Mr Hindi voted in favour of that DA being approved.

On 21 August 2008, Shun Li donated \$5,970 to the Australian Labor Party (ALP) campaign for HCC. Mr Badalati was on the ALP ticket during this campaign. Shun Li’s declaration of political donations and electoral expenditure to the Election Funding Authority of NSW was signed by Ivan Ly on 18 February 2009. At the time, Ivan Ly was Mr Uy’s partner at Hurstville Real Estate. Mr Badalati told the Commission he thought this donation related to an ALP fundraiser Mr Uy and Ivan Ly attended, which involved them buying tickets (\$1,500 per head) and securing some auction prizes.

On 5 August 2009, Mr Badalati, Mr Hindi and Mr Sansom voted in favour of a modification to the consent for 260 Belmore Road, Riverwood, to add an additional storey to the mixed-use development. By this time, the owner of the land was Tiy Loy & Co Pty Ltd, which was a majority shareholder of Shun Li. Mr Uy was still a director of Shun Li at that time.

Mr Badalati told the Commission that by August 2009 he knew Mr Uy was involved in the development at 260 Belmore Road, Riverwood. He could not recall how he knew, although he thought he was told by Mr Sansom. He accepted he should have declared a conflict of interest in relation to 260 Belmore Road, Riverwood. Mr Sansom's evidence was he could not recall whether he told Mr Badalati of Mr Uy's interest in this development or whether he was aware of Mr Uy's involvement at all at the time.

The third relevant DA lodged with HCC concerned 4–6 Coleridge Street, Riverwood, which was also lodged in 2008. It involved a \$2.5-million development on the site. The owner of the property was Eastern Red Enterprises Pty Ltd. Mr Uy was a director of that company between 13 November 2007 and 7 April 2012. On 3 December 2008, Mr Badalati, Mr Hindi and Mr Sansom voted in favour of the application being approved.

“Boys’ weekends” in China, with Mr Badalati, Mr Sansom and Mr Uy

Travel records available to the Commission demonstrate that, between 2007 and 2018, Mr Badalati and Mr Sansom regularly travelled to China and Hong Kong. Sometimes they had several trips a year, which usually lasted for about a week. The travel records show that they sometimes travelled together and sometimes travelled alone. For example, in 2007:

- Mr Badalati and Mr Sansom travelled on the same flight to Hong Kong on 13 April 2007 and returned on the same flight on 18 April 2007.
- Mr Sansom travelled to Hong Kong on 7 June 2007 and Mr Badalati followed on 8 June 2007. Mr Badalati returned on 13 June 2007 and Mr Sansom returned on 14 June 2007.
- Mr Sansom travelled to Hong Kong on 2 August 2007 and Mr Badalati followed on 3 August 2007. Both returned on different flights on 10 August 2007.
- Mr Sansom travelled to Hong Kong on 27 September 2007 and returned on 7 October 2007.

Mr Uy told the Commission his practice for many years has been to spend part of the year in Hong Kong or China. He owns apartments in both locations. Occasionally, Mr Badalati and Mr Sansom would meet up with Mr Uy in Hong Kong. In 2009, Mr Sansom purchased an apartment in the same building as Mr Uy in China. Mr Uy assisted by introducing Mr Sansom to the real estate agent for that property.

Clifton Wong was an HCC councillor between 1999 and 2012. He was friends with Mr Uy, having met him through the Hurstville business community. Their businesses were immediately next door to each other on Forest Road, Hurstville. Clifton Wong told the Commission he travelled to China in the period between 2007 and 2012 approximately four-to-five times per year, for both work and leisure. On some of those trips he travelled with Mr Badalati and Mr Sansom, and Clifton Wong sometimes stayed with Mr Sansom at his apartment in China. He occasionally met with Mr Uy in China.

Mr Badalati and Mr Sansom told the Commission that during these trips they would spend their time shopping, eating and drinking, going to nightclubs and occasionally performing karaoke with Mr Uy. Mr Sansom described these as “boys’ weekends”. When they went out to lunch or dinner with Mr Uy, it was common for Mr Uy or one of the other Chinese people attending to pay for Mr Badalati and Mr Sansom or indeed the whole table. Mr Sansom also said there were occasions when he paid for Mr Uy's meals.

There is also evidence that escorts were hired during these “boys’ weekends”. This is addressed below.

Mr Uy secretly films Mr Badalati and Mr Sansom in China

The Commission found two videos on Mr Uy's mobile telephone – both of which were taken by Mr Uy in 2013 – showing Mr Badalati and Mr Sansom in the company of young women.

The first video, dated 14 March 2013 (“the first video”), was taken by Mr Uy in the lobby of a hotel. The sequence of the first video was as follows. Mr Uy's reflection was visible in metallic elevator doors in a hotel lobby. He was alone, purportedly talking on the same telephone he was using to take the video. Mr Sansom emerged from the elevator holding the hand of a young woman. Mr Badalati also emerged from the elevator, walking behind another young woman. Mr Uy greeted them while continuing to talk on the telephone. The video tracked Mr Badalati and Mr Sansom as they walked out of the elevator, through the elevator lobby and into the hotel restaurant, where they made their way to a table. All the while, Mr Uy seemingly continued to talk on the telephone.

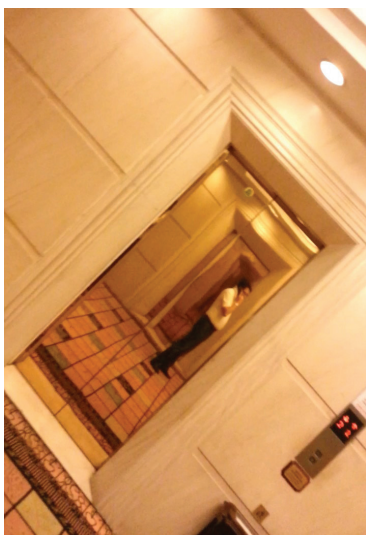
The second video, dated 27 July 2013 (“the second video”), was taken by Mr Uy, in what appeared to be a small private function room in a hotel or restaurant. The second video showed Mr Sansom sharing a chair with a young woman. The video then panned across the room to show Mr Badalati holding the hand of another young woman. They were standing next to a table set for approximately 10 people. There were various other people in the room, including Mr Uy’s brother, Tommy Wong. Mr Uy was again purportedly talking on the same telephone he was using to video the room.

There are three matters arising from these videos that require consideration.

First, whether the young women were escorts. The Commission is satisfied that the young women were escorts. Despite Mr Uy’s denial and his suggestions that the women were interpreters or alternatively shopkeepers, Mr Badalati and Mr Sansom agreed the women were or had been escorts. It is not clear who paid for their services.

The second issue is whether either Mr Badalati or Mr Sansom were aware that they and the escorts were being videoed. Mr Uy told the Commission they likely knew they were being videoed. Both Mr Badalati and Mr Sansom gave evidence they were unaware that Mr Uy was recording either the first video or the second video. The Commission accepts their evidence. It is further satisfied that Mr Uy was not engaging in any telephone conversation. His conduct was a ruse intended to disguise that he was videoing Mr Badalati and Mr Sansom in the presence of escorts. The screenshot below was extracted from the beginning of the first video.

Figure 1: A screenshot from a video Mr Uy recorded without the knowledge of Mr Badalati and Mr Sansom, showing Mr Uy’s reflection in the metallic elevator doors. The reflection shows Mr Uy holding a mobile telephone to his ear



The screenshot depicts a reflection of Mr Uy in the metallic elevator doors. The reflection clearly shows Mr Uy holding a mobile telephone to his ear. It is the very same mobile telephone he used to record both videos. What is not apparent in the screenshot but is evident when watching the video is that Mr Uy is also talking at this point, saying, “Hello. Hello. Yes. Yes”. No one responds. Mr Uy claimed he was speaking with his wife. The Commission is satisfied he was speaking to himself.

Figure 2 and Figure 3 show two screenshots from the second video.

Figure 2: A screenshot from a video Mr Uy recorded in a private function room, showing Mr Sansom sharing a chair with a young woman



Figure 3: A screenshot from the same video Mr Uy recorded in a private function room, showing Mr Badalati holding hands with a young woman



The third and most important issue is the purpose for which the videos were taken. When asked by Counsel Assisting why he was filming Mr Sansom and Mr Badalati in the first video, Mr Uy suggested it was inadvertent and “part of Chinese culture” to take videos of food. The Commission rejects Mr Uy’s evidence. The videos

were not taken inadvertently. The first video depicts the deliberate tracking of Mr Badalati and Mr Sansom as they and their escorts exit the elevator and walk to their table in the hotel restaurant. The first video does not include any imagery of food. The second video does include people eating food but on no reasonable analysis of the video could one conclude that food was its subject. The subject of the video was clearly the presence of Mr Badalati and Mr Sansom in the company of escorts.

It was put to Mr Uy by Counsel Assisting that he took the first and second video so he could use them against Mr Badalati or Mr Sansom in the future, for example, in relation to planning applications he may have coming before HCC. He denied doing so. Both Mr Badalati and Mr Sansom told the Commission that Mr Uy had never used these videos nor any similar material to blackmail them. Mr Uy never showed them these videos. However, having seen the videos during the public inquiry, Mr Badalati's evidence was that he believed the videos were intended as a "blackmail tool". The Commission agrees. Both Mr Badalati and Mr Sansom were married. Both confirmed that their use of escorts around this time was not known to their family or friends in Sydney and that they would have been embarrassed if such videos had been shown to their family or friends. Both men held public office at the time. In the exercise of their powers as councillors, they would likely be called upon to vote in respect of future developments in which Mr Uy had an interest. The Commission is satisfied Mr Uy believed the videos provided a means by which he could, if necessary, secure their votes.

Mr Uy's videos provide a very telling illustration of the vulnerability of public officials to corruption arising from inappropriate and undisclosed relationships with persons who have an interest in how official functions might be exercised.

Mr Uy films Mr Badalati at an Optus store

The Commission found another video on Mr Uy's mobile telephone, dated 21 August 2013, of Mr Uy and Mr Badalati attending an Optus store in Sydney. The video shows Mr Badalati sitting at the counter while an Optus customer service representative attends to a mobile telephone.

Records produced to the Commission pursuant to s 178 of the *Telecommunications (Interception and Access) Act 1979* (Cth) ("the TIA Act") show that a SIM card was registered on 21 August 2013 in Mr Uy's name. Mr Badalati's evidence to the Commission was that Mr Uy paid for the SIM card. Other records produced to the Commission pursuant to s 178 of the TIA Act indicate that Mr Badalati commenced recharge payments

for that SIM card on 25 July 2014. Mr Badalati continued to use the telephone and make at least monthly recharge payments until 31 July 2016. The service was cancelled on 3 March 2017.

During the public inquiry, it was put to Mr Badalati that the absence of payment records between 21 August 2013 and 25 July 2014 indicated Mr Uy paid for the SIM card recharges. Mr Badalati agreed Mr Uy may have paid for them. Mr Badalati also said he may not have had exclusive use of the SIM card between August 2013 and July 2014, because Mr Uy used it in China, but Mr Uy then returned it to Australia and Mr Badalati continued using it between July 2014 and July 2016. Mr Uy denied paying for the credit on the SIM card and claimed he could not recall the circumstances around the purchase of the SIM card or the visit to the Optus store.

Given that Mr Badalati and Mr Uy may have both used the SIM card between 2013 and 2014, the Commission is unable to determine the extent of any benefit received by Mr Badalati. Further, although the receipt of such benefit might constitute corrupt conduct, it would not of itself rise to the level of serious corrupt conduct for the purposes of s 74BA of the ICAC Act.

The Gloucester Road Carpark development

The Gloucester Road Carpark development is addressed in more detail in chapter 6. A short summary is provided at this point to explain the association between Mr Hindi, Mr Sansom, Wensheng Liu, Clifton Wong (a then HCC councillor) and Mr Uy in respect of this development and its progress.

On 20 October 2011, GR Capital submitted an unsolicited expression of interest (EOI) to HCC to develop the Gloucester Road Carpark. The EOI stated GR Capital wished to purchase the site from HCC for \$8 million and develop it into a mixed commercial and residential development. A company cheque in the amount of \$800,000 was provided as a deposit.

Wensheng Liu was the general manager of GR Capital and his wife was a director. Mr Uy told the Commission he discussed the proposal with Wensheng Liu around this time and they both sought advice from others (including expert planners) on how to lodge the EOI.

On 25 October 2011, HCC responded indicating it was subject to very strict probity guidelines and regulations for the disposal and joint development of public property and that HCC would follow those procedures if and when it decided to address the site. HCC returned the cheque for \$800,000.

On 16 November 2011, HCC resolved that the Gloucester Road site be taken to an EOI or selective tender process. That resolution was moved by Mr Sansom. On 14 February 2012, Wensheng Liu forwarded the tender documents to Mr Uy and Mr Vegners. GR Capital lodged a tender and the list of tenderers – which included Deicorp Pty Ltd – was announced on 30 March 2012. The tenders were then assessed by HCC staff and ranked. Of the six tenderers, Deicorp was ranked first and GR Capital was ranked fifth.

On 4 July 2012, HCC resolved to accept the tender of Deicorp and to commence negotiations. On 9 July 2012, Mr Sansom prepared a motion to rescind that resolution and emailed it to Clifton Wong and Mr Hindi for comment. Later that day, Mr Sansom emailed the notice of rescission to HCC's general manager Victor Lampe, to which Mr Hindi replied and indicated to Mr Lampe he supported the motion. On 25 July 2012, the motion was passed, being moved by Clifton Wong and seconded by Mr Sansom.

2013: Mr Badalati assists Wensheng Liu

As noted, Mr Badalati told the Commission he met Wensheng Liu through Mr Uy in around 2013. The earliest record of their interactions is found in emails dated from November 2013, which were produced to the Commission by Malcolm Gunning, a local real estate agent. Mr Gunning primarily deals in commercial and industrial real estate. Mr Badalati said he had known Mr Gunning for about 20 years.

Mr Gunning gave evidence that commencing from at least 2013, Mr Badalati would sometimes suggest to him that he contact Wensheng Liu about particular development opportunities. Mr Gunning said he had meetings with Wensheng Liu and Mr Uy, whom he understood to be working together, so that they could seek his advice on certain properties in the area. He said Mr Badalati would sometimes attend these meetings.

One example of these meetings concerned a property known as Hurstville Business Park. Both Mr Gunning and Mr Badalati told the Commission that, after Mr Gunning informed Mr Badalati the property was for sale, Mr Badalati suggested to Mr Gunning that Wensheng Liu might be interested in the property. Between 21 November 2013 and 14 July 2014, Mr Badalati was the addressee of, or copied into, at least four emails from Mr Gunning also addressed to Wensheng Liu regarding this development opportunity. Mr Badalati said he knew Wensheng Liu had the sort of money available to purchase the site because Wensheng Liu had shown him a letter from a bank indicating Wensheng Liu had

a line of credit for about \$40 million. During his evidence, Wensheng Liu denied he ever showed Mr Badalati such a letter. There is no record of any such letter in evidence. While the Commission cannot be satisfied that such a letter existed or was shown to Mr Badalati, it is clear Mr Badalati believed that Wensheng Liu had access to sufficient funds to purchase a site such as the Hurstville Business Park.

Mr Gunning told the Commission he considered Mr Badalati to be performing an "unusual role" for a councillor, in the sense that he was acting more as a "representative" of Wensheng Liu rather than simply as a councillor looking to promote development in the Hurstville area. One issue explored in the inquiry was whether Mr Badalati's involvement with Wensheng Liu extended beyond merely mentioning Wensheng Liu as a potential buyer to Mr Gunning or some form of consultancy involving payment of fees. Both Mr Badalati and Wensheng Liu denied any such arrangement. Wensheng Liu also denied ever paying Mr Badalati a fee in return for his help in sourcing development opportunities. Whatever the nature of the relationship between Mr Badalati and Wensheng Liu at the time, there is no evidence Mr Badalati was paid for his assistance.

September 2013: messages between Mr Sansom and Mr Uy

On 11 September 2013, an HCC meeting took place to elect a new mayor and new members to the JRPP.

On 11 September 2013, Mr Uy texted Mr Sansom enquiring how he was. The next day Mr Sansom responded:

Philip, I am ok but last night didn't go to plan. Vince didn't get the Mayor but Con did get JRPP along with me. I think two of the Labor Councillors and Con voted against Vince, giving him 5 votes to Jacovou's 7 votes. But Vince was in a bad mood so no point trying to talk to him last night. I had my phone on silent and left the Council after the meeting

Mr Sansom's evidence was that Mr Uy might have been interested to know who was elected mayor merely because he knew Mr Badalati. Mr Sansom accepted he may have discussed with Mr Uy that it would be a good thing if he (Mr Sansom) were appointed to the JRPP. He said the information in this text was publicly available. Mr Uy told the Commission he could not remember the context of the message. He denied he had had any discussions with Mr Sansom about the HCC meeting or the JRPP membership.

Neither Mr Sansom nor Mr Uy accepted that Mr Sansom was telling Mr Uy about the JRPP membership because

Mr Sansom understood Mr Uy might be involved in DAs lodged with HCC, coming before the JRPP. However, Mr Sansom also gave evidence that it was “more than likely” he read a media article published in September 2012 concerning Mr Uy’s involvement in DAs in Riverwood between 2005 to 2009 (these developments were discussed earlier in this chapter). Having regard to this evidence, the Commission infers from the contents of Mr Sansom’s text to Mr Uy on 12 September 2013 that Mr Sansom understood Mr Uy was interested to know who was appointed to the JRPP, and Mr Sansom also understood that Mr Uy was interested because he was involved in property development in some way.

January 2014: Mr Badalati and Wensheng Liu travel to China

Flight records show that on 17 January 2014 Wensheng Liu travelled to Shanghai. Mr Badalati travelled to Shanghai the next day. Mr Badalati returned on 22 January 2014 and Wensheng Liu returned on 24 January 2014. Wensheng Liu told the Commission he and Mr Badalati met in China on this occasion. He said the purpose of his trip was to meet with a potential purchaser of 1–5 Treacy Street and he said he explained that fact to Mr Badalati. Mr Badalati was not asked about this trip during the public inquiry. However, Mr Badalati’s evidence was that by November 2013 he had formed an understanding that Wensheng Liu might seek to develop 1–5 Treacy Street and he had discussed that possibility with Wensheng Liu and Mr Uy. By January 2014, Wensheng Liu or his company owned the options for 1–5 Treacy Street and Mr Uy was an investor in that property. Mr Uy was also asked about this trip during the public inquiry. While he was not in China at the time, he understood the trip had something to do with 1–5 Treacy Street, including Wensheng Liu meeting potential purchasers. When asked why Mr Badalati attended, he said, “You ask Mr Liu”.

In January 2014, Mr Uy and Wensheng Liu exchanged WeChat messages discussing Mr Badalati’s flights to and from Shanghai. The messages do not name Mr Badalati directly. He is referred to as “Chubby”. On 21 January 2014, Wensheng Liu texted Mr Uy, “Chubby is about to board. Everything went well.” Mr Uy responded, “Thanks for your hard work.” Both Wensheng Liu and Mr Uy denied paying for Mr Badalati’s flights to China in January 2014. Wensheng Liu said he did not pay for the flights on the basis that Mr Uy had explained to him that he should not do so because it would be inappropriate for a developer to have that kind of association with a councillor.

The Commission is satisfied Mr Badalati went to China for the purpose of assisting Wensheng Liu to promote

the proposed Treacy Street development to at least one potential purchaser. In April 2016, Mr Badalati did much the same thing. He travelled to China again, this time with Mr Hindi, for the purpose of promoting the Treacy Street and Landmark Square developments to potential investors and local officials. This April 2016 trip is addressed in chapter 4. There is insufficient evidence to conclude that either Wensheng Liu or Mr Uy paid for Mr Badalati’s expenses in relation to the trip to China in January 2014.

March 2014: Mr Sansom travels to China with Wensheng Liu

Flight records establish that on 12 March 2014 Mr Sansom and Wensheng Liu travelled on the same flight from Sydney to Shanghai, China. Mr Sansom returned to Sydney on 17 March 2014 and Wensheng Liu followed on 19 March 2014.

When asked about this trip during the public inquiry, Mr Sansom did not deny travelling to China with Wensheng Liu but claimed he had no recollection of the trip, why it took place, or whether he attended any meetings during the trip.

Wensheng Liu told the Commission that the trip was organised by Mr Uy. The purpose of the trip was to meet with some Chinese developers who were potentially interested in the Gloucester Road Carpark development. He said although the site had been withdrawn from sale in 2012, he understood the development was still a possibility. The fact that Wensheng Liu had that understanding or was at least representing that to be a possibility to potential investors is consistent with minutes of a GR Capital resolution from March 2015. It recorded that GR Capital had paid \$8.8 million to the local council (which was in fact false), that the project would be progressed by GR Capital Group and that the aim was to commence construction before the end of 2015. That resolution was either misleading or wildly optimistic, given that by March 2015 no DA had been submitted for the development to HCC.

Mr Sansom gave evidence that he sometimes acted as a “walking reference” in China, assisted by his title as “Emeritus Mayor”. He said that “a mayor in China has more power than a Premier of a State in Australia” and that if a “Chinese person knows a mayor from Australia ... that raises them up in the ... system so to speak”. He said he performed that role for Mr Uy sometimes. The Commission is satisfied Mr Sansom was performing such a role on this trip, just as mayor Badalati and “deputy mayor” Hindi did when in China in April 2016. Mr Sansom accepted that a likely explanation was that he was invited to China so that he could indicate that HCC was supportive of development on the Gloucester Road

site and that it could be characterised as a favour he was doing for Wensheng Liu and Mr Uy.

Wensheng Liu also told the Commission that during this trip he discussed with Mr Sansom that he was working on another development at 1–3 Railway Parade, Hurstville. Mr Sansom could not recall discussing this development but did not deny it. The Commission is satisfied that by March 2014 Mr Sansom understood Wensheng Liu was involved in property development in the HCC area, including the proposed development of 1–5 Treacy Street and the Gloucester Road Carpark. Mr Sansom accepted it was likely he understood Wensheng Liu was working together with Mr Uy. However, neither Wensheng Liu nor Mr Sansom could recall discussing the Treacy Street development on this trip.

During this trip, Wensheng Liu arranged for a letter to be issued from a Chinese company confirming that Mr Sansom had been engaged as a consultant for that company. On 14 March 2014, Mr Sansom drafted the text of the letter and emailed it to Wensheng Liu, who then contacted a person connected with the company who signed the letter. Wensheng Liu then forwarded the signed letter to Mr Sansom. During the public inquiry, Mr Sansom confirmed he had never done any work for the company. The letter contained a number of false representations. Mr Sansom claimed the letter was issued to assist him in obtaining a business visa for China. His understanding was that if he obtained a business visa it would allow multiple entries into China (rather than having to obtain a visa for each visit), which would make his travels to China easier. Mr Sansom accepted that the supply of the letter to him by Wensheng Liu so he could obtain a business visa could be characterised as a favour for him by Wensheng Liu.

On 10 March 2014, Air China itineraries for Wensheng Liu and Mr Sansom were emailed to Wensheng Liu. The email indicated the cost of both tickets was \$4,455. Mr Sansom told the Commission that while he accepted an inference from this email was that Wensheng Liu paid for these tickets, he could not recall who paid. Wensheng Liu's evidence was that he could not recall who paid, although he said Mr Uy was involved and may have recovered the cost of Mr Sansom's flights from Mr Sansom. The Commission considers it likely Wensheng Liu or Mr Uy paid for the cost of Mr Sansom's travel. After all, he was not travelling to China on HCC business but to promote the proposed Gloucester Road Carpark development, in which Wensheng Liu and Mr Uy had an interest.

March 2014: Mr Sansom travels to China with Mr Uy

Mr Sansom took another trip to China on 23 March 2014, this time with his partner Wang Hui. Both Mr Uy and Mr Sansom accepted they met each other overseas on this occasion. Prior to the trip, Mr Sansom received emails from Direct Link Travel – a travel agency based in Sydney – containing his and Ms Hui's flight details.

The evidence establishes that Mr Uy exchanged text messages with Direct Link Travel to book the flights for both individuals. Mr Uy accepted as much. In those messages, Mr Uy asked Direct Link Travel for its bank account details, which were then provided. The message from Direct Link Travel suggests Ms Hui's ticket cost \$1,160 in total. The Commission infers Mr Sansom's ticket was for a similar amount.

During the public inquiry, Mr Uy claimed he paid for the flights, but that Mr Sansom reimbursed him in cash.

This differed from the evidence he gave during his compulsory examination. During this compulsory examination, he claimed Mr Sansom had paid the money into Direct Link Travel's account. On that occasion he was asked whether it was possible that he had paid for the tickets and then Mr Sansom reimbursed him. He told the Commission this was not possible. While Mr Uy did mention the idea of reimbursement generally at the compulsory examination, his answers made it clear that he had no actual recollection of Mr Sansom giving him cash for these particular flights. His evidence at the public inquiry also made it clear he had no recollection of Mr Sansom giving him cash; he said: "If he [Mr Sansom] was the person who had paid then no but if it was me who had paid then, yes, he had reimbursed me".

Mr Sansom could not recall whether he reimbursed Mr Uy for the flights or whether Mr Uy had ever paid for his flights to China but accepted it was "more than likely" that Mr Uy paid for his flights on some occasions. There was at least one other occasion when Mr Uy accepted he paid for Mr Sansom's flights. That was a trip Mr Sansom took to China to help Mr Uy promote red wine some years before.

Ms Hui prepared a statement for the purposes of the Commission's inquiry. She was not required by any party for cross-examination. Ms Hui was in a relationship with Mr Sansom from about 2014 or 2015, which lasted for several years. During this time, they travelled to China on several occasions. Her evidence was that on one occasion she and Mr Sansom travelled to China with Mr Uy. She says that on one occasion Mr Uy paid for her airfare and, she believes, also for Mr Sansom's airfare and their hotel. Mr Sansom was not able to dispute this evidence

and accepted that Ms Hui was more likely than him to remember these details. Ms Hui did not identify for which trip Mr Uy covered the expenses, but Mr Sansom could not think of any other trip that she might be referring to other than this trip in March 2014.

The Commission is satisfied Mr Uy paid for Mr Sansom and Ms Hui to travel to and from China in March 2014. There was no reimbursement of Mr Uy. Counsel Assisting submitted that if it had been the intention of the parties that Mr Sansom would pay for these flights it would have been a simple matter for Direct Link Travel to issue Mr Sansom with an invoice, given the agency had his email address and had sent him the itinerary, and for Mr Sansom to pay for the flights himself. No one offered a plausible explanation as to why it was necessary for Mr Uy to make the payment to Direct Link Travel first and for Mr Sansom to then reimburse him later by cash. The Commission agrees with Counsel Assisting.

Counsel Assisting also submitted that this series of events in March 2014 demonstrated that by this time, Mr Sansom was willing to perform favours for Wensheng Liu and Mr Uy and they were willing to perform favours for him in return. The Commission agrees with this submission.

Chapter 5 of this report considers whether:

- Mr Badalati's trip to China with Wensheng Liu in January 2014 for the purpose of promoting the Treacy Street development should have been disclosed
- Mr Sansom's trip to China with Wensheng Liu in March 2014 for the purpose of promoting investment in the Gloucester Road Carpark should have been disclosed
- Mr Uy's payment of Mr Sansom's airfares for a further trip to China in March 2014 should have been disclosed and might constitute or involve a criminal offence in respect of which the advice of the Director of Public Prosecutions (DPP) should be sought.

Chapter 3: The Treacy Street and Landmark Square developments between 2014 and 2016

This chapter sets out details of the Treacy Street and Landmark Square developments between 2014 and 2016, including:

- the parties involved, in particular Wensheng Liu and Mr Uy
- the progress of these developments
- the connection of Mr Badalati, Mr Hindi, Mrs Hindi and Mr Sansom to the progress of these developments
- whether a conflict of interest existed for Mr Badalati, Mr Hindi and Mr Sansom in exercising their official functions in relation to these developments.

Background

As noted in chapter 2, Wensheng Liu is a property developer.

Wensheng Liu was a co-director of GR Capital Group. In October 2014, GR Capital Group lodged a DA with HCC to build an 11-storey block of 75 apartments located at 1–5 Treacy Street, Hurstville, known as “The One” (“the Treacy Street development”). In the initial DA, the construction costs were estimated at \$29.8 million, but in subsequent modification applications, were estimated at \$44 million. The Treacy Street development is situated in the centre of Hurstville, approximately 700 metres from both Hurstville and Allawah railway stations. In March 2014, GR Capital Group briefed a firm of architects and planners, Dickson Rothschild, who helped prepare the DA for the site. GR Capital Group went into administration in October 2018.

Councillors Badalati, Hindi and Sansom made various decisions on the Treacy Street development throughout 2014 to 2016. Mr Badalati and Mr Hindi continued to make decisions when they were re-elected to GRC.

The DA was approved by the JRPP on 1 April 2015, while Mr Sansom and Mr Hindi were members. There was then a modification application and further decisions were made by the JRPP or HCC in 2015, 2016 and 2018.

Wensheng Liu was also the sole director and secretary of One Capital, the proponent of the Landmark Square planning proposal. This development was situated at 53–75 Forest Road, 108–126 Durham Street and 9 Roberts Lane, Hurstville. It was a large site of approximately 14,000 square metres on the eastern edge of the Hurstville urban centre, about 800 metres from Hurstville Station and 400 metres from Allawah Station. One Capital acquired the options for multiple properties comprising the Landmark Square development in August 2014 and instructed Dickson Rothschild to prepare the planning proposal to rezone the land and increase the maximum building heights and the floor space ratio (FSR). The proposal was to build 357 residential apartments, a 200-room hotel and various other commercial uses. The planning proposal was lodged in June 2015.

It proposed the relevant local environmental plan (LEP) to rezone the site be amended from industrial to mixed use and the permissible building height and FSR be increased.

Councillors Badalati, Hindi and Sansom voted in favour of that planning proposal in April 2016. Councillors Badalati and Hindi continued to make decisions in relation to the development from 2017 to 2019. One Capital went into administration in October 2018.

Mr Uy’s interest in the Treacy Street and Landmark Square developments

Mr Uy was involved in the Treacy Street and Landmark Square developments in two ways. First, through his building company, Gencorp, and secondly through his own financial investment in both developments.

Gencorp was the builder for the Treacy Street development. It was primarily Mr Uy's responsibility to progress the Treacy Street development on a day-to-day basis.

Mr Uy also worked closely with One Capital to progress the Landmark Square planning proposal. Gencorp and One Capital both had a separate office in the same building on Forest Road, Hurstville. It was primarily Mr Uy's responsibility to progress that planning proposal on a day-to-day basis with the assistance of architects from Dickson Rothschild. In the event the Landmark Square development proceeded, Mr Uy had hoped that Gencorp would construct the residential component of Landmark Square. However, that did not materialise.

Mr Uy had invested in both the Treacy Street and Landmark Square developments. During the public inquiry, Mr Uy told the Commission he was one investor in a group of approximately 20 investors who contributed about \$8 million to the Treacy Street development. He said his personal contribution was about \$400,000. In relation to the Landmark Square development, he again said he was one investor in a group who invested at least \$1.5 million. He said his personal contribution was between about \$400,000 and \$500,000.

July 2014: One Capital enters a Buyer's Agency Agreement (BAA) and options for the Landmark Square development

As at mid-2014, Mr Uy and Wensheng Liu were both working to progress the Treacy Street and Landmark Square developments. By this time, GR Capital Group had briefed Dickson Rothschild to prepare a development application for the Treacy Street development. In relation to Landmark Square, One Capital was looking to acquire options for the property.

Mrs Hindi gave evidence that at some point in the first half of 2014 she became aware the Landmark Square properties were up for sale through another real estate agency, Taylor Nicholas. Taylor Nicholas was then the listing agent for certain owners of the site, specifically 61, 65, 67, 71 and 73–75 Forest Road, Hurstville, and 126 Durham Street, Hurstville. Mrs Hindi said she had known the agents at Taylor Nicholas – George and Michael Constantine – for some time. She said one of the Constantine brothers gave her the details of the site and indicated how much the owners were looking for. Mrs Hindi said the property had been promoted as a site with industrial zoning but with the potential for rezoning for residential or mixed use. She understood around this time that the site had significant development potential. However, it would need to be rezoned by amending the applicable LEP.

Mrs Hindi met both Mr Uy and Wensheng Liu in 2014. She told the Commission she met Mr Uy at a Chinese event in Hurstville. She was aware of him prior to this event because Mr Uy, like herself, was a real estate agent in Hurstville. She was aware Mr Uy had connections with various buyers and investors. She mentioned to Mr Uy at the event that the Landmark Square site was up for sale. Mr Uy indicated to her that Wensheng Liu was interested, in particular, to develop it as a mixed-use commercial and residential site, potentially with a hotel. At that point, she understood that the potential buyer was Wensheng Liu's company, One Capital. She said she then approached Taylor Nicholas and informed them that One Capital was interested in buying the site. Mr Uy gave a similar account of events, although he thought he may have met Mrs Hindi in 2012 or 2013.

Both Mrs Hindi and Wensheng Liu told the Commission that before the BAA was signed in July 2014 they attended a meeting with Mr Uy.

One Capital was registered as a company with ASIC on 21 July 2014.

On 22 July 2014, Taylor Nicholas notified Sentumar Pty Ltd, the owners of the Landmark Square site, that One Capital had offered to enter into 18-month options on the properties.

A BAA was signed by Wensheng Liu on behalf of One Capital, and by Mrs Hindi on behalf Sydney Realty. Both signatures bear the date 24 July 2014. The BAA related to the Landmark Square site, namely, 61–67, 71, 73–75 Forest Road, Hurstville and 126 Durham Street, Hurstville. The BAA provided that the “approximate price range in which the Principal wishes to acquire the property” was \$35–\$36 million. One Capital granted Sydney Realty the right to act on its behalf from 21 July 2014 until 21 July 2016.

Sydney Realty’s remuneration was to be a flat fee of \$500,000 excluding GST. One Capital agreed to pay the fee in accordance with the BAA in the event that Sydney Realty introduced One Capital to the vendor of the Landmark Square property and One Capital, *inter alia*, entered a contract for the purchase of the property. If One Capital purchased the Landmark Square property, Mrs Hindi stood to gain \$500,000 excluding GST. The BAA was to expire on 21 July 2016.

It is also relevant to note that Mrs Hindi stood to make a further commission of \$90,000 under the terms of a conjunction agreement between Sydney Realty and Taylor Nicholas in respect of the Landmark Square properties. A conjunction agreement essentially allows one real estate agent to transfer their obligation to sell a property to another real estate agent. It requires the earnings from any sale to be distributed between both agents. Various drafts of a conjunction agreement were in evidence. All are dated 20 April 2016, which is same date HCC councillors voted on the Landmark Square development. No written conjunction agreement was entered into. The Commission is satisfied that an oral conjunction agreement was entered into. In March 2018, Mrs Hindi was paid the sum of \$67,400 in respect of the Landmark Square property and two other properties where Mrs Hindi had introduced a buyer to Taylor Nicholas, namely, 508–510 Kingsway, Miranda, and 398–412 Princes Highway, Rockdale. This payment is discussed below and in chapter 8.

Before further considering the BAA between One Capital and Sydney Realty, it is necessary to address the credibility of Mrs Hindi and Mr Hindi.

Mrs Hindi was not a credible witness. In respect of a number of matters adverse to her interests or the interests of her husband, her evidence throughout the inquiry was implausible. On occasion, it was not capable of belief. Examples of this are provided throughout this report, including her evidence concerning the BAA, which is

addressed below. The Commission is satisfied that on a number of occasions Mrs Hindi gave untruthful evidence. She frequently gave answers that did not directly address the question asked and were patently untrue.

Mr Hindi was not a credible witness either. Even when pressed, he frequently made no real attempt to answer questions put to him. He was argumentative and rude. In response to evidence that was adverse to his interests or those of his wife, much of what he said was not merely improbable but plainly nonsense. He frequently made speeches that had little to do with the questions asked. He sought to justify his conduct by reference to implausible explanations. The Commission is satisfied that Mr Hindi gave untruthful evidence on many occasions.

There were conflicting accounts about the circumstances in which the BAA was signed. Mrs Hindi initially said the BAA was signed in the presence of both Wensheng Liu and herself at Wensheng Liu’s office. However, she later accepted that she could have signed it and then forwarded it to Wensheng Liu for his signature via Mr Uy. Wensheng Liu gave evidence that the latter occurred. The Commission does not consider that anything turns on this.

Neither Mrs Hindi nor Wensheng Liu could recall how they arrived at the sum of \$500,000. Wensheng Liu said that Mr Uy told him the figure. Mr Uy denied he proposed the \$500,000 and suggested the figure was determined as a “percentage of the price” of the Landmark Square property.

The “Agent” listed on the BAA was not Mrs Hindi. Under the heading “Parties”, a “Malcolm James” was identified as the agent.

Figure 4: The Buyer’s Agency Agreement between One Capital and Sydney Realty, listing Malcom James (Mr and Mrs Hindi’s son) as the agent.

PARTIES	The One Capital Group Pty Ltd
ABN / ACN	600 814 131
Address	Suite 144/Level 4, 10 Park Rd, Hurstville Postcode 2220
Phone: Work	Mobile
Phone: Home	Fax
Email	
Agent	Malcolm James
Licencee’s Licence No.* (see note)	157 80 21
ABN / ACN	481 768 344 56
Trading as	Sydney Realty
Address	P.O. Box 429 Hurstville BC 1481
Phone: Work	Mobile 0431 977 155
Fax	Email sydneyrealtysydney@gmail.com
* Note: If the Agent trades as a corporation the licensee’s licence number is the corporation’s licence number.	

While Mrs Hindi was not identified as the “Agent” on the BAA, both the licence number and the mobile telephone number belonged to Mrs Hindi. Despite the fact that the agent identified in the BAA was Malcolm James, Mrs Hindi agreed the signature on the BAA was her signature.

Malcolm James' full name is Malcolm James Hindi. He is Mr and Mrs Hindi's son. As at the date of this agreement he was about 20 years old. He was a partner in Sydney Realty when it was established in 2011. From 2011 to 2018, he assisted Mrs Hindi with the running of Sydney Realty, while also undertaking a combined law degree at university. He generally performed minor administrative tasks, such as preparing advertising material and assisting with open homes. He was paid about \$150 per week, although on a couple of occasions he was also paid a portion of a commission on a sale where he had referred a buyer to Mrs Hindi.

Malcolm Hindi used the name Malcolm James from time to time when working for Sydney Realty and had business cards bearing that name.

Malcolm Hindi has never been a licensed real estate agent, although he did have a certificate of registration permitting him to perform certain activities under the supervision of a licensed real estate agent. He was not permitted to enter agreements such as the BAA.

Mrs Hindi was asked to explain why the name "Malcolm James" appeared on the BAA. She claimed this was the only agreement entered into by Sydney Realty she could recall where Malcolm's name appeared. She said she was "surprised" to see his name on the document. Mrs Hindi also confirmed that Malcolm never had any dealings with Mr Uy or Wensheng Liu regarding this transaction.

Mrs Hindi's evidence concerning her son's involvement in the BAA was not merely incredible, it was absurd. It was also internally inconsistent.

In summary, Mrs Hindi said Malcolm's name may have been on the BAA because:

- "he was assisting in filling out that agency agreement"
- "he would have assisted me by filling that out"
- the appearance of the name "Malcolm James" on the BAA "could just simply be an error".

Mrs Hindi also claimed:

- a recollection of her son filling out the BAA. She recalled "Malcolm filling this form out" and she recalled having asked him to do so
- a recollection that the reason why her son had filled out the BAA was because she "was in a rush" before her meeting with Wensheng Liu and Mr Uy.

The Commission is satisfied Mrs Hindi recognised that her evidence was implausible and untrue. To her knowledge, Malcolm had not filled out the BAA or signed it on behalf of Sydney Realty.

Mrs Hindi changed her evidence. She claimed, "I was the one who signed the agreement, I filled it out". By and large the document was in her handwriting. No part of the document was in the handwriting of her son, Malcolm.

Mrs Hindi could not provide any rational explanation for engaging in such conduct. She claimed it was a "mistake". While acknowledging she understood Mr Hindi would be voting on the Landmark Square development, she denied this was the reason she had used her son's name in the BAA. The Commission rejects Mrs Hindi's evidence. It is satisfied Mrs Hindi used her son's assumed name, Malcolm James, to conceal the fact that she or her husband had any interest or conflict of interest in the Landmark Square development or its progress.

Mrs Hindi was aware the site had the potential to be rezoned and that HCC, including Mr Hindi, would need to vote on that proposal. She also understood that if the agreement became public with her name on it there may have been a concern that Mr Hindi would be one of the councillors approving or rejecting the application. She accepted that she had a significant financial interest in the development proceeding and a deep interest in Mr Hindi voting in favour of the development.

The Commission is satisfied that Mrs Hindi deliberately used the name "Malcolm James" in the BAA to minimise the prospect of Mr Hindi being accused of a conflict of interest in the Landmark Square development, which would require Mr Hindi to disclose it and abstain from voting.

It was submitted on behalf of Mrs Hindi that, having regard to the length of time since the BAA was entered into and the fact that Malcolm's writing was similar to her own, Mrs Hindi did not knowingly give false or misleading evidence. She claimed she could not recall the circumstances surrounding the creation of the BAA and had not been in possession of the BAA, since it was seized by Commission officers when executing a search warrant in October 2020. Accordingly, she had not had time to study it. Although she initially thought the document contained her son's handwriting, she quickly corrected herself.

Counsel Assisting submitted in reply that Mrs Hindi's submissions had some force and that there was a real question as to whether the current state of the evidence provided a reasonable basis for considering the prosecution of Mrs Hindi for knowingly giving false or misleading evidence.

The Commission disagrees with the submissions of Mrs Hindi and Counsel Assisting. The Commission does not accept Mrs Hindi's evidence. Far from having a lack of recollection, she initially told the Commission she had an actual recollection of her son filling out the BAA. She also claimed to have a recollection of having asked him to do so and a recollection that the reason why her son had filled out the BAA was because she "was in a rush" before her meeting with Mr Liu and Mr Uy.

As has been noted, the Commission is satisfied Mrs Hindi used the name Malcolm James to conceal the fact that she or her husband had any interest or conflict of interest in the Landmark Square development or its progress. Mrs Hindi deliberately filled out the BAA in the name of Malcolm James. She deliberately linked that name to her own real estate licence number, email and contact telephone number. She filled out the details and signed the BAA. Any reasonable observer would have wrongly assumed that Malcolm James had signed the BAA and that he was the agent. There was no indication whatever that Mrs Hindi had anything to do with the BAA. This occurred in circumstances where the BAA was a "big deal" for Mrs Hindi. The Commission is satisfied the suggestion that this all occurred through "error" is fanciful.

Was Mr Hindi aware of the BAA when he voted on the Landmark Square planning proposal?

Mrs Hindi denied mentioning the BAA to Mr Hindi. She initially said, "I always keep my commercial agreements separate to Con. I don't tell him my business. It's my business so he doesn't need to know about my business dealings." She also claimed:

I'm a real estate agent who works in the area so there's going to be a number of instances involving me dealing with clients where my husband potentially would have to vote, and this is why I kept it to myself and I did not tell my husband about my commercial dealings with clients.

She said that she did not tell Mr Hindi about such agreements because, if she told him, he would have to declare a conflict of interest, which was "not fair on my clients generally" and if she had to tell Mr Hindi about every agreement that involved him making a decision on HCC, "I would not have any work".

The Commission is satisfied Mrs Hindi's evidence was untrue. Both Mr and Mrs Hindi took an intense interest in the progress of the Landmark Square development proposal from start to finish. They met together with Mr Uy and others who had a financial interest in the development. Some examples are:

- On 18 May 2015, Mr Hindi attended a Japanese restaurant with Mr Uy and Mr Dickson of Dickson Rothschild, regarding the development of the Landmark Square site. There is evidence Mrs Hindi also attended this meeting. If not, she attended a further meeting at the same Japanese restaurant. By 18 May 2015, Mr and Mrs Hindi were well aware that One Capital was preparing a planning proposal to rezone the land.
- On 18 March 2016, Mr and Mrs Hindi and Mr Badalati attended a dinner in Chinatown. Wensheng Liu and Mr Uy also attended. During that dinner, an agreement was signed by Yuqing Liu (an investor in the Landmark Square development) on behalf of his company, Tangshan Xinfeng Thermoelectric Group Co Ltd ("Xinfeng"), and Wensheng Liu on behalf of One Capital. The agreement concerned a number of possible developments in the Hurstville Local Government Area. The developments included the Treacy Street development and the Landmark Square development. This meeting is addressed later in this chapter.
- In April 2016, Mr and Mrs Hindi, and Mr Badalati travelled to China in relation to a signing ceremony of the same agreement which, as noted above, in part concerned the Treacy Street and Landmark Square developments. They spent time with Yuqing Liu, Wensheng Liu and Mr Uy during that trip and returned a few days prior to the HCC vote on the Landmark Square development. The Commission is satisfied that prior to arriving in China, Mr Hindi and Mr Badalati were aware that the purpose of their attendance was to promote the Treacy Street and Landmark Square developments to officials and potential investors.
- From May 2016, Mrs Hindi had multiple meetings and communications with a representative of Gencorp, Elaine Tang, sometimes in the presence of Mr Uy. The communications were primarily via text message. The meetings commenced around the same time as their text message communications, at various locations. Mrs Hindi engaged in the communications and participated in the meetings for the purpose of acting as a conduit for information provided by Mr Uy and Ms Tang to Mr Hindi, and information and advice from Mr Hindi to Mr Uy and Ms Tang, in relation to the Landmark Square development. These matters are addressed in chapters 7 and 8.
- In June 2017, Mr and Mrs Hindi also had a meeting with a firm of solicitors and Mr Uy, among others. Mr Hindi provided advice to

One Capital, the proponent of the proposed development. These matters are further addressed in chapter 7.

According to Mr and Mrs Hindi, the topic of the BAA never came up during the above interactions. The BAA did not expire until 21 July 2016. The conjunction agreement remained on foot throughout. It beggars belief that despite the Hindis' repeated interactions with the two persons involved in arranging the BAA, it was never mentioned to Mr Hindi by his wife, Wensheng Liu or Mr Uy.

There was no reason to conceal the BAA from Mr Hindi. He was already compromised and should never have voted in respect of the Landmark Square development. Mr Hindi's promotion of the Landmark Square development during his visit to China and Mrs Hindi's presence throughout, combined with Mrs Hindi's attendance at the meetings referred to above and the performance of her role as a conduit in respect of information about the Landmark Square development were enough to require Mr Hindi to make disclosure to HCC and abstain from voting. So too was the conjunction agreement between Mrs Hindi and Taylor Nicholas. It is not credible that Mrs Hindi concealed from her husband knowledge of the BAA so as to prevent his exclusion from voting in respect of the Landmark Square development. Mrs Hindi did not conceal the BAA from Mr Hindi. Rather, through the creation of the BAA using Malcom's name, she concealed from others her role in the Landmark Square development and her husband's disclosable interest.

The Commission is also satisfied that Mrs Hindi's evidence that she did not provide information to Mr Hindi in respect of her business more generally was untrue.

Mrs Hindi was presented with email correspondence between herself and Mr Hindi regarding properties at Richards Avenue, Peakhurst. Mrs Hindi had been the agent in relation to the sale of 5 and 7 Richards Avenue, Peakhurst, which was in the HCC area. In particular, on 12 September 2013, Mrs Hindi sent an email to Emile Sidarous, who was then a director of the company that owned 5 and 7 Richards Avenue. The email was blind copied to Mr Hindi. The email attached a letter to the owners of 3 Richards Ave informing them that she had a potential buyer for that property, that the buyer had just purchased 5 and 7 Richards Ave, that the buyer was willing to offer the same price for the purchase of 3 Richards Ave and the buyer was looking to develop 5 and 7 Richards Avenue to build a block of residential units. Mrs Hindi proposed that her commission fee would be 1.5 per cent. Mrs Hindi was not able to explain why she had copied in Mr Hindi to this email. Neither was Mr Hindi. He said that Mrs Hindi did not speak English

when she moved to Australia years ago and would sometimes send him draft letters to check her spelling/grammar. The Commission is satisfied that Mr Hindi's evidence was untrue. Mrs Hindi's command of the English language was apparent in the witness box. She had no language difficulties. On its face, the letter demonstrates Mrs Hindi also had a good grasp of written English. Further, it is implausible that Mrs Hindi sent the letter to Mr Hindi for advice. It was not a draft letter and had already been sent to Mr Sidarous. There was no reason to obtain advice. Whatever the precise reason for sending the letter to Mr Hindi via a blind copy, Mrs Hindi had no qualms about keeping Mr Hindi in the loop in relation to her business dealings, including dealings where he would more likely than not be required to cast a vote as a councillor. Mr Hindi was required to vote, and did vote, in respect of a development of a block of residential units which was to extend across 5 and 7 Richards Avenue. Mr Hindi voted in favour of the development. He did not declare any conflict of interest.

On 23 April 2014, Mrs Hindi sent a further email to Mr Hindi again concerning 5 and 7 Richards Avenue, which forwarded an email she had received from a firm of solicitors that included an attached order on the agent for the sale of 5 and 7 Richards Avenue. It indicated that the settlement for the property had taken place and that she was authorised to account to the vendors for the deposit less her commission. Mr Hindi could not explain why this was sent to him but speculated that perhaps Mrs Hindi was telling him that the sale had completed, and she was about to receive her commission so that he could then make his own assessment of whether he needed to declare any conflict of interest. This evidence is also inconsistent with Mrs Hindi's evidence that she did not tell Mr Hindi about her business dealings, especially where they might pose a conflict of interest for him. The Commission is satisfied there was no such practice.

On 11 July 2014, Mr Hindi sent an email to Mrs Hindi that forwarded an email from Michael Watt (then director of planning and development at HCC) to all HCC councillors. Mr Watt stated that a question had arisen at a councillors' workshop the night before about the current status of DAs in the Peakhurst R3 area and provided a map and table that indicated the status of various DAs, including 5 and 7 Richards Avenue. The map indicated that the DA for that site had been lodged on 20 February 2014 and was under assessment. Mrs Hindi could not explain why Mr Hindi sent her this information, other than "for interest" or "keeping an eye on what's happening in the area", and potentially because they owned a property at Peake Parade, as shown on the map. Mr Hindi also could not recall, but suggested it was because Mrs Hindi was interested in what was happening in the area. Those explanations are also implausible. A more likely scenario is

that Mr Hindi was sending her this information because the status of the DA on 5 and 7 Richards Avenue was relevant to Mrs Hindi's involvement with that property.

When this material was put to Mrs Hindi, she modified her earlier evidence significantly. She said the difference between the 11 July email with the communications concerning 3 Richards Ave was that the latter was no more than an offer. When she copied Mr Hindi into that correspondence, no agreement had been finalised regarding her commission. She said that "it's hard when you're in the same household. You bounce ideas off each other." She then claimed that "when it comes to actually having agreements between clients, this is, I kept separate from him". Mr Hindi also sought to draw a distinction between a commission Mrs Hindi was entitled to, and a commission she had in fact received, claiming:

if that commission was on foot, which means it is current ... the contract has not been finished, then I have a conflict. If that thing has been completed and finished and a DA comes to council, I don't have a conflict.

It was put on behalf of Mr Hindi that there was no evidence that either the sale of 5 and 7 Richards Avenue or Mrs Hindi's commission on the sale were dependent upon a DA being approved. Mrs Hindi noted that the standard agency agreement had the effect that her entitlement to a commission arose upon payment of the deposit.

There are two problems with these submissions.

First, the draft letter regarding 3 Richards Ave, blind copied to Mr Hindi in September 2013, indicated that Mrs Hindi had sold 5 and 7 Richards Ave and was *entitled* to a commission. That commission was *not in fact paid* until around April 2014, when the properties settled. However, as of September 2013 Mrs Hindi knew that the owners intended to build a block of residential apartments on the site, which would obviously require a DA. That DA was lodged in February 2014. As at September 2013, there was a real possibility that Mr Hindi would be involved in deliberating on the 5 and 7 Richards Ave DA while payment of Mrs Hindi's commission was still pending. This meant there was a possibility Mr Hindi would have to declare a conflict in respect of 5 and 7 Richards Ave, and yet Mrs Hindi had no hesitation including Mr Hindi in this correspondence.

Secondly, whether or not Mr Hindi would have a conflict of interest when he came to vote on the DA for 5 and 7 Richards Avenue, the problem remains in reconciling Mrs Hindi's behaviour in respect of this property with her evidence to the effect that she never told Mr Hindi about any of her commercial dealings in the Hurstville Local Government Area. They cannot be reconciled.

Mrs Hindi claimed she "did the best that I could to keep my dealings separate from him [Mr Hindi]". The Commission rejects this evidence. It is untrue. Sending communications to Mr Hindi concerning her work on 5 and 7 Richards Ave was deliberate.

The Commission is satisfied Mrs Hindi did not have a practice of keeping from Mr Hindi information about her work on sites in the HCC area that might pose a conflict of interest for him. That includes the Landmark Square site, the BAA of July 2014 and Mrs Hindi's substantial interest in the development and its progress, including around the time the BAA was signed in July 2014.

Mr Hindi's evidence was that he never saw the BAA until it was seized from his house by Commission officers when executing a search warrant in October 2020. He said Mrs Hindi never mentioned that she stood to gain \$500,000 if the Landmark Square sale went ahead. When it was suggested to him that he was interested in whether his wife's business succeeded, he claimed, "No, she was a housewife with four kids. She was just doing it as fun, so why would I care?" When it was suggested to him that he enjoyed celebrating her success, he further claimed, "No ... That was just part-time, nothing. It wasn't actually, there's no, there's no office, there's nothing, there's no staff, there's nobody. What a success, of course not." When asked whether he had ever celebrated Mrs Hindi's sale of a big property he said, "No, absolutely not".

Counsel Assisting submitted that either Mr Hindi was completely disinterested in his wife's business or was being disingenuous in his evidence to counter any suggestion that the BAA, and Mrs Hindi's potential \$500,000 reward, were something he and Mrs Hindi might have been excited to discuss at the time. The Commission is satisfied Mr Hindi was being disingenuous. His evidence was untrue.

Mr Hindi was questioned further on this topic. He was asked whether he found out about the BAA in 2014 or 2015. Despite earlier having denied any knowledge, he said "I don't recall". He then changed his evidence yet again to deny he knew about it in 2014, 2015 and 2016.

The Commission does not accept Mr Hindi's evidence in relation to his lack of knowledge of the BAA. The Commission is satisfied that Mr Hindi was aware of the BAA and Mrs Hindi's financial interest in Landmark Square. Although a precise date has not been established, the Commission considers it is more likely than not that Mrs Hindi informed Mr Hindi of the existence of the BAA on or around the date of the agreement, namely, 24 July 2014. Given the large amount of money involved and the fact that on other occasions she had no hesitation in disclosing her financial interest in developments that

might require his vote, it is not credible that Mrs Hindi concealed her interest in Landmark Square from Mr Hindi. The Commission has no doubt that Mr Hindi was aware of Mrs Hindi's interest prior to the HCC vote on the Landmark Square development on 20 April 2016.

August 2014: One Capital obtains options to purchase part of the Landmark Square site and briefs Dickson Rothschild

On 26 August 2014, One Capital entered into option agreements with the owners of the Landmark Square site to purchase some of the site, namely 61–65, 67 and 71 Forest Road. This was arranged through One Capital's lawyers. It appears Mrs Hindi was not involved. There were subsequent variations to the options on 13 January 2015 (in relation to 71A Forest Road), 1 February 2016 (in relation to 61–67 Forest Road) and 5 February 2016 (in relation to 71A Forest Road).

Dickson Rothschild is a firm of architects, planners and urban designers. On 16 October 2014, One Capital engaged Dickson Rothschild to prepare a master plan and planning proposal for the Landmark Square development. Nigel Dickson worked on the planning proposal for several years. Mr Dickson has worked in planning for more than 30 years. He has extensive experience working on DAs and has worked on five-to-10 planning proposals. Mr Dickson's evidence was that he regularly attended meetings with Mr Uy, who was his primary contact for the Landmark Square work, and Wensheng Liu and Ms Tang from time to time. Mr Dickson said he knew Mr Uy as "Philip Ly". Dickson Rothschild also engaged a consultant, Michael Gheorghiu, to work on the planning proposal. Mr Gheorghiu was also an experienced planner, having worked in urban planning and design for 20 years. He had also worked on multiple DAs and planning proposals. He began working on the Landmark Square planning proposal in late 2015, when Mr Dickson went on leave, and had day-to-day responsibility for the project from around that time. He dealt mostly with Ms Tang and to a lesser extent with Mr Uy. Mr Gheorghiu finished working as a consultant for Dickson Rothschild around 2018.

As at late 2014, GR Capital Group's sole employee was a Xin (Chris) Yan. Mr Yan had worked for Wensheng Liu on the Treacy Street development since 2014, primarily managing the accounts, doing research and preparing Chinese marketing materials. He was based at GR Capital Group's office at Park Street, Hurstville, and, from approximately March 2015, at Forest Road, Hurstville. Mr Yan told the Commission that from 2015 he began working for One Capital on the Landmark Square

development, along with Ms Tang. At the time of the public inquiry, Mr Yan still worked with Wensheng Liu, although through a different company.

Ms Tang had been employed by Gencorp since 2014. She began to work more closely with Mr Uy from around the end of 2015. In relation to the Treacy Street development, this involved working on the modification applications and the voluntary planning agreement (VPA). In relation to the Landmark Square development, it involved working on the planning proposal, including meeting with the planners and HCC staff. Ms Tang's evidence was that either Mr Uy or Mr Vegners would give her instructions on the Treacy Street development. It was mostly Mr Uy who would give her instructions on the Landmark Square development. In approximately 2017, Ms Tang stopped working directly for Gencorp and started her own consulting company, E Creative Solutions Pty Ltd. She commenced invoicing GR Capital Group and One Capital for her time in relation to work she was performing for Gencorp. Ms Tang finished up working on both developments in mid-2019. She has not worked with Wensheng Liu or Mr Uy since that time.

October 2014: GR Capital Group lodges a DA for the Treacy Street development

On 3 October 2014, GR Capital Group lodged a DA for the Treacy Street development with HCC (DA 2014/1083). At that time, it was for a mixed-use development, comprising 75 apartments, a commercial/industrial/retail space of 400 square metres and a basement carpark. The total cost of the work was estimated at \$30 million.

The proposed FSR and height for the development were well in excess of the applicable planning controls. The relevant planning controls at the time permitted about seven storeys and an FSR of 3:1, whereas the DA was for 11 storeys and an FSR of 4.9:1.

By 31 October 2014, the DA for the Treacy Street development had been referred to the JRPP. Mr Hindi and Mr Sansom were members at that time.

October 2014: GR Capital Group makes a VPA offer for the Treacy Street development

On 3 October 2014, GR Capital Group made an offer to HCC to enter into a planning agreement (commonly referred to as a "voluntary planning agreement" or "VPA") in connection with the Treacy Street DA. A VPA is an agreement between developers and local councils under s

7.4 (or, at the relevant time, s 93F) of the *Environmental Planning and Assessment Act 1993* (“the EP&A Act”) in connection with a DA or planning proposal. Under a VPA, the developer agrees to dedicate land, pay monetary contributions or provide other material public benefits usually for infrastructure, services or other public amenities. The Treacy Street VPA offer proposed the dedication of a strip of land, construction of a new footpath and the undertaking of some landscaping works and road upgrade works. On 29 October 2014, GR Capital Group amended the Treacy Street VPA proposed to HCC to include the dedication of a ground floor retail tenancy (82 square metres) and a car space.

In November 2014, HCC staff prepared a report to HCC recommending that the Treacy Street VPA offer be refused on the basis that it did not provide sufficient public benefit for an apartment block of that scale. The report recorded that GR Capital Group was the applicant. It noted that the DA was still being assessed and was to be presented to the JRPP on 27 November 2014, but that the proposed height and FSR of the development were well in excess of the applicable controls. The report provided some commentary on GR Capital Group’s offer but noted that the information had not been conveyed to the applicant’s lawyer. This statement made it clear that staff had not yet negotiated with the applicant in respect of the offer. The report also stated the offer had not yet been reviewed by HCC’s lawyers. It stated that the offer was not considered to provide sufficient public benefit because:

1. *The public domain and landscaping works for the site would be required as a condition of any development consent.*
2. *The public domain and landscaping works along surrounding street frontages are not supported as the land is not owned by the applicant and these sites may also be affected by future redevelopment.*
3. *The dedication of retail floor space and a car space are not considered to be of public benefit.*
4. *With regard to the proposed dedication of land along the western boundary of the site along The Avenue, this is considered to have some public benefit and would be welcomed as part of any offer to enter into a VPA. However, as part of this, the relocation of services and associated infrastructure should be considered in light of the future widening of The Avenue.*

HCC voted to accept the VPA offer on 19 November 2014, despite:

- the terms of the report by HCC staff, which made clear that the assessment of the VPA required further work

- the recommendation by HCC staff that the Treacy Street VPA offer be refused
- the fact that there had been no negotiation of the proposal or vetting by HCC’s lawyers.

The HCC vote was less than seven weeks after GRC Capital lodged the offer to enter into a VPA with HCC. Mr Badalati, Mr Hindi and Mr Sansom voted in favour of the offer, which was accepted. No conflicts of interest in relation to Wensheng Liu or Mr Uy were declared by Mr Badalati, Mr Hindi or Mr Sansom. Whether such disclosures were required is considered below.

HCC planning director Mr Watt had prepared the report on the VPA offer. During the public inquiry, Mr Watt told the Commission he was “surprised” that the council accepted the offer at this stage for two reasons:

Firstly, because we were still assessing it and we’d identified some deficiencies for them and we put that to them in the council report. And secondly, this report was called for ahead of the process of work that we needed to do to provide council with full information and indeed negotiate the proposition with the applicant at the time.

Mr Watt’s evidence was that it was not best practice to report to HCC on VPA offers when they were at such a preliminary stage, and it was not his idea to do so. His team was requested to put a report up to HCC and so they prepared a report – a “preliminary” report – on the extent of the investigation to date. While he did not have a specific recollection of who made that request, he believed it was the general manager. The general manager controlled the agenda and the items that went before HCC councillors. Mr Watt could not think of any good reason why it was appropriate for HCC to accept the offer at this stage.

Further problems with the VPA offer were identified in an email from Mr Watt to Mr Dickson on 16 March 2015, including that while the VPA had proposed works of up to \$890,000, the list of works only totalled \$582,474. Mr Watt’s evidence was that he had intended that HCC staff would engage with GR Capital Group on this and those other issues before HCC councillors voted on the offer. Mr Watt said that by voting in favour of the VPA prior to the DA assessment being finalised:

it forced our hand to the extent that council already made a determination on the VPA and so it went ahead of the DA before ... we hadn’t assessed the DA ... they were turning their minds to the VPA and a development they hadn’t even had before them.

Mr Watt agreed with the suggestion that this process was:

odd because what you're doing when you're assessing the VPA offer is working out whether it provides a sufficient public benefit in the context of the value of the development overall and the impacts of the development overall.

Nerida Stores is the executive strategic planner at GRC, having held the position since 2011 when the role was previously with HCC. Ms Stores was another HCC officer who worked on the VPA offer. She told the Commission she was “surprised” when HCC voted in favour of accepting the Treacy Street VPA offer, explaining:

Because the report had outlined that the public benefits weren't to be, weren't supported by staff and that they weren't considered sufficient to address the impacts of the development. So, and also that we hadn't received legal advice on the offer or that we'd actually done, undertaken the full assessment. So we were quite surprised.

Ms Stores said the Treacy Street VPA offer did not provide the information required for a VPA under the legislation, such as the security that would be provided for the works, and other key components, including the form of dispute resolution and the timing of the provision.

Mr Watt's evidence was that Mr Badalati, Mr Hindi and Mr Sansom:

were instrumental in leading the council's direction on voting in generally all matters that came before the council. They were basically the leaders of the controlling bloc [of approximately eight councillors] and usually you could find that if one of those ... councillors [Mr Badalati, Mr Hindi and Mr Sansom] moved a motion when the matter was being considered, that motion usually was accepted.

Mr Watt said he gave this evidence based on his experience in having attended every council meeting while he was director of planning.

On 17 December 2014, a rescission motion was lodged with HCC in relation to the Treacy Street VPA, but it was unsuccessful. Mr Badalati, Mr Hindi and Mr Sansom voted against it, along with councillors Drane, Liu, Kastanias, Wu and Sin. Councillors Thomas, Jacovou, Mining and deputy mayor Stevens voted in favour of the rescission motion.

Did the former councillors know of Wensheng Liu or Mr Uy's involvement when voting on the Treacy Street VPA offer?

An issue explored over the course of the public inquiry was the nature of the relationship between the three former councillors, Wensheng Liu and Mr Uy, including whether they knew of the involvement of Wensheng Liu or Mr Uy in the Treacy Street and Landmark Square developments at the time they cast their votes concerning those developments.

When voting on the Treacy Street VPA offer on 19 November 2014, Mr Badalati, Mr Hindi and Mr Sansom did not make any declaration of any conflict of interest.

Disclosures concerning Wensheng Liu

The November 2014 report prepared by HCC staff on the Treacy Street VPA offer recorded that GR Capital Group was the proponent of the development. The report also stated that it annexed a company extract, which at that time should have indicated that Wensheng Liu was a director and shareholder of the company. The copy of the report tendered during the public inquiry did not have the company extract attached. Mr Badalati's evidence was that he read the report prior to voting. Mr Sansom accepted that it was his practice to read the reports, including company extracts to determine whether he had a conflict of interest. Mr Hindi also said that his practice was to read the company extracts.

Before the vote on 19 November 2014, Mr Badalati had travelled to China with Wensheng Liu, in January 2014. The purpose of the trip was to meet with potential purchasers of 1–5 Treacy Street. By 19 November 2014, Mr Badalati had also referred Mr Gunning to Wensheng Liu concerning properties in the Hurstville area. Mr Badalati's evidence was that he knew around the time the Treacy Street DA was lodged that GR Capital Group was the proponent and that Wensheng Liu was involved. Accordingly, Mr Badalati knew that Wensheng Liu had a financial interest in the Treacy Street development and had travelled to China to assist Wensheng Liu to promote it to potential investors before he first voted in respect of that development on 19 November 2014. The Commission is satisfied Mr Badalati had a significant non-pecuniary conflict of interest, which required disclosure of his relationship with Wensheng Liu. Had he done so, he would not have been permitted to vote in respect of the Treacy Street development.

It was submitted on behalf of Mr Sansom that the evidence before the Commission does not support a

conclusion that his relationship with Wensheng Liu as at 19 November 2014 constituted a significant non-pecuniary conflict of interest. It was submitted that they were not friends, had only been in contact on a handful of occasions and any knowledge Mr Sansom had of Wensheng Liu's involvement in GR Capital Group was, at best, speculative.

The Commission is satisfied that, by 19 November 2014, Mr Sansom did have a significant non-pecuniary conflict of interest arising from his relationship with Wensheng Liu and he knew that to be the case at the time. Mr Sansom had travelled to China with Wensheng Liu in March 2014 to promote the Gloucester Road Carpark development. In his evidence to the Commission, he accepted that his participation in the trip could be characterised as a favour he was doing for Wensheng Liu and Mr Uy. During the trip, Wensheng Liu arranged for a letter to be issued by a Chinese company falsely confirming that Mr Sansom had been engaged by that company as a consultant. Mr Sansom drafted the text of the letter and sent it to Wensheng Liu to arrange for it to be signed. The purpose of the letter was to assist Mr Sansom to obtain a Chinese business visa. Mr Sansom accepted this could be characterised as a favour from Wensheng Liu. The nature of their relationship was such that Mr Sansom was comfortable doing a substantial favour for Wensheng Liu by travelling to China to help promote a property development and was also comfortable in asking him to procure a letter falsely claiming Mr Sansom was engaged as a consultant.

During the public inquiry, Mr Hindi denied knowing Wensheng Liu around this time. There is no evidence to the contrary.

Disclosures concerning Mr Uy

Mr Badalati told the Commission that he considered Mr Uy to be his "friend" from the start of 2014. While Mr Uy denied this, saying they were "acquaintances", the Commission is satisfied Mr Badalati's characterisation of their relationship was accurate, having regard to the following evidence.

First, Mr Badalati had spent time with Mr Uy in China on multiple occasions over many years, including in the presence of escorts. Second, Mr Uy had also made a telephone available to Mr Badalati for use in China and Australia. Other evidence available to the Commission supports Mr Badalati's claim they were "friends", including:

- texts between Mr Uy and Mr Badalati indicating they met at coffee shops in Sydney from at least 2012

- Mr Badalati's evidence to the Commission that they were in touch relatively regularly in Sydney throughout 2014
- video footage of Mr Badalati talking to Mr Uy's brother, Tommy Wong, in the presence of escorts.

By 19 November 2014, Mr Badalati knew that Mr Uy had an involvement in the Treacy Street development. He had discussed with Mr Uy and Wensheng Liu their interest in developing Treacy Street. Although he was not sure about Mr Uy's specific role in the Treacy Street development, he knew that Mr Uy or his company, Gencorp, were involved. He knew that Gencorp, using the services of Mr Vegners, would build the development. Mr Badalati also said that, prior to the vote, Mr Uy knew that Mr Badalati believed the "site could handle the extra height".

In light of Mr Badalati's friendship with Mr Uy and Mr Badalati's evidence about his knowledge of Mr Uy's involvement in the development, the Commission is satisfied that by the time Mr Badalati first voted on the Treacy Street VPA on 19 November 2014, he did so knowing Mr Uy had a financial interest in the development.

The Commission is satisfied Mr Badalati had a non-pecuniary interest in the Treacy Street development on account of his friendship with Mr Uy and his knowledge of Mr Uy's involvement with this development. In accordance with clause 4.12 of the HCC Code of Conduct, Mr Badalati was required to disclose that interest. He failed to do so. Having regard to the fact that Mr Badalati and Mr Uy had known each other for at least 15 years, they had met in China regularly and were in regular contact in Sydney, the Commission is satisfied Mr Badalati had a significant non-pecuniary interest in the Treacy Street development. Accordingly, Mr Badalati was also required to absent himself from decision-making regarding the Treacy Street development under clause 4.16(b) of the HCC Code of Conduct. He failed to do so. As set out in chapter 1, Mr Badalati's evidence was that he understood his obligations under the HCC Code of Conduct from at least March 2013.

Mr Sansom admitted that from at least 2013 he considered Mr Uy to be a friend. Mr Uy denied this, describing Mr Sansom as an "acquaintance". The Commission is satisfied Mr Sansom's characterisation of their relationship is correct. Mr Sansom had spent time with Mr Uy in China on multiple occasions over many years. Mr Uy had introduced Mr Sansom to a real estate agent in China and Mr Sansom subsequently purchased an apartment in the same building as Mr Uy's apartment. Mr Sansom and Mr Uy exchanged text messages and arranged to meet up from time to time in Sydney. On 22 February 2014, when Mr Sansom texted Mr Uy to inform him that his wife had passed away, Mr Uy replied by expressing his condolences

and said, "Please know I am here as your friend and please let me know if there is anything I can do for you and your family at this sad time". In March 2014, Mr Uy paid for the flights of Mr Sansom and his partner to China and subsequently spent time with them on that trip.

Mr Sansom knew Mr Uy had an interest in the Treacy Street development. Mr Sansom told the Commission that it was very likely he knew by 19 November 2014 that Mr Uy was involved in "property development". He said it was also "likely" he knew by that time – although he could not definitively say one way or the other – that Mr Uy had some sort of commercial interest in the Treacy Street development. The Commission also heard evidence from Mr Uy and Wensheng Liu relevant to Mr Sansom's knowledge. Mr Uy gave evidence that in around October 2014, prior to the DA being lodged, he had spoken to Mr Sansom about the Treacy Street development and sought his advice on whether there should be a commercial space reserved on the ground floor. Wensheng Liu gave evidence that he understood Mr Uy was talking to Mr Sansom prior to October 2014. When Mr Uy's evidence was put to Mr Sansom, he claimed he could not recall the conversations but did not deny they occurred.

It was submitted on behalf of Mr Sansom that there was no evidence that Mr Sansom was actually aware of Mr Uy's interest in the Treacy Street development at the time of the exercise of any official function. The Commission does not accept this submission. The Commission is satisfied that by the time Mr Sansom first voted on the Treacy Street VPA offer on 19 November 2014 he did so knowing Mr Uy had a financial interest in the development.

During the public inquiry, Mr Sansom accepted that by 19 November 2014 he likely understood that by virtue of his relationship with Mr Uy he had a non-pecuniary interest in the Treacy Street development. He also said it was possible he voted in favour of the Treacy Street VPA offer because of his relationship with Mr Uy, although he said he would have still looked at the offer closely irrespective of that relationship. He said that in hindsight he should have declared his relationship with Mr Uy as a non-pecuniary, non-significant interest. The Commission rejects Mr Sansom's hindsight analysis and concludes that he resorted to it to lessen his culpability. The Commission is satisfied Mr Sansom knew he had a conflict of interest when he voted on 19 November 2014 and deliberately failed to disclose it. The Commission is satisfied Mr Sansom had a non-pecuniary conflict of interest in the Treacy Street development that he deliberately failed to disclose.

It was submitted on behalf of Mr Sansom that he and Mr Uy had an association which at best would amount to a non-significant, non-pecuniary interest. As a consequence, his conduct was not a substantial

breach of the HCC Code of Conduct, nor was it serious corrupt conduct for the purposes of s 74BA of the ICAC Act, because "disclosure in writing would simply lead to the same result, namely Mr Sansom continuing to participate in his official functions".

The Commission does not accept Mr Sansom's submissions. By 19 November 2014, Mr Sansom and Mr Uy had known each other for at least seven years. Their regular interactions in China and Australia, including in the presence of escorts, demonstrates a close relationship as does Mr Uy's payment for the airfares of Mr Sansom and his partner only eight months prior to the vote on the Treacy Street VPA. The Commission is satisfied Mr Sansom's relationship with Mr Uy gave rise to a significant non-pecuniary interest in respect of the exercise of Mr Sansom's public official functions in relation to the Treacy Street development.

It is relevant to note that even if Mr Sansom's non-pecuniary interest was not significant, the HCC Code of Conduct required disclosure of the interest fully and in writing. If Mr Sansom considered it to be non-significant, he was also required to explain why no further action was necessary. He failed to do so. Declaring non-significant interests is required so that other councillors participating in discussions and the ultimate vote know that the declarant's views might be coloured by the facts and circumstances giving rise to the conflict. In that way, the conflict of interest can be managed by the declarant and council. That might include non-participation in a vote, or it might amount to nothing more than having the declarant's disclosure stand as a matter of public record. The Commission is satisfied such transparency is vital. It is not a matter of form but of substance. Proceeding without transparency creates a very significant risk that the confidence of members of the public in public administration will be undermined.

Mr Hindi denied that, by November 2014, he knew Mr Uy was involved in the Treacy Street development or that he had any discussions with Mr Uy about that development around that time. There is no doubt that Mrs Hindi knew Mr Uy by November 2014. However, there is no evidence that Mr Hindi regularly interacted with Mr Uy prior to HCC's vote on the VPA offer on 19 November 2014.

April 2015: Mr Hindi and Mr Sansom approve the Treacy Street DA, as members of the JRPP

The Operational Procedures of the JRPP required HCC to appoint two of the five relevant JRPP members, with one member having expertise in one or more of the following areas: planning, architecture, heritage,

the environment, urban design, land economics, traffic and transport, law, engineering or tourism.

The JRPP was separate from HCC and it was not bound by the views of HCC, including those of the HCC staff who prepared the report to HCC councillors in November 2014. As has been noted, HCC staff recommended that the Treacy Street VPA offer be refused on the basis that it did not provide sufficient public benefit for a development of its scale.

On 11 September 2014, Mr Sansom was appointed to the JRPP. Mr Hindi was appointed as the alternative representative.

On 1 April 2015 the JRPP, which at that time included both Mr Sansom and Mr Hindi, unanimously approved the DA for the Treacy Street development subject to deferred commencement. The other three members who voted at the meeting were John Roseth (chair), David Furlong and Sue Francis.

Mr Sansom and Mr Hindi made no declarations when voting as members of the JRPP in relation to Wensheng Liu or Mr Uy.

The Commission has found that, by 19 November 2014, Mr Sansom's relationship with Mr Uy amounted to a significant non-pecuniary interest in relation to the Treacy Street development, which he should have declared to HCC when voting on the Treacy Street VPA offer. When the JRPP voted to approve the Treacy Street DA on 1 April 2015, Mr Sansom and Mr Uy continued to maintain a friendship. For example, travel movement records show that in the days following the JRPP vote Mr Uy travelled to Hong Kong. Mr Uy departed on 5 April 2015 and Mr Sansom followed on 8 April 2015. Mr Sansom returned on 15 April 2015 and Mr Uy returned on 23 April 2015. The Commission located a photograph dated 9 April 2015 stored on Mr Uy's mobile telephone showing Mr Sansom eating at a Chinese restaurant. Mr Sansom accepted he met Mr Uy in China on this occasion. The Commission also located a photograph dated 19 March 2015 stored on Mr Uy's telephone of Mr Sansom's Qantas flight itinerary for his April 2015 China trip. There is no reliable evidence establishing that Mr Uy paid for Mr Sansom's flights to China on this occasion. Mr Uy denied paying for these flights.

The Commission is satisfied Mr Sansom's relationship with Mr Uy continued to amount to a significant non-pecuniary interest in relation to the Treacy Street development at the time of the 1 April 2015 vote by the JRPP.

If a member had a non-pecuniary interest, the JRPP Code of Conduct required that member to manage it.

The member was required to remove the source of the conflict or disclose its nature at a meeting of the JRPP. Unless the minister responsible for the planning portfolio or the JRPP determined otherwise, the member was prohibited from being involved in the matter. The member was required to absent themselves during deliberation of the matter and could not take part in any decision on the matter.

Mr Sansom told the Commission that in retrospect he should have raised "some sort of conflict of interest" concerning Mr Uy when voting on the Treacy Street DA, and he accepted he should have at least declared a "non-significant conflict of interest". The Commission has already identified that Mr Sansom was required to declare a significant non-pecuniary interest in respect of the Treacy Street VPA. The Commission is also satisfied Mr Sansom was required to disclose his significant non-pecuniary conflict of interest to the JRPP and not be involved in making decisions in relation to the Treacy Street DA. The Commission is further satisfied Mr Sansom deliberately failed to make disclosure. In so doing, he was in breach of his obligations under the JRPP Code of Conduct.

The same can be said in relation to Wensheng Lui. GR Capital Group was the proponent of the development. The report sent by HCC staff to HCC councillors also stated that it annexed a company extract, which at that time would have indicated that Wensheng Liu was a director and shareholder of the company. Mr Sansom accepted that it was his practice to read such reports, including company extracts, to determine whether he had a conflict of interest.

As previously noted, Mr Sansom had also travelled to China with Wensheng Liu in March 2014 to promote the Gloucester Road Carpark development, and Wensheng Liu had arranged a letter to support Mr Sansom's business visa at around that time. The Commission is again satisfied Mr Sansom had a significant non-pecuniary interest, which required he disclose his relationship with Wensheng Liu to the JRPP.

There is insufficient evidence to show that by 1 April 2015 Mr Hindi and Mr Uy were friends or that Mr Hindi knew the nature of Mr Uy's financial interest in the Treacy Street development. The same is true of Mr Hindi's relationship with Wensheng Liu. While Mrs Hindi had an association with both Wensheng Liu and Mr Uy since at least July 2014 in relation to the Landmark Square development, there is no evidence Mr Hindi had any regular interactions with either of them by 1 April 2015.

It is relevant to note here Mr Badalati's evidence to the Commission included that, following the JRPP vote on 1 April 2015, Mr Uy paid him \$70,000 in cash as a

“thank you” for his help on the Treacy Street development and that he learned from Mr Hindi that Mr Hindi had received a similar amount from Mr Uy. Mr Badalati was uncertain about the timing of the payment to him and the timing of his conversation with Mr Hindi. However, he did not resile from his evidence that he had received the sum of \$70,000 and that he had learned from Mr Hindi that he had received a similar amount from Mr Uy. These matters are addressed in chapter 6.

December 2015: a substantial Treacy Street modification application is lodged and rejected

On 14 September 2015, new councillors were appointed to the JRPP. On this occasion, Mr Hindi and Mr Badalati were appointed. Mr Sansom had previously served as a delegate.

On 15 September 2015, GR Capital Group lodged a modification application in respect of the Treacy Street development (MOD 2015/0118). It included a modest proposal to increase the lift size and install a new common toilet facility.

On 21 October 2015, HCC voted to approve a further modification (MOD 2015/0117) relating to the issue of a construction certificate prior to formal execution of the VPA and voted to put the VPA on exhibition.

On 17 December 2015, GR Capital Group lodged a further modification application (MOD 2015/0162). This application sought substantial modifications. The applicant sought to increase the building height by five storeys (resulting in 16 storeys plus a roof-top level), an additional 27 units and an additional 44 car spaces. This represented a further height increase for a development that already significantly exceeded planning controls.

On 1 February 2016, Mark Raymundo, a development assessment officer at HCC, emailed an assessment report on the December 2015 modification application for consideration by the JRPP to the DPE, for circulation to the JRPP members. The assessment report noted that the proposed modification would increase the FSR from 4.9:1 (as approved) to 6.9:1, and the permissible height from 39.7 metres (as approved) to 56.15 metres. Unsurprisingly, the report stated that the proposed modification appeared “not to be substantially the same as the original development”.

On 4 May 2016, the Treacy Street modification application lodged in December 2015 was considered by the JRPP, which at that time comprised Mr Badalati, Mr Hindi and three others. The formal minutes of the

meeting record that no declarations of any conflict of interest were made by any members. The majority of the JRPP decided to accept the recommendation of the assessment report to refuse the application. Mr Badalati and Mr Hindi were in the minority, voting against the recommendation. Whether Mr Badalati and Mr Hindi were required to disclose their relationships with Wensheng Liu and Mr Uy at that meeting is addressed in chapter 5.

A VPA dated 15 December 2015 and signed by Wensheng Liu on behalf of GR Capital Group was made in connection with the modification application (MOD 2015/0162). It proposed a contribution of \$200,000 to be used for infrastructure. The VPA was ultimately considered at the HCC meeting on 20 April 2016. That meeting is addressed in chapter 5.

5 May 2015: Mr Dickson discusses the Landmark Square planning proposal with councillors and HCC staff

Mr Dickson gave evidence that during his engagement by One Capital his primary contact was Mr Uy. He also met with Wensheng Liu, Mr Vegners and Ms Tang, but less frequently than with Mr Uy.

In May 2015, Mr Dickson sought a meeting with Mr Hindi, who was the mayor of HCC at the time, to explain the Landmark Square development proposal. On 5 May 2015, a meeting was held at HCC in an office adjoining Mr Hindi’s mayoral office. The meeting was attended by Mr Hindi, a few HCC staff and Mr Dickson. In addition, Mr Badalati and Mr Sansom were present. Mr Dickson told the Commission that while he had not requested the attendance of Mr Badalati and Mr Sansom, he understood that the three councillors present at the meeting “were the three power brokers of different factions within the councillors, namely: Councillor Badalati was representing Labor, Councillor Hindi was representing Liberal, and Councillor Sansom the independents” and he said that “it was unusual to see all sides of politics come together on the matter”.

Mr Sansom’s evidence was that, although he could not recall who invited him to the meeting on 5 May 2015, he accepted it was likely Mr Hindi had invited him. Mr Badalati was not asked who invited him. Mr Hindi initially denied inviting Mr Sansom and Mr Badalati. However, he subsequently acknowledged he may have invited them because HCC was “blowing up” and he needed “witnesses”. It was also his evidence that he knew both Mr Hindi and Mr Badalati supported a five-star hotel in the Hurstville area by that point. The Commission

considers it more likely than not Mr Hindi invited Mr Sansom and Mr Badalati to the meeting.

Mr Dickson's evidence was that, during the meeting of 5 May 2015, the councillors conveyed to him that they favoured a change occurring to the industrial land on the Landmark Square site. It was zoned industrial. The area was under-utilised and close to other taller buildings in the area. Mr Dickson's impression was that the "Council staff were not forthcoming at the meeting, and it appeared there were two sets of opinions one being from the staff and one from the Councillors". He said the councillors seemed to be supportive of a hotel being in the area and how it would benefit the Hurstville economy. He also said they expressed "no negative ... attitudes" towards changing the height limit.

Mr Badalati said that by this time he had been talking to Mr Uy about the fact that One Capital had purchased or optioned the Landmark Square properties and that it intended to lodge a planning proposal. He also said that Mr Uy had been speaking to Mr Hindi and Mr Sansom: "we were all talking ... at the time". Mr Badalati said that Mr Sansom had asked him whether he knew Mr Uy was involved in Landmark Square. He also said they were all aware that Wensheng Liu was involved in the proposed development.

Mr Dickson's impression that HCC staff were not forthcoming is of little importance. However, the Commission is satisfied that throughout the assessment process there existed significant differences of opinion between HCC staff and the three councillors in relation to pertinent aspects of the proposal. HCC staff did not object to the proposed change of land use. There were also misgivings held by certain HCC staff concerning the extent to which the three councillors – and in particular Mr Badalati and Mr Hindi – were becoming involved in the assessment process.

Various questions were asked of witnesses during the public inquiry suggesting, in substance, that there is nothing wrong with a councillor supporting a planning proposal that they consider to be in the best interests of the local community. That is to state, no more than the obvious. It says nothing in relation to whether the conduct of Mr Badalati, Mr Hindi and Mr Sansom reveals something more sinister, namely, an undisclosed interest in the progress of the development or undisclosed conflicts of interest affecting the exercise of their official functions.

18 May 2015: a meeting at a Japanese restaurant in Chinatown, Sydney

On 18 May 2015, Mr Dickson attended a lunchtime meeting at a Japanese restaurant on George Street in Chinatown, Sydney. Mr Dickson's evidence was that Mr Uy invited him to attend and he went not knowing either the purpose of the meeting or who might attend. When he arrived, he saw Mr Uy sitting with Mr Hindi. He recognised Mr Hindi, having met him two weeks prior during the meeting at HCC on 5 May 2015 and he was also generally familiar with him through other dealings with HCC. He formed the view that Mr Uy and Mr Hindi were familiar to each other because their conversation was "very informal and it was friendly".

In Mr Dickson's statement to the Commission, he said that during this meeting:

Mr Hindi discussed how Council may deliberate on the planning proposal ... He was not forthcoming on any information I found to be useful in understanding how Council may support the application.

During the public inquiry, when asked if he recalled the words used by Mr Hindi, Mr Dickson said, "I can't recall with any exactitude. He was aware it was being lodged and he, he gave me an indication that it would be considered by council but I can't be anymore exact than that." Mr Dickson also said it was "highly unusual" for him to meet offsite with a councillor and a client to discuss a planning proposal, and he could not think of another occasion where he had attended such a meeting in NSW. He said he "very rarely met councillors" and that he had more interactions with councillors on the Landmark Square planning proposal "than anything else I've ever had in my professional experience".

Mr Uy told the Commission that he invited Mr Hindi to this meeting and that the Treacy Street development was also discussed. In particular, they discussed why the permissible height for Treacy Street was lower than nearby buildings. In relation to the Treacy Street development, Mr Uy claimed he identified himself to Mr Hindi as an "agent" and "lobbyist" for GR Capital Group. He said Mr Dickson did most of the talking and they discussed the Treacy Street development, particularly why the permissible height on Treacy Street was lower than nearby buildings. He said Mr Dickson explained that issue of height to him and he left it for Mr Dickson to explain that to Mr Hindi. He did not dispute that they discussed the Landmark Square development but could not remember doing so.

Mr Hindi's evidence was that he could not recall the meeting. He said Mr Uy probably invited him to come

and “meet his architects”. He denied that he discussed how council might deliberate on the planning proposal, explaining that he did not talk to people about how he voted, that Mr Dickson was an experienced planner who did not require council processes explained to him and that he met with all applicants or objectors (including “architects and owners”) to consider their views so he could make an informed decision. He said he had an “obligation to listen”. While he could not recall discussing the Treacy Street development, he did not dispute Mr Uy’s recollection that it was discussed.

There are several issues arising in relation to this meeting on 18 May 2015.

First, why did Mr Hindi attend the meeting with Mr Uy and Mr Dickson?

Counsel Assisting submitted that, based on Mr Dickson’s evidence, Mr Hindi attended the meeting to provide some advice on how HCC might deal with the proposal, namely, the sort of advice that was better dispensed not at a meeting at the HCC offices (as had occurred two weeks earlier) but at a Japanese restaurant in the absence of HCC staff.

It was submitted on behalf of Mr Hindi that Mr Dickson’s evidence concerning the meeting at the Japanese restaurant provided no factual foundation for the suggestion that Mr Hindi gave advice as to how HCC would deal with the planning proposal, that there was no evidence of any advice given or evidence of what Mr Hindi actually said.

Mr Hindi identified what were said to be inconsistencies in Mr Dickson’s evidence. The Commission has considered each of those matters.

The Commission agrees that there is no evidence of the precise words used by Mr Hindi. Nonetheless, the Commission is satisfied that Mr Hindi was present at the meeting at the request of Mr Uy. Mr Hindi was present because he and Mr Uy considered it would enhance progress of the Landmark Square planning proposal if Mr Hindi could provide guidance to Mr Dickson in relation to the manner in which council would likely approach the proposal. That is, how Council might deliberate on the planning proposal thereby seeking to ensure that Mr Dickson better understood what was required to make satisfactory progress. Such guidance might go beyond what would be regarded as appropriate by HCC staff. As at 18 May 2015, the development proposal had not been lodged. It was lodged on 12 June 2016.

The Commission is satisfied that neither Mr Hindi nor Mr Uy considered it desirable to meet at HCC’s premises in the presence of HCC staff. The Commission considers it is self-evidently undesirable for any councillor to

engage in one-on-one informal meetings with a developer or their representatives. Any such meeting has the capacity to severely undermine public confidence in the development process if it were to become known. The Commission is satisfied Mr Hindi knew the meeting was irregular. It rejects Mr Hindi’s evidence that he met with Mr Dickson and Mr Uy because of an “obligation” to meet with all applicants or objectors (including “architects and owners”) to consider their views so he could make an informed decision. Such a meeting had already occurred on 5 May 2015 within the confines of HCC’s offices and in the presence of HCC staff. The meeting of 5 May 2015 was a formal meeting where Mr Badalati Mr Hindi and Mr Sansom were present with Mr Dickson and several HCC staff to discuss the Landmark Square proposal. As has been noted above, according to Mr Hindi, Mr Sansom and Mr Badalati were present at the meeting as “witnesses”. In contrast, there were no “witnesses”, in particular HCC staff, to observe what occurred at the Japanese restaurant.

Mr Hindi could not explain why it was necessary to meet with Mr Dickson two weeks after the meeting at HCC. The Commission has found that from around July 2014, Mr Hindi knew his wife had a significant financial interest in the Landmark Square development and its progress. As has been noted earlier in this chapter, Mr Badalati’s evidence to the Commission was that following the JRPP vote on 1 April 2015 Mr Uy paid him \$70,000 in cash as a “thank you” for his help on the Treacy Street development, and that he learned from Mr Hindi that Mr Hindi had received a similar amount from Mr Uy.

If Mr Hindi received the sum of approximately \$70,000 prior to 18 May 2015, it is more likely than not he attended the meeting at the Japanese restaurant because he had an interest in the progress of the development over and above that which a councillor might legitimately have, acting in the interests of constituents. At the very least, Mr Hindi knew that a member of his immediate family stood to make a significant sum in respect of the Landmark Square site.

A further matter which must be considered in relation to the meeting of 18 May 2015 is whether it was clear to Mr Hindi at the time that Mr Uy had a financial interest in the Treacy Street and Landmark Square developments, such that Mr Uy stood to derive benefit from the developments if approved.

As has been noted, Mr Uy’s evidence was that he told Mr Hindi during the meeting on 18 May 2015 that he was an “agent” and “lobbyist” for GR Capital Group, the proponent for the Treacy Street development. Mr Hindi’s evidence was that, by this time, he was aware Mr Uy was an “adviser” to the owner of both Landmark Square and Treacy Street, but he did not know the nature of

Mr Uy's interest in the developments. When it was suggested to Mr Hindi that it was unusual for someone to provide advice on a multi-million-dollar development without getting anything in return, he disagreed. When asked whether advice was usually provided on valuable, multi-million-dollar developments, he stated, "Absolutely, absolutely they do. Absolutely." He claimed this was what he understood Mr Uy to be doing on this occasion. He then shifted ground, stating he did not know whether Mr Uy was providing advice at no cost. Mr Hindi claimed:

I don't, it's, it's not my duty under the code of conduct to determine what people are being paid or not being paid. My duty is if I'm aware of anything that prohibits me from, from voting on the application, I will reassess and reevaluate my, my perceived conflict of interest and act accordingly. So, for me, Mr Uy or Faye, I don't know what his role was. So, when this application comes to Council, when they put the papers in front of you, they put the directors. They put all this, and say, do I know these people? Yes I do. I vote or don't know. Then I have to sit here and work out from months earlier, a year earlier, what these guys, because there's a lot of Chinese, there's a lot of Chinese that, there a lot of Chinese people that are middlemen and they pretend they own actual sites. There's a lot of things happening on Kogarah North, up in Kogarah, so...

The Commission rejects Mr Hindi's evidence. The Commission is satisfied that by 18 May 2015 Mr Hindi knew Mr Uy had a financial interest in both developments. He may not have known the extent of Mr Uy's interest. However, he could not have genuinely believed Mr Uy was providing advice free of charge or that conflicts of interest could be resolved merely by looking at a company's extract provided with the application. Mr Hindi and Mr Uy were in regular contact in relation to the developments. The contact was largely informal. It invariably concerned advancing the progress of the developments through HCC. To conclude that Mr Uy would conceal from Mr Hindi that he would suffer personal loss if the Treacy Street and Landmark Square developments were not approved by council is highly unlikely. This issue is re-examined in chapters 4, 5 and 7 in the context of Mr Uy and Mr Hindi's continued interactions in relation to both developments throughout 2016.

The final question in relation to the meeting at the Japanese restaurant on 18 May 2015 is whether Mrs Hindi attended and, if so, in what capacity?

In his statement to the Commission, Mr Dickson said he was not sure whether Mrs Hindi attended this meeting, or a second meeting held later in 2015 at the same Japanese restaurant. During the public inquiry, he said he had a fairly firm recollection she attended on 18 May 2015.

Mrs Hindi told the Commission she attended one meeting which Mr Dickson attended. Mr Uy could not recall whether Mrs Hindi attended, while Mr Hindi's evidence was that he could not recall the meeting.

It is common ground that Mrs Hindi attended one meeting with Mr Dickson at a Japanese restaurant in 2015. She appeared to accept that it occurred on 18 May 2015. However, whether Mrs Hindi attended the meeting on 18 May 2015 or on a later date in 2015 is inconsequential. Regardless of which date Mrs Hindi attended the meeting with Mr Dickson in 2015, the same question remains: what was the purpose of Mrs Hindi's attendance at that meeting?

Mrs Hindi failed to provide any credible evidence to explain her presence, or the presence of her husband. She claimed she was present at the meeting because either Mr Uy or Ms Tang said, "we're going to meet with the architect, are you free to come along?" Most likely the request came from Mr Uy. Mrs Hindi understood the meeting concerned the Landmark Square site. She also claimed she was unsure why she was invited to the meeting. Mr Uy "asked me a number of occasions to come to a meeting". Mr Uy and Ms Tang "would call me and ask me to come along to meetings and I would attend". She never asked why she was being invited to meetings: "I didn't think to ask at the time but they asked me and I was free at the time and I said I'd come along".

Mrs Hindi agreed she had a significant financial interest in the Landmark Square development proceeding and a deep interest in Mr Hindi voting in favour of the development. She recalled that the Landmark Square development was discussed at the meeting and the meeting concerned the Landmark Square site. Mrs Hindi claimed she "was just there listening" but had no recollection of what she or her husband said.

Mrs Hindi's evidence in respect of her attendance was unconvincing. The Commission is satisfied her evidence was untruthful. The Commission is further satisfied Mrs Hindi attended because she had a significant financial interest, known to Mr Hindi, in the progress of the Landmark Square development. It was in her interests that the development be approved.

Mrs Hindi's evidence concerning the reasons for Mr Hindi's attendance at the Japanese restaurant was as unconvincing as that given by her husband. She claimed she:

would have told him about the meeting, that they were under, Philip's request, like I said earlier, Philip would try and contact Con a number of times and Con was working full time, so he wouldn't answer his phone. And Philip would then ask me, "can you please get Con to come for a coffee with us, please, just to have a chat to the architect?"

Mrs Hindi agreed she then asked her husband to attend a meeting with the architect about the Landmark Square planning proposal but claimed she did not say anything else.

According to Mrs Hindi, she could not recall Mr Hindi expressing any concern as to whether it was appropriate for him to have lunch with the architect for a planning proposal which was coming up before council. She said:

No, I don't recall him expressing that concern because it had, something like this had happened previously on other projects or, sorry, not, well, sites, development applications where the applicant or someone that was involved in the application would ask Con to come and attend a meeting with an architect regarding that. So it wasn't, so, so Con didn't express anything, any concern about that meeting. To him, it was just having a chat regarding a concerned constituent about a matter that's before council.

There were subsequent meetings which Mrs Hindi attended. They were meetings which usually involved Mr Uy or Ms Tang. The Commission is satisfied that in those meetings Mrs Hindi acted as a conduit: that is, she received information from Mr Uy and Ms Tang and then passed on the information to Mr Hindi. Similarly, she received information from Mr Hindi and conveyed that information to Mr Uy and Ms Tang. These meetings are addressed in chapter 7. The Commission is satisfied that the purpose of these meetings was to progress the development proposal in a manner which, based on advice from Mr Hindi, would enhance the prospect of HCC approval. At this point, Mrs Hindi was used as a conduit to minimise the risk of it becoming known that Mr Hindi was involved. That changed over time. There were some later occasions where Mrs Hindi played no role. That is, there were direct communications between Mr Hindi and Mr Uy in respect of the Landmark Square development.

12 June 2015: the Landmark Square planning proposal is lodged

On 12 June 2015, Dickson Rothschild lodged the Landmark Square planning proposal with HCC, on behalf of One Capital. It annexed letters indicating that the owners of the relevant properties consented to the "purchaser", One Capital, lodging applications with HCC.

The planning proposal proposed a change in zoning from IN2 Light Industrial to B4 Mixed Use, a change in FSR from 1:1 to 4.5:1, and a change in maximum height from 10 metres to 90 metres. For those changes to be implemented, the Hurstville LEP would need to be amended. The plan was to build an apartment block

of 357 units, a 200-room hotel, retail space including a supermarket, commercial floor space, a childcare centre and community facilities. It was a very large development worth hundreds of millions of dollars.

12 November 2015: Dickson Rothschild representatives attend a meeting at HCC

On 4 November 2015, representatives from Dickson Rothschild contacted HCC requesting a meeting with the mayor (at that time councillor Badalati), and the general manager of HCC. In his statement to the Commission, Mr Dickson explained that the proposed meeting was a collective idea involving Mr Uy, who had been encouraging Mr Dickson to "push the dialogue with Council and the Mayor on the application". Mr Uy had asked him to set up the meeting to discuss a possible VPA relating to building and fitting out a childcare facility on the Landmark Square site.

On 12 November 2015, Mr Dickson attended the meeting at HCC with Mr Badalati, the general manager and some HCC staff. The meeting notes recorded that councillors Hindi and Sansom also attended. During the public inquiry Mr Dickson said he did not invite Mr Hindi or Mr Sansom. Mr Badalati accepted it was likely he invited them because, by that time, they were working together on the planning proposal and there was an agreement between them to promote the proposal. Mr Hindi's evidence was that it was likely Mr Badalati invited him. Mr Sansom could not recall the meeting or who invited him.

The contemporaneous records of the 12 November 2015 meeting – namely, meeting notes prepared by HCC staff and an email from Mr Dickson to Ms Tang dated 14 November 2015, the accuracy of which Mr Hindi and Mr Badalati did not dispute during the public inquiry – recorded that all three councillors expressed support for the planning proposal during that meeting. The councillors' views were recorded as follows:

- Mr Hindi said Hurstville was in need of a hotel. He spoke in support of the design amenity shown in the presentation and of taller towers rather than low squat building forms.
- Mr Badalati said that a hotel would have a positive impact on the local economy and community benefits.
- Mr Sansom said that a hotel had been sought for many years by councillors in the area and noted the excellent views from the elevated location to the city waterways and mountains.

The councillors indicated a clear preference for the VPA to be made with approval of the already submitted planning proposal and not with a subsequent DA, and that the proposed development would likely result in traffic improvements given the number of other developments on foot in the area. The councillors indicated that they were seeking to have the planning proposal and VPA reported to an HCC meeting in December 2015. At least one HCC staff member cautioned that further time would be required for HCC staff to prepare an assessment report and that the assessment could take about 12 months.

Mr Badalati said that the three councillors were keen to have the planning proposal and VPA reported to HCC as soon as possible. Mr Hindi told the Commission he was “indifferent” as to when the matter was put to HCC. However, the number of discussions occurring between Mr Hindi and Mr Uy in 2015 and 2016, which are addressed in more detail below, casts considerable doubt on Mr Hindi’s evidence that he was “indifferent”. On the contrary, he was vitally interested in the Landmark Square development proposal.

On 17 November 2015, Mr Uy texted Wensheng Liu the following:

Mr Liu, you are our leader, our light. Our project hasn't been approved yet and (we) are worried that someone might cause trouble at our back. Will explain and report to your [sic] clearly on (our) return. Chubby and Middle East told us to be quiet.

During the public inquiry, Mr Uy said that “Chubby” and “Middle East” was a reference to Mr Badalati and Mr Hindi. The Commission is satisfied Mr Uy used these descriptors.

Mr Uy agreed “our project” could only be a reference to either the Treacy Street or Landmark Square developments, although he could not remember specifically which one. He said it was probably a reference to Treacy Street. Wensheng Liu’s evidence during the public inquiry was that he was not sure which project Mr Uy was referring to, although he accepted it was possibly Landmark Square. The Commission is satisfied that the words “our project” are more likely a reference to Landmark Square. The Treacy Street development had been approved by the JRPP on 1 April 2015. Although a modification application for that development was lodged in September 2015, it was only for minor modifications, including an increase in the lift size and the installation of a new common toilet.

Neither Mr Uy nor Wensheng Liu could explain the statement, “Chubby and Middle East told us to be quiet”. Mr Badalati and Mr Hindi were also unable to explain its meaning.

Counsel Assisting submitted it was open to conclude that in Mr Uy’s text to Wensheng Liu on 17 November 2015, he was seeking to convey that he had received some advice from Mr Badalati and Mr Hindi about the Landmark Square planning proposal. On the other hand, it was submitted on behalf of Mr Hindi that Mr Uy’s text could be referring to what was said by councillors, council staff and Mr Dickson during the meeting on 12 November 2015, the substance of which was emailed by Mr Dickson to Ms Tang on 14 November 2015 and which, it can be assumed, Mr Uy subsequently reported to Wensheng Liu. Specifically, that Mr Uy was conveying that the advice provided during the meeting foreshadowed a process that would take longer than Mr Uy would have liked, but in respect of which there would need to be compliance. It was submitted by Mr Hindi that Mr Uy used the shorthand “Chubby and Middle East” to refer to “Council” and reflected the general advice to observe the necessary and perhaps quite lengthy process by another shorthand phrase: “told us to be quiet”.

The Commission does not accept the submission of Mr Hindi as a reasonable interpretation of Mr Uy’s text on 17 November 2015. Nor does it accept Counsel Assisting’s acknowledgment in her submission in reply that the text is ambiguous and that it has limited weight. Mr Uy did not refer to “Council” or council staff. He referred specifically to Mr Hindi and Mr Badalati via their pseudonyms. The Commission is satisfied Mr Hindi and Mr Badalati had given advice to Mr Uy, the substance of which was to remain quiet pending HCC’s decision. The reference to “someone might cause trouble at our back” may have been a reference to one or more members of HCC staff or one or more councillors. Several HCC staff did not support the Landmark Square development. However, it is unnecessary to decide. The Commission is satisfied Mr Hindi and Mr Badalati gave advice to Mr Uy in relation to successfully progressing the Landmark Square planning proposal. That advice included not “rocking the boat”, so to speak. The actions of Mr Hindi and Mr Badalati were part of a course of conduct designed and intended to see the Landmark Square development approved. Other examples of this course of conduct are provided throughout this report.

It is relevant here to note the observations of Ms Stores, then executive strategic planner at HCC, concerning the nature of the interactions councillors Badalati, Hindi and Sansom had with HCC staff. She said:

Councillors Constantine Hindi, Vincenzo Badalati and Philip Sansom appeared to have more of a particular interest in the 1–5 Treacy Street and Landmark Square sites. While these Councillors always had an interest in planning matters in general, they would always ask a lot of questions about

the detail for these properties and why things were presented in a particular way.

During cross examination of Ms Stores by Mr Hindi's Counsel, she agreed that she could not quantify the number of questions asked by Mr Hindi about the Treacy Street and Landmark Square sites. She also agreed with the proposition put to her that she had no reason to believe Mr Hindi had anything other than proper planning reasons for the questions he asked of the HCC staff and Mr Dickson in connection with Treacy Street or Landmark Square. This evidence is unsurprising. However, Ms Stores was not privy to all matters referred to in this report, which demonstrate the obsession which at least Mr Hindi and Mr Badalati displayed in progressing the Treacy Street and Landmark Square developments in a way which favoured the developer. The Commission is satisfied that viewed in a wider context, the questioning of HCC staff and others in relation to Treacy Street and Landmark Square went far beyond that which would be expected of councillors who had nothing more in mind than "proper planning".

On or around 24 November 2015, One Capital provided HCC with an amended planning proposal and VPA offer in relation to Landmark Square. It was signed by Wensheng Liu on behalf of One Capital as the "sole director/director/secretary".

On 21 December 2015, there was another meeting at HCC attended by Mr Dickson, Mr Badalati, Mr Hindi and other planning staff. The applicant, One Capital, conveyed that it was amending the planning proposal. Councillor Hindi asked what height would apply and suggested they should "give the site height". Another HCC officer, Carina Gregory, indicated that because of the size of the site there would need to be a site-specific development control plan (DCP).

January 2016: the Panel meeting and the "fat man"

On 19 January 2016, there was a meeting of the St George Design Review Panel ("the Panel") at HCC to consider the Landmark Square planning proposal. The Panel is a group of independent experts – including architects, town planners, urban designers and landscape architects – who provide feedback and advice about the design of developments referred to the Panel. It is not a decision-making body. The Panel, which comprised Peter Annand, Professor Peter Webber and Suzanne Moulis, did not support the proposal. The Panel concluded that it did not have adequate information and that "the proposal responds to planning constraints rather than presenting a well-considered design rationale". It was also noted that the proposed development "fails to justify the built form

that is proposed in any way" and "[t]he Panel expects that the preparation of an urban design study will deliver a very different urban form outcome".

In his statement, Mr Dickson said the Panel meeting showed that:

Council's advisors did not support the Planning Proposal ... due to the bulk and scale of the buildings within the context. There was an evident tension between the developers and Councillors who had clearly sought taller towers for the site. Council had separately commissioned an independent design review about that time to obtain an alternative solution for the site. Once that meeting of 19th January had been held we sought specifically to have a meeting with Council to have the Planning Proposal put up to Council.

On 1 February 2016, Mr Dickson emailed Mr Gheorghiu, the consultant working for Dickson Rothschild, attaching the Panel's minutes and saying, "I met with the client [Mr Uy] on Saturday and he has been in touch with Councillor Hindi".

In his statement, Mr Dickson said he met with Mr Uy on Saturday 30 January 2016 at Silver Restaurant in Chinatown, Sydney. He said during that meeting, Mr Uy told him he had spoken to Mr Hindi "with some frequency" about the progress of the planning proposal. He said Mr Uy spoke about his conversations with Mr Hindi, not by reference to Mr Hindi's name, but by reference to the "fat man" and that the use of code language was "unusual to me". During the public inquiry Mr Dickson added that Mr Uy first told him, "I refer to Councillor Hindi as the Fat Guy" during one of their meetings at a Chinese restaurant, in approximately 2015.

There is a question whether Mr Dickson's evidence that Mr Uy identified Mr Hindi as the "fat man" is accurate. The Commission has found that, as at 17 November 2015, Mr Uy referred to Mr Badalati as "Chubby" and Mr Hindi as "Middle East". The Commission is satisfied Mr Dickson was mistaken in relation to his identification of the "fat man" as being Mr Hindi. The available evidence indicates that Mr Hindi was the subject of discussion during the meeting on 30 January 2016. For example, Mr Dickson's email on 1 February 2016 said Mr Uy had "been in touch with Councillor Hindi". Mr Uy agreed he spoke with Mr Hindi, although he could not recall if he used the words "fat man" during his discussion with Mr Dickson. He denied referring to Mr Hindi as "fat man".

The Commission is satisfied that it was not uncommon for Mr Hindi and Mr Uy to communicate about the Landmark Square development as of 1 February 2016. Mr Dickson told the Commission it was his understanding that Mr Uy was talking with Mr Hindi

“weekly and possibly almost daily” at this time. He said this understanding was based on the “friendliness of the dialogue in which Philip Uy would mention his [Mr Hindi’s] name and infer that they were in touch.” When Mr Uy gave evidence at the public inquiry, he was shown Mr Dickson’s evidence and was asked about the frequency of his meetings with Mr Hindi at this time. When it was put to him that he was speaking to Mr Hindi “frequently”, he said they were speaking “not frequently but from time to time” and “sometimes”. Mr Hindi’s evidence was that he could not recall discussing the Panel’s comments with Mr Uy around February 2016.

Counsel for Mr Hindi submitted that Mr Dickson’s evidence, referred to in the paragraph above, was both a “problematic assertion, and a problematic mischaracterisation of the evidence” on the basis that this evidence was given in the context of Mr Dickson “asserting a proposition which tied his understanding to his misconception that Mr Uy referred to Mr Hindi as the ‘fat man’”.

The Commission does not agree. As previously noted, the Commission is satisfied Mr Dickson was mistaken in his identification of Mr Hindi as the “fat man”. His evidence as to the frequency of contact between Mr Hindi and Mr Uy was an impression based upon his own conversations with Mr Uy. The Commission cannot be satisfied that the contact between Mr Hindi and Mr Uy was “weekly and possibly daily”, as suggested by Mr Dickson. However, the Commission is satisfied that, at a minimum, Mr Hindi and Mr Uy were speaking “not frequently but from time to time”. The Commission has found that contact was not uncommon. Importantly, by 1 February 2016 Mr Uy was communicating directly with Mr Hindi. The communications concerned, at least in part, the Landmark Square development. They were personal communications which did not occur within HCC’s premises. There was no formal record taken or kept. In circumstances where, to the knowledge of Mr Hindi, Mrs Hindi had a significant financial interest which had not been declared, the communications were improper. They should never have occurred. But they did occur. They occurred because by February 2016 Mr Hindi had a financial relationship with Mr Uy by reason of having received approximately \$70,000 from Mr Uy in respect of the Treacy Street development. He, like Mr Badalati, was “on the hook”. The receipt of this money is addressed in chapter 6.

HCC staff draft an employment lands study

The purpose of an employment lands study (ELS) is to provide a strategic direction in respect of industrial zoned lands and to ensure that the local government area has sufficient lands which can be utilised for employment so as

to meet a jobs target and address the service needs of the residential and business community. This was carried out pursuant to a ministerial direction that required, if planning proposals were lodged relating to employment lands, that there be a strategy in place against which to assess them. The ELS was to look at whether the employment lands were still required and which lands could potentially be considered for rezoning. Work on the draft ELS commenced in approximately September 2014. The draft ELS was reported to HCC on 9 December 2015. HCC voted that it be deferred with further work to be carried out.

On 16 December 2015, Ms Stores met with Tina Christy, the acting director of planning and development at HCC. The meeting occurred at the HCC premises. Ms Stores made notes of the meeting. The notes record that Ms Christy informed Ms Stores:

that the Acting General Manager [of HCC] wanted the Council report on the draft Employment Lands Study to recommend what Councillors wanted on certain sites – Durham Street, Penshurst Lane and Penshurst Street, and that the heights and FSRs the Councillors stated at the November 2015 Workshop were what they wanted...

Ms Stores’ notes went on to state that Ms Christy also said that:

the Councillors (Con and Vince) would not make changes to the recommendations of the Employment Lands Study in open Council. They wanted the staff to recommend what they wanted.

Ms Stores’ note records her response:

I stated I would not write a report to say this. We can only recommend what is in the Employment Lands Study. We can then state what the Councillors request but then the Councillors have to make a decision.

Ms Christy’s response was also noted by Ms Stores: “Tina said that they won’t want this”.

Mr Hindi submitted that the note of 16 December 2015 and a subsequent note concerning a 9 February 2016 meeting (referred to below) “recorded information told to Ms Stores by a superior, which in turn amounted to hearsay re-telling of something the superior had been told”. The Commission accepts that the note contains second-hand hearsay. While the Commission is not bound by the rules of evidence, the note could be admitted into evidence in civil proceedings pursuant to s 69(2) of the *Evidence Act 1995* as an exception to the rule against hearsay. The Commission is satisfied Ms Stores’ note is a business record which accurately reflects what happened at her meeting with Ms Christy on 16 December 2015.

Further, the Commission is also satisfied Mr Hindi and Mr Badalati wanted Ms Stores to report to HCC in terms which, without exposing them, reflected the wishes of the developer concerning the height and FSR applied to the Landmark Square site. This is supported by the conduct of Mr Hindi and Mr Badalati in relation to height and FSR prior to 16 December 2015 and their continued obsession with it during a further meeting held on 9 February 2016. During that meeting, Mr Hindi and Mr Badalati expressed their position directly to Ms Stores.

On 9 February 2016, there was a meeting held at HCC in relation to the draft ELS. The meeting was attended by then mayor, Mr Badalati, Mr Hindi, HCC's acting general manager, Ms Stores and Ms Christy. Ms Stores made a contemporaneous file note. It was recorded that Ms Christy advised that the HCC report on the draft ELS be reported to HCC in March 2016. Ms Stores' evidence to the Commission was that the ELS was nearing completion at the time of the meeting. The file note recorded that Ms Christy and Ms Stores explained that it was necessary to follow the process of endorsing a strategy for industrial lands prior to HCC preparing a planning proposal to rezone industrial sites. They explained that an ELS provides the strategy for all the industrial lands within a local government area and identifies what land is required for the future.

Ms Stores' file note recorded that both Mr Badalati and Mr Hindi raised concern at the controls on several sites expressed in the draft ELS, including the Landmark Square site, and could not understand why it had not been allocated higher FSRs and a bonus FSR for a hotel. The acting general manager noted that an alternative option was that the ELS could be deferred, rather than being reported to HCC in March 2016, which would mean that the planning proposal for the Landmark Square site would be assessed without the draft ELS being considered. Ms Stores indicated that the problem with that option was that if HCC did not have an endorsed strategy, "staff do not have any Council endorsed strategy or study which could be referred to when assessing the Planning Proposal ... under the Ministerial Directions".

Ms Store's file note recorded that the meeting concluded with Mr Badalati and Mr Hindi and "indicating that the draft [ELS] not be reported back to Council and that it remain deferred at this stage". It also recorded that Mr Badalati and Mr Hindi agreed "to defer the report until a later date and that Council consider an assessment report on the Planning Proposal for Durham/Landmark Square site in the interim". Following this meeting, the planning proposal was assessed, and an HCC vote taken in April 2016. The assessment report referred to the "draft" ELS.

Who suggested that the draft ELS be deferred?

As recorded in Ms Stores' contemporaneous file note, it was the acting general manager who first mentioned the option of deferring the draft ELS. However, the final paragraph of the file note clearly recorded that Mr Badalati and Mr Hindi had also suggested, on two occasions, that the draft ELS be deferred. The first occasion occurred when they indicated their wish the draft ELS not be reported back to HCC and that it remain deferred. The second occasion occurred when they agreed "to defer the report until a later date and that Council consider an assessment report on the Planning Proposal for Durham/Landmark Square site in the interim".

Ms Stores was cross examined on her file note during the public inquiry. She said the general manager was ultimately responsible for the agenda of council meetings and controlling what reports were prepared for consideration by councillors in council meetings. She noted the general manager could determine to report the draft ELS to council at any stage if he considered putting it on the agenda was appropriate. She accepted that, in the 9 February 2016 meeting, the acting general manager suggested that the draft ELS be deferred. However, she added that this suggestion was made after Mr Badalati and Mr Hindi expressed their concerns that sites, including Landmark Square, were being treated unequally compared to other sites in the area. Mr Hindi put to Ms Stores that the councillors did not say they wanted the draft ELS deferred, but indicated it was a matter for the general manager. She said she could not recall that exact discussion. The Commission notes that the proposition put to Ms Stores is inconsistent with the contemporaneous file note in two ways. First, the file note records that the councillors wanted the draft ELS to be deferred. Secondly, the file note does not record that the councillors indicated it was a matter for the general manager. Ms Stores was a witness who answered questions directly and with care. She presented as a diligent and careful person who was unlikely to impute conduct to councillors without a reasonable basis for doing so. Nothing emerged during her cross-examination to cast doubt on the reliability of her file note. Ms Stores' note is a business record. The Commission is satisfied that Ms Stores contemporaneous file note is an accurate record of the meeting on 9 February 2016.

Mr Hindi denied making any suggestion that the draft ELS be deferred. He also suggested that what was recorded in Ms Stores' file note was false because, as he was neither the mayor nor the general manager, who were the two most important people in that meeting, he was not in a position to suggest what to defer. He said that as a councillor, when it comes to council on the floor,

he could vote against it, defer it or make amendments on the floor on the night.

The Commission does not accept Mr Hindi's evidence. As previously stated, Ms Stores' contemporaneous file note records that Mr Hindi suggested the draft ELS be deferred. The Commission is satisfied that Mr Badalati and Mr Hindi suggested the draft ELS be deferred on at least two occasions during the meeting on 9 February 2016.

What was Mr Hindi and Mr Badalati's purpose in suggesting the draft ELS be deferred?

It was submitted by Counsel Assisting that Mr Badalati and Mr Hindi suggested deferring the draft ELS in part to minimise the prospect that it would pose an obstacle to the approval of the Landmark Square planning proposal. Counsel for Mr Hindi submitted that it was not open to the Commission to accept Counsel Assisting's submission and referred to Mr Hindi's evidence:

- denying that deferral of the draft ELS amounted to the removal of an "obstacle" to the proponents of Landmark Square, because a draft report can be used as a guide for planning decisions in the absence of a final report
- that the councillors were dissatisfied with many aspects of the draft ELS, which covered multiple sites in the HCC area.

The Commission does not accept Mr Hindi's submission concerning council staff using a "draft" report. A draft report should not be used as a "guide" in respect of a large and complex development, if at all. Compliance with the ministerial direction is not discretionary. As noted by Ms Stores, "staff did not have any Council endorsed strategy or study which could be referred to when assessing the Planning Proposal ... under the Ministerial Directions".

The Commission agrees that Mr Badalati and Mr Hindi were dissatisfied with aspects of the draft ELS. As was noted by Ms Stores, both Mr Hindi and Mr Badalati raised concern in relation to the controls on multiple sites referred to in the draft ELS, including the Landmark Square site. They claimed not to understand why the site had not been allocated higher FSRs and a bonus FSR for a hotel. The file note clearly indicates that Mr Badalati and Mr Hindi were concerned about how the draft ELS treated Landmark Square.

The meeting of 16 February 2016 provides another instance of Mr Badalati and Mr Hindi seeking to progress the Landmark Square development proposal in a way which they believed would secure what the developer wanted. They paid little attention to proper procedures,

particularly when those procedures had the capacity to produce impediments to approval.

It should also be noted that by February 2016, Mr Uy was communicating directly with Mr Hindi in relation to the Landmark Square development. Further, as set out in chapter 6, the Commission is satisfied that by February 2016, Mr Badalati had accepted \$70,000 and Mr Hindi had accepted approximately \$70,000 from Mr Uy in relation to the Treacy Street development. The Commission is satisfied that Mr Badalati and Mr Hindi's reason for suggesting the draft ELS be deferred was to minimise the prospect that it would pose an obstacle to the approval of the Landmark Square planning proposal.

21 February 2016: a meeting at the Novotel, Brighton-Le-Sands

On 21 February 2016, Mr Dickson emailed Mr Gheorghiu stating he was "getting quite a bit of pressure to get a meeting with Nerida Stores at Hurstville this week to brief Council on the progress of the PP". In his statement, Mr Dickson said he was under "pressure" from Mr Uy to progress the planning proposal, including the VPA. The words "brief Council" meant HCC staff. He said there was a concern on the part of One Capital that it was going to be difficult to finalise the VPA with Ms Stores, because she worked part time, and there was some discussion about withdrawing the VPA offer altogether so that the proposal could be taken directly to an HCC meeting.

Travel movement records show that Mr Uy travelled to Hong Kong on 3 February 2016 and Mr Badalati and Mr Sansom travelled on the same flight to Hong Kong on 18 February 2016. On Sunday, 21 February 2016, while he was in Hong Kong, Mr Badalati called Mr Dickson to check that all the changes would be completed in order to put "the matter to Council ASAP". Mr Uy and Mr Badalati returned on 23 February 2016 on different flights and Mr Sansom returned on 25 February 2016.

Mr Dickson's evidence was that he was invited by Mr Uy to attend a meeting on a Saturday in February 2016 at the Novotel in Brighton-Le-Sands. His evidence was that Mr Badalati, Mr Hindi, Wensheng Liu, and Mr Uy attended the meeting. There is no contemporaneous record of the meeting. Mr Uy agreed he attended the meeting and that it concerned the Landmark Square development. Wensheng Liu could not recall the meeting and thought that if it occurred it would have been in around 2014 or 2015. Mr Badalati and Mr Hindi could not recall the meeting but did not dispute that it happened. The Commission is satisfied this meeting occurred in February 2016 with Mr Dickson, Mr Badalati, Mr Hindi, Wensheng Liu, and Mr Uy in attendance.

At the time of this meeting, the details of the Landmark Square planning proposal had been lodged with HCC and HCC staff were preparing their assessment report. It is not apparent that there was any information that Mr Badalati or Mr Hindi needed to collect from the applicant for the planning proposal to be assessed.

In his statement, Mr Dickson said the meeting concerned the planning proposal, but he did not see the purpose of his attendance. He contributed nothing. He was not given any instructions. In light of the status of the planning proposal and assessment report as described above, it is unsurprising that Mr Dickson was not asked to contribute or provided any instructions during the meeting.

Mr Dickson gave the following evidence in his statement:

1. The meeting was “exceptional” in that it was held in the courtyard of a hotel, and “informal”, in that it was held in an atrium with the attendees sitting on individual lounge chairs.
2. He said, “the councillors talked about when the planning proposal could be put to council, and I understood they were talking to council staff about this”.

During the public inquiry, Mr Dickson added that it was “extremely unusual” in his experience to meet councillors and clients offsite in this way. He said he was “very surprised” Wensheng Liu attended, because he rarely attended any conversations about the project, and Mr Dickson had “only ever really met him in his office”. He said that Mr Uy in particular “was wanting to get [the planning proposal] onto the agenda as quickly as possible” and the meeting was about “trying to get the application brought up to a council meeting so they could vote on it sooner”. He could not recall the exact words used by Mr Hindi during this meeting in relation to the planning proposal. He said it was a friendly, positive gathering.

Counsel Assisting submitted that because the other attendees could not recall what was said at the meeting, no one was in a position to dispute Mr Dickson’s account of what took place. Counsel for Mr Hindi submitted that it was not open to conclude that Mr Hindi did not dispute Mr Dickson’s account because, as Mr Dickson gave evidence about his impressions of the meetings but was unable to relate any actual conversations, instructions or decisions, there was no account to dispute. The Commission does not accept Mr Hindi’s submissions. The key aspects of Mr Dickson’s evidence about this meeting are summarised above. His evidence was not based on impressions. The Commission notes that the two specific aspects of Mr Dickson’s evidence listed above were put directly to Mr Hindi during the public inquiry. In relation to the first matter, Mr Hindi said he did not

know why Mr Dickson said the meeting was exceptional. In relation to the second matter, after being taken to Mr Dickson’s evidence, Counsel Assisting put to Mr Hindi, “I take it since you don’t recall the meeting, you don’t dispute that aspect of his evidence, is that right?” Mr Hindi said “No, I don’t” and “I don’t recall that”. The Commission accepts Mr Dickson’s account of the meeting at the Novotel in Brighton-Le-Sands in February 2016 and is satisfied that it took place as he described in his evidence.

The Novotel meeting provides a further example of Mr Badalati and Mr Hindi engaging directly with the developer and the developer’s representatives away from the office of HCC. The meeting was inappropriate. Mr Hindi and Mr Badalati knew the meeting was inappropriate. The Commission is satisfied the meeting had nothing to do with advancing the Landmark Square development in the interests of the community. Mr Badalati and Mr Hindi had a personal interest in development approval for Landmark Square, namely, an expectation of financial gain.

March 2016: more meetings

In March 2016, Mr Uy invited Mr Dickson to attend two meetings at coffee shops. The evidence is that Mr Hindi attended both meetings while Mr Badalati attended one. It is again relevant to note that, as of March 2016, there seems to have been no legitimate reason for these coffee shop meetings to take place, given that the councillors were awaiting the assessment report from HCC staff.

In his statement, Mr Dickson said that in early March 2016, he was invited by Mr Uy to attend Macchina Espresso in Kingsgrove. Mr Dickson said that, when he arrived, he saw Mr Badalati and Mr Hindi were already seated. He recalled that the councillors said they would ask the HCC staff to look more fully at the amended planning proposal and they also said they did not understand why the staff were reluctant to consider the hotel, as they felt it was a great opportunity.

Mr Badalati and Mr Hindi’s evidence was that, although they could not recall attending the meeting, they neither denied attending nor disputed Mr Dickson’s account. The Commission accepts Mr Dickson’s account of this meeting in March 2016 and is satisfied it occurred as described in his evidence.

Mr Hindi’s submissions in response to Mr Dickson’s evidence were that Mr Dickson’s evidence of the meeting was “impressionistic” and it was not open to conclude Mr Hindi did not dispute Mr Dickson’s account because there was no account to dispute.

Mr Dickson’s evidence of the early March 2016 meeting at Macchina Espresso was not “impressionistic”.

Further, Counsel Assisting put to Mr Hindi that Mr Dickson's evidence was that Mr Hindi asked council staff to look more fully at the amended planning proposal and that Mr Hindi could not understand the staff's reluctance to consider the hotel. In response, Mr Hindi said, "I don't recall it but I would have said things, like, to that effect. I would have said things about the hotel ... So it's probably correct." Mr Hindi's submission that he did not dispute Mr Dickson's account because there was no account to dispute is plainly incorrect.

Mr Dickson was invited to another meeting by Mr Uy at a coffee shop in Surry Hills on 14 March 2016. In his statement, Mr Dickson said Mr Hindi attended and reported on the progress of the planning proposal at HCC. Only these three people attended the meeting. During the public inquiry, Mr Dickson told the Commission that, during the meeting, Mr Hindi said something to the effect that the proposal was tracking well at HCC and that he was trying to get it on the agenda. Mr Uy told the Commission that, at this meeting, Mr Hindi explained to him about the progress of Landmark Square.

Mr Hindi told the Commission that he did not deny attending the meeting on 14 March 2016, and he did not dispute Mr Dickson's account, but he did not recall the meeting. When Counsel Assisting put Mr Dickson's recollection of the meeting to Mr Hindi, he responded, "I don't recall the meeting. It may have happened ... It's likely but ... I don't recall".

The Commission accepts Mr Dickson's evidence.

The question that remains is why was it necessary for Mr Uy to meet with Mr Badalati and Mr Hindi offsite on these occasions?

In his statement, Mr Dickson said:

*Of all the Councillors at what was then known as Hurstville Council I believe Councillors Hindi, Badalati and Sansom appeared to me to be the most informed and interested in Landmark Square. When I attended the meetings I have outlined above with Councillor Hindi and Councillor Badalati to discuss how the Landmark Square Development was progressing at Council, they **would say words to the effect of "they would look into it" or "see what they could do"**. When they said words to this effect, I took this to mean two things—one that they would encourage the planning staff to expedite the employment generating land study in the first instance, and then secondly, once the decision made was to go to high density residential, they would encourage the staff to consider the merits of having a bonus provision to permit a hotel to be developed on the site as part of a comprehensive up-zoning of the site.*

I believe Philip [Mr Uy] spent a lot of time with Councillors Hindi and Badalati based on what he told me. He was very open with me that his main job was to facilitate communication with the Councillors. I thought the regular meetings Councillors Hindi and Badalati were inappropriate in the Australian context. His view on "sorting things" was a little bit more aggressive than most developers in Sydney.
[emphasis added]

Counsel for Mr Hindi submitted that this evidence from Mr Dickson's statement was "instructive" because Mr Dickson could not relate any actual conversations, just a pastiche of conversations. Further, in relation to the emphasised section of his statement the "effect" seemed to be wholly anodyne and inoffensive; "motherhood statements" that you might expect from elected officials trying to placate an insistent constituent without making any concrete promises or representations. In other words, "pure politics". It was submitted that according to Mr Dickson's account, the councillors were trying to encourage the HCC staff to expedite the draft ELS, not defer it.

The Commission is satisfied that Mr Dickson accurately recalled the substance of what was said during the meetings. The Commission also accepts the emphasised statements might in certain circumstances be "wholly anodyne and inoffensive". However, these statements were made in a particular context, namely, during inappropriate offsite meetings concerning a development in which Mr Badalati and Mr Hindi constantly displayed more than a passing interest. In relation to the last aspect of Mr Hindi's submission concerning the ELS, this possibility raised by Mr Hindi was not put to Ms Stores or any other council staff. That is unsurprising. The weight of evidence, which has already been addressed, demonstrates that Mr Badalati and Mr Hindi sought to defer the ELS.

Mr Hindi's evidence was that the meetings were necessary because the planning proposal had been amended and that even if he requested council staff to provide him with the relevant documents (which he did not) they would not have done so. He claimed briefings occurred in workshops. He denied he was providing Mr Uy with advice on the planning proposal over this period. Mr Uy's evidence was that at his meetings with Mr Hindi in February 2016 at the Novotel and on 14 March 2016 at the coffee shop, Mr Hindi "wanted to know clearly what sort of hotel development it was" and "he wanted to be clear for himself about what sort of thing he was going to support".

The Commission is satisfied there is no plausible explanation for the attendance of Mr Hindi or Mr Badalati at these meetings that is consistent with the proper exercise of their public official functions. It seems they

simply made themselves available on request to provide and receive information or to provide advice. As they were both “on the take”, so to speak, having accepted large payments from Mr Uy, they could hardly have done otherwise without the risk of exposure.

HCC obtains legal advice on the VPA

The VPA for Landmark Square submitted to HCC on or around 24 November 2015 proposed a monetary contribution of \$1 million for roads and traffic management works, but this was made conditional on the proposed hotel being approved.

Council staff sought legal advice on the VPA. On 8 March 2016, Ms Stores emailed Ms Gregory, another HCC officer, the draft email she proposed to send to the external lawyers requesting legal advice on the VPA. Ms Stores indicated that, “[w]e have been requested that the review and assessment of the Planning Proposal and VPA offer be undertaken as quickly as possible and that they be presented to the next Council meeting on 6 April 2016”.

On 9 March 2016, Ms Stores received legal advice that the VPA should not be entered into on the terms proposed. The advice was that, because the money was only to be provided upon approval of the hotel, in effect “nothing is offered for the increase in FSR ... or for the provision of bonus FSR”. That was a concern in circumstances where the increase in FSR was substantial and represented a very significant financial gain for One Capital at the time. The legal advice said that the “important question is whether the Council would be prepared to change the planning controls as sought by the planning proposal without any benefits being provided under the VPA”.

Ultimately, One Capital withdrew the VPA offer prior to HCC voting on the planning proposal on 20 April 2016. This meant that when HCC came to approve that proposal there was nothing at all offered in return for the benefits to One Capital arising from the increased FSR and height. Having regard to Mr Dickson’s evidence in relation to matters on or around 21 February 2016, withdrawal of the VPA appears to have occurred to ensure the VPA did not slow down the planning proposal and it could be put to HCC as soon as possible.

Section 74A(2) statements

In making a public report, the Commission is required by the provisions of s 74A(2) of the ICAC Act to include, in respect of each “affected” person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

- obtaining the advice of the DPP with respect to the prosecution of the person for a specified criminal offence
- the taking of action against the person for a specified disciplinary offence
- the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

An “affected person” is defined in s 74A(3) of the ICAC Act as a person against whom, in the Commission’s opinion, substantial allegations have been made in the course of, or in connection with, the investigation.

For the purpose of the matters dealt with in this chapter, the Commission is satisfied that Mr and Mrs Hindi are “affected” persons.

Mireille Hindi

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP in respect of the prosecution of Mrs Hindi for offences against s 87 of the ICAC Act in respect of her evidence:

- (i) concerning a practice whereby she did not disclose information concerning her business dealings to Mr Hindi
- (ii) concerning the use of her son’s name and her son’s involvement in the creation of the BAA dated 24 July 2014
- (iii) that the existence of the BAA was not disclosed to Mr Hindi.

Constantine Hindi

The Commission is also of the opinion that consideration should be given to obtaining the advice of the DPP in respect of the prosecution of Mr Hindi for an offence against s 87 of the ICAC Act in respect of his evidence:

- (i) concerning a practice whereby Mrs Hindi did not disclose to him information concerning her business dealings
- (ii) that the existence of the BAA was not disclosed to him by Mrs Hindi.

Chapter 4: Signing ceremonies in March 2016 (Sydney) and April 2016 (Tangshan, China)

This chapter examines what Mr Badalati and Mr Hindi knew about the Treacy Street and Landmark Square developments at two signing ceremonies involving those developments, which they attended in March 2016 in Chinatown, Sydney, and April 2016 in Tangshan, China. It also examines who paid for Mr Badalati and Mr Hindi's expenses during the trip to China in April 2016.

Yuqing Liu

Yuqing Liu is a businessman based in China. His company, Xinfeng, operated a waste-to-energy plant in Tangshan, China. On 21 April 2016 a company in Australia was registered and called Xinfeng Australia International Investment Pty Ltd ("Xinfeng AU").

Yuqing Liu is not related to Wensheng Liu. He does not speak English. Travel movement records indicate that Yuqing Liu has not been in Australia since 2018.

There is no evidence that Yuqing Liu ever had any association with Mr Sansom either in Australia or in China.

Prior to the commencement of the public inquiry on 14 June 2022, Yuqing Liu was notified of the scope of the Commission's investigation. He was invited to participate in an interview via video-link. While he indicated a willingness to be interviewed, the Commission's attempts to arrange that interview were unsuccessful. The Commission has had no further contact with Yuqing Liu since the conclusion of the public inquiry in August 2022. Yuqing Liu was not legally represented at the public inquiry and he did not give evidence. He did not receive the submissions of Counsel Assisting. These matters have been considered by the Commission in deciding whether, and to what extent, any findings can be made in respect of Yuqing Liu's conduct and, in particular, findings which might be adverse to his interests.

11 March 2016: Yuqing Liu attends a meeting at Mayor Badalati's office

On 11 March 2016, Yuqing Liu travelled to Australia.

Yuqing Liu had previously been introduced to Wensheng Liu by a mutual friend named Wang Yang Ping in Sydney.

Wensheng Liu told the Commission that in March 2016, Yuqing Liu met him at his office on Forest Road in Hurstville, where Wensheng Liu explained the Treacy Street and Landmark Square developments to Yuqing Liu. Wensheng Liu said Yuqing Liu was already aware of the developments because Wensheng Liu had shared information about them with an intermediary who subsequently spoke to Yuqing Liu. During this meeting, Yuqing Liu mentioned the waste-to-energy project he was involved in and that he was interested in building a similar facility in Australia. Mr Yan (an employee of GR Capital Group) and Mr Uy were also present at this meeting.

At some point prior to the evening of 18 March 2016, Yuqing Liu met with Mr Badalati, who was at that time the mayor of HCC, at his HCC office. The meeting was also attended by Mr Yan and Gensheng Yu, a member of Yuqing Liu's staff. As Yuqing Liu does not speak English, Mr Yan acted as his interpreter.

There is no evidence to establish who arranged the meeting between Yuqing Liu and Mr Badalati. It is possible that it was arranged by Mr Uy or Wensheng Liu, given the nature of their relationship with Mr Badalati. However, they both denied this during the public inquiry.

Mr Badalati and Mr Yan's evidence was that during the meeting, Yuqing Liu explained he had built a waste-to-energy plant in Tangshan, China, and he was interested in building a similar plant in Hurstville. Mr Badalati said he explained to Yuqing Liu that building such a plant in the HCC area was not a realistic possibility.

There is no evidence that Yuqing Liu mentioned the Treacy Street and Landmark Square developments at this meeting. Mr Badalati denied they were discussed, while Mr Yan could not recall them being mentioned.

Mr Badalati said Yuqing Liu invited him to attend a dinner in Chinatown to further discuss the waste-to-energy proposal. Mr Badalati said that although building the project in the HCC area was not a possibility, he was nevertheless interested to attend because he had previously chaired a committee on the Southern Sydney Regional Organisation of Councils which included electricity provision for the people of southern Sydney.

Mr Badalati invited Mr Hindi to attend the dinner in Chinatown with Yuqing Liu. Mr Badalati's evidence was that he invited Mr Hindi because Mr Hindi was an engineer and would understand more about the proposal. Mr Hindi's evidence was that he understood the purpose of the dinner was to discuss waste-to-energy and that by this point

he had expertise in the area, having done some research comprising reading books, Google searching and informal discussions with other local government councillors. Mrs Hindi told the Commission that Mr Hindi invited her to accompany him and she understood the purpose of the dinner was to discuss the waste-to-energy proposal.

18 March 2016: a signing ceremony in Chinatown, Sydney

On 18 March 2016, a dinner in a private room at a Chinese restaurant in Chinatown took place. It was attended by Mr Badalati, Mr and Mrs Hindi, Yuqing Liu, Wensheng Liu (and his wife), Ms Tang (who at that stage was working for both Wensheng Liu and Mr Uy) and Mr Yu. Some other associates of Wensheng Liu also attended.

Figure 5: Mr Badalati, Mr Hindi, Mrs Hindi and others look on at the signing of the Cooperation Agreement between Wensheng Liu (at left) (One Capital) and Yuqing Liu (Xinfeng), 18 March 2016



Wensheng Liu's evidence was that he was invited to the dinner by Yuqing Liu's assistant and girlfriend, Huinan Zhao. Ms Zhao did not attend the dinner because she was not in Australia at that time. Mr Yan, who did not attend the dinner either, gave evidence that he received the address of the restaurant from Gensheng Yu, a member of Mr Liu's staff, which he subsequently sent to Wensheng Liu. Mr Yan said that, on Wensheng Liu's instruction, he hung a large yellow banner with Chinese characters written in red font in the private room at the restaurant, the English translation of which said: "The signing ceremony between Xinfeng and the One Capital Group". Wensheng Liu's evidence was that the banner was Yuqing Liu's idea.

During the dinner, Wensheng Liu and Yuqing Liu signed a "Cooperation Intention" agreement ("the Cooperation Agreement") as representatives of their respective companies, One Capital and Xinfeng. The agreement, which had been drafted by Mr Yan, concerned several projects in Sydney, including the Treacy Street and Landmark Square developments. It was agreed that:

- Yuqing Liu would invest \$50 million in the Treacy Street development and obtain 24 per cent of the net profit upon completion of the project, with the remaining net profit going to Wensheng Liu (clause 1)
- Yuqing Liu would invest \$80 million in the Landmark Square development and obtain 75 per cent of the net profit upon completion of the project, with the remaining net profit going to Wensheng Liu (clause 2).

The other projects referred to in the Cooperation Agreement were Good Cubic, Hurstville No 1 Parking Project, Hurstville Municipal Building Project and Sydney Fish Market.

The Cooperation Agreement gave Xinfeng a "priority" to invest in all projects of One Capital located in Hurstville (clause 10). Xinfeng and One Capital further agreed that for each of the projects listed in the agreement they would sign an independent project cooperation agreement. It would be signed "during the visit to Tangshan" (clause 9). The Cooperation Agreement imposed an obligation upon Wensheng Liu (One Capital) to invite the mayor of Hurstville to visit Xinfeng in Tangshan and meet with representatives of the Tangshan Government (VI. Preparatory Work clause 5). The mayor of Hurstville was Mr Badalati. The Commission is satisfied it was the intention of the parties that at the very least Mr Badalati would be in attendance for the Tangshan signing ceremony referred to below.

Significantly, the Cooperation Agreement did not contain any reference to waste-to-energy or the development of such a power source in Hurstville or elsewhere.

Numerous photographs were taken by those in attendance throughout the dinner. Figure 5 shows a photo of the signing ceremony, in which the Cooperation Agreement was being signed by Wensheng Liu and Yuqing Liu, while Mr Badalati and Mr Hindi were sitting immediately next to them and watching. The agreement was in Chinese, but the front page of the agreement had the words "One Capital" in English.

It is clear the signing was a significant occasion. The large banner that hung in the private room of the restaurant indicated it was to be a signing "ceremony". The food served appears to have included premium dishes, such as a large decorative lobster platter. There were a number of people in attendance, many of whom were taking photographs on their mobile telephones and posing while holding drinks for a toast.

Figure 6: Mr Badalati sharing a toast with Yuqing Liu at the signing ceremony, next to Mr Hindi, 18 March 2016



Figure 7: Mr and Mrs Hindi sharing a toast with others at the signing ceremony, 18 March 2016



Figure 8: Mr Badalati sharing a toast with Mr Uy and others at the signing ceremony, 18 March 2016



Figure 9: [L-R] Yuqing Liu, Mr Badalati and Mr Hindi in front of a large decorative lobster platter at the signing ceremony dinner, 18 March 2016



Figure 10: [L-R] Wensheng Liu, Yuqing Liu, Mr Badalati and Mr Hindi pose in front of a banner referring to the signing ceremony, 18 March 2016



Figure 11: The private function room in a Chinese restaurant where the signing ceremony was held, 18 March 2016



Both Mr Badalati and Mr Hindi told the Commission that at the time of the dinner they did not know the agreement concerned the Treacy Street or Landmark Square developments. Mr Badalati's evidence was that he was told the signing ceremony concerned projects in China. Mr Hindi's evidence was that he did not know what it was about. He said he "wasn't that curious" and "didn't care". Mrs Hindi, Wensheng Lui and Mr Uy's evidence to the Commission was that there was no discussion of the Treacy Street or Landmark Square developments at the dinner. Ms Tang told the Commission she could not recall any such discussion, although she was seated at a different table.

The veracity of this evidence is questionable. It is difficult to accept that neither Mr Badalati nor Mr Hindi believed or even suspected the agreement concerned the Treacy Street and Landmark Square developments, in circumstances where:

- (i) Wensheng Liu was present at the dinner, whom both men knew to be the individual behind both the Treacy Street and Landmark Square developments, and whom they had met a month earlier at the Novotel Brighton-Le-Sands regarding the Landmark Square development.
- (ii) Mr Uy was present at the dinner whom both men knew to be involved in the Treacy Street and Landmark Square developments and whom they had met on multiple occasions, including in the days and weeks prior to the dinner regarding the Landmark Square development. Further, as discussed in chapter 6, the Commission is satisfied that by this time both men had received (in Mr Hindi's case approximately) \$70,000 in payments from Mr Uy in relation to the Treacy Street development.

- (iii) The Cooperation Agreement bore the title “One Capital”. Mr Badalati’s evidence was that he knew One Capital was the proponent for the Landmark Square planning proposal. He accepted that as he was sitting right next to the two men when they signed the document, he likely saw that it said “One Capital” on the cover. Mr Hindi denied both knowing that One Capital was the proponent by this time and also that he saw the words “One Capital” on the agreement. The Commission rejects Mr Hindi’s denial he had knowledge that One Capital was the proponent. Chapter 3 of this report sets out multiple meetings, three of which were formal meetings at HCC and four of which were informal meetings away from HCC, which Mr Hindi attended in relation to the Landmark Square development between May 2015 and March 2016. In particular, the meeting at the Novotel Brighton-Le-Sands only a month prior to the dinner in Chinatown was attended by Wensheng Liu. It is implausible Mr Hindi did not know Wensheng Liu was the face behind One Capital. As for Mr Hindi’s denial he saw the words “One Capital” on the agreement, while it seems unlikely – given he was watching Yuqing Liu and Wensheng Liu sign the agreement – there is no direct evidence to the contrary.
- (iv) Mrs Hindi, whose commercial interest in the Landmark Square development under the BAA did not expire until July 2016, knew that Wensheng Liu and Mr Uy were associated with that development. The Commission has previously found that Mr Hindi was aware of Mrs Hindi’s commercial interest in Landmark Square under the BAA.
- (v) The Cooperation Agreement suggested that at least then mayor Mr Badalati would be invited to visit Xinfeng in Tangshan. It is hard to imagine a rational reason why he would not have been invited during the ceremonial dinner and had the purpose of his visit explained to him. As is noted below, it appears to be common ground that at around the time of the dinner, Yuqing Liu invited Mr Badalati and Mr and Mrs Hindi to visit his waste-to-energy plant in Tangshan. As has been noted above, the Cooperation Agreement imposed an obligation upon Wensheng Liu to invite at least Mr Badalati to Tangshan. This suggests the invitation did not occur prior to the dinner. If Mr Badalati was invited to Tangshan at or shortly after the dinner, it is unlikely he did not believe the

invitation occurred because Yuqing Liu wished to use his status as mayor of Hurstville to encourage investors to invest in proposed property developments in the Hurstville Local Government Area. The Commission heard evidence to the effect that the position of mayor in China is one of considerable power and prestige. The invitation would not have concerned any potential waste-to-energy plant. After all, according to Mr Badalati he had advised Yuqing Liu during the earlier meeting at the HCC premises that development of a waste-to-energy plant within his local government area was not a realistic possibility.

Counsel Assisting submitted there is ultimately insufficient evidence for the Commission to find that at the signing ceremony and dinner in Chinatown either Mr Hindi or Mr Badalati knew that the Cooperation Agreement concerned either the Treacy Street or Landmark Square development. The Commission accepts that submission, although with some reservations.

Although the Commission is satisfied Mr Badalati, Mr Hindi and Mrs Hindi were aware Wensheng Liu and Mr Uy were involved in both projects, it is not satisfied that as at 18 March 2016 they were aware Yuqing Liu had, or would, become an investor in the Treacy Street and Landmark Square developments or that the Cooperation Agreement concerned those developments. If Mr Badalati’s previous meeting with Yuqing Liu concerned a waste-to-energy plant, it is not entirely implausible he assumed the Chinatown dinner and the Cooperation Agreement concerned waste-to-energy or some other Australian or Chinese investment.

Counsel Assisting also submitted that even if Mr Badalati or Mr Hindi were not told and did not know the Cooperation Agreement concerned the Treacy Street and Landmark Square developments, it was open to the Commission to conclude that, beyond discussing waste-to-energy, one purpose of the dinner was to maintain a good relationship with the two councillors who would ultimately be voting on both the Treacy Street and Landmark Square developments. The Commission accepts this submission. It is important to note, however, that the Commission is satisfied by the time they were required to vote on 20 April 2016 they knew of Yuqing Liu’s involvement in the Treacy Street and Landmark Square developments.

One question that arose during the Commission’s investigation is, who paid for the dinner? None of the witnesses who gave evidence on this issue claimed they could recall who paid.

Mr Badalati gave evidence that he did not pay for the dinner and that he assumed Yuqing Liu paid. Wensheng

Liu denied paying for the dinner, as did Mr Uy. Ms Tang's evidence was that she did not pay for her dinner either.

Mrs Hindi told the Commission that she did not know who paid for the dinner but that she left a couple of hundred dollars on the table to cover the costs of her and Mr Hindi's dinner. She said, "I do recall that I left a couple of hundred dollars on the table" and "they wouldn't let us, well, obviously we weren't going to pay for the whole table but the discussion was that took place at that time that I wanted to pay for myself and my husband". Mr Hindi gave evidence that Mrs Hindi "left money on the table ... Two \$100 notes. It wasn't left on the table... [T]here was a waiter there and she said 'Here, here's the money'".

None of the other witnesses who gave evidence at the public inquiry could recall seeing Mrs Hindi leave any money. Mr Badalati's evidence was that he did not see Mrs Hindi leave any money, despite leaving the dinner at about the same time as Mr and Mrs Hindi. Wensheng Liu said that he could not recall, although he could not remember whether he left before or after the Hindis. Ms Tang said she did not see Mrs Hindi leave money on the table.

Counsel Assisting submitted it was open to the Commission to find that Mrs Hindi never left any money on the table at the dinner and that both she and Mr Hindi lied about this. That submission was based on two contentions. First, that Mr Hindi gave an account which was inconsistent with that of Mrs Hindi. Secondly, no other witness who gave evidence saw Mrs Hindi leave money on the table.

The Commission does not accept Counsel Assisting's submission. In relation to the first contention, the Commission is satisfied that the versions given by Mrs and Mr Hindi are reasonably consistent. In relation to the second contention, the Commission accepts that evidence that a witness does not recall seeing something occur is not evidence that the event did not occur, but rather that they did not see it, or they do not have a memory of seeing it. The Commission does not give any weight to Mr Badalati's evidence that he could not recall Mrs Hindi leaving cash in circumstances where it is not clear he left at the same time as the Hindis and the reasonably trivial nature of the occurrence from his point of view.

As to who did pay for the dinner in Chinatown on 18 March 2016, the probabilities favour that it was Yuqing Liu, given that he had issued the invitation to the dinner, that his partner had apparently booked the room and that none of the other witnesses who attended could recall paying.

April 2016: the Hindis and Mr Badalati travel to Tangshan, China, for another signing ceremony

At some point at or around the time of the dinner in Chinatown on 18 March 2016, Mr Badalati and Mr and Mrs Hindi were invited by Yuqing Liu (via an interpreter) to visit his waste-to-energy plant in Tangshan, China. The evidence of Mr Badalati and Mr and Mrs Hindi was consistent on this point.

There were text messages between Wensheng Liu and Mr Yan regarding the organisation of this trip, including Mr Yan supplying Wensheng Liu on 20 March 2016 (two days after the dinner) and 8 April 2016 with photographs and the details of the councillors' names and positions in Chinese. Mr Yan's evidence was that this information was sent to Yuqing Liu or Mr Yu (a member of Yuqing Liu's staff), and he only received it "for my information". In response to seeing these messages he said he did not know whether it was Wensheng Liu who invited the councillors to Tangshan.

On 29 March 2016, Wensheng Liu texted Mr Uy requesting that he "arrange for Chubby, Middle East, to come to Beijing on the 10th to attend the formal signature ceremony". Wensheng Liu told the Commission that "Chubby" and "Middle East" were references to Mr Badalati and Mr Hindi respectively. He also said he understood that Mr Uy referred to Mr Badalati and Mr Hindi by those names. He denied inviting the councillors was his idea, adding that inviting them was Yuqing Liu's idea and that Yuqing Liu had asked him to assist with the arrangements.

This issue cannot satisfactorily be resolved in Yuqing Liu's absence. Counsel Assisting submitted that it is open for the Commission to find that while the invitation to visit the waste-to-energy plant was issued by Yuqing Liu, both Yuqing Liu and Wensheng Liu desired that the two councillors visit Tangshan and attend the signing ceremony. The Commission accepts that submission. As previously noted, the Cooperation Agreement provided that the mayor of Hurstville would visit Xinfeng, and the texts referred to above demonstrate the steps taken by Wensheng Liu to facilitate that occurring. Mr Yan told the Commission that one purpose of the trip was to attract investment from persons or businesses in China and that "if the local Mayor was present that would leave the impression that the investment was supported by local government". Wensheng Liu gave evidence that one purpose of Mr Badalati and Mr Hindi coming was "meeting with the local officials, government officials and bankers and to help seek their approval for the investment in this project".

On 8 April 2016, Mr Badalati, Mr and Mrs Hindi and Wensheng Liu departed Sydney bound for China. They took different flights (Mr and Mrs Hindi travelled together), but eventually met up with each other and Mr Uy in Shenzhen. Mr Badalati, Mr Hindi and Mrs Hindi spent a night at the Shenzhen Intercontinental on 9 April 2016. Mr Badalati paid for his own accommodation by credit card. Mrs Hindi gave evidence that while Mr Badalati may have paid for Mr and Mrs Hindi's accommodation initially, she believed she reimbursed him.

There is no evidence HCC had approved or was even aware of this trip.

On 10 April 2016, Mr Badalati, Mr and Mrs Hindi, and Mr Uy flew from Shenzhen to Beijing. They spent a night at the Beijing International Hotel. Ms Tang and Mr Yan, who left Sydney together on the same flight, joined up with the group in Beijing at this time.

On 11 April 2016, Mr Badalati, Mr and Mrs Hindi, Wensheng Liu, Ms Tang, Mr Uy, Mr Yan and others were collected from Beijing by Yuqing Liu's staff and taken to Tangshan. Tangshan is approximately two-and-a-half hours east of Beijing. They travelled in luxury cars provided by Yuqing Liu. There was one car for Mr Badalati, another for Mr and Mrs Hindi.

Figure 12: Mr Hindi and Mr Badalati in front of a banner in Tangshan that read "Welcome mayor Vince Badalati"



Upon their arrival in Tangshan a welcome banner was prominently displayed. It welcomed mayor Vince Badalati (see Figure 12). An itinerary prepared by Xinfeng listed Mr Badalati as the Mayor of Hurstville. It described Mr Hindi as Deputy Mayor of Hurstville and Mrs Hindi as a Councillor of Kogarah City Council.

Figure 13: The translated itinerary for the April 2016 trip to Tangshan

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List of Australian merchants	
Vince Badalati	Mayor of Hurstville, Australia, State Councillor
Con Hindi	Deputy Mayor of Hurstville, Australia, State Councillor
Mireille Hindi	Councillor of Kogarah, Australia
Wensheng LIU	Director of Australian The One Capital Group Pty Ltd
Zhuohua Huang (Philip Uy)	General Manager of Australian The One Capital Group Pty Ltd
Xidong RUAN	Director of Australian The One Capital Group Pty Ltd Hong Kong Branch
Qinghe HUANG	General Manager of Sales Department of Australian The One Capital Group Pty Ltd Hong Kong Branch
Yaomin WANG	General Manager of Marketing Department of Australian The One Capital Group Pty Ltd Hong Kong Branch
Rongdi SHAO	Project Development General Manager of Australian The One Capital Group Pty Ltd
Elaine TANG	Customer Relationship Manager of Australian The One Capital Group Pty Ltd
Xin YAN	Assistant to the Chairman of Australian The One Capital Group Pty Ltd
Yanping WANG	
Yangyang DING (above people are merchants, 13 people in total)	
Qingfeng LI	Appointed vice mayor
Chun AI, Shuwen PAN, Huirong LIU, Shouting SUN, Shuchun WEI, Huande DONG, Yongcai SUN, Lianqing DONG, Jinhai DONG, Zhengfu DONG, Chengwei YANG	
Yuqing LIU, Jiandong DONG, Defeng MENG, Chao LIU, Zhiwen LIU, Gensheng YU	

/Company seal of Tangshan Xinfeng Thermoelectric Group Co., Ltd Affixed:

JIAYAN TANG
CPN2NO71Q
CHINESE <-> ENGLISH
VALID TO 30/09/2020

SIGNATURE: _____

TRANSLATION DATE: 11/10/2018

I, Jiayan TANG of Sydney Translator, do hereby solemnly and sincerely certify that the above translation into the English Language is a true and accurate translation of the attached Host plan (Written in Chinese). All queries regarding the translation should be directed to me. Translated on 11 October 2018.

Mr Hindi was not, and never has been, deputy mayor of HCC, although much later he served as deputy mayor of GRC (between 23 September 2019 and 18 September 2020). Mrs Hindi was no longer a councillor of Kogarah City Council. She held that office at a much earlier point in time, between 2008 and 2012.

The Commission is satisfied Mr Badalati was represented to those present as mayor; Mr Hindi as deputy mayor and Mrs Hindi as a councillor to impress local officials, government officials and bankers. The purpose of doing so was to promote the Treacy Street and Landmark Square developments and to help seek their approval for investment. This is consistent with the evidence of Wensheng Liu.

Initially, Wensheng Liu said he believed the agreement to be signed at Tangshan concerned a proposed investment in waste-to-energy. However, when shown the agreement he acknowledged that it made no reference to any waste-to-energy project. He further agreed that a waste-to-energy project was the subject of a subsequent letter of intent signed by Mr Hindi and Yuqing Liu. That letter of intent was signed by Mr Hindi and Yuqing Liu in Sydney in May 2016 (when Yuqing Liu travelled to Australia) and signed again in China in June 2016 (when Mr Hindi travelled to China). Wensheng Liu and Mr and Mrs Hindi attended the signing ceremony of the letter of intent, which was held in Tangshan, China. Mr Badalati

did not attend. He was not invited, the likelihood being he had nothing to contribute to any waste-to-energy project.

The Commission is also satisfied that one of the reasons why Mr Badalati and Mr Hindi were invited to Tangshan was to ensure Yuqing Lui and Wensheng Lui could maintain a good relationship with them. Wensheng Lui agreed it was important to maintain a good relationship with Mr Hindi and Mr Badalati because, ultimately, they would be voting on the Landmark Square and Treacy Street developments. As Wensheng Lui put it, “there was a hope that they would vote, they would support it”.

The itinerary also listed Wensheng Liu as director of One Capital, Mr Yan as his assistant, and Ms Tang as customer relations manager. Mr Uy was listed as general manager of One Capital. Other “Australian merchants” for One Capital were listed, including Qinge Huang (Mr Uy’s brother, also known as Wong Ching Ho or Tommy Wong), who was listed as the general manager of the Sales Department Hong Kong branch, and Rongdi Shao, who was listed as project development general manager.

Mr Yan gave evidence that Mr Huang, Mr Shao and Mr Uy did not hold these positions. They were represented this way to Xinfeng so that it appeared One Capital matched the size and strength of Xinfeng. Wensheng Liu gave similar evidence. Mr Yan said, “that’s the way to do business in China. The strength of two sides have to match. So, if one side is significantly stronger than the other one, then it’s hard ... for the two of them to [do] business together.”

Later on 11 April 2016, Mr Badalati and Mr and Mrs Hindi visited Tangshan Xinfeng Jiangmai Industrial Park, Xinfeng’s waste-to-energy plant and the Xinfeng building.

That evening, Mr Badalati and Mr and Mrs Hindi had dinner at the banquet hall at the Xinfeng building. Mr and Mrs Hindi told the Commission they did not pay for that dinner. It was provided by the chefs at the Xinfeng building. Following this, they arrived at the Tangshan Grand Metropark Guofeng Hotel.

On 12 April 2016, Mr Badalati and Mr and Mrs Hindi did some sightseeing at the Tangshan World Horticulture Expo Hall. The three of them then had lunch at “Nanhu Jiudao” with other members of the group. They each told the Commission they did not pay for that lunch. Counsel Assisting submitted that this was paid for by Yuqing Liu or Xinfeng. The Commission is satisfied this occurred.

That evening, a signing ceremony was held in a hall at the Xinfeng building. A banner in the hall again welcomed mayor Vince Badalati. Mr and Mrs Hindi did not attend the signing ceremony but attended the subsequent dinner.

Figure 14: The hall in the Xinfeng building where the signing ceremony took place, with a banner reading “Welcome mayor Vince Badalati to Tangshan Xinfeng Thermoelectric Group”



An agreement was signed on a stage in the hall by Wensheng Liu and Yuqing Liu. It was the same Cooperation Agreement that had been signed in Chinatown, with some minor modifications. Mr Uy was present and stood on the stage.

It is clear Mr Badalati was present as a guest of honour. He also stood on the stage and delivered a speech. Mr Badalati gave evidence that he spoke about Hurstville and the number of Chinese people living there. Wensheng Liu’s recollection of the speech was consistent with Mr Badalati’s account. The Commission is satisfied Mr Badalati’s speech had nothing to do with any investment in a waste-to-energy plant in Australia. It is satisfied Mr Badalati’s reference to the size of the Chinese population residing in Hurstville was to provide comfort to potential investors and officials in respect of investing in the Hurstville Local Government Area and, more particularly, investing in the Treacy Street and Landmark Square developments.

The deputy mayor of Tangshan was also on stage during the signing ceremony, together with some other local government officials. A banner projected on a screen behind the stage stated in English: “Tangshan Xinfeng Thermoelectric Group and Australian The One Capital Group – Signing Ceremony”.

Figure 15: Delegates, including Mr Uy, Yuqing Liu, Mr Badalati and Wensheng Liu on stage during the signing ceremony in Tangshan, China, 12 April 2016



The screen behind the stage also displayed photos of Mr Badalati and Mr Hindi with Yuqing Liu at the signing ceremony in Chinatown and on another occasion. It also displayed a photo of Yuqing Liu standing alongside Mr Uy and Mr Vegners. As has been previously noted, it was anticipated Gencorp, using the building services of Mr Vegners, would construct the Treacy Street development and might also build the residential component of the Landmark Square development.

The Commission is satisfied the purpose of the photos was to represent to those present that Yuqing Liu had a close relationship with mayor Badalati, “deputy mayor” Hindi and the likely builder of either or both the Treacy Street and Landmark Square developments. These representations did not suggest in any way that the signing ceremony concerned any proposed waste-to-energy project in the Hurstville Local Government Area or elsewhere.

Mr Badalati claimed he did not notice these photos, as they were projected on the screen behind him.

There were also prominently displayed banners at the signing ceremony heralding the attendance of mayor Badalati, reading: “Welcome mayor Badalati to Tangshan”.

Figure 16: During the signing ceremony in Tangshan, China (12 April 2016) a screen displays photos featuring Yuqing Liu, Mr Badalati and Mr Hindi at the Sydney signing ceremony (18 March 2016)



It is highly unlikely Mr Badalati did not see the photos at some point prior to, during, or after the signing ceremony. However, nothing turns on this. The Commission is satisfied Mr Badalati was aware before arriving in China that he had been invited to the Tangshan signing ceremony because of his status as mayor of Hurstville and he would be there to promote the Treacy Street and Landmark Square developments within his local government area. It is inconceivable that Mr Badalati believed he had been invited to China to promote investment in a waste-to-energy plant at an unknown location, but certainly not within the Hurstville Local Government Area.

The Commission is also satisfied that Mr and Mrs Hindi were also aware before they arrived in China that they were present in Tangshan and had assumed the fake roles of “deputy mayor” and “councillor” to promote investment in the Treacy Street and Landmark Square developments. The evidence is addressed below.

What did Mr Badalati and Mr Hindi know about the purpose of the signing ceremony in Tangshan?

Both Mr Badalati and Mr Hindi denied knowing that when they travelled to China there was to be a signing ceremony held in Tangshan, or that the agreement to be signed in Tangshan concerned the Treacy Street and Landmark Square developments.

As has been noted, on 29 March 2016, Wensheng Liu had texted Mr Uy requesting that he “arrange for Chubby, Middle East, to come to Beijing on the 10th to attend the formal signature ceremony”. There does not appear to be any reasonable or rational reason to suppose that Yuqing Liu, Wensheng Lui or Mr Uy wished to conceal from Mr Badalati or Mr Hindi the reason for the trip or that the agreement to be signed in Tangshan concerned, in part, the Treacy Street and Landmark Square developments. Even more unlikely is any suggestion Yuqing Liu, Wensheng Lui, or Mr Uy would have falsely represented to Mr Badalati and Mr Hindi that the purpose of their attendance would be to promote investment in a waste-to-energy plant.

Before addressing what Mr Badalati and Mr Hindi knew about the Landmark Square and Treacy Street developments during this trip to China, it is necessary to deal with evidence given by Mr Uy during the public inquiry about whether he told the councillors about the true nature of the signing ceremony in Chinatown or thereafter. When first asked about this in the public inquiry, Mr Uy gave detailed evidence that he told Mr Badalati and Mr Hindi the day after the 18 March 2016 signing ceremony in Chinatown that the agreement signed concerned the Landmark Square and Treacy Street developments. He said that Yuqing Liu had tricked Mr Badalati and Mr Hindi about the purpose of the dinner. He accepted that they certainly knew before they went to China that the agreement signed in Sydney concerned the two developments. He said that he told Mr Hindi around the time of the ceremony in China that the agreement to be signed concerned the Landmark Square development. He said Mr Badalati and Mr Hindi were angry because they felt they had been deceived and, consequently, Mr and Mrs Hindi did not attend the signing ceremony. Mr Badalati reluctantly attended and gave a speech concerning environmental protection.

A few days after giving this evidence in the public inquiry, Mr Uy retracted all of it. He said he had been drunk at the signing ceremony in Chinatown and he did not tell Mr Hindi or Mr Badalati about the true nature of the agreement, either the next day or thereafter.

The fact that Mr Uy’s evidence on this matter changed so significantly during the public inquiry is another example of Mr Uy’s lack of credibility. One version given by Mr Uy must have been false, and knowingly false. That Mr Uy was drunk at the dinner in Chinatown offers no explanation for him giving detailed evidence at the public inquiry as to his conduct the day after the Chinatown signing ceremony. As far as the Commission is aware, Mr Uy was sober at the time he gave that evidence. However, it is ultimately unnecessary for the Commission to resolve the inconsistencies in Mr Uy’s evidence.

This is addressed below.

A number of witnesses who travelled to China in April 2016 gave evidence that either the Treacy Street and Landmark Square developments were not discussed during the trip, or they had no recollection of any such discussion. For example, Mrs Hindi claimed there was no discussion that Yuqing Liu was an investor in Landmark Square or that Wensheng Liu was the developer. She claimed the Landmark Square development was not discussed at all. In the unlikely event that this was truthful evidence, Mrs Hindi was certainly aware of Wensheng Liu’s interest in Landmark Square. She and One Capital were parties to the BAA relating to the Landmark Square site. Ms Tang and Mr Yan said they did not recall witnessing any discussions relating to the two projects during the trip. Ms Tang said she might have explained to Mr Badalati and Mr and Mrs Hindi that Yuqing Liu and Wensheng Liu were working together on the Landmark Square development, but she could not recall.

Mr Badalati told the Commission that – having reviewed the Landmark Square planning proposal lodged in June 2015 and the amendment to the planning proposal lodged in November 2015 – he knew by the time of the signing ceremony in Chinatown on 18 March 2016 that One Capital was the applicant for the planning proposal and that One Capital was Wensheng Liu’s company. It also follows that, having attended a meeting with Wensheng Liu at the Novotel Brighton-Le-Sands in February 2016, Mr Badalati recognized that Wensheng Liu was connected to that development from at least that time, if not earlier. Despite this state of mind, the substance of Mr Badalati’s evidence was that he did not know there was to be a signing ceremony held in Tangshan, or that the agreement to be signed in Tangshan concerned the Treacy Street and Landmark Square developments. He claimed that the “penny dropped” when he “walked into the hall with everybody else” and saw the banner being projected on a screen. He claimed that when he saw the banner, he formed a “suspicion” that the agreement related to Landmark Square and Treacy Street. He said that suspicion was not confirmed during the trip because no one discussed the fact that the agreement being signed concerned those two developments. He said that he now thought he was being used to demonstrate to those present in Tangshan that the relevant local government in NSW supported the Treacy Street and Landmark Square developments, although he did not appreciate this at the time. This position was repeated in his submissions of 25 April 2023.

The Commission does not accept this evidence or the submissions. The Commission is satisfied Mr Badalati knew before travelling to China that the purpose of his visit would be to endorse the proposed developments at

Treacy Street and Landmark Square. However, even if this were not so, it cannot be gainsaid that, at the very latest, by the time Mr Badalati left China and before he cast his vote in relation to the Landmark Square development on 20 April 2016, he knew the agreement concerned the Treacy Street and Landmark Square developments and that both Wensheng Liu and Yuqing Liu in their respective capacities of developer and investor had entered a contract in respect of those developments.

The Commission does not accept that the agreement was not discussed on the trip to Tangshan or earlier or that Mr Badalati was not fully aware the agreement concerned the Treacy Street and Landmark Square developments.

It is convenient to note at this point that Mrs Hindi claimed she believed the purpose of the visit to China in April 2016 was to look at the waste-to-energy facility in Tangshan. At the time of the trip, Mrs Hindi still had a substantial financial interest in the Landmark Square development and its progress. One Capital (Wensheng Liu) was a party to the BAA and Mr Uy had a significant role in the creation of that agreement. Despite the fact that Wensheng Liu and Mr Uy also travelled to China and were present in Tangshan for the signing ceremony, Mrs Hindi claimed the Landmark Square development was not brought up during the trip. Wensheng Liu told the Commission he was not involved in any waste-to-energy proposal. He also said he, Mr Badalati, Mr and Mrs Hindi attended a meeting on this trip “about the waste-energy business and plant” and that some of those present at the meeting were potential investors in the Landmark Square development.

Mrs Hindi also claimed that it did not occur to her that the agreement signed in Tangshan had anything to do with Landmark Square. The Commission does not accept this evidence. It simply beggars belief. The Commission is satisfied Mrs Hindi’s evidence was untrue. Her evidence is further addressed later in this chapter.

Figure 17: Delegates at the Tangshan signing ceremony, 12 April 2016, including Mr Badalati



It was submitted on behalf of Mr Hindi that Mr Badalati’s evidence in relation to the banner being projected on a screen was substantially compromised for the following reasons. First, the evidence concerning the “penny dropping” for Mr Badalati incorrectly referred to the banner displaying “Australian the One Capital Group” when the banner said, “Australian first Capital Group”. Secondly, Mr Badalati changed his evidence during cross examination to say it was the words “The One” which caused him to have suspicions about the signing ceremony. Mr Hindi claimed Mr Badalati was led into accepting this proposition by reason of the interjection of his counsel rather than volunteering it.

The Commission does not accept Mr Hindi’s submission. Mr Badalati’s evidence was that the “penny dropped” when he “walked into the hall with everyone else” and saw the banner on display. The banner projected when he walked into the room was that on display in Figure 15, which stated “Tangshan Xinfeng Thermoelectric Group and Australian The One Capital Group”. When Mr Badalati gave this evidence during the public inquiry, he had been shown a photograph of a different banner taken prior to the signing ceremony while the hall was in the process of being set up, which stated “Tangshan Xinfeng Thermoelectric Group and Australian first Capital Group signing ceremony”. The top line of the banner stated, “The One” (see Figure 18). The Commission is satisfied that the banner Mr Badalati was referring to when he claimed the “penny dropped” was that depicted in Figure 15. That was the banner on display when he “walked into the hall with everyone else”.

Figure 18: Banner displayed on the stage’s screen as the hall is prepared prior to the Tangshan signing ceremony



In relation to the second matter put by Mr Hindi, counsel for Mr Uy asked Mr Badalati if Figure 18 (which refers to “Australian first Capital Group”) was the banner he was referring to when he said the “penny dropped”.

The Commission is satisfied Mr Badalati was mistaken in his answer to counsel for Mr Uy and is satisfied that it was Figure 15 (which refers to “Australian The One Capital Group”), not Figure 18, that Mr Badalati saw when he walked into the hall. In any event, counsel for Mr Uy put to Mr Badalati that the words “Australian first Capital Group” could have referred to any company, not necessarily the company related to Wensheng Liu, because his company was “One Capital” not “first Capital”. Mr Badalati responded, “I find that hard to believe”. Counsel for Mr Uy put it to Mr Badalati that “there is nothing on that banner [Figure 18] to indicate to you that it had anything to do with anything but the waste-to-transfer [sic] project”. At that point, counsel for Mr Badalati interjected and said, “Just in fairness to my learned friend, if we just look at the top – I mean, I don’t want to say it in front of the witness but if you just look closely at that image...”. The following exchange then took place between counsel for Mr Uy and Mr Badalati:

[Counsel for Mr Uy]: That sign would convey to you, would it not, that it related to the waste-to-energy transfer project with which you associated the Tangshan Xinfeng Thermoelectric Group?

[Mr Badalati]: Well, if you look at the top of the sign on the right it’s got “The One”.

[Q]: Thank you. And were you assisted in that answer by your counsel’s intervention?

[A]: Oh, I may have been but I just noticed it now.

The Commission does not accept Mr Hindi’s submission that Mr Badalati’s evidence was substantially compromised because he was led into accepting a proposition rather than volunteering it without the assistance of counsel. Any debate on this subject ultimately goes nowhere because the banner displaying “Australian first Capital Group” was not the banner on display when Mr Badalati “walked into the hall with everyone else” at the signing ceremony. Photographs taken of the hall that night show the screen on stage displayed a banner stating, “Australian The One Capital Group”.

In any event, this is all beside the point. Mr Badalati knew before he went to China that he had been asked to attend in his capacity as mayor of HCC and that the purpose of his visit was to endorse and promote the Treacy Street and Landmark Square developments. There was no question of any penny dropping.

As for Mr Hindi, Counsel Assisting submitted that by the time he attended the dinner after the signing ceremony and saw the banner with “One Capital” the “penny dropped” just as it had for Mr Badalati. He realised that the signing ceremony was connected to at least Landmark Square.

The Commission does not accept that the penny finally dropped for Mr Hindi when he attended the dinner. The Commission is satisfied he knew before travelling to China that the purpose of his visit would be to endorse and promote the proposed developments at Treacy Street and Landmark Square. Even if this were not so, it is certainly the case that by the time Mr Hindi departed China he too knew the agreement concerned both the Treacy Street and Landmark Square developments and that both Yuqing Liu and Wensheng Liu had signed the Cooperation Agreement in their respective capacities of investor and developer of the Treacy Street and Landmark Square developments. It is simply absurd to suggest that Mr Hindi, another important guest – a “deputy mayor” no less – did not know. There is no suggestion Wensheng Liu, Yuqing Liu or anyone else present at Tangshan on or prior to 12 April 2016 sought to conceal what was going on. It was a signing ceremony which was designed and intended to encourage investment in Hurstville and obtain approval for such investment from the relevant Chinese officials. Both Mr Hindi and Mr Badalati were there to promote these objectives.

It is also worth considering the following:

- Both Wensheng Liu and Mr Uy were present on the trip.
- Mr Hindi said it was likely he knew by the time of this trip that Wensheng Liu was the proponent for the Landmark Square development.
- The Commission is satisfied Mr Hindi knew both Wensheng Liu and Mr Uy were involved in the Treacy Street and Landmark Square developments.

It is convenient to deal with Wensheng Liu’s presence on the trip to Tangshan, before then addressing Mr Uy’s presence.

Mr Hindi accepted that by the time of the April 2016 trip, he likely knew that Wensheng Liu was the proponent for Landmark Square. Given that Mr Hindi attended a meeting with Wensheng Liu concerning Landmark Square at the Novotel Brighton-Le-Sands in February 2016, the Commission is satisfied Mr Hindi knew Wensheng Liu was the proponent for Landmark Square from at least February 2016.

The next question is whether Mr Hindi knew there was a connection between Wensheng Liu and the

proponent of the Landmark Square development, One Capital. Mr Hindi told the Commission he did not know Wensheng Liu was connected to One Capital. His evidence was that councillors were not furnished with the name of a proponent of an application to be voted on by HCC until the meeting papers were circulated in the days before the relevant meeting.

The Commission rejects Mr Hindi's evidence. Mr Hindi knew well before the vote of 20 April 2016 that Wensheng Liu was to be involved in the development. Whether or not Mr Hindi knew of the precise identity of the corporate vehicle which would be utilised by Wensheng Liu, he knew Wensheng Liu would be pulling the strings, so to speak. However, the Commission is satisfied that by March 2016, Mr Hindi was aware that One Capital was the proponent of the Landmark Square development.

Although there is no direct evidence establishing Mr Hindi knew Wensheng Liu was behind One Capital, the inference he knew is clear. Wensheng Liu was a signatory to the agreement. At the dinner after the Tangshan signing ceremony, Mr Hindi posed for a photograph in front of the banner which said, "Tangshan Xinfeng Thermoelectric Group and Australian The One Capital Group – Signing Ceremony" (see Figure 19). The photograph speaks for itself. As discussed in chapter 3, the Commission is satisfied Mr Hindi knew that Mrs Hindi had entered into the BAA with the developer of the Landmark Square site and must have known that Wensheng Liu was a signatory to the agreement. The BAA would not expire until July 2016.

Counsel for Mr Hindi submitted that payment under the BAA was subject to conditions that were so remote as to be impossible and that the BAA was going to expire without any payment being made. Accordingly, they submitted the Commission should not make any decision and form any opinion based on the circumstances of the Tangshan visit, contending that the imminent lapsing of the BAA made it unlikely the agreement would have been adverted to.

The Commission does not accept that submission. The BAA is evidence of a commercial relationship between Mrs Hindi and Wensheng Liu in relation to the Landmark Square site, under which she stood to gain \$500,000 excluding GST. Mrs Hindi knew that Wensheng Liu and Mr Uy were associated with the Landmark Square development. As noted in chapter 3, the Commission found that Mrs Hindi had informed Mr Hindi of the BAA well before the April 2016 trip to Tangshan. In light of that finding, the Commission is satisfied that during the April 2016 trip, Mr Hindi knew Wensheng Liu and Mr Uy were associated with Landmark Square because he was aware of Mrs Hindi's commercial relationship with Wensheng Liu under the BAA.

Figure 19: Mr Hindi at the dinner that followed the Tangshan signing ceremony, 12 April 2016



It was submitted on behalf of Mr Hindi that the screen on stage in the hall did not warrant his attention because it displayed a rolling sequence of company names that were neither recognisable to him nor relevant to the waste-to-energy activities, which was the singular reason for his participation in this trip.

The Commission rejects this submission. There is no evidence of a "rolling sequence of company names". Figure 15 and Figure 19, which both contain the banner stating, "Tangshan Xinfeng Thermoelectric Group and Australian The One Capital Group – Signing Ceremony" and also the words "The One" in the top line of the banner, were taken during and after the signing ceremony respectively. It is unlikely that the screen on stage displayed a "rolling sequence of company names" when three photographs (see also Figure 20, discussed below), taken at different times during the evening, displayed the same banner. It is implausible that the banner displaying One Capital and Xinfeng, which were both companies known to Mr Hindi, did not come to his attention. There is evidence indicating that the screen on stage displayed different images during the signing ceremony. Figure 16 shows that, during the signing ceremony, the screen on stage displayed photographs of Mr Badalati and Mr Hindi together with Yuqing Liu at the signing

ceremony in Chinatown, Sydney, on 18 March 2016. The only rolling images on the screen alternated between the banner identifying the parties to the signing ceremony and images of Yuqing Liu's visit to Sydney in March 2016, including the signing ceremony in Chinatown. It is equally implausible that Figure 16 did not come to Mr Hindi's attention. The Commission is satisfied that Mr Hindi was aware of both the banner on the screen and its significance, namely, promoting a signing ceremony involving the Treacy Street and Landmark Square developments.

Mr Hindi strongly supported the Landmark Square planning proposal at both formal and informal meetings. When it was put to Mr Hindi that by March 2016 he had a very good idea of what the Landmark Square planning proposal involved, he said, "As the mayor in ... May 2015 [prior to the planning proposal being lodged in June 2015], I had a good idea what it was because they came and presented to us [in May 2015]". Chapter 3 of this report sets out at least seven meetings Mr Hindi attended in relation to Landmark Square between May 2015 and March 2016 – three of which were formal meetings at HCC and four of which were informal meetings away from HCC premises. While these meetings were usually attended by Mr Dickson and Mr Uy, Wensheng Liu attended at least one meeting in February 2016. It is not credible that in circumstances where he frequently attended formal and informal meetings concerning the planning proposal, Mr Hindi did not know the identity of the proponent of that development, One Capital, or the connection between Wensheng Liu and One Capital. Further, given he met Wensheng Liu in February 2016 at the Novotel Brighton-Le-Sands in relation to the Landmark Square development, given that Wensheng Liu was present on the trip to China in April 2016 and given Mr Hindi's evidence that he realised at the dinner after the signing ceremony that the Tangshan signing ceremony was at least related to Landmark Square, it is fanciful to suggest that Mr Hindi did not realise Wensheng Liu was connected to that development and that One Capital would be utilised by Wensheng Liu to develop the property.

As for Treacy Street, Mr Hindi denied he knew Wensheng Liu, or GR Capital Group, was the proponent for that development. Shortly before the 19 November 2014 meeting he received the report of council staff concerning the Treacy Street VPA which recorded the applicant as GR Capital Group and attached a company extract which should have recorded Wensheng Liu as a director and shareholder, although the business paper tendered in the public inquiry did not attach that company extract. It is relevant to note Mr Hindi accepted that after receiving the council report prior to the council vote on 20 April 2016 he knew that Wensheng Liu and GR Capital Group was the proponent for Treacy Street. He received that

report on or around 15 April 2016. Also on 15 April 2016, Mr and Mrs Hindi arrived back in Sydney following their trip to Tangshan. It should also be noted that if Mr Hindi had received around \$70,000 from Mr Uy in relation to the Treacy Street development, it is highly unlikely he would have done so without knowing the identity of the proponent. The Commission is satisfied Mr Hindi knew Wensheng Liu and GR Capital Group were seeking to develop Treacy Street by the time he travelled to China.

In relation to Mr Uy's presence, it was submitted on behalf of Mr Hindi that considering Mr Uy's evidence he was Yuqing Liu's general manager working on "kitchen waste" at that time, Mr Uy attended the trip in his capacity as the general manager in respect of the waste-to-energy proposal. The Commission does not agree. That possibility was never raised by Mr Uy, and it was never put to him. Further, Xinfeng AU was not registered until 21 April 2016, after the trip to Tangshan. Mr Hindi's submission is also inconsistent with contemporaneous records. The itinerary for the trip identified Mr Uy as general manager of One Capital, a company that had nothing to do with waste-to-energy. The weight of the evidence suggests Mr Uy attended the trip in relation to the signing ceremony because it concerned the Treacy Street and Landmark Square developments in which he had an interest and not a waste-to-energy proposal.

The Commission is satisfied Mr Hindi knew that Mr Uy would be attending, and did attend, the signing ceremony because it concerned the Treacy Street and Landmark Square developments.

Finally, on the issue of banners in the Xinfeng hall, it was submitted on behalf of Mr Hindi that Mr Hindi did not see a banner projected on screen that referred to "One Capital" because no such banner existed. It was submitted that the banner said, "Australian first Capital Group", the company purportedly signing with Xinfeng that night and bearing no relationship to anything Mr Hindi knew about Wensheng Liu, Mr Uy or any proposal before HCC.

The Commission rejects this submission. It is plainly wrong. The banner in Figure 18 was the first banner in the empty hall that was being set up and that referred to "Australian first Capital Group". The banner in Figure 15 was the banner displayed at the dinner, which Mr Hindi attended. It stated, "Australian The One Capital Group".

Just like Mr Hindi, Mrs Hindi did not attend the Tangshan signing ceremony, but was present at the dinner in the hall afterwards. There is one aspect of Mrs Hindi's evidence that is relevant to what Mr and Mrs Hindi may have discussed during that dinner. A photograph taken of Mrs Hindi during the dinner (see Figure 20) contained a reflection under the banner welcoming "mayor Badalati".

to Tangshan of the purple screen on stage in the hall, displaying the banner stating, “Tangshan Xinfeng Thermoelectric Group and Australian The One Capital Group – Signing Ceremony”.

Figure 20: Mrs Hindi at the dinner that followed the Tangshan signing ceremony, 12 April 2016

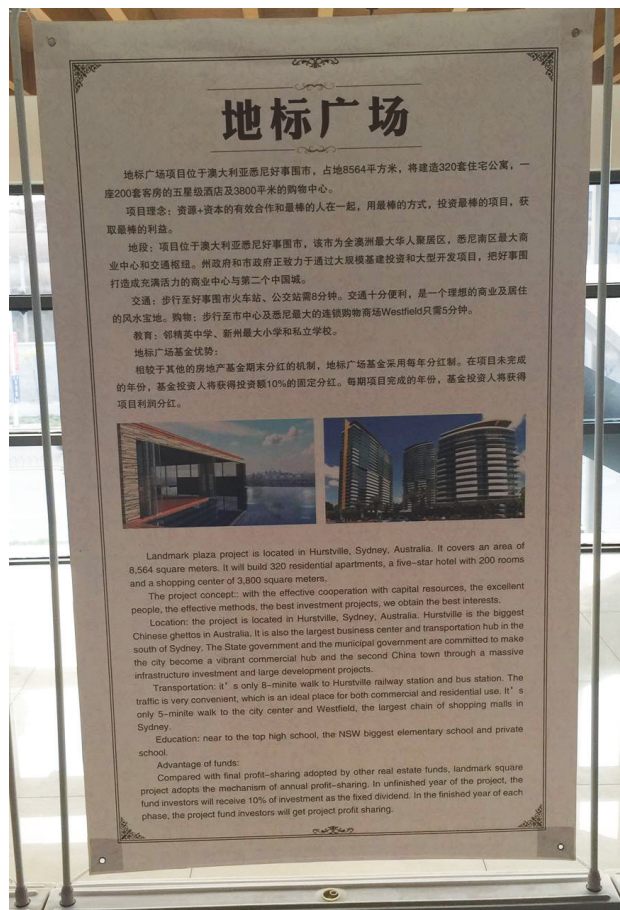


During the public inquiry, Mrs Hindi accepted that the banner identifying the signing ceremony with One Capital was displayed during the dinner, but she did not recall it being displayed. She denied seeing the banner and realising that the ceremony had something to do with the Landmark Square development. She denied discussing Landmark Square with Mr Hindi during this trip to Tangshan. The Commission rejects Mrs Hindi's evidence. It is implausible that she did not see the banner on display in the hall. The Commission is satisfied Mrs Hindi saw it. Having seen the banner, it is inconceivable Mrs Hindi did not notice that One Capital, a company she had a commercial relationship with, was a party to the signing ceremony that night. Given the nature of her commercial interest with One Capital, the Commission does not accept that she did not discuss it with anyone, including Mr Hindi. The Commission is satisfied Mr and Mrs Hindi understood One Capital had signed an agreement in the Xinfeng hall that night. The probabilities favour that they discussed as much at some point during their stay in China.

Counsel Assisting also pointed to the fact that Mr Hindi had seen plans for the Landmark Square development on display at the Xinfeng office and, having seen these plans, should have been alerted to the fact that the signing ceremony was connected at least to Landmark Square. The Commission agrees. However, the Commission is satisfied that there was no need for any further alerts. Mr Hindi knew the signing ceremony concerned the Treacy Street and Landmark Square developments before arriving in China.

It should also be noted Mr Hindi gave inconsistent evidence in relation to the Landmark Square plans during his compulsory examination and at the public inquiry. During the compulsory examination, Mr Hindi volunteered the fact that he had seen plans for Landmark Square at the Xinfeng office. He also said he saw photographs of the proposed development at the Xinfeng office. At the public inquiry, after being shown photographs of those plans on display at the Xinfeng office in April 2016 (see Figure 21), he said repeatedly that it was “highly unlikely” he had seen those plans.

Figure 21: Plans for the Landmark Square development on display at the Xinfeng office in Tangshan, China, April 2016



When reminded of the evidence he had previously given, Mr Hindi ultimately accepted he may have seen them. When asked about the truthfulness of his evidence, he said he had “two different recollections and I believe the recollection I had [at the compulsory examination] is probably a bit more truthful because it was closer to the event than the other one today”. Counsel Assisting submitted Mr Hindi's shifting evidence undermined his credibility on this issue. The Commission agrees but considers the evidence undermines Mr Hindi's credibility generally.

It was submitted on behalf of Mr Hindi that there was no change in evidence. This submission included a summary of “the thrust of Mr Hindi’s evidence at his compulsory examination” and then concluded that “the evidence at Mr Hindi’s public enquiry [sic] was substantially the same” as the summary.

The Commission rejects Mr Hindi’s submission. It is untenable. The evidence Mr Hindi gave during his compulsory examination and at the public inquiry was plainly, and irreconcilably, inconsistent. At the public inquiry Mr Hindi only accepted that his evidence at the compulsory examination was accurate after he was repeatedly asked to identify which account was truthful. The Commission is satisfied Mr Hindi had seen the material depicted above at the Xinfeng office.

It was submitted on behalf of Mr Hindi that there was no objective evidence which demonstrated:

*that what Mr Hindi **believed** [original emphasis] to be the case was not honestly his belief, namely that he had supposed the plans for Landmark Square displayed at the Xinfeng office were a piece of grand-standing, a peacock display, not anything significant and not impinging upon the purpose of the visit to the waste-to-energy plant.*

It was submitted that:

Ultimately, it does not matter whether Mr Y Liu had some interest in Landmark Square on the issue of credit. What matters is Mr Hindi’s subjective belief on that issue. If the evidence in his compulsory examination was no different to that given in the public enquiry [sic], nothing flows. All that is established is that a photograph of Landmark Square was exhibited in the Xinfeng offices. This must be viewed in its proper context, and by reference to the overwhelming weight of evidence that would have led any reasonable person to believe that the April Ceremony concerned Landmark Square...

There appears to be an error in the final sentence of this submission, namely, the word “not” is missing. The Commission has proceeded on the basis that the sentence should read, “...and by reference to the overwhelming weight of evidence that would not have led any reasonable person to believe that the April Ceremony concerned Landmark Square”. In supplementary submissions, made on behalf of Mr Hindi, it was also submitted that the fact he did not go to the signing ceremony is objective corroborating evidence that he never intended to travel to China in the capacity as a councillor to promote the developments.

The Commission rejects each of these submissions.

Mr Hindi claimed that the purpose of the trip to China, as he understood it, concerned a proposed investment by Xinfeng in a waste-to-power plant in Australia. No question of honest or reasonable belief arises. The Commission is satisfied Mr Hindi well understood he was in China to endorse and promote the Treacy Street and Landmark Square developments. The trip to China had nothing to do with a waste-to-energy plant and Mr Hindi never believed otherwise.

There is also evidence that prior to the signing ceremony, Mr Hindi realised it had nothing to do with waste-to-energy. During his compulsory examination, Mr Hindi said he saw the ceremony being set up and realised it had “nothing to do” with waste-to-energy, so he decided not to attend. However, at the public inquiry, when shown the photograph of the hall being set up and the screen displaying the banner “Australian first Capital Group” (see Figure 18), he said that was not the case. He said he thought the ceremony may still have related to waste-to-energy. Counsel Assisting submitted that Mr Hindi’s shifting evidence undermined his credibility on this topic. The Commission agrees but again notes that it considers such evidence undermines Mr Hindi’s credit generally.

It was submitted on behalf of Mr Hindi that all aspects of the April 2016 China trip “were dominated by Mr Liu’s promotion of the putative Australian waste-to-energy plant” and also that evidence of Mr Hindi’s “one purpose” for visiting Tangshan was his subsequent return visit in June 2016.

The Commission does not accept these submissions. The evidence addressed in this chapter demonstrates that, although Mr Badalati and Mr and Mrs Hindi visited Xinfeng’s waste-to-energy plant, waste-to-energy was not the purpose of the April trip to China. The June 2016 trip is discussed in chapters 5, 6 and 7. It concerned a possible waste-to-energy plant in Australia and had nothing to do with the Landmark Square or Treacy Street developments.

If the penny dropped for Mr Badalati and Mr Hindi in China, they were aware of the matters referred to below by the time they left China. However, the Commission is satisfied that by the time Mr Badalati and Mr Hindi travelled to China in April 2016, they knew the signing ceremony in Tangshan and the agreement to be signed at the ceremony concerned the Treacy Street and Landmark Square developments. It is inconceivable that Mr Badalati or anyone else present in Tangshan at the signing ceremony or the dinner thereafter would not have been aware the signing ceremony concerned an agreement in respect of developments in Hurstville and that Mr Badalati as mayor, and Mr Hindi as “deputy mayor” were present in an official capacity to demonstrate that the proposed projects were supported by them.

On the night of 12 April 2016, Mr and Mrs Hindi and Mr Badalati stayed at the same hotel in Tangshan. The next morning, they checked out of the hotel and were transferred by Yuqing Liu's staff back to Beijing. They did some sight-seeing, together with Wensheng Liu, and spent one more night at the Beijing International Hotel together with Mr Uy.

Mr and Mrs Hindi flew from Beijing to Hong Kong, and onto Sydney, arriving back on 15 April 2016. Mr Badalati travelled back to Shenzhen and then onto Sydney, arriving back on 17 April 2016.

Who paid for the flights, accommodation, transfers and meals for the April 2016 trip to China?

An issue explored during the inquiry was who paid for the flights and accommodation for Mr Badalati and Mr and Mrs Hindi on this April 2016 trip to China.

Defamation proceedings against the *Sydney Morning Herald* regarding the April 2016 trip to China

It is relevant to provide some context to Mr Badalati and Mr Hindi's accounts of the trip and the question of payment.

On 2 April 2019, an article was published in the *Sydney Morning Herald* (SMH) reporting that Mr Badalati and Mr Hindi had been referred to the Commission "over a Chinese trip they took with a developer, whose projects they helped to push through without declaring any conflict of interest". The article stated that, according to Yuqing Liu's lawyers, Xinfeng had paid for Mr Badalati's and Mr Hindi's accommodation in Tangshan. It also stated that the two councillors had, a month before the trip, attended a dinner in Chinatown with Yuqing Liu and Wensheng Liu when the two signed the same agreement signed in Tangshan. The article noted that neither councillor made a declaration when, a week after the trip to China, they voted on the Treacy Street and Landmark Square developments. During the public inquiry, Mr Badalati, Mr Hindi and Mrs Hindi said they read this article around the time it was published.

Mr Badalati drafted some notes regarding the March 2016 Chinatown dinner and the April 2016 trip to China. He provided those notes to Mr Hindi. On 13 May 2019, Mr Hindi created a copy of Mr Badalati's notes which were saved on his iPad. Mr Hindi told the Commission that he copied Mr Badalati's account of the Chinatown dinner and the trip to China to keep as a record for

himself. He denied it was because he was trying to get his "story straight" with Mr Badalati.

Mr Hindi also drafted his own notes about the dinner and the trip.

During the public inquiry, Mr Badalati said that he and Mr Hindi discussed the expenses for the Tangshan trip around the time the SMH article was published. He accepted that he and Mr Hindi reached an agreement as to what they should both say about the expenses; namely, that they covered their own. Mr Hindi denied they reached any such agreement.

In response to the SMH article, Mr Badalati commenced defamation proceedings against the SMH. This defamation claim was ultimately settled and the SMH paid Mr Badalati a significant amount of money. The SMH also published an apology. When Mr Hindi was asked if he reached this agreement with Mr Badalati about their expenses so they could both convey a consistent account to the SMH, he denied it and said he "wasn't going for defamation". That evidence was disingenuous. Mr Hindi wrote to the SMH after Mr Badalati's defamation claim settled. His letter to the SMH complained about the allegations in the article, including the question of expenses, and relied on relevant elements of Mr Badalati's claim. Mr Hindi was ultimately also paid a significant amount by way of settlement.

It was submitted on behalf of Mr Hindi that during years of vilifying press coverage, Mr Hindi had come to understand the utility of preparing his own notes and records to ensure he had a clear recollection of the circumstances and actions under challenge. The Commission does not accept this submission. There is no dispute about Mr Hindi keeping his own notes. However, the submission does not adequately explain the utility or necessity of Mr Hindi having a copy of Mr Badalati's notes.

Mrs Hindi also had a photograph of Mr Badalati's account of the trip. On 23 May 2019, Mrs Hindi texted Mr Hindi a photograph of notes on an iPad showing Mr Badalati's account of the trip. When Mrs Hindi was asked about this during the public inquiry, she could not explain why she sent this photograph to Mr Hindi or where she got the notes from. She denied that she was attempting get her story straight with Mr Hindi and Mr Badalati.

Mr and Mrs Hindi were unable to provide any plausible explanation for why they had in their possession Mr Badalati's notes of the trip. The Commission is satisfied that Mr Badalati and Mr and Mrs Hindi were attempting to get their stories straight around May 2019 regarding the expenses of the trip, for the purposes of addressing the allegations in the SMH article.

For the purpose of the defamation proceedings against the SMH, Mr Badalati also obtained a statutory declaration through Mr Uy from a person known as Wong Ching Ho, purporting to provide an account of the payment of the costs of accommodation and meals at the Tangshan hotel. Wong Ching Ho is also known as Tommy Wong or Qinge Huang and is Mr Uy's brother. Mr Badalati told the Commission he did not know this at the time the declaration was prepared.

A first version of the statutory declaration was signed on 9 May 2019. It dealt with Mr Badalati only and did not expressly refer to Mr or Mrs Hindi. It said that Wong Ching Ho was acting as the translator for Mr Badalati during the trip to Tangshan in April 2016 and that Mr Badalati "and another" each paid 4,000 RMB to Yuqing Liu's staff. Mr Badalati gave evidence that he asked Mr Uy to arrange this statutory declaration and Mr Uy communicated with Wong Ching Ho about it. Mr Badalati said he told Mr Uy that the declaration should say that he had given 4,000 RMB to Yuqing Liu's staff. He said Mr Uy later provided him with a copy of the statutory declaration.

A second version of the statutory declaration was signed by Wong Ching Ho on 19 June 2019. This time, the statutory declaration referred to both Mr Badalati and Mr and Mrs Hindi. It claimed Wong Ching Ho was acting as translator for all of them during the trip to Tangshan. It said that Mr Badalati had paid 2,000 RMB (contrary to the earlier declaration, which said he had paid 4,000 RMB) and that Mrs Hindi paid 4,000 RMB to Yuqing Liu's staff. Mr Badalati told the Commission that he had asked for the declaration to be amended to say he paid 2,000 RMB. He agreed he formed the view that 4,000 RMB was not a plausible amount for him to have paid. He said he received a copy of this second statutory declaration in hard copy from Mr Uy and gave it to the lawyers acting for him in the defamation proceedings against the SMH. He said he also gave a copy to Mr Hindi.

At some point between the dates of the first and second statutory declarations, someone prepared typed notes very similar to the second statutory declaration. The notes also referred to Mr Badalati paying 2,000 RMB and Mrs Hindi paying 4,000 RMB. A photograph of those notes, dated 7 June 2019, was found on Mr Uy's telephone. Initially, Mr Badalati claimed that he was not sure who drafted this document and said it could have been him. He denied that Mr or Mrs Hindi ever suggested to him that the statutory declaration should be amended to refer to them. However, on further reflection, he said that he did not think he drafted the notes. He did not think Mr Uy had the English skills to draft the document. He could not think of anyone other than Mr or Mrs Hindi who could have drafted the document. He said that he

did not come up with the idea that the declaration should be amended to refer to Mr and Mrs Hindi and did not make that suggestion. He could only assume that it was the Hindis' idea and that they suggested it, but he could not recall any conversations to that effect.

Ultimately, it is not clear who drafted the notes that mirror the second statutory declaration. During the public inquiry, Mr Uy gave evidence that he thought Mr Badalati had given him the notes. Mr Hindi denied that he or Mrs Hindi drafted the notes. Mr Hindi said he did not use the statutory declaration and he had no need for it. Contrary to Mr Hindi's evidence that "he had no need for it", he used it. After Mr Badalati's claim settled, Mr Hindi wrote to the SMH complaining about the article as discussed above. That letter referred to the statutory declaration. He deployed it in threatening defamation proceedings.

The existence of the photograph of the notes on Mr Uy's mobile telephone and their similarity to the second statutory declaration suggest the second statutory declaration – and probably the first statutory declaration – were drafted for Wong Ching Ho. It is likely they were drafted by Mr Badalati or Mr Hindi. The evidence falls short of identifying the author. Nevertheless, both Mr Badalati and Mr Hindi adopted the second statutory declaration to refute certain of the allegations contained in the SMH article. They both relied upon it as containing an accurate account.

Ultimately, Mr Badalati admitted he never paid any money to Yuqing Liu's staff. However, Mr and Mrs Hindi continued to dispute that anyone else paid for their flights and accommodation. These matters are addressed below.

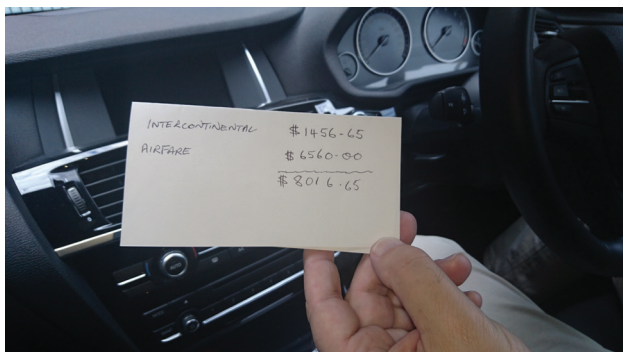
Return flights to China

Mr Badalati booked a return trip to Hong Kong through Marconi Travel in the amount of \$6,500. This was for a business-class airfare. Mr Badalati said that he paid for this in cash, and that is consistent with the note on the Marconi Travel receipt. He said that due to his previous employment with Qantas, he was usually able to get discounted flights. However, he was not able to book with Qantas on this occasion due to the last-minute nature of the plans. It is not readily apparent why Mr Badalati was willing to incur this sort of expenditure, which he accepted was "pretty significant" for him, if the trip was merely to see a waste-to-energy plant, especially in circumstances where he was used to paying about 10 per cent of a ticket price for Qantas flights.

An image, dated 22 April 2016, was found on Mr Uy's telephone showing a handwritten note. The note is held by someone's hand in front of a car dashboard (see Figure 22). The handwritten words are:

INTERCONTINENTAL	\$1456.65
AIRFARE	<u>\$6560.00</u>
	\$8016.65

Figure 22: Photo of a note written in Mr Badalati's handwriting, listing prices similar to the cost of Mr Badalati's accommodation and air fares for the April 2016 China trip



During the public inquiry, Mr Badalati accepted that it was his handwriting, his hand, and his car dashboard in the background. The amounts stated on the note approximate the \$6,500 for the return flight to Hong Kong, and the amount Mr Badalati spent at the Shenzhen Intercontinental. It was put to Mr Badalati that he showed this note to Mr Uy because they had an agreement whereby Mr Uy would reimburse him for these expenses. Mr Badalati denied this. Mr Uy also denied as much. There are no other records suggesting the contrary.

Mr Badalati claimed he showed the note to Mr Uy because he hoped Mr Uy would arrange for Yuqing Liu to reimburse him for the expenses. This evidence was different from the explanation he had previously offered when he was shown this photograph during earlier stages of the investigation. In these earlier explanations, he made no mention of seeking reimbursement from Yuqing Liu.

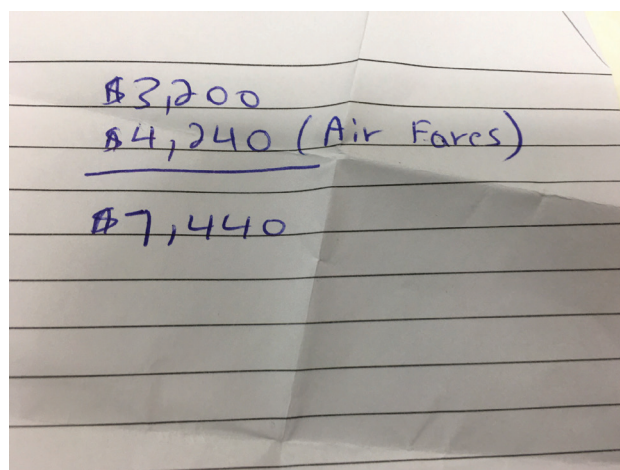
It was submitted by Counsel Assisting that while there is some degree of implausibility in Mr Badalati's explanation, it is difficult to understand why he would admit to Yuqing Liu or Mr Uy paying for some of his expenses on this trip (as set out below) and to receiving payments from Mr Uy in the amount of \$170,000, but not to payment for the flights and accommodation. Whether implausible or not, there is no evidence that the cost of flights or accommodation at the Shenzhen Intercontinental were paid by anyone other than Mr Badalati. Perhaps Mr Uy never conveyed Mr Badalati's request for reimbursement to Yuqing Liu. Perhaps the request was conveyed to Yuqing Liu, but he decided not to reimburse Mr Badalati. The Commission cannot be satisfied that anyone other than Mr Badalati paid for his flights to China in the amount of \$6,500 and his accommodation at the Shenzhen Intercontinental in the amount of \$1,456.65.

Mr and Mrs Hindi booked their return trip to Hong Kong through Golden Miles Travel. Mr Uy gave evidence that he contacted Golden Miles Travel and made the booking for Mr and Mrs Hindi. Mrs Hindi also emailed Golden Miles Travel to alter their travel details. The final itinerary was emailed to Mrs Hindi on 6 April 2016. The amount on the invoice for the flight and visa (excluding credit card charges) was \$4,240. Mrs Hindi's evidence was that she paid for the flights by credit card.

An image of an iPad displaying the invoice from Golden Miles Travel was found on Mr Uy's telephone. The image was dated 28 April 2016, which is after the trip to Tangshan, China. Neither Mrs Hindi nor Mr Uy could explain why this image was on Mr Uy's telephone. Mrs Hindi could not confirm whether the iPad depicted in the photograph was her own iPad, although she accepted that it looked like her iPad because it was black with a black cover. Given the invoice was sent by email to Mrs Hindi, it is likely that it was Mr or Mrs Hindi's iPad and that one of them was showing the invoice to Mr Uy following the trip to China.

On 5 August 2016, Mrs Hindi forwarded the Golden Miles Travel invoice from her own Hotmail account to her son Malcolm's Gmail account. An image dated 11 August 2016 of a handwritten note was found on Wensheng Liu's telephone (see Figure 23).

Figure 23: A handwritten note referring to "Air Fares" and listing the same amount paid by Mr and Mrs Hindi for their flights to China in April 2016



The amount of \$4,240 listed on the note matches the total on the Golden Miles Travel invoice (excluding credit card charges). It is unclear to what the \$3,200, also listed on the note, refers. During the public inquiry, Mrs Hindi admitted that this note was in her handwriting. She could not explain why an image of the note was found on Wensheng Liu's telephone. She could not recall showing

the note to Wensheng Liu or Mr Uy. She denied she had any arrangement with Wensheng Liu or Mr Uy for them to reimburse her for these expenses. This was also denied by Mr Uy.

Wensheng Liu could not explain how this image came to be on his telephone and could not recall Mrs Hindi or anyone else showing him the note. He denied he or his companies reimbursed the Hindis for their expenses. He said he did not know whether Mr Uy or Yuqing Liu reimbursed them.

One explanation for the handwritten note prepared by Mrs Hindi is that it was shown to either Mr Uy or Wensheng Liu for the purposes of seeking reimbursement for these expenses. However, there is no direct evidence that these amounts were ever in fact reimbursed to Mr or Mrs Hindi. While there was a cash deposit of \$10,000 into Mrs Hindi's Sydney Realty account on 12 August 2016, Mrs Hindi's evidence was that this was payment for a car she had sold. It was submitted by Counsel Assisting that there was an insufficient basis to conclude that anyone other than Mrs Hindi paid for the April 2016 flights to China for Mr and Mrs Hindi. The Commission agrees.

Flights from Shenzhen to Beijing

On 10 April 2016, there was a charge on Mr Uy's credit card at Shenzhen International Airport for 15,290 CNY, which equates to about \$3,245 AUD at the present exchange rate. Mr Badalati's ticket is in evidence and was for 1,170 CNY. This equates to about \$363 AUD at the present exchange rate. However, there were around nine people travelling from Shenzhen to Beijing that day, which likely explains the size of the charge on Mr Uy's card. There was no record of Mr and Mrs Hindi's ticket in evidence. During the public inquiry, Mr Uy accepted that he paid for Mr Badalati, Mr Hindi and Mrs Hindi's flights from Shenzhen to Beijing by credit card.

While Mr Badalati initially gave evidence that he reimbursed Mr Uy at the airport with cash, he ultimately accepted that it was unlikely that he did so.

It was submitted on behalf of Mr Hindi that Mr Badalati's evidence on this matter undermines his credit because his "belief about reimbursement ... was based on Mr Y[ui]ng Liu making reimbursement and therefore Mr Uy not actually paying his own money for the flight". It was also submitted that Mr Badalati was prepared to accept the proposition that he would not have reimbursed Yuqing Liu by making payment to Mr Uy on account of a \$70,000 payment, which was "nonsensical".

The Commission rejects these submissions. While Mr Badalati's evidence was that he believed Yuqing Liu "may have reimbursed ... would reimburse us", there is no evidence Yuqing Liu did so. Mr Uy's credit card

statement clearly records he made the payment at Shenzhen International Airport. Mr Badalati accepted that it was unlikely he reimbursed Mr Uy for the flight. The Commission accepts his evidence. In circumstances where Mr Badalati had by this point (according to his own evidence) accepted a payment of \$70,000 from Mr Uy in relation to the Treacy Street development (see chapter 6), it does not make sense that he would seek to reimburse Mr Uy for a flight worth about \$363.

It was also submitted on behalf of Mr Uy that Mr Badalati's evidence should be doubted because it was not changed until the very end of the public inquiry and is likely to have been tailored to suit other evidence he gave.

The Commission does not accept Mr Uy's submission. Mr Badalati's evidence on this matter changed over the course of a few minutes of examination during the public inquiry. Mr Badalati's evidence that it was unlikely he reimbursed Mr Uy for the cost of the flight was a concession against his own interest and it is accepted by the Commission.

The Commission is satisfied that Mr Badalati did not pay for his flight between Shenzhen and Beijing. The Commission is satisfied that Mr Uy paid for Mr Badalati's flight between Shenzhen and Beijing.

During the public inquiry, Mrs Hindi initially claimed she paid for her and Mr Hindi's flights and that she did so in cash to an agent at an airline desk at Shenzhen airport. She said she generally used cash overseas because she had been "scammed once" using her credit card. She said she had taken about \$4,000 AUD with her. However, after she was shown Mr Uy's credit card statement, she claimed she might have given the cash to Mr Uy at the airport instead of the agent, but she did not have a clear recollection. Mr Hindi did not witness Mrs Hindi pay the cash but said, "she told me she did and I have no reason to doubt it". Mr Badalati said he did not see Mr or Mrs Hindi pay cash to Mr Uy for these flights, despite being at the airport with them that day.

Mr Uy gave evidence that Mrs Hindi paid him cash, which is consistent with Mrs Hindi's account. He also gave evidence that Mr Badalati paid him cash for the flight. This is inconsistent with Mr Badalati's evidence. The Commission does not accept Mr Uy's evidence that Mr Badalati reimbursed him. The Commission is satisfied that Mr Uy's evidence on this point was untrue.

The Commission received submissions from other affected parties to the effect that Mr Uy was not a credible witness. As previously noted, the Commission does not consider that Mr Uy was a credible witness. The Commission has been cautious about the weight that can be given to Mr Uy's evidence that he was reimbursed by Mrs Hindi. The Commission is satisfied Mr Uy did

not receive reimbursement from Mrs Hindi. Rather, he participated in conduct designed and intended by him to create the false impression that Mr Badalati, Mr Hindi and Mrs Hindi had paid their own way.

Shortly after the SMH article was published in April 2019, Mr Uy assisted Mr Badalati to obtain receipts for the April 2016 trip to China. On 22 April 2019 (which coincidentally was the day before GRC resolved to request the Commission and the NSW Office of Local Government to immediately commence an investigation into the claims published in the SMH), Mr Uy sent Mr Badalati's name to "Emily Li", a travel agent based in China, seeking a receipt for the flight from Shenzhen to Beijing. He also gave her Mr Hindi's name: "There are also two others. One male, one female. Foreigners. Have a look. Called Con Hindi". He told Ms Li the flight was "from Shenzhen to Beijing" and asked her to give "to the three of them a receipt from your company. Write paid in cash". Ms Li sent him documents in return, and he said: "Can the date of receipt be 2016 not 2019?"

It was put to Mr Uy that if Mr and Mrs Hindi had given him cash, Mr Uy could have issued the receipt himself if a receipt were necessary. Mr Uy did not accept this. He said that even though he had paid the agency for the flights, and Mr and Mrs Hindi had paid him cash, it was still appropriate for the agent to issue a receipt and "that's how we worked in China". It was submitted by Counsel Assisting that Mr Uy's explanation makes no sense at all. The Commission agrees. His evidence makes no sense because it is untrue.

It was submitted on behalf of Mr Hindi and Mrs Hindi that in relation to Mr Uy's explanation "that's how we worked in China", the Commission cannot dismiss his explanation of a Chinese cultural or legal norm in circumstances where the Commission has not properly investigated such norms. It was submitted on behalf of Mr Hindi that the Commission's failure to properly investigate these matters cannot be used to impugn Mr Uy's credibility, nor his account of the payments, nor the account of Mrs Hindi.

The Commission does not accept Mr Hindi or Mrs Hindi's submissions. Given the Commission's finding concerning Mr Uy's credibility on this topic and more generally, it gives no weight to the suggestion cultural practices explain his conduct. His conduct was designed and intended to falsely represent that Mr Badalati and Mrs Hindi had paid their own way.

The Commission rejects Mr Uy's evidence concerning text messages sent and received by the travel agent in China on 22 April 2019. The Commission is again satisfied that Mr Uy was giving an untruthful account. If Mr and Mrs Hindi did pay cash to Mr Uy for these flights, there

was no need for the travel agent to issue any receipts. Mr Uy could have issued them himself. The messages between Mr Uy and the travel agent in China could be explained in the following ways:

- Mr and Mrs Hindi paid cash to the travel agent, despite the undisputed evidence that Mr Uy had paid for the flights by credit card. That would have resulted in the travel agent being paid twice. The Commission is satisfied that Mr and Mrs Hindi did not make any payment to the travel agent.
- Mr and Mrs Hindi paid cash to Mr Uy, but for some reason they considered that receipts issued by Mr Uy would be insufficient for their purposes and Mr Uy instead engaged in an attempt to obtain false receipts from the travel agent.
- Mr and Mrs Hindi paid cash to no one, and Mr Uy was engaged in an attempt to obtain false receipts from the travel agent.

Given the unreliability of Mr Uy's evidence identified above, the Commission does not accept his evidence that he was reimbursed by Mrs Hindi for the April 2016 flights from Shenzhen to Beijing and does not accept the evidence of Mrs Hindi to the same effect.

It was also submitted on behalf of Mr Hindi that receipts were sought from the travel agent rather than from Mr Uy because, for the purpose of his defamation proceedings, Mr Badalati needed to substantiate that he paid for the particular travel expenses, not merely that certain amounts had been paid to Mr Uy. In response, Counsel Assisting submitted that this does not explain why Mr Uy could not have obtained a receipt from the service provider confirming his payment, and then issued a receipt for the corresponding amount to Mr Badalati, both of which could have been used by Mr Badalati for the defamation proceedings. The Commission agrees. It is satisfied that receipts were sought so that Mr Badalati could falsely claim he had paid his way.

In circumstances where Mr Badalati did not see the need to reimburse Mr Uy, it is improbable that Mr or Mrs Hindi did so. Mrs Hindi's evidence on the question of reimbursement was unconvincing. Mrs Hindi initially claimed she paid the amount directly to the travel agent. That evidence was plainly untrue, as the travel agent would have been paid twice. After being shown Mr Uy's credit card statement, she sought to distance herself from that evidence, suggesting that she might have paid the required amount to Mr Uy. As indicated above, it is unlikely she paid the travel agent at the airport because that would have resulted in the agent being paid twice. The Commission does not accept Mrs Hindi's evidence she reimbursed Mr Uy for the cost of her and Mr Hindi's

flights. Mrs Hindi had taken the trip to China to assist, or for her husband to assist, Yuqing Liu, Wensheng Liu and Mr Uy for the purpose of promoting the Treacy Street and Landmark Square developments. Having agreed to help in this way, it is not credible that the Hindis would have been required to pay internal transfer costs or have seen any need to do so.

The Commission is satisfied that Mr and Mrs Hindi did not reimburse Mr Uy for the flights between Shenzhen and Beijing. The Commission is satisfied that Mr Uy paid for Mr and Mrs Hindi's flights between Shenzhen and Beijing on 10 April 2016.

Accommodation at Beijing International Hotel

Before considering who paid for the accommodation at the Beijing International Hotel on the nights of 10 and 13 April 2016, it is relevant to note that in June 2019, Mr Uy tried to arrange receipts for these payments from the Beijing International Hotel. He did so at Mr Badalati's request.

On 19 June 2019, Mr Uy texted the following to a representative of the hotel: "Hindi Con[.] Vincenzo Pietro Badalati. Using Australian passports. Checking in on 11 April 2016. Thank you..." The hotel representative then sent Mr Uy several documents. Mr Uy wrote back: "Hello, thank you. They said that at the time of checking out, they paid with RMB cash themselves and did not do transfer balance to one room to pay. They paid for their own."

The Commission obtained receipts from the Beijing International Hotel dated 19 June 2019. They were in Mr Badalati's name. They showed a balance transfer from one room to another for 11 April 2016 and 13 April 2016.

On the night of 10 April 2016, Mr Badalati and the Hindis stayed at the Beijing International Hotel. Mr Uy's credit card statement showed a payment to the "International Hotel" on 11 April 2016 in the amount of 4,823 CNY, which is the equivalent of about \$1,024 AUD at the present exchange rate. The receipt for Mr Badalati's room, dated 19 June 2019, showed that the cost of his accommodation for the nights of 10 and 13 April 2016 was approximately 720 CNY, which is about \$153 AUD at the present exchange rate. The receipts also showed a balance transfer from one room to another for those nights' accommodation. Given the difference between the amount of the charge on Mr Uy's card (4,823 CNY) and the cost of Mr Badalati's room (720 CNY), the Commission is satisfied Mr Uy paid for other members of the party too.

Mr Uy accepted that he paid for Mr Badalati and Mr and Mrs Hindi's accommodation by credit card. He said the charges for their rooms were transferred to his own

room. He said that Mr Badalati and Mr and Mrs Hindi reimbursed him in cash for the hotel costs.

Mr Badalati initially gave evidence in his compulsory examination that he reimbursed Mr Uy for this expense at the Beijing International Hotel. However, he admitted at the public inquiry that he did not reimburse Mr Uy.

It was submitted on behalf of Mr Uy that there is "every reason to doubt Mr Badalati's evidence" because it was not changed until the very end of the public inquiry and is likely to have been tailored to suit other evidence given by him.

The Commission does not accept Mr Uy's submission. While Mr Badalati's evidence changed during the investigation, the Commission accepts the evidence he gave at the public inquiry on this topic. It was an admission against his own interest. As set out below in relation to the hotel accommodation in Tangshan, Mr Badalati made this admission despite it being inconsistent with the version of events he advanced during his defamation claim. The Commission has addressed Mr Badalati's credibility in chapter 6.

A question arises in relation to Mr Badalati's motive for initially giving untrue evidence in respect of the payment for accommodation at the Beijing International Hotel. It is possible that Mr Badalati gave untrue evidence because his initial account to the Commission was consistent with the account he gave to the SMH and because the SMH had paid him to settle the defamation proceedings. He may have been concerned that the SMH would seek repayment if his account to the Commission differed. The same might be said in relation to his initial account of his reasons for travelling to China and attending the signing ceremony and dinner in Tangshan. The Commission does not accept that the subsequent account given by Mr Badalati during the public inquiry was entirely candid. The Commission has rejected Mr Badalati's evidence the "penny dropped" for the first time when he attended the signing ceremony. It should be noted that Mr Uy's legal representative put to Mr Badalati that it was "fraudulent" for him to commence defamation proceedings against the SMH based on matters he acknowledged were untrue. Mr Badalati accepted his conduct was fraudulent. This was also a significant admission against his own interest.

The Commission is satisfied Mr Uy paid for Mr Badalati's accommodation at the Beijing International Hotel on the night of 10 April 2016.

The Commission does not accept Mr Uy's evidence that Mr and Mrs Hindi reimbursed him for the cost of accommodation on 10 April 2016. As set out above, Mr Uy was involved in an attempt to obtain a false receipt from the Beijing International Hotel in relation to the cost

of accommodation on 10 and 13 April 2016. He sought to have an hotel employee falsely record that a “transfer balance” had not occurred, but instead the Hindis had paid in cash at the hotel. This is inconsistent with Mr Uy’s evidence that he was reimbursed by the Hindis.

Mrs Hindi initially explained that she attempted to pay Yuqing Liu’s staff in cash for the accommodation when they picked them up on 11 April 2016. She claimed she could not recall whether they accepted the payment or not. Mrs Hindi then acknowledged she may not have paid for the accommodation at the Beijing International Hotel on 10 April 2016 because she did not have a clear recollection of it. Counsel for Mrs Hindi submitted that her evidence about the 10 April 2016 stay at the Beijing International Hotel can be summarised by reference to the following exchange between Counsel Assisting and Mrs Hindi:

[Counsel Assisting]: So you accept you may not have actually paid anyone for the Beijing hotel. Is that right?

[Mrs Hindi]: That’s right. Because I don’t have a clear recollection of that.

The Commission is satisfied Mrs Hindi did not make any payment to Yuqing Liu’s staff for the cost of the accommodation or attempt to do so. The Commission is also satisfied that Mrs Hindi gave untruthful evidence on this point. Her claimed lack of recollection was feigned. Her acceptance of the possibility someone else had paid because “I don’t have a clear recollection of that” is nonsense. When first questioned about the matter, Mrs Hindi sought to convey that she had a recollection of attempting to pay Yuqing Liu’s staff when picked up on 11 April 2016. The Commission is satisfied Mrs Hindi later falsely claimed a lack of recollection because she knew Mr Uy had paid and the invoices Mr Uy had sought from the Beijing International Hotel were at odds with any reasonable possibility that she had sought to pay anyone other than the hotel. Mrs Hindi did not assert she had paid the hotel. Such a possibility was inconsistent with Mr Uy’s credit card records demonstrating he had paid for the costs of accommodation on 10 April 2016.

The Commission is satisfied that Mr Uy paid for the accommodation, and he was never reimbursed.

Mr Hindi gave evidence that he did not witness any payment by Mrs Hindi. He said, “I don’t deal with payments” and that Mrs Hindi was always responsible for payment. It was submitted on behalf of Mr Hindi that Mrs Hindi’s recollection of her attempt to pay Yuqing Liu’s staff “contains the detail and the idiosyncrasy which are the hallmarks of authenticity”. The Commission rejects that submission as it fails to take into account

Mrs Hindi evidence that she may not have paid for the accommodation on 10 April 2016 or her subsequent claim she could not remember attempting to pay Yuqing Liu’s staff.

On the night of 13 April 2016, Mr Uy, Mr Badalati and Mr and Mrs Hindi stayed again at the Beijing International Hotel. Mr Uy’s credit card statement showed a payment to the “International Hotel” on 15 April 2016 of 8,161 CNY, which amounts to about \$1,733 AUD at the present exchange rate.

Mr Uy accepted that he paid for this accommodation on his credit card. Once more his evidence was that Mr Badalati and Mr and Mrs Hindi reimbursed him in cash for the 13 April 2016 accommodation.

Mr Badalati admitted that he did not reimburse Mr Uy for this accommodation of 13 April 2016. The Commission does not accept Mr Uy’s evidence that Mr Badalati and Mr and Mrs Hindi reimbursed him and refers to the matters set out above in relation to the payment of accommodation costs for 10 April 2016.

The evidence given by Mrs Hindi about the stay at the Beijing International Hotel on 13 April 2016 was that, although she was “not clear” or “100 percent sure”, she “believed” she reimbursed Mr Uy and had a “vague recollection” that she paid him in cash.

The Commission does not accept this evidence. The Commission is satisfied Mrs Hindi did not reimburse Mr Uy and that she was aware Mr Uy had paid for the accommodation of 13 April 2016.

It was submitted on behalf of Mr Hindi that Mrs Hindi’s inability to recall exact details of this particular reimbursement did not render her evidence unreliable, and it is not open to conclude that Mr and Mrs Hindi did not reimburse Mr Uy for the accommodation for the night of 13 April 2016.

The Commission does not accept these submissions. Mr Uy’s credit card statement is a reliable record of who paid for the accommodation at the time. If Mrs Hindi had reimbursed Mr Uy there would have been no need for Mr Uy to obtain receipts which would falsely represent that Mr and Mrs Hindi had paid the hotel directly for their accommodation.

The Commission is satisfied Mrs Hindi’s claims that she was “not clear” or “100 percent sure”, and she “believed” she reimbursed Mr Uy, were to her knowledge, untrue. So too was Mr Uy’s claim that he had been reimbursed. The Commission is satisfied that Mr Uy paid for the accommodation, he was never reimbursed and Mrs Hindi knew this was so.

Accommodation at Tangshan Grand Metropark Guofeng Hotel

Mr Badalati, Mr and Mrs Hindi, and Mr Uy stayed at the Tangshan Grand Metropark Guofeng Hotel in Tangshan on the nights of 11 and 12 April 2016. On the morning of 13 April 2016, they checked out of the hotel around the same time.

It is common ground that the accommodation in Tangshan was paid for by Yuqing Liu or Xinfeng. Whether Mr Badalati and Mr and Mrs Hindi reimbursed Yuqing Liu or Xinfeng for that accommodation was contested.

As referred to earlier in this chapter, Mr Badalati drafted some notes in 2019 regarding this 2016 trip to China, in relation to the SMH defamation claim. Those notes stated:

The following morning we went to breakfast and some of Mr Liu's staff were there. After breakfast we tried to pay for the hotel but were told that it had been paid by Mr Liu (China). We found that unacceptable and "argued with his staff". I left 2000RMB and Councillor Hindi left 4000RMB with the staff member who at first would not take the money but finally reluctantly took it.

One of the people who had been picked up in Beijing saw what had happened and he gave me his Business Card and said he would gladly confirm what had happened.

That morning we were taken back to Beijing.

I have receipts for airfares and hotel bookings in Shenzhen and Beijing and have got a Statutory Declaration re the payment in Tangshan.

Mr Badalati's evidence on payment for the accommodation of the Tangshan hotel changed during the inquiry. At his compulsory examination, Mr Badalati maintained the version of events described above. However, on 19 July 2022 he admitted he never had a conversation with Mr Liu's staff about the payment and never left 2,000 RMB or any money with Mr Liu's staff. He also said he did not see Mr or Mrs Hindi leave any money either, despite being in the lobby at the same time.

It was submitted on behalf of Mrs Hindi that Mr Badalati's evidence cannot be accepted as reliable and should be rejected, absent any corroborating evidence. Similarly, it was submitted on behalf of Mr Hindi that "the version given by Mr Badalati at the public inquiry on 19 July 2022 is to be preferred over the various previous versions he provided". It is noted that Mr Hindi's submission then extracted an incomplete exchange between Counsel Assisting and Mr Badalati, which critically omitted the most contentious aspect of Mr Badalati's evidence.

The Commission has assumed that the failure to include the omitted material was an oversight. The whole exchange is set out below, with emphasis added to the evidence omitted in Mr Hindi's submission:

[Counsel Assisting]: All right. And when you went to the reception of the hotel you found out that the accommodation had already been paid for, is that right?

[Mr Badalati]: Correct.

[Q]: And who had it been paid for by on your understanding?

[A]: I believe it was China [Yuqing] Liu.

[Q]: All right. And what happened then?

[A]: Nothing. I just went outside.

[Q]: All right. Well, there's been a suggestion that you then had a conversation with China Liu's staff about the question of payment. Did that happen?

[A]: No, it didn't.

[Q]: Did you give China Liu's staff any cash at the hotel in Tangshan?

[A]: No.

[Q]: Did you see Mr or Mrs Hindi give any cash to China Liu's staff in the Tangshan hotel that morning?

[A]: I, I didn't see anything.

The Commission is satisfied that Mr Badalati understood the cost of accommodation had been paid by Yuqing Liu, that there was no conversation with Yuqing Liu's staff concerning the question of payment and that Mr Badalati did not make any payment to Yuqing Liu's staff. The evidence contained significant admissions against interest. As has been noted above, Mr Uy's legal representative put to Mr Badalati that it was "fraudulent" for him to commence defamation proceedings against the SMH on the basis of matters he acknowledged were untrue. Mr Badalati accepted his conduct was fraudulent. That Mr Badalati would make such a damning admission against his own interest, one that was inconsistent with the account he provided to the SMH and which formed the basis upon which the settlement was reached, adds to the credibility of that evidence.

The Commission is satisfied that Mr Badalati did not reimburse Yuqing Liu or Xinfeng for the cost of the

accommodation in Tangshan (about \$200 AUD per night) for the nights of 11 and 12 April 2016.

Both Mr and Mrs Hindi claimed Yuqing Liu or Xinfeng were reimbursed for the cost of the accommodation in Tangshan. As set out earlier in this chapter, Mr Hindi also prepared some notes in 2019 relating to the 2016 Tangshan trip in response to the SMH article. These notes recorded:

The following morning we went to Breakfast and some of Mr Liu's staff were there. After Breakfast My wife Miray went to pay for the accommodation and she was told it was paid for by Mr Liu staff. I found that to be unacceptable and argued with his staff to accept the payment of 4000RM [sic] for Miray and I's accommodation.

Eventually Miray left 4000RMB and Mayor Badalati 2000RMB with the staff member who would not accept the money but he finally reluctantly took it. He was pleading with us as his boss would be very upset.

One of the people who had been picked up in Beijing saw what happened and he gave mayor Badalati his business [sic] card and said he would gladly confirm what had happened.

We were taken back to Beijing that morning.

My wife and I have receipts for [sic] airfares and hotel accommodation in Shenzhen and Beijing and got a statutory declaration regarding the payment in Tangshan.

Mr Badalati's notes and Mr Hindi's notes are similar. As set out earlier in this chapter, the Commission is satisfied that Mr Badalati and Mr and Mrs Hindi were attempting to get their stories straight around May 2019, regarding the expenses of the trip, for the purposes of addressing the allegations in the SMH article. The Commission is also satisfied Mr Badalati shared his notes with Mr Hindi to ensure consistency between the two versions. It is likely Mr Hindi was also contemplating a possible claim for defamation against the SMH at the time.

It was submitted on behalf of Mr Hindi that Mr Hindi's notes were prepared as a "personal aide memoir", not intended to be a public or official account of those events, but "the metaphorical 'note on the fridge' and there is no justification to draw inferences from any inconsistencies between the memo and any evidence given by Mr Hindi in the public inquiry".

The Commission does not accept Mr Hindi's submissions. He gave different, and inconsistent, versions of what happened in the lobby of the Tangshan Grand Metropark Hotel at his compulsory examination and the public inquiry.

Both of those accounts varied from the notes he prepared in 2019. The inconsistencies between these different accounts raise doubts about their veracity. They also raise questions about the credibility of Mr Hindi's evidence on this topic and more generally.

During Mr Hindi's compulsory examination, the following exchange took place between Counsel Assisting and Mr Hindi:

[Counsel Assisting]: That suggests that somebody paid for all the accommodation and then, so how did it come about?

[Mr Hindi]: Yeah. Thank you, thank you. So I'll explain. We went to pay in the morning after we finished, we were trying to pay to leave, and we were told that the accommodation has been taken care of. And it wasn't just us, like, me, Vince and my wife, there's other people that were staying there, other Chinese that were staying there, and Mr Liu China [Yuqing Liu] paid for it and we said, no – let's call him Mr Liu China. The lady said, "Mr Liu China has paid for it". We were having breakfast and we were trying to pay and we said, "You can't pay for us. No, we have to pay. It doesn't work like this. We have to pay for it". And they said, "No, no. He gets very upset, he's paid already, you can't". So back and forward, arguing back and forward –

[Q]: Okay. Just stop. This is you discussing it with –?

[A]: Not me, my wife. My wife and Vince.

[Q]: And you – ?

[A]: I'm just standing there listening.

[Q]: All right. With the receptionist or something like that?

[A]: Yes, yeah, yeah.

[Q]: Okay.

[A]: And, and, and Mr Liu's staff as well, and other Chinese people that were part of that, the thing. So they're all there, like, we're going, "No, no, you can pay for them but you can't pay

for us". My wife said, "You can't pay for us". And Vince goes, "You can't pay for me and you can't pay for us".

...

So when we said, and then to my recollection, that's from my recollection – and the reason I remember this is because that's the information that was put into *The Sydney Morning Herald* when we went for defamation. So, Vince Badalati grabs 2,000 RMB and my wife grabs 4,000 RMB and says, "Whether you like it or not, it's on the table. You're going to [not transcribable] to his staff, you take it, give it to the waiters, give it to anybody. We don't care. Our job is we have to pay it for ourselves..."

Later in the compulsory examination, Mr Hindi confirmed that he did not actually see Mrs Hindi make the payment, but she told him about it later. This evidence is inconsistent with Mr Hindi's notes from 2019. The evidence given during his compulsory examination suggested that Mrs Hindi was the one who had the discussion with Mr Liu's staff (Mr Hindi was "just listening"), whereas the 2019 notes suggested that Mr Hindi had been the one who "argued" with Mr Liu's staff. Both versions given by Mr Hindi were inconsistent with the evidence of Mr Badalati that he never had a conversation with Mr Liu's staff about payment and never paid them anything.

During the public inquiry, Mr Hindi gave a further account which differed from the earlier versions. The following exchange took place between Counsel Assisting and Mr Hindi:

[Counsel Assisting]: So you witnessed Mrs Hindi have a discussion with someone, is that right?

[Mr Hindi]: Yeah. Discussion, yeah.

[Q]: With a member of China [Yuqing] Liu's staff?

[A]: Well, somebody she was talking to.

[Q]: And could you hear what they were saying?

[A]: No. Because I don't –

[Q]: Did you see Mr Badalati participate in that discussion?

[A]: I didn't see him.

[Q]: Could you hear what he was saying?

[A]: I couldn't hear anyone saying anything.

[Q]: Did you see Mrs Hindi give China [Yuqing] Liu's staff anything?

[A]: I didn't see, I just saw her put her hand in her purse and that's about it. Like, like through the side of my eye because I don't look at these things.

[Q]: You didn't see what she handed to China Liu's staff?

[A]: No, no.

[Q]: Did she tell you later what she handed to them?

[A]: Yes, in the car.

This evidence was at odds with the evidence given during the compulsory examination. It was also inconsistent with Mr Hindi's notes. He now claimed that he had not been "listening" to the alleged discussion with Yuqing Liu's staff but merely observed the discussion from a few metres away. Mrs Hindi later told him what had been said. Further, Mr Hindi now claimed that he did not see Mr Badalati participate in any discussion.

Mr Hindi disputed that his evidence was inconsistent. That submission is reproduced in full:

According to Mr Hindi, Mrs Hindi had a conversation with Mr Y Liu's staff. The staff did not want to accept payment, for fear it would offend Mr Liu. Mrs Hindi insisted on leaving 4,000RMB. Mr Hindi's understanding of the exchange in which Mrs Hindi participated derives from what Mrs Hindi told him. Mr Hindi's understanding of the exchange in which Mr Badalati was thought to have participated derived, at the time of Mr Hindi's compulsory examination, from the information Mr Badalati had provided as part of his defamation claim and the version of events peddled by Mr Badalati until July 2022. By the time he gave evidence at the public enquiry [sic] Mr Hindi knew the account provided by Mr Badalati at the time of the defamation claim had been resiled from, and so Mr Hindi's new understanding of the exchanges in the lobby is reflected in his evidence.

The Commission does not accept Mr Hindi's submission. During the compulsory examination Mr Hindi claimed to have a personal recollection, as he did during the public inquiry. There was no "new understanding". The Commission is satisfied both accounts were, to the knowledge of Mr Hindi, untrue.

During the public inquiry, Mrs Hindi gave evidence that she paid for the accommodation in Tangshan in cash and that the money was given to either a hotel staff member or a member of Yuqing Liu's staff who was present at the time the payment was made. She said that she had a conversation with Yuqing Liu's staff member in English.

Mrs Hindi's account is inconsistent with Wong Ching Ho's statutory declaration in which he stated he was acting as translator for Mrs Hindi. It was submitted on behalf of Mrs Hindi that Wong Ching Ho's statutory declaration does not constitute a truthful statement – given that Mr Badalati accepted it was false – and the Commission should not rely on inconsistencies between the statutory declaration and Mrs Hindi's evidence to support a finding that her evidence was untruthful. The Commission accepts that submission and no weight is placed on that statutory declaration when assessing the truthfulness of Mrs Hindi's evidence.

However, Mrs Hindi's account is also inconsistent with Mr Badalati's evidence. He said he did not reimburse Yuqing Liu or Xinfeng. He also said he did not see Mr or Mrs Hindi leave any money, despite being in the lobby at the same time, although he did not say that it did not occur.

The Commission has previously addressed Mrs Hindi's submission that Mr Badalati's evidence should be rejected. The Commission does not accept the submission. The Commission accepts Mr Badalati's evidence.

As to the evidence of other witnesses, Mr Yan told the Commission he saw Mrs Hindi speaking with one of Yuqing Liu's staff members and a receptionist at the front desk of the hotel. Wensheng Liu gave evidence that he observed the same conversation take place but could not hear what was said. He claimed he saw Mrs Hindi "giving something but I couldn't see what it was". Mr Uy gave a similar account to that of Wensheng Liu. Ms Tang could not recall witnessing any discussions between Mr Badalati and Mrs Hindi and the staff.

It was submitted on behalf of Mrs Hindi that the evidence of Mr Yan, Wensheng Liu and Mr Uy corroborates the general account given by Mrs Hindi and that it was immaterial that those three witnesses could not see what Mrs Hindi gave to the staff at the hotel. It was submitted on behalf of Mrs Hindi that Counsel Assisting provided no alternative explanation for why Mrs Hindi was at the front desk, if not paying for the accommodation, or what she was handing over, if not cash.

Counsel Assisting submitted in response to Mrs Hindi's submission that limited weight can be given to the evidence of Mr Yan and Wensheng Liu, given they did not overhear the conversation and did not see what Mrs Hindi claimed to have handed over to Mr Liu's staff. It was also submitted that Mr Uy's evidence should not be considered, given the issues discussed previously about his credibility.

The Commission accepts Counsel Assisting's submission and does not accept Mrs Hindi's submission. The evidence of Mr Yan and Wensheng Liu does not make good the proposition that Mrs Hindi reimbursed anyone in cash for the Hindis' accommodation at the hotel in Tangshan.

Given the Commission has found that Mr Hindi's evidence was untruthful, it provides no support to Mrs Hindi's evidence.

It was submitted on behalf of Mrs Hindi that any perceived deficiencies in Mr Hindi's evidence arise from the different versions he was given by Mr Badalati and Mrs Hindi, and in any event, cannot constitute a legitimate basis to impugn the evidence of Mrs Hindi. It was also submitted on behalf of Mr Hindi that "it is not logically possible that anything Mr Badalati might have to say about the events in the Tangshan hotel lobby on 12 April has any bearing on the evidence given by Mr or Mrs Hindi or Mr Uy".

The Commission does not agree. The Commission has not used the evidence of Mr Hindi to impugn the evidence of Mrs Hindi. Rather, as noted above, the evidence of Mr Hindi provides no support for Mrs Hindi's evidence. As to Mr Badalati, he said he did not reimburse Yuqing Liu or Xinfeng for the accommodation. He also said he did not see Mr or Mrs Hindi leave any money, despite being in the lobby at the same time – although it is noted again that Mr Badalati did not say the payment did not occur. Further, the Commission has taken into account Mrs Hindi's evidence in relation to the payment of other expenses during the trip. As previously noted, the Commission does not accept her evidence and is satisfied that her evidence was untruthful.

It should be noted again that Mrs Hindi was involved with Mr Badalati and Mr Hindi in attempting to get their stories straight, regarding the expenses, for the purpose of addressing the allegations in the SMH article.

Counsel Assisting invited the Commission to consider whether Mrs Hindi's evidence that she paid money to Yuqing Liu's staff for the cost of the hotel in Tangshan was false or misleading evidence.

The Commission does not accept the evidence of Mr and Mrs Hindi that they reimbursed anyone for the accommodation in Tangshan. The Commission

has accepted Mr Badalati's evidence that he did not reimburse anyone for that accommodation. Mr Badalati and Mr Hindi were in a similar position, in that they had travelled to China to endorse and promote the development of Treacy Street and Landmark Square for the benefit of Yuqing Liu, Wensheng Liu and Mr Uy. The Commission has given no weight to the evidence of Mr Uy because of the issues identified in respect of his credibility as a witness. The Commission is satisfied Mrs Hindi's evidence was untrue.

Transfers and meals

Yuqing Liu made available luxury cars (Rolls-Royce, no less) to transfer Mr Badalati, Mr Hindi and Mrs Hindi from Tangshan to Beijing, and Beijing to Tangshan.

Both Mr Badalati and Mr Hindi agreed they did not pay for this transport and that the luxury cars belonged to Yuqing Liu.

Yuqing Liu or Xinfeng also provided or paid for meals on several occasions during the trip, as outlined above.

Corrupt conduct and s 74A(2) statement – the trip to China

Chapter 5 of this report will address the questions of:

- whether the trip to Tangshan, China, in April 2016 for the purpose of endorsing and promoting the Treacy Street and Landmark Square developments, and the receipt of the benefits referred to above, involved serious corrupt conduct
- whether the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of any person for a specified criminal offence.

Chapter 5: HCC votes on the Landmark Square and Treacy Street developments, 20 April 2016

This chapter examines HCC's vote on 20 April 2016 in relation to the Landmark Square planning proposal and the application to modify the Treacy Street development. This chapter also examines in detail whether Mr Badalati, Mr Hindi and Mr Sansom had any pecuniary or non-pecuniary interests in relation to those developments and, if so, whether they were required to disclose those interests to HCC.

14 April 2016: HCC staff report on the Landmark Square planning proposal

By 14 April 2016, HCC staff had finalised their assessment report for the Landmark Square planning proposal. On that day, HCC councillors were notified the report was available on the "Councillors Intranet Portal" and it was also publicly available on HCC's website. Mr Badalati and the Hindis were at this time heading home from Tangshan, China.

While the HCC staff report supported the rezoning from Industrial to Mixed Use, they did not support the height and FSR sought by One Capital. While One Capital had sought a height of 65 metres for Site A and 25 metres for Site B, staff recommended 40 metres for Site A and 18 metres for Site B.

One Capital had also sought an FSR of 3.5:1 for Site A and 1.5:1 for Site B. However, HCC staff proposed that the FSR be capped across the whole site at 2.5:1, with a bonus 1.5:1 for any hotel or motel accommodation. One Capital held options for Site A. Site B was owned by other parties.

The report made clear the height and FSR sought were not supported:

due to the scale of development on the edge of the Hurstville City Centre, the lack of a built form

transition across the site to the adjacent lower scale residential development, and the significant difference in the distribution of the proposed height and FSR across the whole site (between Site A and Site B). The identification of Site A and Site B is based on land ownership rather than planning considerations and site characteristics.

The height and FSR recommendations made by staff were based on the advice of the St George Design Review Panel (referred to in chapter 3), independent urban design advice, recommendations of the draft Hurstville ELS and consideration of state and local policies and directions.

HCC staff also recommended that:

- The amendment be supported "subject to an appropriate mechanism being available to assist in addressing the road and traffic infrastructure demands and improvements within the City Centre generated by the future development of the site", including mechanisms such as HCC entering a planning agreement (noting One Capital's VPA offer had been withdrawn on 24 March 2016) or alternatively preparation of an amendment to the *Hurstville Section 94 Development Contributions Plan 2012* ("the contributions plan")
- to address road and traffic infrastructure within the Hurstville City Centre.
- One Capital undertake a contamination assessment to inform the proposed rezoning of the whole of the subject site (both Site A and Site B), as required by the *State Environmental Planning Policy No 55 – Remediation of Land* ("SEPP 55") (see clause 6). The report said it was "not acceptable, and is inconsistent with the provisions of SEPP 55, to have the extent of any contamination on the site left unknown until after the site is rezoned and dealt with at

the DA stage". The report noted that potential contamination at the site existed and that a number of existing and former land uses may have impacted site soils and underlying groundwater.

- HCC resolve to commence preparation of an amendment to the *Hurstville Development Control Plan No 2 – Hurstville City Centre* to include the site within the boundary of the Hurstville City Centre and to include site-specific provisions for the site, including but not limited to vehicle access points, building locations and form, landscaped areas, through-site connections, active street frontages and building setbacks.

Mr Gheorghiu was a consultant engaged by Dickson Rothschild to work on the planning proposal. On 15 April 2016, Mr Gheorghiu emailed Ms Tang to summarise the recommendations in the HCC staff report, copying Mr Dickson. Mr Gheorghiu suggested that "discussions need to occur at the relevant political levels to make them aware of the recommendation".

Ms Tang gave evidence that she probably did not read this email. She said she probably forwarded the email to Mr Uy. Ms Tang also claimed that at the time she did not understand "discussions need to occur at the relevant political levels" meant Mr Uy needed to speak with Mr Badalati and Mr Hindi. Mr Dickson was also asked about this email. Mr Dickson said he understood this to be a reference to Mr Uy having discussions with councillors and possibly also senior council staff, but particularly Mr Hindi because "there was no question that dialogue had been had with Councillor Hindi as the principal lobbyist ... amongst the councillors".

It was submitted on behalf of Mr Hindi that Mr Dickson's assertion that Mr Hindi was the "principal lobbyist amongst the councillors" should be disregarded due to Mr Dickson's "unreliability".

The Commission does not accept this submission. The Commission is of the view that Mr Dickson was a credible and reliable witness. There is no reason to reject his evidence. Further, and considering the statement that "discussions need to occur at the relevant political levels", the contemporaneous telecommunication data and email records available to the Commission indicate that Mr Hindi, and indeed Mrs Hindi, did have discussions with Mr Badalati, Mr Sansom and Mr Uy, particularly between 18 and 20 April 2016.

Mr Sansom drafts a resolution

Telecommunication data available to the Commission shows that on the morning of 18 April 2016, Mr Hindi called Mr Badalati and they spoke for about eight minutes. Mr Badalati called Mr Hindi 10 minutes later and they spoke for another six minutes.

Mr Badalati told the Commission that he, Mr Hindi and Mr Sansom met at the Novotel in Brighton-Le-Sands on 18 April 2016. Mr Hindi could not recall this meeting but did not deny it. Mr Sansom likewise could not call the meeting but also did not deny it. Telecommunication location data available to the Commission indicated that between 5.56 pm and 6.34 pm Mr Hindi was communicating with Mr Badalati and Mr Sansom while Mr Sansom was communicating with Mr Hindi from "Brighton-Le-Sands the Grand Parade". The Novotel is located on The Grand Parade, Brighton-Le-Sands. The Commission is satisfied Mr Badalati, Mr Hindi and Mr Sansom met at the Novotel in Brighton-Le-Sands on the evening of 18 April 2016.

Mr Badalati told the Commission that the HCC staff assessment report on the Landmark Square planning proposal was discussed during this meeting at the Novotel hotel. He said they agreed at the meeting that Mr Sansom would prepare a draft resolution regarding the planning proposal that would depart from the staff's

recommendations. It was put to Mr Badalati that they “were getting [their] heads together to see whether there was a way [they] could stop what was being proposed”. Mr Badalati accepted this proposition.

Mr Hindi and Mr Sansom told the Commission that while they could not recall what was discussed at the meeting, it was likely they discussed the Landmark Square planning proposal. Mr Sansom’s evidence was that while he could not recall, it was possible they agreed at the meeting he would draft the resolution because he “was probably better at doing that than anyone else”. Mr Hindi could not recall what was said but accepted it was likely they agreed Mr Sansom would draft the resolution and that they would propose a higher height and FSR.

It was submitted on behalf of Mr Hindi that the Commission should not accept Mr Badalati’s evidence that they “were getting [their] heads together to see whether there was a way [they] could stop what was being proposed”. Mr Hindi submitted that:

by the stage that Mr Badalati was answering questions about this issue, he was doing so almost automatically, accepting whatever Counsel Assisting put to him. Mr Badalati agreed to Counsel Assisting’s leading question.

The Commission rejects Mr Hindi’s submission for the following reasons. Mr Badalati accepted the proposition against his own interest. What was put to him was consistent with the evidence addressed below from which the Commission concluded that Mr Badalati, Mr Hindi and Mr Sansom exchanged emails the following day about a draft resolution to be put to HCC that was contrary to HCC staff recommendations and which favoured One Capital and Mr Uy. Mr Badalati was not “accepting whatever Counsel Assisting put to him”. Rather, he accepted certain, but not all, propositions put to him that were adverse to his interests. Some of his evidence was also adverse to the interests of Mr Hindi. Implicit in Mr Hindi’s submission is the assumption that because Mr Badalati agreed with what was being put to him, he must have been giving untruthful evidence and that Mr Hindi was giving truthful evidence. This assumption and the submission based upon it are fallacious. Further, the submission appears to assume Mr Badalati gave the relevant evidence in July 2022. This is incorrect. The evidence was given at the beginning of the public inquiry in June 2022, not in July 2022.

The Commission accepts Mr Badalati’s account of the 18 April 2016 meeting. The Commission is satisfied that Mr Badalati, Mr Hindi and Mr Sansom were putting their heads together to see whether, in the interests of One Capital and Mr Uy, there was a way they could stop

what was being proposed in the HCC staff report on the Landmark Square planning proposal.

It was also submitted on behalf of Mr Hindi that Mr Badalati’s “almost autonomous responses” must be assessed against the sworn evidence of Mr Hindi and Mr Sansom on the same topic; namely, they both confirmed the meeting on 18 April 2016 was an entirely usual and legitimate part of the activities of a councillor.

The Commission does not accept Mr Hindi’s submissions. In general terms, the Commission accepts that from time to time councillors may meet both formally and informally in relation to uncontroversial council business. However, the weight of the evidence available to the Commission indicates that the purpose of this meeting was so that the three councillors could discuss whether there was a way they could stop what was being proposed in the report of council staff on the planning proposal in respect of a substantial and controversial development.

The following day, 19 April 2016 at 2.08 pm, Mr Sansom emailed a draft resolution to Mr Badalati and Mr Hindi. The draft resolution departed in significant respects from the recommendations of HCC staff. It proposed a height of 65 metres for Site A and 25 metres for Site B, as sought by the applicant. It also proposed an FSR of 3.5:1 for Site A and 1.5:1 for Site B, as sought by the applicant.

Mr Sansom sent the draft resolution from his private email account to Mr Badalati and Mr Hindi using their private email accounts. Mr Sansom said he used his private email from time to time for work matters and that Mr Hindi and Mr Badalati did too. Mr Badalati claimed he also sometimes used his private email address for council work. Mr Hindi’s evidence was that he used his personal email for work matters from time to time.

The Commission notes that all five email exchanges between Mr Badalati, Mr Hindi and Mr Sansom concerning the draft resolution were sent to and from their private email accounts. In contrast, the final version of the resolution which Mr Sansom emailed to the general manager on 20 April 2016 (discussed below) was sent from his HCC email account. Indeed, a mere one minute after Mr Sansom emailed the general manager the resolution from his HCC account, he reverted to his private email account to send Mr Badalati and Mr Hindi a copy of the “final recommendation as sent to [the general manager] just now”. The Commission is satisfied that Mr Badalati, Mr Hindi and Mr Sansom used their private email addresses to avoid the risk of detection. More particularly, they wished to conceal communications which would have revealed their respective roles in drafting a resolution which was for the benefit of One Capital and Mr Uy.

Telecommunication data obtained by the Commission shows that at 2.18 pm on 19 April 2016, Mr Uy called Mrs Hindi for 1 minute 33 seconds. At 3.33 pm, Mr Badalati called Mr Uy and spoke to him for 41 seconds. Mr Badalati also attempted to contact Ms Tang at 3.48 pm. Mr Hindi spoke to Mr Sansom at 3.50 pm for 55 seconds. At 3.50 pm and 3.52 pm Mr Hindi attempted to contact Mr Badalati. At 3.54 pm, Mr Badalati called Mr Hindi and spoke with him for 1 minute 34 seconds. At 8.53 pm, Mr Uy called Mrs Hindi and spoke to her for 1 minute 42 seconds.

The next morning, 20 April 2016, Mr Badalati had further telephone contact or attempted telephone contact with Mr Uy and Ms Tang: he contacted them nine times between 9.50 am and 11.27 am. Mr Badalati then spoke to Mr Hindi at 11.31 am for 3 minutes 42 seconds and to Mr Sansom at 11.45 am for 42 seconds. Mr Badalati spoke to Mr Uy again at 12.56 pm for 51 seconds.

When questioned about these calls, Mr Badalati, Mr and Mrs Hindi, Ms Tang and Mr Uy were unable to recollect what was discussed. Mr Badalati accepted it was likely that at least one call to Ms Tang and Mr Uy was about the drafting of the resolution, and Ms Tang also accepted they were likely about the Landmark Square development. Mr Badalati also accepted at least one call to Mr Hindi was about the resolution.

Given the proximity of the calls to the HCC vote on the Landmark Square planning proposal (scheduled for 20 April 2016), their repetitive nature (signalling some urgency), and the contemporaneous emails between the councillors regarding the resolution, the Commission is satisfied most of the calls concerned Landmark Square, and in particular the drafting of the resolution for the vote that evening.

Mr Hindi and Mr Sansom denied that the resolution had been drafted in consultation with or at the request of Mr Uy. Mr Badalati's evidence was that it was likely Mr Uy and Ms Tang were consulted about the drafting of this resolution.

Given the frequency of the communication over the course of 19 and 20 April 2016 between Mr Badalati and Mr Uy and Mrs Tang, and between the three councillors, the Commission is also satisfied Mr Uy was being consulted on the drafting of the resolution. No one offered any other explanation of why Mr Uy or Ms Tang were being contacted by Mr Badalati in this period other than perhaps to also talk about the Treacy Street development, which was also on the agenda at the council meeting on 20 April 2016. That Mr Uy and Mrs Hindi communicated twice on 19 April 2016 is also significant. The second call occurred at 8.53 pm. Mr Uy's evidence was that he could not recall the contents of the conversation with

Mrs Hindi. Mrs Hindi claimed that although she could not recall the conversation with Mr Uy at 8.53 pm, they did not discuss the council vote the next day. She denied that she was talking to Mr Hindi about the resolution and relaying her discussions with her husband to Mr Uy. She also denied knowing Mr Hindi was involved in the resolution. This was despite the fact that if the planning proposal did not go ahead, her \$500,000 commission under the BAA with One Capital was at risk.

Mr Sansom circulated a revised resolution to Mr Badalati and Mr Hindi on 20 April 2016 at 1.04 pm. In this version, the maximum building height had changed to 60 metres for Site A and 25 metres for Site B. There was now a bonus FSR of 1.5:1 for hotel or motel accommodation for Site A only, and the requirement for a contamination assessment report only applied to Site A. In contrast, the HCC staff had recommended that the report address the entire site.

Mr Sansom was unable to provide a plausible explanation as to why this amendment was made. He accepted the amendment favoured One Capital in that it proposed an assessment report for a subsection of the site but claimed that was not the intention. The explanation for the amendment offered by Mr Badalati and Mr Hindi was that Site B was not owned by One Capital. Mr Hindi's evidence was that limiting the application of the contamination assessment report to site A was reasonable, in circumstances where site A was much bigger than site B and might be expected to yield results that could be extrapolated to the entire site. The Commission does not accept Mr Hindi's explanation, in light of the evidence of Catherine McMahon, manager of strategic planning at GRC. Ms McMahon explained that the ownership of the site was not a legitimate reason not to require a contamination assessment report, because SEPP 55 required that when re-zoning from industrial to residential, council had to be satisfied the whole site could be made suitable for the future use. The Commission is satisfied that there is no plausible explanation for why this amendment was made other than to benefit One Capital and Mr Uy by saving the applicant the time and cost associated with obtaining a contamination assessment for site B, which it was intended would be purchased by or on behalf of One Capital and form part of the Landmark Square development.

Later that day, Mr Badalati spoke to Ms Tang at 1.31 pm and Mr Sansom at 1.38 pm.

At 2.25 pm, Mr Sansom circulated another version of the draft resolution to Mr Badalati and Mr Hindi. The email stated, "Please see amended version after talking to Vince". This version now deleted the HCC staff proposal to adopt a mechanism to address road and traffic infrastructure issues.

Mr Sansom said the deletion would have been a suggestion from either Mr Hindi or Mr Badalati as he sent it to them for feedback. He accepted it was another amendment that favoured the developer, One Capital, but said he would not have thought of it in that way at the time. Mr Badalati's evidence was that he could not recall whose idea it was to delete the paragraph addressing the road and traffic infrastructure demands, although he understood these amendments reflected what Mr Uy wanted. Mr Hindi's evidence was that he considered the planning proposal to have been unfairly penalised when compared with the "meagre requirements imposed on a substantial development across the road". He said a VPA at a later stage of the assessment process would have provided an alternative mechanism to yield the funding to undertake the requisite traffic and infrastructure upgrades. The Commission considers that Mr Badalati's evidence on this issue is the most likely explanation and is supported by additional factors, such as the telecommunication records showing he was communicating with Mr Uy and Ms Tang on 19 and 20 April 2016. The Commission is satisfied that the HCC staff proposal to adopt a mechanism to address road and traffic infrastructure issues was deleted from the draft resolution in consultation with Mr Uy or Ms Tang and was intended to favour the interests of One Capital and Mr Uy.

At 3.03 pm on 20 April 2023, Mr Hindi emailed a response: "Good". Mr Hindi then spoke to Mr Badalati at 3.31 pm and Mr Sansom at 3.33 pm. He spoke to Mr Sansom again at 4.27 pm.

At 4.44 pm, Mr Sansom circulated yet another version of the draft resolution which he indicated had been sent to the acting general manager. The final resolution supported a maximum building height of 60 metres for Site A and 25 metres for Site B: which equates to 19 storeys for Site A (up from the recommended 40 metres or 12 storeys) and seven storeys for Site B (up from the recommended 18 metres or five storeys). It also supported an FSR of 3.5:1 for Site A and 1.5:1 for Site B with a bonus FSR incentive of 1.5:1 for "hotel or motel accommodation" on Site A.

The final resolution now removed any reference to the DCP being amended to deal with design details. This also favoured One Capital and Mr Uy. If there were no DCP, there would be fewer requirements to satisfy when it came time to prepare the DA.

Mr Sansom said he could not recall why reference to the DCP was removed or whose idea it was. He accepted it "might" be another amendment that favoured the proponent, but he did not recall "doing it on purpose". Mr Badalati's evidence was that he could not recall whether it was an amendment Mr Uy desired, but he could not think of any other reason for agreeing to depart

from the HCC staff recommendation. When it was put to him that the amendment was in the applicant's favour, he agreed. Mr Hindi's evidence was that he did not favour the removal of the requirement for a DCP, but he had not drafted the resolution, and on balance he supported its aims.

In relation to Mr Sansom's emails at 1.04 pm, 2.25 pm and 4.44 pm on 20 April 2016, Mr Hindi denied that the amendments were drafted to favour the interests of either Mr Uy or the proponent of the proposal. It was submitted on behalf of Mr Hindi that there was no evidence which provided the Commission with a logical basis to reject Mr Hindi's evidence on this issue. By 20 April 2016, Mr Hindi had accepted cash in the order of \$70,000 from Mr Uy in relation to the Treacy Street development. The Commission is satisfied the payment was made during 2015 and was connected to the exercise of Mr Hindi's functions as a councillor. In April 2016, Mr Hindi also accepted payment from Mr Uy for two nights' hotel accommodation in Beijing and flights from Shenzhen to Beijing. The Commission has previously found that Mr Hindi was aware that Mr Uy had a financial interest in the Landmark Square and Treacy Street developments. The Commission is satisfied that there is no reasonable explanation for removing the requirement to amend the DCP other than to favour the interests of One Capital and Mr Uy. The Commission does not accept Mr Hindi's evidence to the contrary.

The Commission is also satisfied that the three amendments to the draft resolution in Mr Sansom's emails of 1.04 pm, 2.25 pm and 4.44 pm on 20 April 2016 were made in consultation with One Capital's representatives and were intended by each councillor to favour One Capital and Mr Uy. Despite suggestions to the contrary, it is clear that each of the three amendments favoured One Capital and Mr Uy. The telecommunication records show the councillors had regular communication with Mr Uy and Ms Tang over 19 and 20 April 2016. None of the councillors could provide any reasonable or rational explanations for the amendments. Further, Mr Badalati confirmed that he understood these amendments were in accordance with what Mr Uy wanted and that he was acting at the "behest" of Mr Uy. The Commission is satisfied that Mr Hindi and Mr Sansom were also acting at the behest of Mr Uy.

It was submitted on behalf of Mr Uy that the word "behest" was not used by Mr Badalati in his evidence. Further, even if the amendments were in accordance with what Mr Uy wanted, that did not make them "corrupt" per se. The Commission does not accept Mr Uy's submission. During the public inquiry, it was put to Mr Badalati during cross examination that he was acting at the "behest" of Mr Uy, which he accepted. In relation to the second matter, Mr Badalati's involvement in drafting

amendments favourable to Mr Uy cannot be viewed as an isolated incident. It formed only part of a course of conduct, the evidence of which is detailed throughout this report.

It was submitted on behalf of Mr Hindi that the proposition that the HCC vote on the Landmark Square planning proposal was somehow subverted by the amendments to the resolution cannot be established. It was submitted that the resolution was ultimately passed by the majority of the members of the HCC, and included councillors whose conduct is not suggested as having been impugned or affected by the amended resolution, rather than having been motivated because the resolution effectively reflected the merit of the proposal to justify the resolution being made, in circumstances where all councillors were informed by workshops and meetings about the HCC staff view on the merits of the proposal.

The Commission does not accept Mr Hindi's submission. In the case of Mr Hindi and Mr Badalati, their vote and their conduct leading up to the vote were tainted by the receipt of benefits including in Mr Badalati's case \$70,000 and in Mr Hindi's case approximately \$70,000 from Mr Uy. Chapters 3 and 4 set out Mr Hindi and Mr Badalati's dealings in relation to the Landmark Square planning proposal that, in the Commission's view, compromised their impartiality in respect of that development. It cannot be the case that receiving payments from Mr Uy is excused by the contention that Mr Hindi would have voted in favour of those developments anyway.

20 April 2016: HCC votes on the Landmark Square planning proposal

Mr Badalati and Mr Hindi accepted that by 20 April 2016, they understood Wensheng Liu's company, One Capital, was the proponent for the Landmark Square planning proposal.

At the HCC meeting on the evening of 20 April 2016, Mr Dickson and Dr Michael Neustein, another experienced planner, spoke in favour of the planning proposal. The resolution – as drafted by Mr Sansom, Mr Hindi and Mr Badalati – was moved by Mr Sansom. HCC voted in favour of the resolution. It was supported by by then mayor, Mr Badalati, Mr Hindi, Mr Sansom and councillors Sin, Drane, Kastanias, Liu and Wu. Councillor Stevens voted against it. The resolution as passed did not include a 25-metre bonus height for the hotel, as included in Mr Sansom's draft resolution that he sent to Mr Hindi and Mr Badalati at 4.44 pm on 20 April 2016, which he described at the time as the "final recommendation" that he sent to the general manager.

Ms McMahon, manager of strategic planning at HCC and later GRC, was the person primarily responsible for assessing the Landmark Square planning proposal. Ms Stores, executive strategic planner at HCC and then GRC, was the person primarily responsible for assessing the Landmark Square VPA. As they explained:

- The resolution allocated a higher height and FSR to Site A, in which the applicant had a proprietary interest. Ms McMahon could not think of a good planning reason why the FSR should be so much higher on Site A than Site B.
- The resolution did not adopt any mechanism to address road and traffic infrastructure demands, as staff recommended. It only amended the contributions plan to include the site within the Hurstville City Centre, which permitted HCC to apply the city centre contributions rate to the development but not to levy amounts to cover traffic and infrastructure. That was of concern, given the Landmark Square development had the capacity to affect road and traffic with additional residential units and commercial retail floor space.
- The resolution did not require any amendment to the DCP, as recommended by HCC staff, which would have provided the detail of vehicle access points, landscaping, through-site connections, active street frontages and setbacks. Not amending the DCP reduced the number of guidelines applying to the site when it came time to lodge the DA and meant that the applicant would not need to justify the proposal against those guidelines.
- The resolution did not require a contamination assessment report for the entire site, as had been recommended by HCC staff. This was contrary to SEPP 55. It saved the applicant time and cost associated with obtaining a contamination assessment for Site B. However, there was no reasonable planning justification.

During the public inquiry, Mr Dickson said:

I think I was momentarily stunned because ... it was a complete overturn of the council staff recommendation. I was surprised that the councillors all voted consistent with the planning proposal. And I say that because sometimes there is a mediation between the council staff position and the applicant's position, and so as things will be that there's a midway point. But what eventuated here is that I believe we attained, in that council vote that evening, the full extent that we were asking for.

In Mr Dickson's statement, he said he went into the council meeting "feeling very uncertain" given council staff "had very clear opposition to the proposed change to the existing zoning at that site and that site was contentious". He was surprised "given the level of opposition from council staff" and said that in his experience, based on 10 planning proposals over between five and 10 years, this was the "only rezoning application which had such resounding support from Councillors". He said he believed the favourable outcome "was based on the favourable vote of Councillors Hindi and Badalati as powerbrokers of the Labour and Liberal factions ... and that this was achieved from the involvement" of Mr Uy. He knew from his discussions with Mr Uy that "there was a lot going on that side of the table as much as we were doing our own professional duties". He said that Mr Uy's "main role was to speak regularly with the councillors to engender their support ... his main role, I understood was as a communicator between the applicant and the councillors".

He said, in relation to Mr Hindi:

Well, in my professional career I have worked in the Hurstville/St George area for many years and Councillor Hindi is known as a very vocal person on council. Has a strong support base and following from other councillors. So he's known as a powerbroker in the area, but also I knew that he was particularly strong on this particular application. This was a large site, about 1.4 hectares of land between Hurstville Station and Allawah, so it's not usual to get such large industrial sites in town centres, so I believe that Councillor Hindi was following the application with great interest and intending great support for it.

The following exchange occurred between Senior Counsel for Mr Hindi and Mr Dickson:

[Senior Counsel for Mr Hindi]: And you have no reason to suspect that each of these Councillors considered what you said, put forward the planning proposals and determined to accept the resolution that was put on a proper basis, bearing in mind the merit of the application and the good of the community, correct?

[Mr Dickson]: Absolutely.

[Q]: You're agreeing with me, is that right?

[A]:

I am agreeing with you entirely. I saw nothing inappropriate with the vote and the decision that evening based on the planning proposal before council.

[Q]:

And you addressed on the merit of this because you believed it had merit, bona fide and genuine merit, correct?

[A]:

Yes. The application that was considered that evening had genuine merit. I, I, at all times am of that opinion. It was a very reasonable application. It just did not attain the pleasure of the department.

Mr Dickson said he thought aspects of the planning proposal "would get up" and that he expected a result that was a "lesser outcome but I still viewed that as a reasonably successful outcome because planning proposals are a, a matter of seeking a variety of scenarios...".

The next step was for HCC to forward the planning proposal to the DPE, where it would be assessed, and a recommendation made to the relevant minister or delegate as to whether there was merit in the proposal proceeding. The minister would then make a "gateway determination" under s 56 of the EP&A Act. This would determine whether the planning proposal proceeded or not.

Ms McMahon provided an estimate of the benefit to One Capital flowing from the adjustment of the height and FSR from what HCC staff recommended compared to what was ultimately approved by HCC on 20 April 2016. The change resulted in at least an extra 70 units constructed across the whole site (at a value of about \$11.2 million). When broken down by ownership, the change resulted in an extra 110 units on Site A (over most of which One Capital had options) and 40 fewer units on Site B (in which One Capital had no interest).

20 April 2016: HCC votes on the Treacy Street modification and VPA offer

At the same meeting on 20 April 2016, HCC also considered the application to modify the Treacy Street development to include five extra storeys. HCC staff had recommended that the modification application be refused on the basis that the proposed height and FSR were inconsistent with planning controls, and that the Treacy Street VPA offer be refused for providing insufficient public benefit.

However, the VPA offer was accepted by HCC. Mr Badalati, Mr Hindi, Mr Sansom and councillors Sin, Drane, Kastanias, Liu and Wu voted in favour of it. Councillors Stevens and Thomas did not support it.

Mr Badalati and Mr Hindi told the Commission that by 20 April 2016, they understood Wensheng Liu's company, GR Capital Group, was the proponent for the Treacy Street development.

On 4 May 2016, the modification application for Treacy Street was considered by the JRPP. The JRPP determined to accept the HCC staff recommendation to refuse the application. A majority of the panel, who refused the application for the reasons expressed in the council's assessment report, comprised Mr Roseth (chair), Mr Furlong and Ms Francis. Mr Badalati and Mr Hindi were in the minority and voted to approve the application.

Lack of disclosure by Mr Badalati, Mr Hindi and Mr Sansom

By the time of the 20 April 2016 council meeting, the Commission is satisfied that Mr Badalati and Mr Hindi had:

- accepted money from Mr Uy as a "thank you" for their help in relation to the Treacy Street development (see chapter 6)
- travelled to China for the purpose of endorsing and promoting the Treacy Street and Landmark Square developments for the benefit of One Capital (Wensheng Liu) and Mr Uy. Mr Badalati did so in the capacity of mayor and Mr Hindi falsely purported to be deputy mayor (see chapter 4)
- accepted payment from Mr Uy of expenses during the April 2016 trip to China. Specifically, Mr Uy paid for their stay at the Beijing International Hotel (about \$150 AUD per person per night, for two nights) on 10 and 13 April 2016 and their flights from Shenzhen to Beijing

(about \$363 AUD per person) on 10 April 2016 (see chapter 4)

- accepted payment from Yuqing Liu or Xinfeng of expenses during the April 2016 trip to China. Specifically, Yuqing Liu or Xinfeng paid for their stay at the Tangshan Grand Metropark Guofeng Hotel on 11 and 12 April 2016, provided meals during the Tangshan trip and provided luxury cars for their transfers between Beijing and Tangshan (see chapter 4).

Further, Mr Badalati, Mr Hindi and Mr Sansom had engaged in the surreptitious preparation of an amended resolution to HCC, which was intended to favour One Capital and Mr Uy in respect of the Landmark Square development.

The above matters required disclosure by Mr Badalati and Mr Hindi and, in the case of the amended resolution, Mr Sansom. Mr Badalati and Mr Hindi understood that the signing ceremony in Tangshan concerned the Landmark Square and Treacy Street developments. Although it is possible Mr Sansom also knew this because of his contact with Mr Badalati and Mr Hindi, there was no evidence before the Commission that he did know.

None of these matters was declared by either Mr Badalati or Mr Hindi at the HCC meeting of 20 April 2016. Nor did Mr Sansom, Mr Hindi or Mr Badalati declare their relationships with Mr Uy or Wensheng Liu.

Mr Badalati and Mr Hindi made no disclosures concerning the April 2016 trip to China or its purpose

Just days prior to HCC voting in respect of the Landmark Square and Treacy Street developments, mayor Mr Badalati and "deputy mayor" Mr Hindi were in Tangshan endorsing and promoting these investments in the interests of One Capital (Wensheng Liu), Yuqing Liu and Mr Uy. There can be little doubt that those present would have understood that both Mr Badalati and Mr Hindi supported the developments and would be voting in favour of them, the interests of One Capital and Yuqing Liu.

The conduct of Mr Badalati and Mr Hindi was not only breathtakingly brazen, it involved the dishonest and partial exercise of their official functions.

HCC was unaware of the trip to China or its purpose. Had HCC become aware, there is little doubt that the further involvement of Mr Badalati and Mr Hindi in both developments would have ceased.

Mr Badalati made no disclosures concerning his relationship with Mr Uy

By the time of the 20 April 2016 council meeting, Mr Badalati had a relationship of many years with Mr Uy, that included the following:

- He spent time with Mr Uy in China on multiple occasions over many years, including in the presence of escorts. They also texted and met up from time to time in Sydney (see chapter 2).
- By the time he began voting on the Treacy Street development on 19 November 2014, he did so knowing that his friend Mr Uy had a financial interest in the development (see chapter 3).
- He attended the dinner in Chinatown on 18 March 2016 and travelled to China in April 2016, where he attended multiple lunches and dinners (see chapter 4).

The nature of Mr Badalati and Mr Uy's relationship had not diminished between 19 November 2014 and 20 April 2016. They remained friends. Given Mr Badalati's acceptance of a \$70,000 cash payment from Mr Uy in 2015 in relation to the Treacy Street development, Mr Badalati was acutely aware of Mr Uy's interest in that development.

As for the Landmark Square development, the Commission is satisfied that Mr Badalati was aware by 20 April 2016 that Mr Uy had a financial interest in that development. Mr Badalati had engaged in discussions with Mr Uy about the planning proposal. He attended the meeting at the Novotel in February 2016 with Mr Hindi, Mr Sansom, Wensheng Liu and Mr Uy, where the planning proposal was discussed. Mr Badalati also attended a meeting with Mr Uy regarding the Landmark Square planning proposal in March 2016 at Macchina Espresso. He attended the signing ceremony on 18 March 2016, where Mr Uy was present, and the signing ceremony in Tangshan, where Mr Uy was also present. He spoke with Mr Uy several times while the amended resolution for the planning proposal was being drafted, on 19 and 20 April 2016.

The Commission is satisfied Mr Badalati had a significant non-pecuniary interest in respect of the Treacy Street development arising out of his relationship with Mr Uy. The receipt of \$70,000 from Mr Uy was not a pecuniary interest in the development as defined in the HCC Code of Conduct. However, it certainly gave rise to a substantial conflict of interest.

The Commission is also satisfied that Mr Badalati had a significant non-pecuniary interest in the Landmark Square development by virtue of his relationship with Mr Uy. As has been noted, Mr Badalati acknowledged he felt under an obligation to assist Mr Uy in respect of

the Landmark Square development once he had received the sum of \$70,000 from Mr Uy in respect of the Treacy Street development and had an expectation of being rewarded in relation to the Landmark Square development.

The Commission is satisfied that Mr Badalati knowingly failed to disclose these conflicts of interest in accordance with clause 4.12 of the HCC Code of Conduct. The Commission is also satisfied Mr Badalati knew the conflicts of interest addressed above were substantial. However, even if Mr Badalati had formed the view that these conflicts of interest were not significant, he was required to explain why the conflict required no further action (clause 4.17). He failed to do so. Because the conflicts of interest were significant, Mr Badalati was required to absent himself from decision-making regarding both developments under clause 4.16(b) of the HCC Code of Conduct. The Commission is satisfied that he knowingly failed to do so.

Mr Badalati told the Commission he understood his obligations under the HCC Code of Conduct from at least March 2013. The Commission is satisfied that Mr Badalati's deliberate failure to declare and appropriately manage this conflict of interest in relation to Mr Uy constituted or involved the dishonest exercise of his official functions.

Mr Badalati made no disclosures concerning his relationship with Wensheng Liu

By the 20 April 2016 council meeting, Mr Badalati's interactions with Wensheng Liu included:

- From 2013, Mr Badalati referred various property opportunities to Wensheng Liu via Mr Gunning (see chapter 2).
- He travelled to China in January 2014 with Wensheng Liu for the purpose of assisting Wensheng Liu to promote the proposed Treacy Street development (see chapter 2).
- Wensheng Liu associated with Mr Badalati at the dinner in Chinatown on 18 March 2016 and on the trip to China in April 2016, attending multiple lunches and dinners with him and for some sightseeing in Beijing (see chapter 4).

Wensheng Liu continued his association with Mr Badalati after HCC went into administration, at a dinner on 9 May 2016, a dinner at Mr Hindi's house on 16 May 2016, and a dinner at Yuqing Liu's house in Sydney on 21 July 2016.

The relationship between Mr Badalati and Wensheng Liu was not as close as the relationship between Mr Badalati and Mr Uy. However, by the time Mr Badalati came to

vote on the two developments on 20 April 2016, he had recently spent a significant amount of time with Wensheng Liu, which included the dinner at Chinatown on 18 March 2016 and the trip to China between 8 and 17 April 2016. The Commission is satisfied that Mr Badalati's relationship with Wensheng Liu constituted a non-pecuniary conflict of interest. So much was conceded by Mr Badalati in his further submissions of 25 April 2023. He submitted, however, that the relationship was not sufficiently close to constitute a significant non-pecuniary conflict of interest. As noted in chapter 1, the HCC Code of Conduct dealing with non-pecuniary conflicts of interest required a significant non-pecuniary conflict of interest to be managed by removing the source of the conflict or by having no involvement in the relevant matter. However, the code also required that where a non-pecuniary interest conflicted with a councillor's public duty, the councillor should disclose that interest in writing, even if the conflict was not significant. The Commission is satisfied that Mr Badalati knowingly failed to disclose that interest in accordance with clause 4.12 of the HCC Code of Conduct. It should be noted that even if Mr Badalati had formed the view that conflict was not significant, he was required to explain why it required no further action (clause 4.17 of the HCC Code of Conduct). The Commission is satisfied that he knowingly failed to do so.

The question of whether this was a significant non-pecuniary interest depends upon whether the relationship was "particularly close", which in turn depends on the nature of the relationship, the frequency of contact and its duration, under clause 4.15(b) of the HCC Code of Conduct. Relationships need not be social. They include business relationships. The Commission rejects Mr Badalati's submission that his non-pecuniary conflict of interest arising from his relationship with Wensheng Liu was not significant. Given the nature of that relationship, as set out above, the Commission is satisfied that the interest was significant. In addition, by April 2016 he had profited from the Treacy Street development in which Wensheng Liu had an interest, in an amount of \$70,000. The non-pecuniary conflict of interest could hardly be described as insignificant.

Mr Badalati's evidence was that he understood his disclosure obligations from at least March 2013. The Commission is satisfied that his deliberate failure to declare and appropriately manage this conflict of interest in relation to Wensheng Liu constituted or involved the dishonest exercise of his official functions.

Mr Badalati continued to vote in favour of the Treacy Street and Landmark Square developments on 20 April 2016 and upon his election to GRC. After receiving the \$70,000 for Treacy Street, Mr Badalati voted in favour of the Treacy Street VPA on 20 April 2016, the Treacy

Street modification on 4 May 2016, and a further Treacy Street VPA on 25 June 2018. In relation to Landmark Square, Mr Badalati continued to vote in favour of the Landmark Square planning proposal as a member of the GRC Environment and Planning Committee on 12 June 2018, 9 July 2018, 13 August 2018, 8 October 2018 and 8 July 2019 and at GRC meetings on 25 June 2018, 23 July 2018, 27 August 2018, 29 October 2018 and 22 July 2019.

In determining whether Mr Badalati's conduct involved the partial exercise of his official functions, it is relevant to note that "partial" conduct refers to conduct of a public official who, in relation to the exercise of their official functions, is under a duty to act impartially.⁴ Partiality involves not merely giving a preference but giving advantageous treatment to a person for a reason that is unacceptable because it is contrary to what the law or rules allow, with an actual or imputed appreciation that what was being done was, in the context in which it was done, done for a reason that is unacceptable.⁵ It is also relevant to note that all councillors had a duty to act impartially in relation to planning matters that came before the HCC and GRC (see clause 3.4 and 3.5 of the HCC and GRC codes of conduct).

As has been noted, Mr Badalati said that when he received the \$70,000 from Mr Uy, he understood that it was a "thank you" for his work on the Treacy Street development, that he was thereafter "on the hook", and he was under an obligation to assist Mr Uy in relation to both developments. He also accepted that he felt a sense of obligation to keep assisting Mr Uy after he received a \$100,000 payment in relation to the Landmark Square development. Mr Badalati's evidence demonstrated an appreciation that, having taken the money, continuing to exercise his official functions in relation to both developments in favour occurred, at least in part, for a reason that was unacceptable. That remains the case even if a particular outcome he voted for could be objectively justified on the merits. The Commission has considered Mr Dickson's evidence. Notwithstanding his opinion that the Treacy Street and Landmark Square developments were justifiable on their merits, the Commission remains concerned that certain decisions were not justifiable. In relation to the vote on the Landmark Square planning proposal on 20 April 2016, there appears to have been no reasonable planning justification for favouring Site A in terms of FSR, for not adopting a mechanism to address road and traffic infrastructure, for not amending the DCP, and for not requiring a contamination assessment of Site B. In relation to the decision on the Treacy Street

⁴ *Greiner v ICAC* (1992) 28 NSWLR 125 at 144, 162.

⁵ *Greiner v ICAC* (1992) 28 NSWLR 125 at 162.

modification of 4 May 2016, Mr Badalati was in the minority. When asked whether he thought that the modification had “proper planning merit” he admitted “I didn’t really think so”. In these circumstances, the Commission is satisfied Mr Badalati’s conduct constituted or involved the partial exercise of his official functions.

The Commission is also satisfied Mr Badalati exercised his official functions in a “dishonest” manner by failing to declare the relationships referred to above and the fact that he had received benefits from Mr Uy and Wensheng Liu. The Commission is satisfied Mr Badalati’s conduct also constituted or involved a breach of public trust. His conduct had a significant capacity to undermine public confidence in the process for approval of developments in the HCC Local Government Area.

Mr Hindi made no disclosures concerning Mrs Hindi’s financial interest

For the reasons set out in chapter 3, the Commission is satisfied that well before he voted on 20 April 2016 in favour of the Landmark Square planning proposal, Mr Hindi was aware that Mrs Hindi had entered into the BAA, whereby she stood to receive a substantial fee if the Landmark Square properties were sold to One Capital. Mr Hindi knew that Mrs Hindi had a financial interest in the HCC’s decision to approve the planning proposal.

The Commission is satisfied that Mr Hindi knew that he had a “pecuniary interest” in the Landmark Square planning proposal by virtue of his wife’s interest (clauses 4.5 and 4.6 of the HCC Code of Conduct). Contrary to clause 4.7 of the HCC Code of Conduct, Mr Hindi failed to disclose his wife’s pecuniary interest and participated in the decision-making process on 20 April 2016. The Commission is satisfied the failure to do so was deliberate.

The Commission is satisfied that Mr Hindi’s deliberate failure to declare this conflict of interest in relation to Mrs Hindi constituted or involved the dishonest and partial exercise of his official functions. Further, the Commission is satisfied that voting in favour of the Landmark Square development without disclosing Mrs Hindi’s pecuniary interest constituted or involved a breach of public trust.

Mr Hindi made no disclosures concerning his relationship with Mr Uy

By the time of the 20 April 2016 HCC meeting, Mr Hindi’s relationship with Mr Uy included the following:

- Mr Hindi had known Mr Uy since 2015. While Mr Wong’s evidence was that Mr Hindi and Mr Uy met in around 2011 or 2012, and while Mrs Hindi knew both Mr Uy and Wensheng

Liu by July 2014 (when the BAA was signed), the first meeting between Mr Hindi and Mr Uy clearly established by the evidence was the lunch at the Japanese restaurant on 18 May 2015. Both the Landmark Square and Treacy Street developments were discussed during that lunch (see chapter 3).

- Mr Hindi and Mr Uy attended several informal meetings in Sydney in February and March 2016 in relation to the Landmark Square development. Specifically, Mr Hindi and Mr Uy attended meetings at the Novotel in Brighton-Le-Sands in February 2016, at Macchina Espresso in Kingsgrove in early March 2016 and at a coffee shop in Surry Hills on 14 March 2016 (see chapter 3).
- Mr Hindi attended the dinner and signing ceremony in Chinatown, Sydney, with Mr Uy on 18 March 2016. He also travelled to China in April 2016, where he attended multiple lunches and dinners and did some sightseeing in Beijing with Mr Uy. The Commission has previously found that by the time he travelled to China in April 2016, Mr Hindi was aware the signing ceremony in Tangshan, China, would concern the Treacy Street and Landmark Square developments (see chapter 4).

Mr Hindi continued to interact with Mr Uy after HCC went into administration. For example, Mr Uy attended a dinner at the Hindis’ house on 16 May 2016. There were several meetings between them since, including at Carss Park in May 2020.

The Commission has found that by 20 April 2016, Mr Hindi understood that Mr Uy had a financial interest in the Landmark Square planning proposal.

Mr Hindi did not have the same significant social relationship with Mr Uy as did Mr Badalati. Nevertheless, he had a relationship in respect of which he derived a substantial financial benefit. He had a non-pecuniary conflict of interest in respect of the Treacy Street and Landmark Square developments, as defined in the HCC Code of Conduct. The Commission is satisfied Mr Hindi was required to fully disclose his relationship with Mr Uy. The Commission is satisfied that Mr Hindi knowingly failed to do so.

The Commission is satisfied Mr Hindi’s conflict of interest was a significant non-pecuniary interest. Although Mr Hindi’s association with Mr Uy occurred more recently than was the case with Mr Badalati and Mr Sansom, he accepted money and other benefits because of his support for the interests of One Capital and GR Capital Group (Wensheng Liu) and Mr Uy.

Mr Hindi told the Commission he understood his obligations under the HCC Code of Conduct from at least March 2013. The Commission is satisfied that Mr Hindi's deliberate failure to declare his conflict of interest in relation to Mr Uy constituted or involved the dishonest and partial exercise of his official functions.

It was submitted on behalf of Mr Hindi that when he voted on the Treacy Street VPA on 20 April 2016 and the Treacy Street modification application on 4 May 2016, he did not have a relationship with Mr Uy. Mr Hindi also submitted he had not received any money or other benefits from Mr Uy and had nothing to declare in relation to Mr Uy. Having regard to the evidence addressed above, the Commission rejects these submissions.

It was also submitted on behalf of Mr Hindi in respect of Mr Uy that the available evidence did not satisfactorily prove two matters. First, the existence of a non-pecuniary interest that conflicted with Mr Hindi's public duties in connection with the developments. Secondly, that Mr Hindi deliberately failed to disclose that interest.

The Commission does not accept Mr Hindi's submissions. In relation to the first submission, the Commission is satisfied that Mr Hindi's relationship with Mr Uy amounted to a non-pecuniary conflict of interest in both developments. In relation to the second submission, Mr Hindi's failure to disclose those interests was plainly deliberate given he was exercising his public official functions dishonestly and partially to favour Mr Uy's commercial interests. Mr Hindi's conduct represented a misuse of his official functions for an improper purpose. Mr Hindi was required to act honestly and with integrity. His conduct was contrary to those requirements. His conduct undermined the decision-making process of the HCC and had the capacity to seriously undermine public confidence in the process of decision-making by local government authorities.

Mr Hindi made no disclosures concerning his relationship with Wensheng Liu

At the time of the 20 April 2016 HCC meeting, Mr Hindi's interactions with Wensheng Liu included:

- attending the meeting at the Novotel in Brighton-Le-Sands in February 2016 with Wensheng Liu to discuss the Landmark Square planning proposal (see chapter 3)
 - attending the dinner and signing in Chinatown, Sydney, with Wensheng Liu on 18 March 2016, and travelling to China in April 2016, where they attended multiple lunches and dinners and did and some sightseeing together in Beijing (see chapter 4)
 - Mr Hindi knew Wensheng Liu had an interest in the Treacy Street development (see chapter 4)
 - Mr Hindi knew Wensheng Liu and One Capital had an interest in the Landmark Square development (see chapter 4).
- After HCC went into administration, Mr Hindi continued to have interactions with Wensheng Liu. For example, Wensheng Liu attended the dinner at the Hindis' house on 16 May 2016. Wensheng Liu also travelled to China in June 2016 with Mr Hindi and others, for the signing ceremony between Xinfeng and Variable Solutions (see chapter 7). Wensheng Liu and Mr Hindi attended a further dinner at Yuqing Liu's house in Sydney on 21 July 2016.
- The Commission is satisfied that by 20 April 2016, Mr Hindi's relationship with Wensheng Liu gave rise to a non-pecuniary conflict of interest. The Commission is satisfied he deliberately failed to disclose that interest as required in accordance with clause 4.12 of the HCC Code of Conduct.
- The question of whether it was a *significant* non-pecuniary interest depends upon whether the relationship was "particularly close", which in turn depends on the nature of the relationship, the frequency of contact and its duration, as defined by clause 4.15(b) of the HCC Code of Conduct. It was submitted on behalf of Mr Hindi that, given their limited interaction, he did not have a significant non-pecuniary conflict of interest in relation to Wensheng Liu. The Commission rejects this submission. Relationships need not be social. They include business relationships. The Commission is satisfied that the interest was significant. At the very least, Mr Hindi had profited from the Treacy Street development in which Wensheng Liu had an interest in an amount of approximately \$70,000.
- The Commission again notes Mr Hindi's evidence was that he understood his obligations under the HCC Code of Conduct from at least March 2013. The Commission is satisfied that Mr Hindi's deliberate failure to declare this conflict of interest in relation to Wensheng Liu constituted or involved the dishonest and partial exercise of his official functions.
- It was submitted on behalf of Mr Hindi that he had nothing to declare regarding his "relationship" with Wensheng Liu. The Commission rejects this submission. The evidence set out above establishes that it was incumbent on Mr Hindi to declare his relationship with Wensheng Liu. Mr Hindi deliberately failed to do so.
- It was also submitted on behalf of Mr Hindi that, in relation to Wensheng Liu, the available evidence did not satisfactorily prove two matters. First, the existence of a non-pecuniary interest that conflicted with Mr Hindi's public duties in connection with the developments,

arising out of the relationship that Mr Hindi had with Wensheng Liu. Secondly, that Mr Hindi deliberately failed to disclose that interest.

The Commission rejects these submissions. First, Mr Hindi made identical submissions in relation to Mr Uy. The Commission's response to the submissions concerning Mr Uy also applies to these submissions. The Commission is satisfied that Mr Hindi had a non-pecuniary conflict of interest in relation to Wensheng Liu. Secondly, Mr Hindi did not exercise his public official functions in good faith in relation to the Landmark Square and Treacy Street developments. He exercised his public official functions for an ulterior or improper purpose, namely, to favour others, including Wensheng Liu.

Mr Hindi continued to vote in favour of the Treacy Street and Landmark Square developments after 20 April 2016 and upon his election to GRC. He voted in favour of the Treacy Street modification on 4 May 2016 (as a member of the JRPP) and a further Treacy Street VPA on 25 June 2018. Mr Hindi continued to vote in favour of the Landmark Square planning proposal (as a member of the GRC Environment and Planning Committee, or at a council meeting) on 13 August 2018, 27 August 2018, 29 October 2018, 8 July 2019 and 22 July 2019.

The Commission rejects Mr Hindi's submissions to the effect that he would have voted in favour of the developments anyway. His vote was not impartial. It was partial. He voted in support of the developments in circumstances where he had received a substantial amount of money from one of its loudest supporters. As noted above, the Commission is satisfied Mr Hindi's conduct was dishonest and constituted a partial exercise of his official functions. His conduct may also have constituted or involved a breach of public trust.

Mr Badalati and Mr Hindi made no disclosures concerning Yuqing Liu

By the time of the 20 April 2016 council meeting, Mr Badalati and Mr Hindi's interactions with Yuqing Liu included a meeting between Mr Badalati and Yuqing Liu in Mr Badalati's office at HCC in March 2016, followed by Mr Badalati and Mr Hindi attending the signing ceremony in Chinatown with Yuqing Liu on 18 March 2016. Yuqing Liu also hosted Mr Badalati and Mr and Mrs Hindi in Tangshan, China, in April 2016.

There is no evidence of any dealings between Mr Sansom and Yuqing Liu.

As set out in chapter 4, the Commission is satisfied Yuqing Liu or his company Xinfeng provided benefits to Mr Badalati and Mr and Mrs Hindi on the trip to Tangshan in April 2016: namely, making available luxury

cars for their return transfers between Beijing and Tangshan, providing meals during the Tangshan trip and paying for their accommodation in Tangshan on the nights of 11 and 12 April 2016. The Commission has also found that by the time Mr Badalati and Mr Hindi arrived in China in April 2016, they understood that the agreement to be signed in Tangshan concerned the Treacy Street and Landmark Square developments and that Yuqing Liu had an interest in both. They understood they were there to address officials and to endorse and promote investment in the developments.

Mr Badalati and Mr Hindi's acceptance of those benefits breached Part 5 of the Council's Gifts and Benefits Policy contained within the HCC Code of Conduct. Specifically, it was contrary to clause 5.1, because it gave rise to the appearance that Yuqing Liu (and Mr Uy), through paying for the accommodation, transfers, meals and/or flights, was attempting to secure favourable treatment from Mr Badalati and Mr Hindi as councillors in relation to the two developments that were then before council and likely to be the subject of a vote in the near future. Mr Badalati and Mr Hindi's acceptance of those benefits also breached clause 5.51 of the HCC Code of Conduct, in that they accepted a benefit that might create a sense of obligation on their part, or might be perceived to be intended to influence them in carrying out their official functions. Given the cost of the accommodation was approximately \$200 per room per night, the Commission is satisfied the benefits were of more than a token value (clause 5.4 of the HCC Code of Conduct).

It was submitted on behalf of Mr Hindi that he had nothing to declare in relation to Yuqing Liu. The Commission rejects Mr Hindi's submission. As set out above, Mr Hindi was required to comply with the Council's Gifts and Benefits Policy. Mr Hindi's evidence was that, from March 2013, he understood his obligations in relation to gifts and benefits. The benefits Yuqing Liu provided to Mr Hindi clearly fell within that policy, and Mr Hindi's failure to declare his acceptance of those benefits was contrary to the HCC Code of Conduct.

The Commission is satisfied Mr Hindi and Mr Badalati were required to disclose, pursuant to Part 5 of the HCC Code of Conduct, the benefits they received from Yuqing Liu during the April 2016 trip to China. They failed to do so, and the Commission is satisfied the failure was deliberate.

Mr Sansom made no disclosures

As set out in chapter 3, the Commission is satisfied that by the time Mr Sansom voted on the Treacy Street VPA offer on 19 November 2014, he did so knowing his friend Mr Uy had a financial interest in the development. The Commission has also found that

by 19 November 2014, Mr Sansom had a significant non-pecuniary conflict of interest in the Treacy Street development by virtue of his personal relationship with Mr Uy over a number of years. The Commission found that Mr Sansom appreciated at the time that the relationship gave rise to a significant non-pecuniary interest, but deliberately chose not to declare it.

There is no evidence that their relationship diminished in the period between 19 November 2014 and 20 April 2016. It is also noted in relation to the Treacy Street development that Mr Sansom did not make any declarations concerning Mr Uy and failed to absent himself from voting as a member of the JRPP on 1 April 2015.

In relation to the Landmark Square development, Mr Sansom gave evidence that he had discussions with Mr Uy about the planning proposal. He conceded it was likely that by 20 April 2016, he understood that Mr Uy's interest in the proposal was not just as an "ordinary member of the public" and agreed it was probable that he understood Mr Uy "had some sort of commercial interest" in the proposal. The Commission is satisfied that when Mr Sansom came to vote on the Landmark Square planning proposal, he was aware Mr Uy had a financial interest in that proposal.

It was submitted on behalf of Mr Sansom that there was no evidence that Mr Sansom was aware of Mr Uy's interests at the time of the exercise of any official functions. Having regard to the matters referred to above, the Commission does not accept that submission.

The Commission is satisfied that Mr Sansom's longstanding friendship with Mr Uy constituted a significant non-pecuniary conflict of interest in relation to the Treacy Street and Landmark Square developments, which he was required to disclose. He failed to do so. This was contrary to clause 4.12 of the HCC Code of Conduct. Given the nature of the relationship, the fact that it had lasted for at least 15 years and included repeated social interactions in China and in Sydney, Mr Sansom should not have been involved in making decisions in relation to the Treacy Street or Landmark Square developments. To do otherwise was in breach of clause 4.16(b) of the HCC Code of Conduct. The Commission is satisfied that Mr Sansom deliberately failed to abstain from the HCC vote on 19 November 2014, the JRPP vote on 1 April 2015 and the HCC vote on 20 April 2016 regarding the VPA offer for the modification of the Treacy Street application. In relation to the Landmark Square development, the Commission is satisfied that Mr Sansom deliberately failed to abstain from the HCC vote on that planning proposal on 20 April 2016.

Mr Sansom told the Commission that he understood his obligations under the HCC Code of Conduct from

at least March 2013. The Commission is satisfied that Mr Sansom's failure to declare his conflict of interest in relation to Mr Uy constituted or involved the partial and dishonest exercise of his official functions.

It was submitted on behalf of Mr Sansom that the evidence does not establish that he deliberately failed to declare or properly manage any conflict of interest arising from his relationship with Mr Uy.

The Commission rejects that submission. As noted above, the Commission is satisfied that Mr Sansom's failure to declare his significant non-pecuniary interests was deliberate. He was exercising his public official functions partially to favour the commercial interests of his friend Mr Uy. Such conduct involved a misuse of Mr Sansom's public official functions. By favouring Mr Uy's commercial interests, Mr Sansom neglected his obligation to act in good faith and to act without an ulterior motive or improper purpose. Mr Sansom's conduct was contrary to the requirement that he act honestly and with integrity. His conduct undermined the decision-making process of HCC and had the capacity to undermine public confidence in the process of decision-making by local government. His conduct constituted or involved a breach of public trust.

It was also submitted on behalf of Mr Sansom that the evidence does not establish that he had a substantial non-pecuniary conflict of interest arising from his relationship with Wensheng Liu.

The Commission rejects that submission. By 20 April 2016, when Mr Sansom voted on both developments, he had travelled to Shanghai with Wensheng Liu in March 2014 to promote the Gloucester Road Carpark development and had also arranged for Wensheng Liu to procure a letter from a Chinese company falsely claiming Mr Sansom was engaged as a consultant. Mr Sansom attended at least one meeting with Wensheng Liu at the Novotel Brighton-Le-Sands regarding the Landmark Square development. There is no evidence of any social interactions between them. However, by the time Mr Sansom voted on both developments on 20 April 2016, he was aware that Wensheng Liu had a financial interest in both developments. The report prepared by HCC staff for the 19 November 2014 meeting recorded the applicant as GR Capital Group and the "company extract included" with that report should have recorded Wensheng Liu as a director and shareholder (although it is noted again that the copy of the report tendered during the public inquiry did not attach that extract). Mr Sansom's evidence was that it was his practice to read attachments to assessment reports and he was concerned to do so because he needed to identify the companies to assess if he had a conflict of interest. He told the Commission that by around March 2014, it was likely

he understood Wensheng Liu and Mr Uy were working together on the Treacy Street development and it was also likely he understood that Mr Uy had a commercial interest in that development. The report prepared by HCC staff in relation to Landmark Square for the 20 April 2016 meeting recorded the “interested parties” as including “The One Capital Group Pty Ltd (Wensheng Liu)”.

In the circumstances, the Commission is satisfied that Mr Sansom had a significant non-pecuniary interest by virtue of his association with Wensheng Liu and his knowledge of Wensheng Liu’s interest in the two developments.

Should the draft conjunction agreement between Mrs Hindi and Taylor Nicholas have been declared at this point?

The Commission has addressed certain aspects of the conjunction agreement between Mrs Hindi and Taylor Nicholas in chapter 3.

George Constantine of Taylor Nicholas produced to the Commission four draft conjunction agreements regarding Landmark Square between Mrs Hindi and Taylor Nicholas, all dated 20 April 2016. That is the same day as the HCC vote on the Landmark Square planning proposal. The draft conjunction agreements provided that Mrs Hindi, as the co-joined agent, would receive 20 per cent of the selling fee for the Landmark Square properties. The selling fee, based on the information in the agreements, was at least \$450,000, meaning the potential commission flowing to Mrs Hindi was at least \$90,000.

The agreements were in draft form and unsigned. However, George Constantine said in his statement that it was up to the co-joined agent to ensure such agreements are signed, since the agent has control of the commission received. He said, “if you trust the person you are dealing with, then there is no need for it. I have been paid many times without an agreement, on nothing more than a handshake”. During the public inquiry, George Constantine accepted he had an agreement with Mrs Hindi that she would be paid part of the commission he received on Landmark Square, but no agreement as to a particular amount.

Mrs Hindi told the Commission that she had heard One Capital might not proceed with the purchase of the Landmark Square properties and agreed with George Constantine that if she introduced another buyer to the property, she would get a portion of the commission. She said she had a “sort of verbal understanding” with George Constantine to that effect.

As submitted by Counsel Assisting, whether Mr Hindi knew of the conjunction agreement as of 20 April 2016, when he voted on the Landmark Square planning proposal, is not a matter on which the Commission needs to reach a view because any entitlement Mrs Hindi had to a commission did not arise before Mr Hindi voted on the Landmark Square planning proposal. Mr Hindi was not a councillor from 12 May 2016 to 9 September 2017 and did not make any further decisions on the Landmark Square planning proposal until 12 June 2018. By that time, Mrs Hindi had been paid a commission by Taylor Nicholas. It was paid in March 2018. The relevant question is therefore whether Mr Hindi knew that Mrs Hindi had been paid the commission at that point, and whether he was required to declare that fact when voting in June 2018 and thereafter. This is addressed in chapter 8.

9 May 2016: a dinner in Market City

On 9 May 2016, Mr Dickson was invited to attend a dinner at Market City, Sydney. In his statement he said he was driven there by Ms Tang. There were about 15 people in attendance in a private function room, including Mr Badalati, Mr Hindi, Wensheng Liu, Mr Uy and other men whom Mr Dickson understood to be business associates of Yuqing Liu from China.

Mr Dickson recalled both councillors making positive comments about the Landmark Square development at the dinner. He understood “there was a connection between the outcome at the most recent Council meeting and the dinner which was celebratory in nature”. During the public inquiry, Mr Dickson explained that to mean that “there was a very happy atmosphere” and “some toasts” and “there was congratulations on your hard work and comments of that broad nature”. He understood there was a potential investor in Landmark Square in attendance.

Mr Dickson’s attendance at this dinner was recorded in the Dickson Rothschild invoice for the Landmark Square project issued on 31 May 2016. The entry stated: “Meeting with major investor Mr Liu from Tangsha [sic] and Mayor of Hurstville and Cr Hindi at Market City”.

Mr Badalati told the Commission he recalled the dinner but thought its purpose related to one of the Chinese people attending, not to celebrate Landmark Square. Mr Hindi said he could not recall the dinner but nevertheless denied that it was to celebrate Landmark Square:

because we only make recommendations to the Department of Planning. We don’t approve things. So this is nothing. This is a recommendation to go to the Department of Planning, which subsequently overturned it.

The Commission does not accept Mr Hindi's explanation. It is implausible. While there were further steps to be undertaken before the DPE reviewed the planning proposal, this did not mean there was no cause to celebrate the first step of HCC voting in favour. It is clear at least that Mr Uy and his team were very happy with the outcome. Text messages were exchanged the night of the vote on 20 April 2016. Ms Tang texted Wensheng Liu and Mr Uy "Congratulations Chief". Mr Liu replied, "love u" and "victory".

Mr Hindi made several submissions in relation to the dinner on 9 May 2016. First, that Mr Dickson's characterisation of the dinner as "celebratory in nature" is based on Mr Dickson's "understanding" about the dinner, "not based on any admissible sensory evidence which can be used by the Commission for factual determinations or to form any opinion". Secondly, the fact that Mr Dickson charged the client for his attendance at the dinner indicated that "the dinner was neither represented to Mr Dickson as celebratory and that Mr Dickson took it as associated with work". Thirdly, no other witness confirmed Mr Dickson's belief that the dinner was a celebration relating to Landmark Square. Fourthly, Mr Dickson's evidence was "greatly devalued" because he "spent years wrongly believing" that Mr Uy called Mr Hindi the "fat man", and that "an error of this magnitude and significance should caution the Commission to view with caution any beliefs formed by Mr Dickson". Finally, it was submitted that "all of the evidence which is available" suggests that the dinner was to honour Yuqing Liu upon his return to Australia to further his waste-to-energy project.

The Commission does not accept Mr Hindi's submissions. As set out in chapter 3, the Commission is of the view that Mr Dickson was a truthful witness. By contrast, Mr Hindi's explanation for the dinner was implausible. In weighing up which version to accept, the Commission gives weight to Mr Dickson's evidence that the dinner involved "some toasts" and "there was congratulations on your hard work and comments of that broad nature" and "there was a very happy atmosphere" as signs that the dinner was, at least in part, celebrating the HCC vote on the Landmark Square development. The dinner may also have involved discussion of a waste-to-energy project, given Yuqing Liu's visit to Australia in May 2016 involved several meetings concerning a waste-to-energy plant. However, that does not explain the attendance of Mr Badalati, Mr Dickson, Wensheng Liu, Ms Tang or Mr Uy. Indeed, the Commission is satisfied that Mr Hindi's presence at the function cannot be explained by reference to any proposal for a waste-to-energy plant. He was there, as were others, to celebrate HCC's decision in relation to the Landmark Square planning proposal. As to the other matters raised by

Mr Hindi, the Commission found that any understanding Mr Dickson had in relation to the identity of the "fat man" was an error. It hardly "greatly devalued" Mr Dickson's evidence. Further, the fact that Mr Dickson issued an invoice in respect of his attendance is inexplicable unless his attendance concerned the Landmark Square development. Any suggestion that Mr Dickson's invoice related to any waste-to-energy plant is fanciful.

The Commission is satisfied that the purpose of the dinner on 9 May 2016 was to celebrate the HCC's favourable vote. Mr Badalati and Mr Hindi were there because of their efforts in promoting the planning proposal and securing a favourable outcome.

Corrupt conduct

The Commission's approach to making findings of corrupt conduct is set out in Appendix 2 to this report.

First, the Commission makes findings of relevant facts based on the balance of probabilities. The Commission determines whether those facts come within the terms of s 8(1), s 8(2) or s 8(2A) of the ICAC Act. If they do, the Commission then considers s 9 of the ICAC Act and the jurisdictional requirements of s 13(3A).

The Commission then considers whether, for the purpose of s 74BA of the ICAC Act, the conduct is sufficiently serious to warrant a finding of corrupt conduct.

The April 2016 trip to China

The trip to China in April 2016 has been addressed in chapter 4.

To recap, the trip occurred a matter of days prior to the council voting in respect of the Landmark Square and Treacy Street developments on 20 April 2016. Mr Badalati and Mr and Mrs Hindi departed Sydney on 8 April 2016. Mr and Mrs Hindi returned to Australia on 15 April 2016. Mr Badalati arrived on 17 April 2016.

Mr Badalati

Mr Badalati accepted the following benefits associated with his trip to China:

- (i) payment by Mr Uy for his accommodation at the Beijing International Hotel on the nights of 10 and 13 April 2016 in the amount of about \$150 per night (approximately \$300 total)
- (ii) payment by Mr Uy for his flight from Shenzhen to Beijing on 10 April 2016 in the amount of about \$363

- (iii) payment by Yuqing Liu or Xinfeng for his accommodation at the Tangshan Grand Metropark Guofeng Hotel on the nights of 11 and 12 April 2016 in the amount of about \$200 per night (approximately \$400 in total)
- (iv) payment by Yuqing Liu or Xinfeng for his return transfers in luxury cars between Beijing and Tangshan on 11 and 13 April 2016 and meals in Tangshan between 11 and 12 April 2016

in circumstances where he knew such payments were intended as an inducement or reward to use his position as a councillor of HCC to favour the interests of Mr Uy and the proponents of the Treacy Street and Landmark Square developments.

Mr Badalati's conduct was corrupt conduct for the purpose of s 8 of the ICAC Act. It involved conduct that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of his public official functions (s 8(1)(a)). It also involved a breach of public trust (s 8(1)(c)).

For the purpose of s 9(1)(a) of the ICAC Act, it is relevant to consider s 249B of the *Crimes Act 1900* ("the Crimes Act"). Section 249B(1) of the Crimes Act provides:

249B Corrupt commissions or rewards

- (1) *If any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit—*
- (a) *as an inducement or reward for or otherwise on account of—*
 - (i) *doing or not doing something, or having done or not having done something, or*
 - (ii) *showing or not showing, or having shown or not having shown, favour or disfavour to any person,**in relation to the affairs or business of the agent's principal, or*
 - (b) *the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,*
- the agent is liable to imprisonment for 7 years.*

When Mr Badalati's conduct is analysed, the relevant elements of a possible offence against s 249B(1) of the Crimes Act are as follows:

- (i) an agent (Mr Badalati)
- (ii) corruptly solicits or receives
- (iii) from another person
- (iv) any benefit
- (v) as an inducement or reward
- (vi) on account of showing favour to any person
- (vii) in relation to the affairs or business of the agent's principal.

Section 249A(e) of the Crimes Act defines "agent" to include:

a councillor within the meaning of the Local Government Act 1993 (and in this case a reference in this Part to the agent's principal is a reference to the local council of which the person is a councillor).

Thus, for the purposes of this offence, Mr Badalati was the "agent" and council was the "principal". The benefits were either a "reward" for his past conduct, or an "inducement" for Mr Badalati to favour the proponents of the two developments and Mr Uy or promoting the application in dealing with council staff (s 249B(1)(a)) or would "tend to influence" Mr Badalati to show favour to the proponents and Mr Uy when voting on the developments or dealing with council staff (s 249B(1)(b)). Mr Badalati "corruptly" received the benefits in circumstances where he knew the two developments were before council at the time and that Mr Uy, Wensheng Lui and Yuqing Liu were involved in both, but did not declare receipt of those benefits.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Badalati committed offences under s 249B(1) of the Crimes Act of corruptly receiving benefits as an inducement or reward in relation to the affairs or business of HCC. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purpose of s 9(1)(a) of the ICAC Act, it is also relevant to consider whether Mr Badalati's conduct amounts to the common law offence of misconduct in public office.

The object of the common law offence of misconduct in public office is to prevent public officers, in this case councillors, from exercising their power in a corrupt or partial manner.⁶

⁶ *Maitland v R; Macdonald v R* [2019] NSWCCA 32 at [68]

In *Obeid v The Queen*⁷, Bathurst CJ set out the elements of the offence as follows:

- 1) a public official
- 2) in the course of or connected to their public office
- 3) wilfully misconducts himself, by act or omission, for example, by wilfully neglecting or failing to perform his duty
- 4) without reasonable excuse or justification, and
- 5) where such misconduct is serious and meriting criminal punishment having regard to the responsibilities of the office and the officeholder, the importance of the public objects which they serve and the nature and extent of the departure from those objects.

In *Sin Kum Wah v HKSAR*⁸, Sir Anthony Mason NPJ elaborated on the second element of the offence as follows:

To constitute the offence of misconduct in public office, wilful misconduct which has a relevant relationship with the defendant's public office is enough. Thus, misconduct otherwise than in the performance of the defendant's public duties may nevertheless have such a relationship with his public office as to bring that office into disrepute, in circumstances where the conduct is both culpable and serious and not trivial.

Element 2 was also considered by the Victorian Court of Appeal in *R v Quach*.⁹ Redlich JA said:

*In my opinion the relevant misconduct need not occur while the officer is in the course of performing a duty or function of the office. Certain responsibilities of the office will attach to the officer whether or not the officer is acting in the course of that office. Where the misconduct does not occur during the performance of a function or duty of the office, the offence may be made out where the misconduct is inconsistent with those responsibilities. **It may be connected to a duty already performed or to one yet to be performed or it may relate to the responsibilities of the office in some other way. The misconduct must be incompatible with the proper discharge of the responsibilities of the office so as to amount to a breach of the confidence which the public has placed in the office, thus giving it its public and criminal character.** Accordingly, use of*

knowledge or information acquired by the office holder in the course of his or her duties for a private or other impermissible purpose may be inconsistent with the responsibilities of the office and calculated to injure the public interest. If the misuse of the information is of a serious nature and is likely to be viewed as a breach of the trust reposed in the office so as to bring the office into disrepute, the conduct will fall within the ambit of the offence whether or not it occurs in the course of public office. It will in such circumstance have the necessary connection to that office. [Emphasis added]

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Badalati committed offences of misconduct in public office. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

The Commission is also satisfied for the purpose of s 9(1)(b) of the ICAC Act that if the facts as found were to be proved on admissible evidence to the civil standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that, in each case, Mr Badalati had committed a disciplinary offence being a substantial breach of the requirements of the HCC code of conduct. Specifically, his conduct could constitute or involve a substantial breach of the following clauses:

- (i) clause 5.1, which required the avoidance of situations giving rise to the appearance that a person, by providing a gift or benefit, was attempting to secure favourable treatment from a councillor
- (ii) clause 5.5(c), which required that councillors must not accept any gift or benefit that might create a sense of obligation on their part, or might be perceived to be intended to influence them in carrying out their official functions.

His conduct therefore comes within s 9(1)(b) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act the Commission is satisfied that if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal there would be grounds on which such a tribunal would find that Mr Badalati had committed offences under s 249B(1) of the Crimes Act or misconduct in public office.

The Commission is also satisfied that if the facts as found were to be proved on admissible evidence to the civil

⁷ (2017) 96 NSWLR 155 at [60]

⁸ [2005] 2 HKLRD 375 at [47]

⁹ (2010) 27 VR 310 at [40]-[41]

standard of proof and accepted by an appropriate tribunal there would be grounds on which such a tribunal would find that Mr Badalati had committed disciplinary offences, being substantial breaches of the requirements of the HCC Code of Conduct as set out above.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that the conduct is serious corrupt conduct given Mr Badalati's seniority as a councillor, the proximity of the payments to decisions affecting the developments, the scale of the developments, both in terms of the potential benefit to the developers and the impact on the local community, and because it could constitute or involve serious criminal offences.

Mr Hindi

Mr Hindi accepted the following benefits associated with his trip to China:

- (i) payment by Mr Uy for accommodation of himself and his wife at the Beijing International Hotel on the nights of 10 and 13 April 2016 in the amount of about \$150 per night (approximately \$300 total)
- (ii) payment by Mr Uy for the flights of himself and his wife from Shenzhen to Beijing on 10 April 2016 in the amount of about \$363 (approximately \$726 total)
- (iii) payment by Yuqing Liu or Xinfeng for accommodation of himself and his wife at the Tangshan Grand Metropark Guofeng Hotel on the nights of 11 and 12 April 2016 in the amount of about \$200 per night (approximately \$400 total)
- (iv) payment by Yuqing Liu or Xinfeng for return transfers in luxury cars of himself and his wife between Beijing and Tangshan on 11 and 13 April 2016 and meals in Tangshan between 11 and 12 April 2016

in circumstances where he knew such payments were intended as an inducement or reward to use his position as a councillor of HCC to favour the interests of Mr Uy and the proponents of the Treacy Street and Landmark Square developments.

Mr Hindi's conduct was corrupt conduct for the purpose of s 8 of the ICAC Act as it involved conduct that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of his public official functions (s 8(1)(a)) and a breach of public trust (s 8(1)(c)).

For the purpose of s 9(1)(a) of the ICAC Act, it is relevant to again consider s 249B of the Crimes Act and the common law offence of misconduct in public office.

As defined by s 249A(e) of the Crimes Act, Mr Hindi was the "agent" and council was the "principal". The benefits received were either a "reward" for past conduct, or an "inducement" for Mr Hindi to favour the interests of the proponents and Mr Uy or promoting the proponents and Mr Uy in dealing with council staff (s 249B(1)(a)). Further, the benefits would "tend to influence" Mr Hindi to show favour to the proponents and Mr Uy when voting on the developments or dealing with council staff (s 249B(1)(b)). Mr Hindi "corruptly" received the benefits in circumstances where he knew the two developments were before council at the time and that Wensheng Liu, Mr Uy and Yuqing Liu were involved in both but did not declare receipt of those benefits.

The relevant elements of the common law offence of misconduct in public office are set out above.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that if the facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Hindi committed offences under s 249B(1) of the Crimes Act of corruptly receiving benefits as an inducement or reward for showing favour to the proponents of the developments and Mr Uy in relation to the affairs or business of HCC.

The Commission is also satisfied for the purpose of s 9(1)(a) of the ICAC Act that if the facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Hindi committed offences of misconduct in public office.

His conduct therefore comes within s 9(1)(a) of the ICAC Act.

The Commission is satisfied for the purpose of s 9(1)(b) of the ICAC Act that if the facts as found were to be proved on admissible evidence to the civil standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that, in each case, Mr Hindi had committed a disciplinary offence being a substantial breach of the requirements of the code of conduct. His conduct therefore comes within s 9(1)(b) of the ICAC Act. Specifically, his conduct could constitute or involve a substantial breach of the following clauses:

- (i) clause 5.1, which required the avoidance of situations giving rise to the appearance that a person, by providing a gift or benefit, was attempting to secure favourable treatment from a councillor
- (ii) clause 5.5(c), which required that councillors must not accept any gift or benefit that might create a sense of obligation on their part or might be perceived to be intended to influence them in carrying out their official functions.

His conduct therefore also comes within s9(1)(b) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, they would be grounds on which such a tribunal would find that Mr Hindi had committed offences under s 249B(1) of the Crimes Act or misconduct in public office.

The Commission is also satisfied that if the facts as found were to be proved on admissible evidence to the civil standard of proof and accepted by an appropriate tribunal there would be grounds on which such a tribunal would find that Mr Hindi had committed disciplinary offences, being substantial breaches of the requirements of the HCC Code of Conduct as set out above.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that the conduct was serious corrupt conduct for the reasons addressed above in relation to Mr Badalati.

The trip to the Tangshan signing ceremony

Mayor Badalati and “deputy mayor” Mr Hindi travelled to Tangshan in circumstances where they knew their status as public officials with HCC would be misused for the purpose of endorsing and promoting the Treacy Street and Landmark Square developments in the interests of One Capital, Wensheng Liu, Yuqing Liu and Mr Uy. There can be little doubt that those present would have understood that both Mr Badalati and Mr Hindi supported the developments and would be voting in the interests of One Capital and Yuqing Liu.

HCC was unaware of the trip or its purpose.

The Commission is satisfied that Mr Badalati and Mr Hindi’s conduct was corrupt conduct for the purpose of s 8 of the ICAC Act. It involved conduct that adversely affects, or that could adversely affect, either directly or

indirectly, the honest or impartial exercise of their public official functions (s 8(1)(a)). It also involved a breach of public trust (s 8(1)(c)).

For the purpose of s 9(1)(a) of the ICAC Act it is relevant to consider the common law offence of misconduct in public office. It was utterly inappropriate for Mr Badalati and Mr Hindi to travel to China for the purpose of endorsing and promoting developments on behalf and in the interests of the proponents and associated parties just days before the council would hold a vote. They did not act with integrity, impartiality or honesty. They concealed the trip and its purpose. As has already been noted, had council been informed of what had occurred and the relationships between Mr Badalati and Mr Hindi and those involved in promoting those developments, there is little doubt that the further involvement of Mr Badalati and Mr Hindi in both developments would have ceased. For reasons already addressed their conduct had the capacity to undermine public confidence in public administration and, in particular, the process by which local government makes decisions in respect of proposed developments within their local government areas.

As has been noted above, the trip to China occurred a matter of days prior to the vote. Mr Badalati and Mr Hindi purported to be in attendance as public officials. On any view their conduct in endorsing and promoting investment in the developments was connected to a duty to be performed, namely, voting in respect of those developments. Their conduct was incompatible with the proper discharge of the responsibilities of their office.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence, including evidence of further corrupt conduct addressed throughout this report, to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could conclude that Mr Badalati and Mr Hindi committed an offence of misconduct in public office. Their conduct therefore comes within s 9(1)(a) of the ICAC Act.

The Commission is satisfied for the purpose of s 9(1)(b) of the ICAC Act that if the facts as found were to be proved on admissible evidence to the civil standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could conclude Mr Badalati and Mr Hindi had committed disciplinary offences being a substantial breach of the requirements of the HCC Code of Conduct. Their conduct therefore comes within s 9(1)(b) of the ICAC Act. Specifically, their conduct could constitute or involve a substantial breach of clause 4.1 which required disclosure of non-pecuniary interests that conflicted with a public duty. Here Mr Badalati and Mr Hindi failed to disclose the trip to China and the fact they were there to endorse

and promote the interests of the proponent and associate parties in respect of matters which would be the subject of their votes on 20 April 2016.

For the purposes of s 13(3A) of the ICAC Act the Commission is satisfied that if the facts as found were to be proved on admissible evidence, including evidence of further corrupt conduct addressed throughout this report, to the criminal standard of proof and accepted by an appropriate tribunal there would be grounds on which such a tribunal would find that Mr Badalati and Mr Hindi had committed offences of misconduct in public office. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that the conduct was serious corrupt conduct.

Mr Badalati had served on council since 1999. He had been mayor of HCC twice, including between September 2015 and May 2016. Mr Badalati used his official position as mayor of HCC on the trip to China in April 2016 to endorse and promote investment in the Treacy Street and Landmark Square developments in the interests of the proponent and others without the knowledge or consent of council. This occurred at a time proximate to the casting of his votes. These were substantial developments both in terms of the potential benefit to developers and the impacts on the local community. Mr Badalati was well aware of his obligations under the HCC Code of Conduct.

Much the same can be said in relation to Mr Hindi's conduct. Mr Hindi held office on Council since 2004. He was mayor of HCC from September 2014 to September 2015. Mr Hindi also represented, or permitted others to falsely represent to officials and potential investors, that he was "deputy mayor" of HCC. The trip to China was for the purpose of endorsing and promoting investment in respect the Treacy Street and Landmark Square developments. This occurred at a time proximate to the casting of his votes. The developments were of substantial scale both in terms of the potential benefit to developers and the impacts on the local community. Mr Hindi was aware of his obligations under the HCC Code of Conduct.

Failure to declare conflicts of interest

From the time Mr Badalati began voting on the developments on 19 November 2014, he knew that his friend, Mr Uy, had some sort of interest in both.

At least by the time he voted on 20 April 2016 in favour of the Landmark Square planning proposal, Mr Hindi was aware that Mrs Hindi had entered the BAA with One Capital, or at least she had entered an agreement

whereby she stood to gain financially if the Landmark Square properties were sold to One Capital. He therefore knew that his wife had a financial interest in any HCC decision to approve the planning proposal.

After returning from their trip to China in April 2016, where certain expenses (as set out above) had been paid for by Mr Uy and Yiuqing Liu or Xinfeng, both Mr Badalati and Mr Hindi exercised their official functions to vote in favour of the Treacy Street and Landmark Square developments.

Mr Badalati

On 19 November 2014, Mr Badalati attended a meeting of HCC at which the Treacy Street VPA proposal was considered and voted in favour of the Treacy Street VPA proposal but deliberately failed to disclose his significant non-pecuniary interest in the development by virtue of his relationship with Mr Uy.

On 20 April 2016, he attended a meeting of HCC at which the Landmark Square planning proposal and the VPA offer for the Treacy Street modification application were considered and voted in favour of the Landmark Square planning proposal and the Treacy Street modification but deliberately failed to disclose his significant non-pecuniary interest in the developments by virtue of his relationship with Mr Uy and Wensheng Liu.

On 4 May 2016, he attended a meeting of the JRPP at which the Treacy Street modification was considered and voted in favour of the Treacy Street modification but deliberately failed to disclose his significant non-pecuniary interest in the development by virtue of his relationship with Mr Uy and Wensheng Liu.

In each case, the conduct on the part of Mr Badalati referred to above was corrupt conduct for the purpose of s 8 of the ICAC Act as it constituted the dishonest and partial exercise of his official functions (s 8(1)(b)) and involved a breach of public trust (s 8(1)(c)).

The Commission is satisfied in each case for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence, including evidence of further instances of corrupt conduct addressed throughout this report, to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Badalati committed the common law offence of misconduct in public office.

The Commission is satisfied in each case for the purpose of s 9(1)(b) of the ICAC Act that if the facts as found were to be proved on admissible evidence to the civil standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a

tribunal could reasonably conclude that, in each case, Mr Badalati had committed a disciplinary offence being a substantial breach of the requirements of the HCC Code of Conduct. Specifically, it could have constituted or involved a substantial breach of the following clauses:

- (i) clause 4.2, which required council officers to avoid or appropriately manage any conflicts of interest
- (ii) clause 4.12, which required disclosure fully and in writing of any non-pecuniary interest that conflicted with a public duty even if the conflict was not significant
- (iii) clause 4.16, which required that significant non-pecuniary interests be managed by removing the source of conflict or by having no involvement in the relevant matter

His conduct therefore comes within s 9(1)(b) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied in each case that, if the facts as found were to be proved on admissible evidence to the civil standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Badalati had committed a disciplinary offence being a substantial breach of the requirements of the HCC Code of Conduct.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that, in each case, the conduct was serious corrupt conduct by reason of the matters already referred to above.

Mr Hindi

On 20 April 2016, Mr Hindi attended a meeting of HCC at which the Landmark Square planning proposal and the VPA offer for the Treacy Street modification application were considered and voted in favour of the Landmark Square planning proposal and the Treacy Street modification application but deliberately failed to disclose:

- (i) his pecuniary interest in the Landmark Square planning proposal, by virtue of Mrs Hindi's interest in that development pursuant to the BAA under which Mrs Hindi stood to gain \$500,000 ex GST
- (ii) his significant non-pecuniary interest in the developments by virtue of his relationship with Mr Uy and Wensheng Liu.

On 4 May 2016, Mr Hindi attended a meeting of the JRPP at which the Treacy Street modification application

was considered and voted in favour of the Treacy Street modification but deliberately failed to disclose:

- (i) his pecuniary interest in the Landmark Square planning proposal, by virtue of Mrs Hindi's interest in that development pursuant to the BAA under which Mrs Hindi stood to gain \$500,000 ex GST
- (ii) his significant non-pecuniary interest in the development by virtue of his relationship with Mr Uy and Wensheng Liu.

In each case, the conduct on the part of Mr Hindi referred to above was also corrupt conduct for the purpose of s 8 of the ICAC Act as it constituted the dishonest and partial exercise of his official functions (s 8(1)(b)) and involved a breach of public trust (s 8(1)(c)).

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, in each case, if the facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Hindi committed the common law offence of misconduct in public office.

The Commission is also satisfied for the purpose of s 9(1)(b) of the ICAC Act that, in each case, if the facts as found were to be proved on admissible evidence to the civil standard of proof and accepted by an appropriate tribunal there would be grounds on which such a tribunal could reasonably conclude that, in each case, Mr Hindi had committed a disciplinary offence being a substantial breach of the requirements of the code of conduct. Specifically, it could constitute or involve a substantial breach of the following clauses:

- (i) clause 4.2, which required council officers to avoid or appropriately manage any conflicts of interest
- (ii) clause 4.7, which required disclosure of pecuniary interests at the meeting and refraining from participation in decision-making in the relevant matter
- (iii) clause 4.12, which required full disclosure in writing of any non-pecuniary interest that conflicted with a public duty, even if the conflict was not significant
- (iv) clause 4.16, which required that significant non-pecuniary interests be managed by removing the source of conflict or by having no involvement in the relevant matter.

His conduct therefore comes within s 9(1)(b) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act the Commission is satisfied in each case that, if the facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Hindi had committed the common law offence of misconduct in public office.

The Commission is also satisfied in each case for the purposes of s 13(3A) of the ICAC Act that if the facts as found were to be proved on admissible evidence to the civil standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Hindi had committed a disciplinary offence being a substantial breach of the requirements of the HCC Code of Conduct.

Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that in each case the conduct is serious corrupt conduct for the same reasons as referred to above.

Mr Sansom

On 19 November 2014, Mr Sansom attended a meeting of HCC at which the Treacy Street VPA proposal was considered and voted in favour of the Treacy Street VPA proposal but deliberately failed to disclose his significant non-pecuniary interest in the development by virtue of his relationship with Mr Uy.

On 20 April 2016, he attended a meeting of HCC at which the Landmark Square planning proposal and the VPA offer for the Treacy Street modification application were considered and voted in favour of the Landmark Square planning proposal and the Treacy Street modification but deliberately failed to disclose his significant non-pecuniary interest in the developments by virtue of his relationship with Mr Uy and Wensheng Liu.

In each case this conduct was corrupt conduct for the purpose of s 8 of the ICAC Act as it constituted the dishonest and partial exercise of his official functions (s 8(1)(b)) and involved a breach of public trust (s 8(1)(c)).

In each case the Commission is satisfied for the purpose of s 9(1)(b) of the ICAC Act that if the facts as found were to be proved on admissible evidence to the civil standard of proof and accepted by an appropriate tribunal there would be grounds on which such a tribunal could reasonably conclude that, in each case, Mr Sansom had committed a disciplinary offence being a substantial breach of the requirements of the code of conduct. Specifically, it could involve a substantial breach of the following clauses:

- (i) clause 4.2, which required council officers to avoid or appropriately manage any conflicts of interest
- (ii) clause 4.12, which required disclosure fully and in writing of any non-pecuniary interest that conflicted with a public duty even if the conflict was not significant
- (iii) clause 4.16, which required that significant non-pecuniary interests be managed by removing the source of conflict or by having no involvement in the relevant matter.

His conduct therefore comes within s 9(1)(b) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied in each case that if the facts as found were to be proved on admissible evidence to the civil standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Sansom had committed a disciplinary offence being a substantial breach of the requirements of the code of conduct. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that, in each case, the conduct was serious corrupt conduct. Mr Sansom held office on Council from 1991. He held office as mayor on three occasions earning him the title of emeritus mayor. It is also relevant to note the closeness of the relationship with Mr Uy and the fact that the relationship was ongoing during the period that Mr Sansom was exercising his official functions in relation to both developments. He repeatedly failed to disclose the relationship over the period from 2014 to 2016. The developments were of a substantial scale with substantial benefits to the developers and impacts on the community. Mr Sansom knew of his obligations under the HCC Code of Conduct.

Mr Sansom also accepted payment from Mr Uy for his and his partner Wang Hui's return flights for a trip to China in March and April 2014 in circumstances where he knew such payment was intended to influence him in carrying out his official functions.

This conduct was corrupt conduct for the purpose of s 8 of the ICAC Act as it involved a breach of public trust (s 8(1)(c)).

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that if the facts as found were to be proved on admissible evidence to the requisite standard of proof and accepted by an appropriate tribunal there would be grounds on which such a tribunal could reasonably conclude that Mr Sansom had committed an offence under s 249B(1) of the Crimes Act or the common law offence of misconduct in public office.

His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that if the facts as found were to be proved on admissible evidence to the requisite standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Sansom had committed an offence under s 249B(1) of the Crimes Act or the common law offence of misconduct in public office. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that the conduct was serious corrupt conduct for the reasons given above and, in addition, because the conduct involved serious criminal offences.

Philip Uy

Mr Uy provided the following benefits to Mr Badalati and Mr Hindi:

- (i) payment for accommodation for Mr Badalati and Mr and Mrs Hindi at the Beijing International Hotel on the nights of 10 and 13 April 2016 in the amount of about \$150 per room per night (approximately \$600 total)
- (ii) payment for the flights for Mr Badalati and Mr and Mrs Hindi from Shenzhen to Beijing on 10 April 2016 in the amount of about \$363 per person (approximately \$1,089 total)

in circumstances where he intended the payments to be an inducement or reward to Mr Badalati and Mr Hindi to use their position as councillors of HCC to favour the interests of Mr Uy and the proponents of the Treacy Street and Landmark Square developments.

Mr Uy also paid for Mr Sansom and his partner Ms Hui's return flights for the trip to China in March and April 2014 in circumstances where he knew such payment was intended to influence Mr Sansom in carrying out his official functions, including in relation to the Treacy Street and Landmark Square developments.

In each case the conduct referred to above was corrupt conduct for the purpose of s 8 of the ICAC Act as it involved conduct that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by a public official (s 8(1)(a)) and which could also involve offering and giving secret commissions (s 8(2)(b)).

In each case for the purpose of s 9(1)(a) of the ICAC Act, it is relevant to consider s 249B of the Crimes Act. Section 249B(2) of the Crimes Act provides:

249B Corrupt commissions or rewards

(2) If any person corruptly gives or offers to give to any agent, or to any other person with the consent or at the request of any agent, any benefit —

(a) as an inducement or reward for or otherwise on account of the agent's —

(i) doing or not doing something, or having done or not having done something, or

(ii) showing or not showing, or having shown or not having shown, favour or disfavour to any person,

in relation to the affairs or business of the agent's principal, or

(b) the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,

the firstmentioned person is liable to imprisonment for 7 years

In the case of Mr Badalati and Mr Hindi, benefits were "corruptly" given as Mr Uy knew that the two developments were likely to be the subject of a council vote in the weeks following the trip and that payment of their expenses might predispose them to vote favourably or take other action to promote the developments such as engaging with council staff. The benefits were either a "reward" for Mr Badalati and Mr Hindi having voted in favour of the developments in the past in relation to the Treacy Street development, or an "inducement" for them to vote favourably in the future or take other action such as engaging with council staff in respect of both the Treacy Street and Landmark Square developments (s 249B(2)(a)). Alternatively, the receipt of those benefits would "tend to influence" Mr Badalati and Mr Hindi to show favour to Mr Uy and the proponents when it came time to vote in relation to the two developments or in dealing with council staff (s 249B(2)(b)).

In the case of Mr Sansom, Mr Uy paid for the return flights for the trip to China departing 23 March 2014 and returning 6 April 2014 in circumstances where he intended that providing these benefits would influence Mr Sansom in carrying out his official functions. As previously noted, on 12 March 2014, Mr Sansom and Wensheng Liu travelled on the same flight from Sydney to Shanghai, China. The purpose of this trip was to meet with some Chinese developers who were potentially interested in the Gloucester Road Carpark development.

In each case the Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that if the facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Uy committed offences under s 249B(2) of the Crimes Act of corruptly giving or offering benefits to Mr Badalati, Mr Hindi, and Mr Sansom. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act the Commission is satisfied in each case that if the facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Uy had committed offences under s 249B(2) of the Crimes Act of corruptly giving or offering benefits to Mr Badalati, Mr Hindi and Mr Sansom. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

In relation to Mr Badalati and Mr Hindi, the Commission is satisfied for the purpose of s 74BA of the ICAC Act that the conduct is serious corrupt conduct because, even though the amounts of money were relatively small, it was part of a continuing course of conduct. The benefits were provided in circumstances where Mr Uy had cultivated a relationship with Mr Badalati and Mr Hindi over a significant period of time. The payments were made at a time when Mr Uy knew that the Treacy Street and Landmark Square developments were before council and were to be voted on by both councillors in the very short term.

In relation to Mr Sansom, the Commission is satisfied for the purpose of s 74BA of the ICAC Act that the conduct is serious corrupt conduct because the cost of the trip to China was provided in circumstances where Mr Uy had cultivated a relationship with Mr Sansom over a significant period of time and where Mr Sansom had earlier in March 2014 travelled to China to promote the Gloucester Road Carpark development. As noted above, on 19 November 2014, Mr Sansom attended a meeting of HCC at which the Treacy Street VPA offer was considered and, on 20 April 2016, attended a meeting of HCC at which the Landmark Square development proposal and Treacy Street modification were considered.

Wensheng Liu

The Commission does not make any finding of corrupt conduct in respect of Wensheng Liu.

There is insufficient evidence to conclude that Wensheng Liu had any knowledge of or involvement in Mr Uy covering some of Mr Badalati's and the Hindis' expenses on the April 2016 trip to China. Wensheng Liu denied

any such involvement. While, as noted above, there was a photograph found on Wensheng Liu's telephone of Mrs Hindi's handwritten note of some expenses for that trip, it is unclear whether Wensheng Liu personally took that photo or whether it was provided to him by someone else. While there is a real question as to why the photo was on his telephone at all, there is insufficient evidence to prove that he or his companies reimbursed Mr or Mrs Hindi for those amounts or that he was involved in Mr Uy reimbursing the Hindis.

Yuqing Liu

Yuqing Liu is presently based in China. He was notified of this inquiry and invited to participate, but ultimately was not legally represented. The fact that he has not given evidence in the inquiry is a factor to be taken into account in making any findings against him.

The evidence establishes that Yuqing Liu or Xinfeng provided payment for Mr Badalati and Mr and Mrs Hindi's:

- (i) accommodation at the Tangshan Grand Metropark Guofeng Hotel on the nights of 11 and 12 April 2016 in the amount of about \$200 per night per room (approximately \$800 total)
- (ii) return transfers in luxury cars between Beijing and Tangshan on 11 and 13 April 2016
- (iii) meals in Tangshan between 11 and 12 April 2016.

Such conduct on the part of Yuqing Liu or Xinfeng could have adversely affected, either directly or indirectly, the honest or impartial exercise of functions by Mr Badalati and Mr Hindi when voting on the Treacy Street VPA or the Landmark Square planning proposal on 20 April 2016. The provision of these benefits could have influenced both to act partially in favour of the proposal when voting on it. However, the Commission makes no finding in respect of this conduct.

There are matters that weigh against a conclusion that Yuqing Liu actually intended to induce or influence the exercise of their official functions with these payments. For example:

- (i) at the time of the April 2016 trip, Yuqing Liu had signed a "letter of intent" to invest \$50 million in the Treacy Street development and \$80 million in the Landmark Square development. However, as explained above, in addition to signing the two project investment agreements on 23 May 2016, Yuqing Liu apparently signed a further "internal confidentiality agreement" stating that the "true purpose" of the agreements was (in summary) to assist him to migrate to Australia. Whether this agreement is authentic is

unclear in the absence of Yuqing Liu's evidence. As explained in chapter 7, ultimately Yuqing Liu only ever invested \$10 million and, following the souring of his relationship with Wensheng Liu and the commencement of the Supreme Court proceedings¹⁰, his cooperation with Wensheng Liu came to an end. If Yuqing Liu did not have a genuine intention to participate in the two developments, then it is less likely that any expenses covered by him in Tangshan were intended to influence Mr Badalati or Mr Hindi in the exercise of their official functions.

- (ii) Given the scale of Yuqing Liu's wealth and the scale of the developments in question, and his otherwise limited involvement with the councillors having only met them for the first time in March 2016, it is questionable that he intended that the isolated, relatively small amounts of money spent on hosting Mr Badalati and Mr Hindi in China would actually influence their decision-making on the Treacy Street or Landmark Square developments. Another explanation for the payment of these expenses is simply that Yuqing Liu was hosting the group in China on this occasion and he or his company paid for the expenses of multiple persons in that group regardless of whether they had any role in deciding on the two developments.

In the circumstances the Commission makes no finding of serious corrupt conduct in relation to the conduct of Yuqing Lui.

Section 74A(2) statements

The Commission is satisfied that Mr Badalati, Mr Hindi, Mr Sansom and Mr Uy are "affected" persons for the purposes of s 74A(2) of the ICAC Act.

Vincenzo Badalati

The Commission has a witness cooperation policy to encourage those involved in, or with knowledge of, corruption to cooperate with the Commission to establish whether corrupt conduct has occurred and the full extent of that conduct. The policy sets out how the Commission can protect those who assist it, and what potential benefits are available for those who cooperate fully with the Commission.

The Commission is satisfied Mr Badalati provided substantial assistance to the Commission during its investigation. But for significant admissions against

interest made by Mr Badalati, the investigation would have been more complex and undoubtedly the public inquiry would have consumed far more time and resources.

However, as has been addressed at various points in this report, the Commission is satisfied that Mr Badalati did not give entirely truthful evidence in respect of the matters identified. For example, the Commission is satisfied that Mr Badalati did not give entirely frank and truthful evidence in respect of his state of mind when in Tangshan. The Commission does not accept that the "penny dropped" in respect of the connection between the signing ceremony and the Treacy Street and Landmark Square developments while Mr Badalati was at that ceremony. The Commission is satisfied Mr Badalati had knowledge of the connection by the time he arrived in China. At no time was it his understanding that the signing ceremony or his attendance at it concerned investment in a waste-to-energy plant.

The Commission's witness cooperation policy operates where a witness has completely disclosed all relevant information. It cannot apply in respect of Mr Badalati. He disclosed relevant information. However, the Commission is satisfied that he was not entirely truthful.

Mr Badalati's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including credit card records, text messages, travel records and potentially the evidence of others who travelled on the same trip.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Badalati for offences against s 249B(1) of the Crimes Act in relation to receiving benefits in the form of the flights, accommodation, meals and transfers in respect of the April 2016 trip to China from Mr Uy and Yuqing Liu.

Mr Badalati's term as a GRC councillor concluded in December 2021. Accordingly, the question of taking any disciplinary action against him for any specified disciplinary offence does not arise.

The Commission is also of the opinion that in all the circumstances, consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Badalati for offences of giving false or misleading evidence contrary to s 87 of the ICAC Act in respect of his evidence:

¹⁰ *Xinfeng Australia International Investment Pty Ltd v GR Capital Group Pty Ltd* (2021) NSWSC 614.

- (i) that he did not know prior to arriving in Tangshan, China, in April 2016 that there was to be a signing ceremony of an agreement concerning the Treacy Street and Landmark Square developments
- (ii) that he believed he attended Tangshan, China, in April 2016 in relation to a proposed waste-to-energy project
- (iii) that he did not know there was to be a signing ceremony in Tangshan, China, before arriving in arriving or that the agreement to be signed concerned the Treacy Street and Landmark Square developments
- (iv) that he reimbursed Mr Uy in respect of the cost of his accommodation at the Beijing International Hotel on 10 April 2016.
- (ii) that he believed he attended Tangshan, China, in April 2016 in relation to a proposed waste-to-energy plant
- (iii) concerning the payment for the cost of his accommodation and that of Mrs Hindi at the Tangshan Grand Metropark Guofeng Hotel on 11 and 12 April 2016.

Constantine Hindi

Mr Hindi's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including credit card records, text messages, potentially the evidence of Mr Badalati and the evidence of others who travelled on the same trip.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Hindi for offences of receiving benefits from Mr Uy and Yuqing Liu being the cost of flights, accommodation, meals and transfers in respect of travel within China in April 2016 contrary to s 249B(1) of the Crimes Act.

Mr Hindi's term as a GRC councillor concluded in December 2021. Accordingly, the question of taking any disciplinary action against him for any specified disciplinary offence does not arise.

The Commission is of the opinion that in all the circumstances, consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Hindi for offences of giving false or misleading evidence contrary to s 87 of the ICAC Act in respect of his evidence:

- (i) that he did not know prior to arriving in Tangshan, China, in April 2016 that there was to be a signing ceremony of an agreement concerning the Treacy Street and Landmark Square developments

Mireille Hindi

Mrs Hindi's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against her in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mrs Hindi for offences of giving false or misleading evidence contrary to s 87 of the ICAC Act in respect of her evidence:

- (i) that the Landmark Square development was not discussed at all during her trip to Tangshan, China, in April 2016
- (ii) that the Landmark Square development was not brought up during the trip to Tangshan, China, in April 2016
- (iii) that it did not occur to her that the agreement signed in Tangshan had anything to do with Landmark Square
- (iv) that she reimbursed Mr Uy in respect of the cost of her travel and that of Mr Hindi from Shenzhen to Beijing on 10 April 2016
- (v) concerning her payment for the cost of her accommodation and that of Mr Hindi at the Beijing International Hotel on 10 April 2016
- (vi) that she reimbursed Mr Uy in respect of the cost of her accommodation and that of Mr Hindi at the Beijing International Hotel on 13 April 2016
- (vii) concerning the payment for the cost of her accommodation and that of Mr Hindi at the Tangshan Grand Metropark Guofeng Hotel on 11 and 12 April 2016.

Philip Sansom

Mr Sansom's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act.

However, the Commission is satisfied that there is other admissible evidence that would be available, including travel records, text messages, and potentially the evidence of Ms Hui.

In chapter 2, the Commission found Mr Uy paid for Mr Sansom and Ms Hui to travel to and from China in March 2014. There was no reimbursement of Mr Uy. The Commission accepted the submission of Counsel Assisting that this payment demonstrated Mr Sansom was willing to perform favours for Mr Liu and Mr Uy.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Sansom for offences against s 249B(1) of the Crimes Act in relation to receiving the benefits referred to above.

Mr Sansom's term as an HCC councillor concluded in May 2016. Accordingly, the question of taking any disciplinary action against him for any specified disciplinary offence does not arise.

Ching Wah (Philip) Uy

Mr Uy's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including credit card records, receipts and text messages.

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Uy for offences against s 249B(2) of the Crimes Act in relation to paying for Mr Badalati and Mr Hindi's flights from Shenzhen to Beijing and their accommodation at the Beijing International Hotel during the April 2016 trip to China.

The Commission is also of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Uy for offences of giving false or misleading evidence contrary to s 87 of the ICAC Act in respect of his evidence:

- (i) that Mr Badalati and Mrs Hindi reimbursed him for the cost of travel from Shenzhen to Beijing on 10 April 2016
- (ii) concerning the reasons why he obtained receipts from a travel agent in respect of the cost of the travel undertaken by Mr Badalati and Mr and Mrs Hindi from Shenzhen to Beijing on 10 April 2016

- (iii) that Mrs Hindi reimbursed him in respect of the cost of her accommodation and that of Mr Hindi at the Beijing International Hotel on 10 and 13 April 2016
- (iv) that Mr Badalati reimbursed him in respect of the cost of his accommodation at the Beijing International Hotel on 10 and 13 April 2016.

Chapter 6: Did Mr Uy pay Mr Badalati and Mr Hindi \$70,000 for the Treacy Street development and \$100,000 for the Landmark Square development?

Mr Badalati admitted to receiving \$70,000 from Mr Uy in respect of the Treacy Street development and \$100,000 in respect of the Landmark Square development. He laimed that Mr Uy had paid Mr Hindi a sum in the order of \$70,000 in respect of the Treacy Street development and \$100,000 in respect of the Landmark Square development.

Each of these matters is addressed later in this chapter. However, it is appropriate to first address an issue of importance to the Commission's investigation, namely, the credit of Mr Badalati and Mr Uy and the credibility of their evidence. The credit of Mr Hindi and the credibility of his evidence was addressed in chapter 3.

There is no doubt that, at times, Mr Badalati gave untruthful evidence. He first attended the Commission to participate in a compulsory examination on 7 December 2021. He was questioned principally about trips to China and who had borne the cost. However, he was also asked whether he had ever been paid by Mr Uy for any assistance in respect of development opportunities. He denied this had occurred. That evidence was untruthful.

There were other examples of Mr Badalati giving untruthful evidence. Some of that evidence was given after 2 June 2022, when he confessed to receiving the sum of \$170,000 from Mr Uy. For example, he gave untruthful evidence concerning the reason he travelled to China in April 2016 and his state of mind at that time. This has been addressed in chapter 5.

Mr Badalati's evidence was that he had received a \$70,000 payment in cash from Mr Uy in relation to the Treacy Street development. He believed this occurred during 2015, and likely after the JRPP had voted in favour of the Treacy Street DA on 1 April 2015.

He said that Mr Uy had called him to invite him for a coffee. They met at Macchina Espresso on Paterson Avenue at Kingsgrove. No one else attended the meeting.

They had both parked their cars in Paterson Avenue. They left the coffee shop and walked to their cars. Mr Uy then retrieved a shopping bag from the boot of his car and gave it to Mr Badalati. Mr Badalati could see inside the bag, but whatever was inside it was wrapped up.

Mr Uy said, "This is for your help on Treacy Street". Mr Badalati understood that Mr Uy believed that Mr Badalati had done something or would do something in return for the money, such as talking to HCC officers or voting to support what Mr Uy or Wensheng Liu wanted.

When he got home, he opened the bag and unwrapped its contents. He found money inside. It was all in \$100 notes. He put the money in his safe. It stayed there for a while but then he began depositing the money into a bank account.

Mr Badalati claimed that shortly after receiving the sum of \$70,000 from Mr Uy he had a conversation with Mr Hindi in which Mr Hindi told him he had been paid a similar amount by Mr Uy in relation to the Treacy Street development. According to Mr Badalati, Mr Hindi did not say where or when he received it. However, if Mr Badalati was giving truthful evidence, Mr Hindi must have been paid the sum of approximately \$70,000 sometime in 2015 and likely after the JRPP had voted in favour of the Treacy Street DA on 1 April 2015.

Mr Badalati later clarified under cross-examination that while he and Mr Hindi had initially spoken on the telephone, they then met in person and that is where the discussion just described took place. Mr Badalati said he was comfortable admitting his payment to Mr Hindi because "he was involved like I was" and agreed that they had "got together at various points in time to discuss how and when [they] would vote in favour of certain things".

Mr Uy and Mr Hindi denied that Mr Uy made any payment to Mr Hindi, of \$70,000 or some other amount, in relation to the Treacy Street development. Mr Hindi denied telling Mr Badalati he had received such a

payment. The Commission rejects their evidence and accepts the evidence of Mr Badalati on this issue.

The Commission is satisfied that Mr Badalati received the sum of \$70,000 and Mr Hindi received the sum of approximately \$70,000 from Mr Uy in relation to the Treacy Street development. It is also satisfied that these amounts were received by the end of 2015.

On 2 June 2022, Mr Badalati also gave evidence that Mr Uy had paid him \$100,000 in cash in relation to the Landmark Square development. He said that Mr Uy invited him for a coffee and that he and Mr Hindi had met Mr Uy at a coffee shop in the Rhodes Shopping Centre. Mr Uy has an apartment in Rhodes and Mr Badalati had coffee in Rhodes with Mr Uy on three or four other occasions.

The three of them then relocated to a park at Rhodes. Mr Badalati said, “then we just walked to the park, which is right next door to the shopping centre and Con Hindi and I moved our cars to be close to Phillip [sic] Uy’s car there”. Based on that evidence, it was unclear whether Mr Badalati and the others had walked to the park from the shopping centre or drove their cars there. He later clarified that the three of them had first parked their cars at the shopping centre but had then moved their cars to the park.

He said Mr Uy retrieved bags from the boot of his car and gave two bags to Mr Badalati and two bags to Mr Hindi. Mr Badalati could see inside the bags but again what was inside was covered up.

Mr Uy said, “Thank you for your assistance on Landmark”. Mr Badalati’s understanding was that this “Thank you” was for assistance they had already provided. He said this could have occurred after the HCC vote on 20 April 2016 on the Landmark Square planning proposal, but he was not sure.

When he arrived home, Mr Badalati opened the two bags given to him. He found money inside. It comprised \$50 notes. He put the money in his safe. He later deposited some of the money into a bank account over time.

Mr Badalati gave further evidence on 19 July 2022. He was shown the text messages from 25 July to 5 August 2018 between Mr Uy and a third party (addressed below) in which Mr Uy sent a photograph of an ironing board covered in cash. Mr Badalati had not been shown these in his compulsory examinations or when he first gave evidence in the public inquiry on 14 and 15 June 2022. He was also told that a few days before the text messages, on 23 July 2018, he and Mr Hindi had voted in favour of sending an amended version of the planning proposal for gateway determination.

In his further evidence on 19 July 2022, Mr Badalati said that while he initially thought the \$100,000 payment could have been made in 2016, these messages suggested to him it could have been in 2018. He also said that the park he had visited with Mr Uy and Mr Hindi was Rhodes Foreshore Park. They parked their cars immediately beside each other (side by side rather than nose to rear). He marked the location where they parked on a map.

Mr Uy and Mr Hindi denied that Mr Uy made any payment to Mr Hindi. They both admitted having coffee at the Rhodes Shopping Centre from time to time. Mr Uy said he had spent time with Mr Hindi and Mr Badalati in a park in Rhodes but denied that there was an occasion where he provided money to Mr Badalati and Mr Hindi. Mr Hindi also admitted going to a park with Mr Uy and Mr Badalati, “probably on one or two occasions”. He claimed he could not recall whether it was in 2015, 2016, 2017 or 2018. Mr Hindi also said the park was Lewis Berger Park. He could not recall ever going to Rhodes Foreshore Park. He claimed the purpose of going to the park was because Mr Uy wanted to show him and Mr Badalati the high-rise buildings which had been built at Wentworth Point. Although Mr Hindi claimed to have

no recollection of going to the park on 25 July 2018, he acknowledged “It may have happened”.

The Commission has carefully considered the question of Mr Badalati’s credit and the many submissions contending he had no credibility whatsoever.

In assessing whether Mr Badalati’s account should be accepted, it is common ground that his evidence has changed over time in several respects and that at least on 7 December 2021, he gave untruthful evidence. When he attended his first compulsory examination on 7 December 2021, he denied ever receiving any payments in relation to the Treacy Street or Landmark Square developments. He also denied that anyone else paid for his flights and accommodation on the April 2016 trip to China. The Commission is satisfied that Mr Badalati lied to avoid being implicated in unlawful conduct.

As has been noted above, Mr Badalati attended a further compulsory examination on 2 June 2022. He was shown some financial records which indicated the deposit of a large amount of cash into bank accounts held in his name as well as accounts held in his daughters’ names. The deposits were in small amounts – a few thousand dollars – and spread out over several years. He was asked where the money had come from, and at that time was not able to provide an explanation. After two adjournments, Mr Badalati gave evidence he had received two payments from Mr Uy: \$70,000 in relation to the Treacy Street development then another \$100,000 in relation to the Landmark Square development. At the time he gave this evidence, he thought the first payment was received in 2015 and the second in 2016, although he said he was not sure about this. Mr Badalati also gave evidence that Mr Hindi had received the same, or in the case of Treacy Street similar, amounts.

Mr Badalati attended a further compulsory examination on 7 June 2022 and gave further evidence about the cash payments. At that stage, he still denied that anyone else paid for his flights and accommodation on the April 2016 trip to China.

At the public inquiry, Mr Badalati accepted that he had lied to the Commission on previous occasions. He said that he was fearful of the ramifications if he confessed and that he panicked. Mr Badalati was adamant that he was now telling the truth. He said the reason he told the truth on 2 June 2022 about the cash payments was that he was fearful that, if he did not explain the cash deposits, his daughters would be called to give evidence and they would be “dragged” into it, even though they had nothing to do with his misconduct. The Commission is satisfied this is a plausible explanation of why Mr Badalati made the decision to change his evidence on 2 June 2022.

There were various attempts to challenge Mr Badalati’s credibility during cross-examination and in submissions. It was suggested Mr Badalati was motivated to falsely implicate Mr Uy and Mr Hindi because, during the examination on 2 June 2022, the Commission had drawn his attention to the witness cooperation policy. It is possible, though unlikely, the Commissioner’s reference to the witness cooperation policy played some role in the admissions made by Mr Badalati concerning his own conduct. However, as was noted by Counsel Assisting, the document containing the witness cooperation policy was available to Mr Badalati, as it was to all affected persons, well in advance of his attendance on 2 June 2022. In other words, it is likely Mr Badalati was aware of the Commission’s policy before he gave false evidence in December 2021. Mr Badalati was represented by experienced counsel. It is reasonable to infer that in providing advice to Mr Badalati, counsel drew the policy to his attention.

Because experience teaches that most people do not concoct allegations against others and perjure themselves in support of the concoction, facts which show a motivation for fabrication or the lack of it are relevant to the probability that a witness has falsely implicated another.

The Commission rejects the suggestion that Mr Badalati was motivated to implicate Mr Uy and Mr Hindi in very serious misconduct in the hope, or with the expectation, that he would benefit from the Commission’s witness cooperation policy.

Mr Uy was unable to provide any explanation why Mr Badalati would tell the Commission he had been paid \$170,000 by him. Mr Hindi could do no more than speculate. Mr Hindi was unable to provide any rational reason why Mr Badalati would tell the Commission that Mr Uy had paid Mr Hindi \$170,000. Mr Hindi did not suggest that Mr Badalati had any grudge against him. Mr Badalati gave evidence that he and Mr Hindi had been friends up to 2022. This evidence was not challenged. Mr Hindi said that he considered Mr Badalati a close friend from around 2019. Mr Badalati confirmed that while he understood the Commission had power to make certain decisions under the witness cooperation policy, he understood there was no certainty in that regard and he had no expectations. The Commission accepts this evidence. Further, the mere possibility of favourable treatment must be weighed against the fact that, by making admissions which were so adverse to his interests, Mr Badalati was bound to suffer grave personal consequences. His reputation has been ruined, his daughter has disowned him, his family life is “hanging by a thread”, and people he used to know and trust have distanced themselves from him. The Commission is satisfied Mr Badalati did not manufacture a version of events in the mere hope of obtaining favourable treatment.

It was also put during cross-examination of Mr Badalati and in submissions that he had implicated Mr Hindi because the Commission “suggested” it to him. The Commission rejects these contentions. They are nonsense. Mr Badalati was not a witness who readily acceded to propositions with which he did not agree. So much is clear from his cross examination. The Commission recognises that modern authority has counselled against over reliance upon a witness’ demeanour. Nevertheless, it is still relevant. The Commissioner presiding at the examinations of Mr Badalati was of the view that Mr Badalati was not a halting or prevaricating witness of unsatisfactory demeanour. While under considerable stress arising from the consequences of his admissions, Mr Badalati was largely unshaken by robust cross-examination. That is not to say he was entirely truthful in his evidence. There are instances which are addressed in this report where the Commission is satisfied Mr Badalati was being untruthful. However, the Commission is satisfied that subject to these exceptions, Mr Badalati gave truthful evidence. In assessing the credibility of a witness, it is not uncommon to accept parts of the evidence but not accept other parts. It certainly does not follow that proof that a witness has lied in respect of a particular matter means that all the witness’ evidence which adversely affects other persons must be rejected.

It was also suggested that Mr Badalati was motivated to falsely implicate Mr Uy because he was upset that Mr Uy had not repaid him an \$11,000 loan. That is inherently implausible given the size of the loan when compared to the grave personal consequences Mr Badalati has suffered already because of giving evidence adverse to Mr Uy. Further, it provides no explanation for implicating Mr Hindi.

It was further suggested Mr Badalati might have been upset with Mr Uy because the Commission’s investigation had cost HCC millions of dollars. Again, that is inherently implausible. It is unlikely Mr Badalati would be so concerned about legal costs incurred by HCC in circumstances where he no longer serves on council and has not done so since December 2021.

It was also put that Mr Uy had no incentive to make any payments regarding the Landmark Square development to Mr Badalati or Mr Hindi in 2018, because in late 2017 the Landmark Square site was sold to Prime Hurstville Pty Ltd. However, as explained in chapter 7, One Capital nevertheless had an agreement with Prime Hurstville that One Capital would be paid an amount of money upon the gazettal of the Landmark Square planning proposal.

It was suggested that it was implausible that Mr Badalati would tell Mr Hindi about receiving the cash payment of \$70,000 in 2015 and that it was more likely he would

have told Mr Sansom about the payment because they were closer. However, Mr Badalati’s evidence was that, at least in relation to the Treacy Street development, he and Mr Hindi were working together by this point in time: “he was involved like I was”. Mr Badalati was not working together with Mr Sansom in this way.

It was further put there was no need for Mr Uy to pay money to either Mr Badalati or Mr Hindi regarding the Treacy Street development in 2015 because the JRPP had approved the Treacy Street DA on 1 April 2015. It was also put there was no need to pay money to them regarding the Landmark Square development in 2018 because HCC had already voted in favour of that planning proposal on 20 April 2016. This overlooks the fact that both Mr Badalati and Mr Hindi continued to make decisions on both developments. They voted in favour of the Treacy Street VPA on 20 April 2016, the Treacy Street modification application as members of the JRPP on 4 May 2016, and the Treacy Street VPA on 25 June 2018. They also continued to make decisions on the Landmark Square site through 2018 and 2019 in relation to various amendments to the planning proposal.

Various matters were put in cross examination and in submissions which sought to cast doubt on the veracity of Mr Badalati’s evidence by reference to inconsistencies in matters of detail. The Commission is satisfied that, to the extent there were inconsistencies or uncertainty in respect of such evidence, Mr Badalati was not engaged in fabrication. He was genuinely endeavouring to give truthful evidence to the best of his recollection. The following are provided by way of examples.

Mr Badalati was shown schedules prepared by the Commission which evidenced unexplained cash deposits into several bank accounts including the account of a daughter. Mr Hindi submitted that the timing of the cash deposits did not match up with Mr Badalati’s evidence concerning the timing of the payment of the sum of \$70,000 made by Mr Uy to Mr Badalati. Initially, Mr Badalati’s evidence as to the timing of the payment was inconsistent with the dates shown in the schedules. This was because he said he had kept the \$70,000 in his safe for “roughly” one year. The first payment into his daughter’s account occurred on 20 July 2015, which suggested he had received the sum of \$70,000 in 2014. Ultimately his evidence was that he received \$70,000 in 2015 and \$100,000 in July 2018. The Commission is satisfied Mr Badalati was not giving untrue evidence. The evidence concerned the timing of the payment of \$70,000 to him, not to Mr Hindi. There is no rational reason why Mr Badalati would lie. He could not benefit by doing so. The Commission is satisfied Mr Badalati’s recollection was imperfect. He was simply mistaken as to the timing of the first deposit into his daughter’s account.

There is a further matter which should be noted here. The Commission's analysis of deposits of cash into Mr Badalati's own accounts and that of his daughter amounted to \$291,784, not \$170,000. Mr Badalati was questioned about the discrepancy during his compulsory examination of 7 June 2022. He provided an explanation. The Commission examined the explanation by reference to contemporaneous financial records. It is satisfied that the explanation is true. A complaint was made by Mr Hindi that the relevant part of the transcript recording the evidence of Mr Badalati has been redacted by the Commission. It was redacted because the additional deposits concerned a personal family matter which was not relevant to the Commission's investigation.

It was also put that there were inconsistencies in Mr Badalati's account of the meeting at Rhodes. As noted above, Mr Badalati's evidence about whether they walked or drove to the park from the shopping centre was initially ambiguous. However, he later confirmed that he, Mr Hindi and Mr Uy all drove to the park in separate cars. It was suggested that, after Mr Uy gave evidence, Mr Badalati changed his evidence to refer to Rhodes Foreshore Park because he recognised it was impossible to park side by side at Lewis Berger Park. However, Mr Badalati never said that the meeting took place at Lewis Berger Park. While he said that the park was "virtually behind" the Rhodes shopping centre, that language is ambiguous and could equally refer to Lewis Berger Park, which was immediately adjacent to the shopping centre, or Rhodes Foreshore Park, which is a few blocks from the shopping centre. In any event, there was no need to pick Rhodes Foreshore Park to justify the side-by-side parking, as such parking is available near Lewis Berger Park. The Commission does not accept that Mr Badalati was telling lies in respect of the location of the park. If he was mistaken as to the distance between the shopping centre where he and Mr Hindi were paid, the Commission is satisfied his evidence reflected his best, but mistaken, recollection.

It should also be noted that Mr Badalati's evidence in relation to the payments made by Mr Uy is also consistent with other evidence considered by the Commission. Examples are provided below.

Photographs of cash, taken in 2015, found on Mr Uy's mobile telephone

There was a photograph found on Mr Uy's mobile telephone, created on 19 February 2015, of bundles of \$50 and \$100 notes (see Figure 24).

Figure 24: Photo of large quantities of \$50 and \$100 notes, created on Mr Uy's mobile telephone on 19 February 2015



The photograph was taken at a time when Mr Uy was in Hong Kong.

There was also another photograph on his mobile telephone, created on 6 April 2015, of many \$100 notes (see Figure 25).

Figure 25: Photo of many \$100 notes, created on Mr Uy's mobile telephone on 6 April 2015



At the time this photograph was taken, Mr Uy was once more in Hong Kong.

Mr Uy confirmed that this was his own cash. That is consistent with the very large amount of cash, about \$1.47 million, withdrawn from Mr Uy's Australian bank accounts over the period from 2012 to 2020.

The Commission does not suggest that either photo depicts the cash actually paid to Mr Badalati or Mr Hindi. However, it is probative of the considerable wealth at Mr Uy's disposal, including not only cash but also property he owned in Hong Kong and China.

Photographs and text messages, taken in 2018, found on Mr Uy's mobile telephone

On 23 July 2018, GRC resolved to endorse the amended planning proposal for Landmark Square, to send it to the DPE for a gateway determination and for a DCP to be prepared. A majority (including Mr Badalati and Mr Hindi) voted in favour of the proposal. Councillors Landsberry and Payor voted against it.

Two days later, on 25 July 2018 at 9.18 am, Mr Uy sent a photograph to John Yuen of an ironing board covered in stacks of \$50 notes (see Figure 26).

Figure 26: Photo of an ironing board covered in \$50 notes, sent from Mr Uy to Mr Yuen



Mr Yuen was an investor in the Landmark Square development. He also travelled to Tangshan in April 2016.

Mr Uy confirmed that this was a picture taken at his apartment in Rhodes. He also confirmed it was his own cash. He said that it was intended for his own use, likely to take back to Hong Kong or China, and it came from his personal bank accounts. He estimated it was about \$300,000.

A translation of the text messages that followed was tendered in the public inquiry. It recorded that, on 25 July 2018 at 11.28 am, Mr Uy's friend responded (apparently in response to the photograph): "To be given to me?" It was put to Mr Uy that his response at 11.45 am (message 5) should be translated as: "Fat, middle east". As has been noted, Mr Uy used those nicknames from time to time to refer to Mr Badalati and Mr Hindi respectively. Mr Uy said he believed he was referring to Mr Badalati and Mr Hindi. He denied he was suggesting the money was to be given to the two councillors but claimed he could not remember what he was referring to. The translation also recorded that, a few seconds later, Mr Uy sent another message saying: "Other is ready for you" (message 6).

After the public inquiry concluded, Mr Uy wrote to the Commission disputing the translation of message 5. He said that the words "middle east" do not appear in the message. He said that the proper translation of the Chinese symbols is "China Happy" (although conceding only part of the symbol for "China" appears) and that he had intended to convey the meaning "Fat Happy Chinese Buddha" referring to the Buddha pictured in the background of the photograph he had sent to Mr Yuen. No such issue was raised during his evidence when the messages were put to him. Indeed, as has been noted above, Mr Uy said he believed he was referring to Mr Badalati and Mr Hindi in this text message. Nevertheless, the correspondence caused the Commission to examine the issue further and consult an independent translator. A transcript of the interview with the translator is in evidence. In light of that independent translation, it is open to conclude that, while the first character in the message refers to "Chubby" or "Fat", the latter two characters do not literally say "middle east". The first of those characters, read in isolation, means "middle" or "Chinese". The second of those characters, read in isolation, means "happy" or "music". The translator's opinion was that, read together, they could mean "Chinese music" or could refer to a name. But according to the translator, even when read in context of the photograph with the Buddha in the background, it is unlikely those two characters were being used to describe the Buddha. He said, "nobody would say China Chinese or China happy like that" and did not agree that it was plausible that the author was referring to "Fat Happy Chinese Buddha". He said that if anyone thought the two Chinese characters mean "Chinese happy" that would be a "new invention of a description ... for children to learn if they are ... starting to learn Chinese language".

In response to a request by the Commission, Mr Uy provided further submissions and an unsworn statutory declaration addressing various matters, including the meaning of text message 5. He claimed that the word "fat" impliedly referred to the Buddha which appeared

in the background of the photo. He further claimed the meaning had cultural significance to him because he was a member of a Buddhist temple and that it was a common Chinese cultural practice to send photos of “lucky money” to friends and relatives. He denied that he had mistakenly used the words “happy” or “music” when he meant to use the word “east”.

The literal translation of message 5 – “Fat. Chinese music” – makes no sense when read in the context of the surrounding text messages. The previous message from Mr Yuen was asking whether the money in the photograph was to be given to him. Messages 5 and 6, which followed only minutes later, appear to be indicating that the money was not for Mr Yuen – it was for someone else – and Mr Yuen’s money was elsewhere. That is consistent with the fact that, as noted, Mr Yuen was an investor in the Landmark Square development. Message 5 is intended to identify the intended recipients of the money in the photograph, so it would make sense for it to be naming individuals, as it has done in referring to “Fat” – Mr Badalati’s nickname.

The Commission is satisfied that the last character in message 5 is a typographical error, and that Mr Uy had intended to write the character for “east”. The penultimate character in message 5 (which the independent translator confirmed means “middle” or “China”) is the same as the first character in message 8 (see below), in the context of referring to “middle east” – a clear reference to Mr Hindi. The last character in message 5 is very similar (but not the same) as the second character in message 8 (see below), which is the character for “east”. The characters are so similar that at first the translator likely mistakenly assumed the same character appeared in message 5 and message 8. The translator considered that the author could have intended to write the character for “east” in message 5 instead of “happy”, but mistyped. The translator demonstrated how this could occur: he attempted to draw the character for “east” with an e-pencil on the telephone, and the telephone produced several characters for him to select from including “happy” and “east”. Mr Uy may have mistakenly selected the character for “happy” instead of “east” given their similarities. The translator considered that was the more likely explanation, and that message 5 was intended to refer to two people, given Mr Uy referred to “middle east” in message 8 and (as he was instructed) used that nickname at other times. The Commission is satisfied that in message 5 Mr Uy intended to refer to “Fat, middle east” and that this was a reference to Mr Badalati and Mr Hindi. That is especially likely given Mr Uy did not dispute the translation when it was put to him during the public inquiry. Once again, it is relevant to note that when asked during the public inquiry about message 5, Mr Uy told the Commission he believed he was referring to Mr Badalati and Mr Hindi.

In the statutory declaration referred to above, Mr Uy said the photograph of the money on the ironing board was likely taken in 2017 but acknowledged that the money (or most of it) was still in his possession around 25 July 2018. However, he claimed he had paid \$100,000 to a third party.

A week or so later, on 2 August 2018, Mr Uy wrote to Mr Yuen (message 8):

“middle east” suddenly two weeks ago. Requested ... because the last meeting all things have been completed. However the female arranged a group of people to turn it over ... Big fighting last week. Middle east, Fat Fat fought for their life ... Yesterday’s newspaper had a large paragraph.

The reference in this text message to “Middle east” and “Fat Fat” also supports a conclusion that he had intended to refer to Mr Hindi and Mr Badalati in message 5.

Mr Uy was asked about the meaning of message 8. It was put to him that the words “last meeting” was a reference to the HCC meeting of 23 July 2018. He said he did not remember, and it could mean anything because “they helped many local people to do with many things. As a councillor they help many people...”. It was suggested to him that the woman he was referring to was a councillor, Ms Landsberry. He said he did not think so, but he could not remember who he was referring to. He claimed he was unable to confirm that he was referring to Mr Badalati and Mr Hindi having attended a meeting. He claimed he did not remember. It was also put to him that he was referring to Mr Hindi “requesting” an amount of money, but he denied that.

The reference to something being “requested” in this message is ambiguous. It is not entirely clear whether “Middle east” is the one who did the “requesting” or, if so, what he was “requesting”. The message was also sent about eight days after the photograph of the money was sent, which means this later message was not necessarily connected to the initial messages and the photograph of the money. However, the Commission is satisfied that in the latter part of message 8, Mr Uy was referring to the HCC meeting on 23 July 2018, which Mr Badalati and Mr Hindi attended, and where Ms Landsberry (who is female) voted against sending the planning proposal to the DPE for gateway determination. This is consistent with a contemporaneous media report, which included a statement from Ms Landsberry stating she did “not support this level of density” and felt “the need to record my name against it”. As noted above, Mr Badalati and Mr Hindi voted in favour of sending the amended planning proposal for gateway determination. The message suggests that Mr Uy was grateful for their assistance at that meeting.

Mr Badalati's evidence was that it was around this time – late July 2018 – that he and Mr Hindi received \$100,000 each in cash from Mr Uy.

Telephone calls made at the same time as the photographs were sent

Records of telephone calls between Mr Uy, Mr Badalati and Mr Hindi made on 25 July 2018 – the same day the photograph of the ironing board was sent to Mr Yuen – also support Mr Badalati's account. They indicate that there was contact between Mr Uy and Mr Badalati on the afternoon of 25 July 2018, as well as between Mr Hindi and Mr Badalati, and that all three of them were situated in the vicinity of Rhodes that afternoon.

Mr Uy's interest in the developments

Mr Uy had a motive to make the payments referred to by Mr Badalati. He had a personal interest in seeing the two developments (Treacy Street and Landmark Square) approved and, to his knowledge, both Mr Badalati and Mr Hindi would play a significant role in the process.

More particularly, Mr Uy had a significant financial interest in both developments. He or his company stood to derive a very large amount of money from them. Mr Uy had personally invested about \$400,000 in each development. In respect of Treacy Street, his company Gencorp was also the builder for the project and stood to derive significant fees for that work. Wensheng Liu also gave evidence that, as at October 2014, the projected profit from the Treacy Street development (that is, even prior to the modification approving the additional storeys) was about \$20 million, and that after deducting expenses, Mr Uy would receive about 10 per cent of that amount. As has also been noted, Mr Uy hoped that his company would be involved in building the residential part of the Landmark Square project. As at April 2016, Mr Uy hoped that he or Gencorp would derive about 20 per cent to 30 per cent of One Capital's net profit after tax from the Landmark Square project. Mr Uy had also received contributions from several investors who were expecting a return. He accepted he was doing his best to speed up the proposal.

The nature and quality of the relationship between Mr Badalati, Mr Hindi and Mr Uy

The relationship between Mr Uy, Mr Badalati and Mr Hindi has already been addressed at length in earlier chapters (in particular, see chapter 5).

The relationship between Mr Uy and Mr Badalati, commencing from at least 2007, was close. It included multiple trips to China together. The Commission accepts that, at least initially, Mr Hindi was not as close to Mr Uy. They knew each other from at least 2015 and spent time together at the signing ceremony at the restaurant in Chinatown on 18 March 2016, the trip to China in April 2016, the dinner at the Hindis' house on 16 May 2016 and the trip to Tangshan in June 2016.

Meetings outside HCC offices and away from HCC officers and the level of interest displayed in the Landmark Square development

The meetings conducted outside HCC offices and away from HCC officers have been addressed in earlier chapters (in particular, see chapters 3 and 4). Mr Hindi and Mr Badalati's meetings with Mr Uy in relation to the Landmark Square development, occurring outside council offices, included those on 18 May 2015, February 2016, twice in March 2016 and in late 2016 (with Adrian Liaw – see chapter 8) and late 2017 (with Mr Gheorghiu – see chapter 7). Mr Hindi also attended a meeting at Addisons lawyers with Mr Uy (see chapter 7).

As previously noted, the level of interest Mr Hindi and Mr Badalati showed in the Landmark Square development, not only at meetings with Mr Uy but also in meetings with HCC staff, were significant. In relation to Mr Hindi, this was particularly apparent in 2020, given his level of interest in the VPA and in assisting to draft correspondence to councillors regarding that issue (see chapter 8). Mrs Hindi also provided continued assistance to Ms Tang and Mr Uy which extended well beyond what a mere "acquaintance" would likely provide, at a time when her interest under the BAA had expired.

Mr Uy's credibility

The Commission does not accept the evidence of Mr Uy. It is satisfied that in respect of all significant issues, particularly those adverse to his interests, Mr Uy gave untruthful evidence.

The Commission accepts that Mr Uy's understanding of the English language is poor, albeit not as poor as he sought to make out. However, even allowing for any difficulty in answering questions through an interpreter, more often than not Mr Uy did not answer questions directly, did not answer them at all, made irrelevant speeches or failed to provide responsive answers to the questions asked. The Commission is satisfied that Mr Uy repeatedly claimed untruthfully he could not remember significant matters which, on any rational view of the

evidence, he must have remembered. One example was his failure to provide any reasonable or rational explanation of text messages composed and sent by him, including his text messages of 25 July 2018.

When Mr Uy sought to provide explanations, they were often implausible. An example was his explanation of the covert videos taken of Mr Badalati and Mr Sansom addressed in chapter 2. Another example was his explanation of the large number of cash withdrawals he had made in the period from 2015 to 2018, and the pictures of the money on his telephone from 2015. Mr Uy said he had a practice of accumulating large amounts of cash at home – sometimes even as much as \$50,000 or even \$200,000. He said it was his “personal preference and my practice” to keep money at home rather than in the bank. He also claimed that he sometimes withdrew \$10,000 to take to Hong Kong, or to give others to take there, because that is the limit on how much can be taken overseas. He claimed it was more cost effective than transferring money electronically. He said he paid his mortgage in cash and would also use the cash to support his family in China. He also claimed the money might have been used for his ceramics business in China. He said he took photographs of the money because he “liked it”.

The above are provided by way of examples. There are further examples addressed elsewhere in this report which demonstrate that Mr Uy was not a witness of truth.

Mr Uy was an unimpressive witness. In addition to the matters noted above, his demeanour was very poor. On occasions, he became agitated and purported to answer questions by asking questions. Counsel Assisting submitted it was open to the Commission to conclude that Mr Uy’s evidence should be considered unreliable unless it is adverse to his interests or is supported by documentary evidence. The Commission agrees with Counsel Assisting.

The Hindis’ cash resources

The Commission admitted evidence concerning the cash available to Mr and Mrs Hindi over the period from 2014 to 2020. There were a number of cash deposits into Mrs Hindi’s Sydney Realty account over that period, but ultimately those were explained by Mrs Hindi. There was a table of expenses in evidence relating to the Hindis’ development of a duplex at 19 Culburra Road, Miranda. Mrs Hindi accepted that her general practice – and, as she understood it, the general practice of Mr Hindi and her son Malcolm – was to record amounts spent on the development and method of payment in the table as they were actually paid. She said some of the expenses may have recorded anticipated costs rather than amounts actually paid, but the majority should represent amounts

actually paid. The table of expenses illustrates that between about 14 August 2018 and 21 May 2019, about \$166,000 in cash had been paid to various contractors. The cash payments could not be linked to any withdrawals from any of Mr or Mrs Hindi’s or Malcolm’s bank accounts.

The amount of \$166,000 approximates the amount of cash that Mr Badalati alleges had been paid to Mr Hindi by Mr Uy in 2015 and 2018. Mr and Mrs Hindi gave evidence that this cash was drawn from cash that they had available at home (from cash given for their 25th wedding anniversary, about \$12,000 to \$15,000, as well as a cash gift from Mrs Hindi’s parents, about \$35,000) and from cash loans from Mr Hindi’s family. Mr Hindi said that he obtained a cash loan of \$30,000 from one family member, a cash loan of \$30,000 from another family member, and a cash loan of \$20,000 from another family member. He said he had repaid one of the \$30,000 loans in cash but had not repaid the others “because they don’t want it. There’s not an urgent need for it.” Although the Commission has reservations as to the veracity of Mr and Mrs Hindi’s evidence in relation to the source of their cash, it is not satisfied to the requisite standard that the cash used for the Culburra Road development was cash provided by Mr Uy.

Nevertheless, the Commission is satisfied that Mr Badalati and Mr Hindi received the sum of \$100,000 from Mr Uy in respect of the Landmark Square development. It is also satisfied these payments were received in 2018.

The alleged payment of \$10,000 by Mr Uy to Mr Hindi in relation to the Gloucester Road Carpark development

On 22 June 2022, the Commission added a further allegation to the scope of the inquiry regarding an alleged \$10,000 paid by Mr Uy to Mr Hindi between 2011 and 2012 in relation to land bounded by Gloucester Road, Carrington Avenue and Garthons Lane, Hurstville, which was known as the Gloucester Road Carpark development.

Clifton Wong was a councillor at HCC from 1999 to 2012. He gave evidence in respect of this allegation in the public inquiry on 28 June 2022. The evidence is summarised below.

Mr Wong claimed that some time prior to October 2011, he discussed with Mr Uy that Wensheng Liu was interested in submitting a tender for the Gloucester Road Carpark development. Mr Uy asked Mr Wong to arrange a “coffee” with Mr Hindi. Mr Wong said he had previously introduced Mr Uy to Mr Hindi at a function in Hurstville. Mr Wong called Mr Hindi and Mr Hindi

proposed they meet at his house. Mr Uy and Mr Wong thereafter attended Mr Hindi's house. Mr Wong estimated this occurred sometime between November 2011 and July 2012. Although he could not say exactly when the meeting occurred, he said this was the likely time period given the decision to take the carpark to tender was made in November 2011, and the tender process was completed by July 2012.

Mr Wong's evidence was that after he and Mr Uy and Mr Hindi had sat down together, Mr Uy "without warning" produced an envelope and handed it to Mr Hindi. Mr Uy explained that Wensheng Liu was interested in submitting a tender for the Gloucester Road Carpark and he asked Mr Hindi not to assist other developers. Mr Wong could see inside the envelope, which was slightly open, and saw "green and brown notes". He estimated the envelope was around two-to-three centimetres thick. He said Mr Hindi took the money and said: "Thank you".

Both Mr Hindi and Mr Uy denied that this meeting ever took place, and both denied that Mr Uy ever gave any money to Mr Hindi in relation to the Gloucester Road Carpark or otherwise.

Mr Wong's evidence was that once he and Mr Uy left the house, he asked Mr Uy how much he paid Mr Hindi. Mr Uy said \$10,000. Mr Uy said to Mr Wong, "You took me here and you saw, you saw him take the money".

Mr Wong said he did not report the incident to anyone. He said he regretted not doing so. He said he was in shock and at that time he intended to serve his last term on council and did not want to get himself into trouble.

Mr Wong said that when HCC resolved in July 2012 to negotiate with another tenderer, Deicorp Pty Ltd, Mr Uy was upset. He explained to Mr Wong that because Deicorp was a "Middle Eastern company", Mr Hindi might have had something to do with the outcome and Mr Wong as well. Mr Uy suggested Mr Hindi and Mr Wong had a "deal" with Deicorp.

This was denied by Mr Hindi. As far as the Commission is aware there is no evidence Mr Hindi had any connections with Deicorp or did in fact assist it in any way in relation to the Gloucester Road Carpark development.

Mr Wong claimed that Mr Uy then asked him to recover the money from Mr Hindi. Mr Uy denied this occurred. However, there are contemporaneous text messages between Mr Wong and Mr Uy that support Mr Wong's account in this regard. They are set out in Table 1 (page 126).¹¹

¹¹ The texts were in Chinese. However, the English translations were confirmed to be substantially accurate by Mr Wong and Mr Uy in the public inquiry.

Mr Wong's evidence was that these text messages related to his attempts to recover the \$10,000 from Mr Hindi. He said he used strong language (for example, "you can hold me responsible for you") to convey to Mr Uy that he (Mr Wong) had not been "part of it". He said he felt a sense of obligation to recover the money because he arranged and attended the meeting and Mr Uy had made a point of saying that Mr Wong had taken him to the meeting. When he said he felt "responsible too as the introducing person" he was not referring to the initial introduction at the Chinese function but his role in arranging the meeting at Mr Hindi's house. He felt he had been "set up" and that Mr Uy had asked him to come to the meeting so that there was a witness present. The Commission understood Mr Wong to be suggesting that Mr Uy wanted Mr Wong present so that the events could be used against Mr Hindi or Mr Wong in the future, if necessary.

Mr Wong said that, ultimately, Mr Uy told him not to bother recovering the money. That is what he understood Mr Uy to be referring to when he said, "don't get those books for now", and that he thought Mr Uy used the word "books" so as not to appear too obvious. He said his own reference to the "tea" was also a reference to the money. He had used "code" because Mr Uy had done so. He said that while he did ultimately speak to Mr Hindi, he did not recover the money.

Mr Uy was asked to explain the text messages. He was unable to provide any credible explanation. At times, he said he could not remember what the texts concerned. Given the language used by both parties and the fact it seems to have been a significant event for Mr Uy and Mr Wong – as reflected in Mr Uy's message that "he has made it so miserable for me, causing me huge loss" – it is highly unlikely Mr Uy could not recall the meaning of the text messages or the circumstances which gave rise to sending and receiving them. The Commission does not accept his evidence.

Mr Uy denied that the "he" or "him" being referred to was Mr Hindi. He claimed it could have been any number of business associates Mr Wong had introduced him to. He could not identify which associate he was referring to in the messages.

Mr Uy also denied that "books" referred to money. He claimed it was a reference to magazines he had purchased in Hong Kong, which he sometimes lent to friends, and that he was telling Mr Wong not to bother recovering the magazines. However, he could not identify the person he had lent magazines to on this occasion. Mr Uy's account is implausible in circumstances where Mr Uy had informed Mr Wong – only 17 minutes earlier – that there was no need to "chase him up" because "Brother Ping has lent to me" (clearly referring to money).

Table 1: Text messages sent between Mr Uy and Mr Wong in October 2012

Date	Sender	Contents of text message.
17-10-12	Mr Uy to Mr Wong	Big brother, please help and see him as soon as possible. I need to pay my tax.
17-10-12	Mr Wong to Mr Uy	I have left voice message and sent message. Am waiting for him to reply. Must chase it up. You can hold me responsible for you!
17-10-12	Mr Uy to Mr Wong	He has made it so miserable for me, causing me huge loss. Thank you.
17-10-22	Mr Wong to Mr Uy	I am responsible too as the introducing person. This is another big learning of life for me! Trusted the wrong person!
17-10-12	Mr Uy to Mr Wong	So far, he is still not answering my call or replying to my message. I will continue to contact him tomorrow. Sorry!
17-10-12	Mr Uy to Mr Wong	Thank you for your help. Waiting to pay tax.
17-10-12	Mr Wong to Mr Uy	Please do not say thank you. This is not help. This is what I owe you as a matter of moral principle. I feel so guilty.
17-10-12	Mr Uy to Mr Wong	Do not say that. I understand. All because tax needs to be paid urgently. Will wait for your news tomorrow.
18-10-12	Mr Wong to Mr Uy	Have called him many times this morning but he's not picking up still. I will continue to call until I can get hold of him.
18-10-12	Mr Uy to Mr Wong	Big brother, no need to chase him up anymore. Brother Ping has lent to me. Let's think about it later. Thank you. Sorry to have troubled.
18-10-12	Mr Wong to Mr Uy	Can't just leave it like this. He has already betrayed us. Must pressure him, otherwise he will go on and harm other people.
18-10-12	Mr Uy to Mr Wong	His issue is unrelated to me. Anyway, Brother Ping has lent to me this morning. Whether he will harm other people or not is not a matter for me. Let's think about it only later.
18-10-12	Mr Wong to Mr Uy	If you can't do your work then refund the money. That's the rule.
18-10-12	Mr Uy to Mr Wong	Anyway, listen to me. Don't get those books for now. Don't chase him up for those books. I need to go to the hospital to get the report. What money?
19-10-12	Mr Wong to Mr Uy	Big brother, the Xihu Longjing Tea you told me to buy for you will come in next Thursday. Let's meet up one day. Thank you.
19-10-12	Mr Uy to Mr Wong	Thank you, but I have already told you there is no need for them now. I will handle it in future myself. Thank you for your help.

and Mr Wong had replied seven minutes earlier that "if you can't do your work then refund the money" (again, clearly referring to money). The Commission rejects Mr Uy's evidence.

Mr Wong was cross-examined on these text messages a few days later, on 4 July 2022. Unfortunately, Mr Wong did not complete his evidence at the public enquiry. He died in tragic and unexpected circumstances. As a result, the Commission did not have an opportunity to examine Mr Wong in relation to certain materials that had recently come to light. Those materials may have

been relevant to Mr Wong's credibility. For these reasons, it is unnecessary for the Commission to express any view as to the veracity of the evidence Mr Wong gave on 4 July 2022. However, the Commission notes that when Mr Wong first attended a compulsory examination on 4 November 2021 (around seven months before the evidence he gave at the public inquiry) he claimed he could not recall the meaning of the text messages. The Commission is not satisfied to the requisite standard that Mr Uy paid Mr Hindi the sum of \$10,000 in respect of the Gloucester Road Carpark development.

Corrupt conduct

Money received by Mr Badalati

Mr Badalati accepted the sum of \$70,000 from Mr Uy in 2015 in relation to the Treacy Street development and \$100,000 in 2018 in relation to the Landmark Square development – in each case as an inducement or reward to use, or for having used, his position as an HCC and later GRC councillor to favour the interests of Mr Uy and the proponent of the Treacy Street and Landmark Square developments.

Mr Badalati's conduct was corrupt conduct for the purpose of s 8 of the ICAC Act, as it involved conduct that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of his public official functions – as defined by s 8(1)(a) – and a breach of public trust – as defined by (s 8(1)(c).

For the purpose of s 9(1)(a) of the ICAC Act, it is relevant to consider again s 249B of the Crimes Act. As defined by s 249A(e) of the Crimes Act, Mr Badalati was the "agent" and HCC was the "principal". The benefits received were either a "reward" for past conduct, or an "inducement" for Mr Badalati to favour the interests of the proponents and Mr Uy or for promoting the proponents and Mr Uy in dealing with HCC staff – as per s 249B(1)(a)). Further, the benefits would "tend to influence" Mr Badalati to show favour to the proponents and Mr Uy when voting on the developments or dealing with HCC staff – as per s 249B(1)(b). Mr Badalati "corruptly" received the benefits in circumstances where he knew the two developments were before council at the time and that Wensheng Liu, Yuqing Liu and Mr Uy were involved in both developments. Unsurprisingly, the cash received by Mr Badalati was not declared.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that if the facts as found were to be proved on admissible evidence to the criminal standard of proof, and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Badalati committed offences against s 249B(1) of the Crimes Act of corruptly receiving benefits as an inducement or reward for showing favour to the proponents of the developments and Mr Uy in relation to the affairs or business of HCC. Mr Badalati's conduct therefore comes within s 9(1)(a) of the ICAC Act.

The Commission is also satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence, including evidence of further instances of corrupt conduct addressed throughout this report, to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably

conclude that Mr Badalati committed the common law offence of misconduct in public office.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that if the facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably find that Mr Badalati had committed offences under s 249B(1) of the Crimes Act of corruptly receiving benefits as an inducement or reward for showing favour to the proponents and Mr Uy, in relation to the affairs or business of HCC or of misconduct in public office. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that the conduct is serious corrupt conduct. The receipt of substantial sums of cash by a public official which were intended to influence the outcome of development proposals and development applications is self-evidently serious. As is the proximity of the payments to decisions affecting the developments and the scale of the developments, both in terms of the potential benefit to the developers and the impact on the local community.

Money received by Mr Hindi

Mr Hindi accepted the sums of approximately \$70,000 from Mr Uy in 2015 in relation to the Treacy Street development and \$100,000 in 2018 in relation to the Landmark Square development – in each case as an inducement or reward to use, or for having used, his position as an HCC and later GRC councillor to favour the interests of Mr Uy and of the proponent of the Treacy Street and Landmark Square developments.

Mr Hindi's conduct was corrupt conduct for the purpose of s 8 of the ICAC Act, as it involved conduct that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of his public official functions – as per s 8(1)(a) – and a breach of public trust – as per s 8(1)(c). It was also corrupt conduct because it might constitute or involve obtaining secret commissions – as per s 8(2)(d).

For the purpose of s 9(1)(a) of the ICAC Act, it is relevant to consider again s 249B of the Crimes Act. As defined by s 249A(e) of the Crimes Act, Mr Hindi was the "agent" and HCC was the "principal". The benefits received were either a "reward" for past conduct, or an "inducement" for Mr Hindi to favour the interests of the proponents and Mr Uy or promoting the proponents and Mr Uy in dealing with HCC staff – as per s 249B(1)(a). Further, the benefits would "tend to influence" Mr Hindi to show favour to the proponents and Mr Uy when voting on the developments

or dealing with HCC staff – as per s 249B(1)(b). Mr Hindi “corruptly” received the benefits in circumstances where he knew the two developments were before HCC at the time and that Wensheng Liu, Yuqing Liu and Mr Uy were involved in those developments. Unsurprisingly, the cash received by Mr Hindi was not declared.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that if the facts as found were to be proved on admissible evidence to the criminal standard of proof, and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Hindi committed offences against s 249B(1) of the Crimes Act of corruptly receiving benefits as an inducement or reward for showing favour to the proponents of the developments and Mr Uy in relation to the affairs or business of HCC. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

The Commission is also satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence – including evidence of further instances of corrupt conduct addressed throughout this report – to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Hindi committed the common law offence of misconduct in public office.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that if the facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably find that Mr Hindi had committed offences against s 249B(1) of the Crimes Act of corruptly receiving benefits as an inducement or reward for showing favour to the proponents and Mr Uy, in relation to the affairs or business of HCC or of misconduct in public office. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that the conduct was serious corrupt conduct and self-evidently so.

Money paid by Mr Uy

The Commission is satisfied that Mr Uy paid the sum of \$70,000 to Mr Badalati in 2015 in relation to the Treacy Street development and \$100,000 in 2018 in relation to the Landmark Square development – in each case as an inducement or reward to use, or for having used, his position as an HCC and later GRC councillor to favour the interests of Mr Uy and the proponents of the Treacy Street and Landmark Square developments.

The Commission is satisfied that Mr Uy paid the sum of approximately \$70,000 to Mr Hindi in 2015 in relation to the Treacy Street development and \$100,000 in 2018 in relation to the Landmark Square development – in each case as an inducement or reward to use, or for having used, his position as an HCC and later GRC councillor to favour the interests of Mr Uy and the proponents of the Treacy Street and Landmark Square developments.

In each case, this conduct on the part of Mr Uy was corrupt conduct for the purpose of s 8 of the ICAC Act, as it involved conduct that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by a public official – as per s 8(1)(a) – and which could also involve offering and giving secret commissions – as per s 8(2)(b).

For the purpose of s 9(1)(a) of the ICAC Act, it is relevant to consider s 249B of the Crimes Act. The benefits were either a “reward” for Mr Badalati and Mr Hindi having voted in favour of the developments in the past (in relation to the Treacy Street development), or an “inducement” for them to vote favourably in the future or take other action such as engaging with HCC staff in respect of both the Treacy Street and Landmark Square developments – as per s 249B(2)(a). Alternatively, the receipt of those benefits would “tend to influence” Mr Badalati and Mr Hindi to show favour to Mr Uy and the proponents when it came time to vote in relation to the two developments or in dealing with HCC staff – as per s 249B(2)(b).

In each case, the Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that if the facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Uy committed offences under s 249B(2) of the Crimes Act of corruptly giving or offering benefits to Mr Badalati and Mr Hindi as an inducement or reward to show favour in relation to the Treacy Street development and Landmark Square planning proposal in which Mr Uy had interests, in relation to the affairs or business of HCC. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied in each case that if the facts as found were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Uy had committed offences under s 249B(2) of the Crimes Act of corruptly giving or offering benefits to Mr Badalati and Mr Hindi as an inducement or reward to show favour to Mr Uy and the proponents of the Treacy Street development and Landmark Square

planning proposal, in which Mr Uy and the proponents had interests, in relation to the affairs or business of HCC. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that in each case the conduct is serious corrupt conduct and self-evidently so.

Section 74A(2) statements

The Commission is satisfied that, in respect of the matters covered in chapters 4 and 5, Mr Badalati, Mr Hindi and Mr Uy are “affected” persons for the purposes of s 74A(2) of the ICAC Act.

Vincenzo Badalati

As previously noted, Mr Badalati’s evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to a prosecution for an offence under the ICAC Act. Relevantly, the evidence that Mr Badalati may have committed the criminal offences referred to above came from the evidence of Mr Badalati, including evidence explaining cash deposits into various accounts. Without that evidence there is insufficient admissible evidence against Mr Badalati.

The Commission is not of the opinion that, in all the circumstances, consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Badalati for offences against s 249B(1) of the Crimes Act, or the offence of misconduct in public office, in relation to receiving the sums of \$70,000 and \$100,000 from Mr Uy.

Constantine Hindi

Mr Hindi’s evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that there is other admissible evidence that would be available, including potentially the evidence of Mr Badalati and the evidence addressed throughout this report which supports his evidence. Any question concerning Mr Badalati’s role in any criminal prosecution is a matter for the DPP and Mr Badalati.

The Commission is of the opinion that, in all the circumstances, consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Hindi for offences against s 249B(1) of the Crimes Act, and the offence of misconduct in public office, in relation to him receiving the sums of approximately \$70,000 and \$100,000 from Mr Uy.

As has already been noted, the object of the common law offence of misconduct in public office is to prevent public officers – in this case councillors – from exercising their power in a corrupt or partial manner.¹² The elements of the offence are addressed in chapter 5.

*Maitland v R; Macdonald v R*¹³ is a recent decision of the Court of Criminal Appeal addressing the offence of misconduct in public office. For present purposes, the relevant charges consisted of two counts of misconduct in public office. The first count alleged that a former minister of the Crown engaged in wilful misconduct by granting a mining company consent to apply for an exploration licence without reasonable cause or justification. The second count alleged that the same minister engaged in wilful misconduct by granting an exploration licence to the same mining company without reasonable cause or justification. Underlying both counts was an allegation that the minister had illegitimately exercised his powers to benefit the mining company and one of its directors. The court determined that the minister could only have been properly convicted if the prosecution proved that the power would not have been exercised except for the alleged illegitimate purpose of conferring a benefit on the director and the mining company.

Reference has already been made to Mr Hindi’s submission to the effect that irrespective of any alleged benefits said to have been received by him he would have exercised his vote in favour of the Treacy Street and Landmark Square developments anyway. However, in this investigation the gravamen of the offending conduct was that Mr Badalati and Mr Hindi received benefits – including the sum of \$170,000 in the case of Mr Badalati and approximately \$170,000 in the case of Mr Hindi – as an inducement or reward for exercising their powers in a way which would favour the proponents and Mr Uy. The way in which Mr Badalati and Mr Hindi ultimately exercised their powers is of less significance than the corrupt receipt of benefits by both men. It would be absurd if a public official could take \$170,000 to exercise his or her public official functions in a particular way and not have it regarded as misconduct in public office simply because they would have exercised their official functions in the same way whether or not they received corrupt payments. The Commission is satisfied that the Court of Criminal Appeal did not intend to suggest otherwise. The Commission is also satisfied that as a councillor, Mr Hindi’s misconduct was sufficiently connected to his office. It was only because of his position as a councillor, who would likely be involved in voting in respect of the Treacy Street and Landmark Square developments, that he was paid.

¹² *Maitland v R; Macdonald v R* [2019] NSWCCA 32 at [68].

¹³ *Maitland v R; Macdonald v R* [2019] NSWCCA 32.



Ching Wah (Philip) Uy

Mr Uy's evidence was the subject of a declaration under s 38 of the ICAC Act and cannot be used against him in criminal proceedings, except in relation to prosecution for an offence under the ICAC Act. However, the Commission is satisfied that other admissible evidence would be available, including telephone records, credit card records, text messages and potentially the evidence of Mr Badalati.

The Commission is of the opinion that, in all the circumstances, consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Uy for offences against s 249B(2) of the Crimes Act in relation to paying the sum of \$70,000 to Mr Badalati and the sum of approximately \$70,000 to Mr Hindi in relation to the Treacy Street development. The Commission is of the same opinion in relation to Mr Uy's payments of \$100,000 each to Mr Badalati and Mr Hindi in respect of the Landmark Square development.

The Commission is also of the opinion that, in all the circumstances, consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Uy for an offence of aiding, abetting, counselling and procuring the offences of misconduct in public office committed by Mr Badalati and Mr Hindi, in relation to their corrupt involvement in the Treacy Street and Landmark Square developments, including their receipt of the sums of approximately \$70,000 and \$100,000 in the case of Mr Hindi and \$70,000 and \$100,000 in the case of Mr Badalati together with other benefits provided by Mr Uy.

Chapter 7: Conduct while HCC was in administration, May 2016 to September 2017

This chapter examines interactions involving, and events attended by, Mr Badalati and Mr Hindi in relation to the Landmark Square development during the period that HCC was in administration, between 12 May 2016 and 9 September 2017.

12 May 2016: HCC is in administration

As set out in chapter 1, when HCC was dissolved on 12 May 2016, Mr Badalati, Mr Hindi and Mr Sansom ceased to be councillors. Mr Sansom was never re-elected to council. Insofar as Mr Sansom is concerned, this is where the investigation into his conduct ends. Mr Badalati and Mr Hindi were elected to the newly formed GRC in September 2017 and continued to make decisions on both the Treacy Street and Landmark Square developments.

Xinfeng and Variable Solutions

In the meantime, Mr Hindi was exploring a new business venture with Yuqing Liu, involving the possible building of a waste-to-energy plant in NSW, similar to Yuqing Liu's plant in Tangshan, China. By then, Yuqing Liu had hosted Mr and Mrs Hindi in Tangshan in April 2016 and had agreed to invest many millions of dollars in the Treacy Street and Landmark Square developments.

A dinner was held at the Hindis' house on 16 May 2016, attended by Mr and Mrs Badalati, Wensheng Liu, Yuqing Liu and a female friend, Mr Uy and Gensheng Yu. During the public inquiry, those attendees called to give evidence denied that this meeting related to the Landmark Square development. They claimed the purpose was to thank Yuqing Liu for his hospitality in Tangshan, to discuss the waste-to-energy project, and to meet Yuqing Liu's girlfriend.

On 22 May 2016, Mr Hindi registered a company called Variable Solutions. Around the same time, Mr Hindi and Yuqing Liu signed a letter of intent in Sydney regarding

the establishment of a waste-to-energy plant in NSW. Mr Hindi signed on behalf of Variable Solutions and Yuqing Liu signed on behalf of his company, Xinfeng. Xinfeng agreed to invest \$450 million for the construction of the project, with the total investment to be \$1.5 billion over five years. Variable Solutions agreed to "represent the Australian government" to: provide support and service for the project (including investigating the project and providing reports for approvals from government); assist Xinfeng to register a company, open a bank account, obtain approval from the Foreign Investment Review Board and apply for visas; and assist Xinfeng to enter relevant agreements with the government and utilities companies.

Mr Hindi prepared an estimate of fees for Xinfeng for work on the project. He told the Commission he could not recall whether he issued it to Xinfeng, but accepted he probably did. He said that it represented the fees for an expert as well as for himself. His portion was only about 10 per cent of the total \$795,000 to \$905,000 estimated. Mr Hindi claimed he did some research for the project. Mrs Hindi also took Yuqing Liu to visit a potential site in St Marys in July 2016. However, Mr Hindi denied ever receiving any payment from Yuqing Liu or Xinfeng for that work. There is no evidence that such a payment was made.

In June 2016, Mr and Mrs Hindi travelled to Tangshan again for another signing ceremony. This time, it was so Mr Hindi and Yuqing Liu could sign an agreement relating to the waste-to-energy plant in NSW. The agreement was similar to the one signed in Sydney around May 2016 between Variable Solutions and Xinfeng. Wensheng Liu, Ms Tang, Mr Uy and Mr Yan attended this trip, as did a member of the NSW Parliament. There is no suggestion that the member engaged in improper conduct.

Wensheng Liu claimed that although he was not involved in the waste-to-energy project, he travelled to China to attend meetings concerning obtaining government

approval for the transfer of money in relation to the Treacy Street and Landmark Square developments. It seems Mr Uy had some involvement in the waste-to-energy project: Yuqing Liu had promised Mr Uy that he could be the general manager of the project if it went ahead.

Mr and Mrs Hindi travelled business class on Air China between Sydney and Beijing. Although the Air China invoice was issued to Xinfeng, it was Wensheng Liu's company, GR Capital Group, that initially paid for the tickets. Wensheng Liu gave evidence that Xinfeng later reimbursed him for this amount. There is no documentary record of this. Mr Yan said he was aware that there was an arrangement between Yuqing Liu and Wensheng Liu whereby Yuqing Liu would reimburse Wensheng Liu in China for certain business expenses, but he was not specific as to what sorts of expenses that involved.

Mrs Hindi told the Commission that she discovered the flights had been paid for and then paid cash to Mr Uy to reimburse the costs prior to taking the trip. Mr Uy gave the same account. There is no documentary record of this. Mr Yan said that if he were aware of the reimbursement, he would have recorded it in the GR Capital Accounts, but there is no such record. He said it was possible it was reimbursed to Mr Uy or Ms Tang, but he was not aware of it. Ms Tang gave evidence she was not aware of any reimbursement.

Counsel Assisting submitted that it was curious that Mrs Hindi would take steps to reimburse Mr Uy for the flights, given at this time Mr Hindi was no longer a councillor and so there was no impropriety in a third party paying for their flights. Counsel Assisting submitted that it was also curious that, according to Mrs Hindi's evidence, she asked Ms Tang to issue a receipt for this payment – allegedly so that Mr Hindi might claim it as a business expense – but never received one. Ms Tang told the Commission that Mrs Hindi also asked her in November 2021 (around the time the Commission was conducting compulsory examinations in this investigation) if Ms Tang had any receipts for the trip. Counsel Assisting submitted that if Mrs Hindi had been the one to make payments, Mrs Hindi would have the receipts, not Ms Tang.

It was submitted on behalf of Mr Hindi that given he was proposing a "multimillion-dollar business venture with a significantly wealthy businessman", Mr Hindi's "motivation for making reimbursement was one of 'appearance' and 'status' in that context". It was submitted that, "in simple terms", Mr Hindi "did not wish to be regarded as 'cheap' or not being a man of substance with the means of proceeding with the waste-to-energy project" and that "the attempt at reimbursement was a matter of show".

It is ultimately unnecessary for the Commission to resolve the question of payment for Mr and Mrs Hindi's business class flights to China in June 2016. It is unclear whether GR Capital Group or Xinfeng paid for the flights, and whether Mrs Hindi reimbursed Mr Uy for those flights. There is insufficient evidence to find that Mrs Hindi did not pay for the flights.

After this trip, a dinner was held on 21 July 2016 at Yuqing Liu's house in Sydney. The dinner was attended by Mr Badalati, Mr and Mrs Hindi and Wensheng Liu. Mr Hindi told the Commission that this dinner also related to the waste-to-energy project. Wensheng Liu did not dispute this, although he could not recall the reason for the dinner. Another dinner was held in August 2016 at the Hindis' house, attended by Yuqing Liu. Mr Hindi gave evidence that this related to the waste-to-energy project. While it would be surprising if neither the Treacy Street nor Landmark Square developments were discussed at these dinners, there is ultimately no evidence that they were.

The waste-to-energy project was short lived. By 17 November 2017, Mr Hindi had applied for deregistration of Variable Solutions. It was deregistered on 24 January 2018. Although Mr Hindi claimed he had done some work on the project, he denied that he was ever paid anything by Yuqing Liu or Xinfeng and there is no evidence to the contrary.

It was submitted by Counsel Assisting that these events demonstrate that while Mr Badalati and Mr Hindi were not serving as councillors, they continued to maintain a relationship with Wensheng Liu, Yuqing Liu and Mr Uy. It was submitted by Mr Hindi that Counsel Assisting's submission had not "identified the type of relationship and what flows from the suggestion that Mr Hindi, Yuqing, [sic] Liu, Wensheng [sic] or Mr Uy were seeking to maintain any particular type of relationship of association". The Commission does not accept Mr Hindi's submission. Mr Hindi's continued interactions with Wensheng Liu, Yuqing Liu and Mr Uy at the signing ceremonies and dinners from May 2016 to August 2016 are relevant to an understanding of the nature of the relationship. It was the same relationship which existed when Mr Hindi was a councillor of HCC and exercised his public official functions to favour the proponents of the Treacy Street development, the Landmark Square development and Mr Uy.

Further agreements signed by Wensheng Liu and Yuqing Liu

On 23 May 2016, Wensheng Liu and Yuqing Liu signed two further agreements. The first was the Xinfeng The One Treacy Project Investment Agreement. Under the Agreement, Yuqing Liu was to invest \$10 million for the purposes of construction. It recorded that, as at 12 May 2016, Wensheng Liu had expended \$18,393,731.19 on the project. During the public inquiry, Wensheng Liu confirmed that this was roughly correct, although the money was partly from Mr Uy. The Agreement also provided that Wensheng Liu would assist Yuqing Liu and Gensheng Yu to apply for a permanent visa.

On the same day, Yuqing Liu and Wensheng Liu also signed the Xinfeng Landmark Square Project Investment Agreement. It provided that both parties would enter into a joint venture agreement for the project, with Yuqing Liu holding 60 per cent and Wensheng Liu holding 40 per cent. It provided that Yuqing Liu was to invest \$80 million into the joint venture.

On the same day, Yuqing Liu and Wensheng Liu signed a further agreement, styled an “Internal Confidentiality Agreement”. This agreement records that the “true purpose” of signing the above two agreements was as follows:

- 1.1 To assist [Yuqing Liu] to apply visa to immigrate to Australia.
- 1.2 To transfer Tangshan Xinfeng Company's asset to Australia.
- 1.3 To deal with financial department of Tangshan Xinfeng Company
- 1.4 To deal with other related Chinese Authority.

This third agreement provided for the transfer of \$10 million into Wensheng Liu's or Mr Uy's account, which Wensheng Liu said was intended to be a further \$10 million, on top of the \$10 million provided for in the Treacy Street investment agreement. Upon receipt, Wensheng Liu or Mr Uy were to contribute the fund to the Treacy Street development. Once that was completed, the amount was to be transferred into Yuqing Liu's personal account in Australia or that of his girlfriend, Huinan Zhao. It also provided for Wensheng Liu to assist Huinan Zhao to obtain a visa.

This document suggests the real purpose of Yuqing Liu entering into the agreements regarding the Treacy Street and Landmark Square developments was to assist him and his girlfriend to migrate to Australia. However, Wensheng Liu's evidence was that at the time he still believed the

agreements to be genuine ones. In the NSW Supreme Court matter *Xinfeng Australia International Investment Pty Ltd v GR Capital Group Pty Ltd* (2019)¹⁴, Ward CJ in Eq said that the Internal Confidentiality Agreement was previously unseen by Yuqing Liu and its execution would apparently be denied by him. In the absence of evidence from Yuqing Liu, the issue cannot be resolved.

Wensheng Liu's evidence was that Yuqing Liu paid \$10 million into Wensheng Liu's company account or accounts in instalments over the course of 2016. That is consistent with findings made in *Xinfeng Australia International Investment Pty Ltd v GR Capital Group Pty Ltd* (2021)¹⁵.

Yuqing Liu never invested the outstanding amounts he had agreed to invest in the Treacy Street or Landmark Square developments under the above agreements. After 2016 he had little involvement in either development and there is no evidence of further interactions with Mr Hindi or Mr Badalati.

On 9 August 2018, Yuqing Liu's company Xinfeng AU commenced proceedings against One Capital, GR Capital Group and Wensheng Liu to recover the \$10 million payment. Consent judgment was entered in Yuqing Liu's favour for the \$10 million amount. One Capital and GR Capital Group went into administration in October 2018. Wensheng Liu gave evidence that the \$10 million was never repaid.

The Landmark Square planning proposal stalls

On 19 May 2016, the Landmark Square planning proposal was referred to the DPE for gateway determination. On 4 August 2016, the DPE returned the planning proposal to council (while it was in administration) suggesting that it consider density, contributions, road and traffic network matters and whether the proposal should be resubmitted for gateway determination, noting the “proposed density increases are disproportionately distributed across the site”.

On 24 August 2016, council staff met with the applicant's representatives to discuss the DPE's position and it was agreed the applicant would provide a response to the issues raised by the DPE. On 28 September 2016 and 17 October 2016, One Capital provided further

¹⁴ *Xinfeng Australia International Investment Pty Ltd v GR Capital Group Pty Ltd* [2019] NSWSC 1547 at 22.

¹⁵ *Xinfeng Australia International Investment Pty Ltd v GR Capital Group Pty Ltd* [2019] NSWSC 1547 at 22.

information on the planning proposal. On 20 March 2017, it lodged a revised master plan. In early June 2017, it lodged a revised planning proposal. A report on that proposal was prepared by council staff for the purposes of a meeting of the Independent Hearing and Assessment Panel, to take place on 20 July 2017. As Ms McMahon, manager of strategic planning at council and the author of that report, explained in her statement to the Commission, by this time she supported the amended planning proposal because the Design Review Panel was generally in support of the heights, FSR and overall design, the layout of the buildings was largely in line with the advice provided by GMU back in 2016, and the proponent had agreed to lodge a DCP and had offered to enter into a planning agreement.

Meanwhile, in August 2016 a document entitled “Confidential and Not Investment Advice – Not to be used except by [Xinfeng AU] – Potential issues with the Development Site” was prepared, referring to the Landmark Square site. It was dated 2 August 2016. It outlined several issues with the Landmark Square development, including the uncertainty around when the development would commence or complete. The Commission located this document at Mr Hindi’s house during the execution of search warrants in 2020. During the public inquiry, Mr Hindi could not explain why it was found there.

It was submitted on behalf of Mr Hindi that there is no evidence upon which the Commission could make a finding about the circumstances or timing of Mr Hindi’s possession of the Investment Advice document dated 2 August 2016.

The Commission agrees. The Commission is not satisfied that any inference about the nature of Mr Hindi’s relationship with Wensheng Liu or Mr Uy in relation to the Landmark Square planning proposal can be drawn from the fact that he was in possession of the document. There is no evidence as to when or from whom he obtained it. Nevertheless, it is another indicator that Mr Hindi maintained an interest in the Landmark Square development and its progress.

15 June 2017: meeting at Addisons

By June 2017, One Capital had become increasingly concerned about the delays with the Landmark Square planning proposal. It decided to seek advice from Addisons lawyers.

Greg Hynd gave evidence at the public inquiry. He was then a director of Foresight Management Pty Ltd, which had been engaged to provide due diligence, transactional advice and management regarding the potential purchase of the Landmark Square site from One Capital. In late

2016, One Capital and Wensheng Liu had entered an agreement with Prime Hurstville Pty Ltd (“Prime”) – a subsidiary of Aoyuan Property Group (Australia) Pty Ltd (“Aoyuan”) – under which One Capital appointed Prime as its nominee to exercise the options in respect of Landmark Square. Under that agreement, the nomination fee payable by Prime depended upon the FSR ultimately adopted in the LEP. If the FSR was less than 5:1, the fee was about \$47.4 million. If the FSR was equal to or greater than 5:1, an additional amount was payable.

Mr Hynd said that around the time of this meeting there had been “difficulties in trying to get the thing moving forward”.

Addisons is a law firm based in Sydney. Mrs Hindi was responsible for introducing One Capital to Addisons. Her son, Malcolm Hindi, obtained the recommendation for “a good planning lawyer” from his law school professor at university. Mrs Hindi made the first approach to Addisons on behalf of One Capital.

On 15 June 2017, a meeting was held at Addisons’ office in the Sydney CBD. An Addisons file note recorded that the attendees were Mr Gheorghiu, Mrs Hindi, Mr Hynd, Ms Tang and Mr Uy. The purpose of the meeting was for One Capital to obtain advice on the Landmark Square planning proposal, and the issues discussed included the VPA offer and land ownership.

During the public inquiry, Mrs Hindi said that Mr Uy or Ms Tang asked her to attend the meeting. Ms Tang gave evidence that she did not invite Mrs Hindi. She assumed Mr Uy did so. Ms Tang could not explain why Mrs Hindi was there, and agreed it was not necessary for her to attend. In a statement to the Commission, the partner from Addisons who attended the meeting gave evidence that Mrs Hindi did not have an “active role” in the meeting, although he believed she was an “advisor, consultant or client contact”.

Mrs Hindi claimed that she attended the meeting simply because she had introduced One Capital to Addisons. Mr Uy’s evidence on this topic was similar.

The Commission does not accept the explanation given by Mrs Hindi and Mr Uy. The Commission also does not accept Mrs Hindi’s submission that Mrs Hindi did not decline attending these meetings because, given their relationship at the time, she had no particular reason to decline. In circumstances where Mrs Hindi had no personal relationship with the lawyers in attendance and, as Mrs Hindi accepted, Ms Tang and Mr Gheorghiu were more than capable of introducing those in the room and explaining what advice they were seeking from Addisons, the Commission does not accept that Mrs Hindi attended these meetings because she was the introducer.

She attended because she had a financial interest in progressing the development. She was, and would remain, a conduit for information to and from Mr Hindi. This is addressed further below.

There was evidence that Mr Hindi also attended the meeting at Addisons. Text messages between Mr and Mrs Hindi on 15 June 2017, just prior to the meeting, situate him in the Addisons building in the Sydney CBD. Those messages demonstrate Mrs Hindi was uncertain whether he should attend. Mrs Hindi texted Mr Hindi, "Do you think I should come in or no?", which was followed up by another text three minutes later, "...I meant to say if u should come in".

Mr Gheorghiu and Mr Hynd gave evidence that Mr Hindi did attend. Mr Gheorghiu told the Commission he thought Mr Hindi stayed for the entire meeting, although he could not recall what Mr Hindi said. Mr Hynd's evidence is discussed below.

The fact of Mr Hindi's attendance was not disputed by Mr Hindi or Mrs Hindi. There is a question as to whether Mr Hindi stayed for the entire meeting. Mrs Hindi thought he stayed for about five or 10 minutes. She could not recall why he left but said it was possible someone suggested he should not be there. She could not recall what he said. Mrs Hindi said she told Mr Hindi about the meeting and asked him to attend. When asked why she invited him, Mrs Hindi said to "sit there and listen" because he had an interest in a hotel being built in the area.

During the public inquiry, Mr Hindi said he was invited to the meeting by either Mrs Hindi or Mr Uy. He did not deny that he was asked to leave the meeting because someone was concerned about a former councillor attending, but he could not recall either way. He denied he was at the meeting to provide any advice on the proposal based on his experience as a councillor who had deliberated on the proposal, or otherwise. Mr Hindi said that he came to the meeting so that he "could get to know Addison for future reference". He said he was involved in property development and that he "might want to use them for myself and if someone's arranging a meeting, might as well go". He also said, "we went there for 10 minutes" and that someone had told him Addisons had done work on Barangaroo, and he suggested that was a sufficient indication of their expertise. Mr Hindi also gave inconsistent evidence that the sort of property development he was involved in was "knock the house down and build another one" and that "you don't need a solicitor" for that.

Mr Uy also gave evidence about Mr Hindi's attendance at the meeting. He said he invited Mr Hindi because "as a councillor he should know about the rezoning, and

he should know whether that would be beneficial to Hurstville". The Commission does not accept Mr Uy's evidence or the evidence of Mr Hindi. Mr Hindi was no longer a councillor at the time. The point of the meeting was not to explain the benefits of the development, which had already been explained to Mr Hindi many times when he was at council, but to seek advice from him on difficulties being faced in progressing the planning proposal with council.

In his statement, Mr Hynd said that Mr Hindi spoke at the meeting about previously being involved with the Landmark Square planning proposal when on council. During the public inquiry, Mr Hynd said Mr Hindi was "effectively providing advice in the meeting ... talking about strategy with planning, planning matters". Mr Hynd was challenged on his recollection in cross-examination by senior counsel for Mr Hindi. Mr Hynd said that while he could not remember the detail of the discussion, he did remember what was set out in his statement. He was confident Mr Hindi had been present for the discussion of the Landmark Square development, and said it was "unlikely" his recollection was incorrect, albeit he agreed with the proposition that was put to him by senior counsel for Mr Hindi "on a technical level", namely, that he could not "be certain that the discussion about Landmark that [he] witnessed was in Mr Hindi's presence".

It was submitted on behalf of Mr Hindi that Mr Hindi's name would have appeared on the Addisons file note of the meeting if he had taken an active or significant role at the meeting and "the fact that the contemporaneous note is silent is damning ... about Mr Hindi's attendance and role". It was also submitted that Mr Hynd's memory of the event is unsupported by any contemporaneous file note and his memory must be considered, in light of the exchange referred to above with senior counsel for Mr Hindi.

Mr Hindi's submissions appear to question whether Mr Hindi attended the meeting at all. The Commission does not accept these submissions. While Mr Hindi's name is not listed on the contemporaneous file note, Mrs Hindi, Mr Gheorghiu, Mr Hynd, Mr Uy and even Mr Hindi himself gave evidence that he attended the meeting at Addisons. As for Mr Hynd's evidence, Mr Hynd was a credible witness who had no reason to lie about either Mr Hindi's attendance or what Mr Hindi said at the meeting. The Commission accepts Mr Hynd's evidence and agrees with him that it was "unlikely" his recollection was incorrect.

The Commission is satisfied that Mr Hindi was at the meeting, at least for a short period, to provide some advice on how council might deliberate on the planning proposal, and that he did in fact provide such advice.

The Commission is satisfied he still had an expectation of financial benefit if the development was approved.

On 23 June 2017, an Addisons' lawyer sent Mrs Hindi a draft costs agreement. The email also suggested that the author had discussed the costs agreement with Mrs Hindi the day prior. During the public inquiry, Mrs Hindi did not dispute that fact. This suggests that Mrs Hindi was not just a passive observer at the meeting, but rather she had represented herself to have an interest sufficient to be involved in, or a conduit for, communications with Addisons' client, One Capital. That raises the question as to whether Mrs Hindi's role went beyond mere "introductions".

It was submitted on behalf of Mrs Hindi that the suggestions that she was some sort of "contact person" should be rejected because, as the person who arranged the first meeting, her contact details were taken by Addisons. It was also submitted that Addisons, making an administrative error, sent the costs agreement to Mrs Hindi, who subsequently clarified the matter with Addisons, who later re-sent the costs agreement to Ms Tang with a direction for Mrs Hindi not to be copied into emails from Addisons. It was submitted that this would not have occurred if Mrs Hindi's role went beyond "introductions".

The Commission does not accept Mrs Hindi's submission. That Mrs Hindi attended the meeting merely as an introducer is implausible. She had a financial interest in the development proceeding. Mrs Hindi stood to make commissions because of her agreement with Taylor Nicholas if the development was approved. That Mrs Hindi's role went well beyond "introductions" is confirmed by her subsequent interactions with Addisons. She attended further meetings on 26 and 27 June 2017 regarding the Landmark Square development. She said she attended these meetings as a "friend" of Ms Tang. Mrs Hindi had further telephone calls with Addisons on 29 June 2017 and 7 July 2017. Mrs Hindi also attended a meeting with Addisons on 6 October 2017, again she said as a "friend" of Ms Tang.

It was submitted on behalf of Mrs Hindi and Mr Hindi that the Commission should not make a finding that Mrs Hindi attended the meetings at Addisons to be a conduit of information to Mr Hindi.

The Commission does not accept these submissions. For the reasons addressed below, the Commission is satisfied that Mrs Hindi attended the meetings at Addisons because of her financial interest in the development and to be a conduit of information to Mr Hindi thereafter. The Commission is also satisfied Mr Hindi attended the meeting and provided advice because he too had a financial interest in the progress

of Landmark Square. Like Mr Badalati, he had received \$70,000 in respect of the Treacy Street development. He had an expectation he would receive further monies if he assisted in progressing the Landmark Square development to a successful outcome.

Other interactions between Mrs Hindi and Ms Tang

Apart from her meetings with Addisons, Mrs Hindi continued to interact with Ms Tang on a regular basis. At the time, Ms Tang was continuing to work with Wensheng Liu and Mr Uy on the Landmark Square planning proposal. Many such interactions are recorded in text messages exchanged between Mrs Hindi and Ms Tang, commencing in about May 2016. Examples included:

- On 23 May 2016, Ms Tang texted Mrs Hindi saying: "Hi Miray, Philip asked me to meet you today. I will be running late. I will get to the city at 3pm. Is that ok?"
- On 12 August 2016, Ms Tang texted Mrs Hindi: "I have the letter we discussed this afternoon. How should I give it to you?"
- On 25 August 2016, Ms Tang texted Mrs Hindi:

Hi Miray, i [sic] spoke with my boss this morning and he said if you haven't spoken to the owners to request for more time then please hold it for now. We are just waiting on 1 more extension to be signed off just in case they change their mind. Also, can you come my boss's office [sic] tomorrow morning to discuss a few things? Let me know what time best suits you. Thank you.

During the public inquiry, Mrs Hindi agreed this message was about extending the options for Landmark Square but could not recall whether she did in fact speak to Taylor Nicholas about it.
- On 29 August 2016, Ms Tang texted Mrs Hindi:

Good morning, just letting you know that we got all 3 extensions as per discussion on Friday. Also, just waiting on someone to contact myself and Michael from Nigel's office to request information for report. Thank you.
- On 7 September 2016, Ms Tang texted Mrs Hindi: "Hi Miray. just wondering if you had a chance to find a good town planner to give us the 2nd report? Thanks". Mrs Hindi accepted she was providing some assistance regarding the Landmark Square proposal by finding a town planner.

- On 3 November 2016, Mrs Hindi texted Ms Tang: “Hi Elaine, just confirming tonight’s dinner at 7 pm tonight at: Al Aseel Restaurant”.
- On 14 December 2016, Mrs Hindi texted Ms Tang: “Hi Elaine, can we meet at 10 this morning?”
- On 3 March 2017, Mrs Hindi texted Ms Tang: “Can we meet at 1.00 instead?”
- On 11 April 2017, Ms Tang texted Mrs Hindi: “Let’s have coffee tomorrow?”
- On 13 April 2017, Ms Tang texted Mrs Hindi: “I spoke to my boss and he said that he will speak to you”.
- On 1 May 2017, Mrs Hindi texted Ms Tang: “We can do 5 pm at HURSTVILLE”.
- On 9 June 2017, Mrs Hindi texted Ms Tang: “Can we meet at 4.30 instead?”
- On 13 July 2017, Ms Tang texted Mrs Hindi: “I looked further and found the whole report. It is recommended that IHAP [Independent Hearing and Assessment Panel] supports the request”. Mrs Hindi responded: “Oh great :)”. The Commission is satisfied this was a reference to the report to the IHAP regarding the amended planning proposal, which was due to be considered by the IHAP on 20 July 2017.
- On 20 July 2017, Ms Tang texted Mrs Hindi: “It’s online now ... can you please look”. Mrs Hindi responded: “Just checked it. I will give you a call tomorrow to discuss”. This was again a reference to the IHAP review of the amended planning proposal. The next day, Mr Yan also sent messages to Wensheng Liu saying: “Elaine said there was no IHAP deferred, but only said that other condition would be required. Elaine and Philip will have a meeting with Con today and they will give you a call after the meeting.” The messages demonstrate that both Mr and Mrs Hindi were providing advice to Mr Uy on the IHAP report around this time.
- On 25 July 2017, Mrs Hindi texted Ms Tang: “Can we meet today?” Ms Tang responded: “I can’t to the city. How about tomorrow ... just with you is fine”. The next day, Ms Tang texted Mrs Hindi: “Can we meet in the office?” During the public inquiry, Mrs Hindi accepted that was likely a reference to the One Capital office on Forest Road and was unlikely to be a social engagement.

Mrs Hindi told the Commission that following the April 2016 trip to Tangshan, she and Ms Tang became “closer”

and she was just providing assistance “to help a friend”, including at the further Addisons meetings in June and October 2017, described above. She accepted that she and Ms Tang discussed Landmark Square from time to time, an example being the options extensions and the IHAP report. Mrs Hindi said that Ms Tang would just keep her updated on the “progress” of the planning proposal and that she did provide advice “just a personal opinion” from time to time. However, she also said that they caught up socially, to the point that it was possible they had two social catch-ups within four days on 21 and 25 July 2017 respectively.

Mr Uy accepted that Ms Tang met with Mrs Hindi from time to time but said that the purpose was just to keep Mrs Hindi up to date with the progress of the planning proposal, given she had introduced One Capital to the property in the first place.

Ms Tang’s evidence to the Commission was very different. She said she was not friends with Mrs Hindi. Following the trip to Tangshan, they became “acquaintances”. She explained that Mr Uy had suggested to her that Mrs Hindi was a “friend” and that if Ms Tang had “any things to discuss” about the planning proposal she could “just go and speak to her about it”. She said Mr Uy told her that whatever council sent through, she had to go and mention it to Mrs Hindi from time to time. She said that Mr Uy told her that Mrs Hindi would be able to “help” and Ms Tang assumed that meant Mrs Hindi could help with problems they were having with council. She accepted that Mrs Hindi did not have any particular expertise to assist. Ms Tang assumed that Mrs Hindi would raise the issues with Mr Hindi. She said it was likely that the only purpose of meeting with Mrs Hindi was so she could convey the issues to Mr Hindi. She said that most of her meetings with Mrs Hindi were on instructions from Mr Uy. She also said she had only ever had a social catch-up with Mrs Hindi “once or twice”.

So, what was the purpose of Mrs Hindi’s interactions with Ms Tang? At this point, it is worth noting that the Commission has previously found that the reason Mrs Hindi attended meetings with, for example, Mr Dickson and Mr Uy at a Japanese restaurant in 2015, was because Mrs Hindi was acting as a “conduit” to Mr Hindi on the Landmark Square planning proposal. The question is whether Mrs Hindi was acting in a similar fashion in relation to her interactions with Ms Tang. Both Mrs Hindi and Mr Hindi submitted that the Commission should not make a finding of this nature.

However, the Commission is satisfied that Mrs Hindi’s interactions with Ms Tang around this time were primarily directed towards Mrs Hindi passing information from Ms Tang to Mr Hindi and from Mr Hindi to Ms Tang and Mr Uy, so that Mr Hindi might provide them with advice.

The Commission accepts Ms Tang's evidence. She had no apparent motive to lie about the purpose of the meetings with Mrs Hindi. Further, it is clear from the content of the text messages and Mrs Hindi's attendance at the Addisons meetings that Mrs Hindi was attempting to assist Ms Tang and Mr Uy on issues relating to the Landmark Square planning proposal. By this time, she was not doing so because she had an interest under the BAA. It had expired in July 2016. However, she stood to gain commissions from Taylor Nicholas in relation to the sale of the Landmark Square site. Although she had no personal expertise to offer on the planning proposal, her husband did. As for the suggestion that the texts between Mrs Hindi and Ms Tang referred to above all took place during the period that Mr Hindi was no longer a councillor, so he was a private citizen who had no ability to take any action (like talking to council staff) and could have been contacted directly by Ms Tang and Mr Uy, the Commission has previously heard evidence from both Mr and Mrs Hindi that it was difficult to get hold of Mr Hindi and that sometimes people would contact Mrs Hindi if they wished to reach Mr Hindi. While there is no direct evidence of when Mr Hindi nominated to run for election to GRC, it is highly likely that he had decided he would run by 15 June 2017 (the time of the first Addisons meeting) given that, at that stage, the election was being held on 9 September 2017. It should be noted that Mr Hindi also accepted Mrs Hindi may have raised with him, from time to time, issues conveyed by Ms Tang regarding the planning proposal.

Mr Badalati, Mr Gheorghiu, Mr Hindi and Mr Uy meet in Chinatown

In his statement, Mr Gheorghiu said that after the Addisons meeting in June 2017 but before the GRC elections on 9 September 2017, Mr Uy called him and suggested they meet at a restaurant on George Street. He said he met Mr Uy on the street, they entered the restaurant and when they arrived at the table he saw Mr Badalati and Mr Hindi sitting there. He said Mr Hindi then asked for an update on the Landmark Square development and when the matter was next before council. He said the VPA was discussed in terms of the next steps in the process. During the public inquiry, Mr Gheorghiu said he gave an update on his experience with council.

Mr Gheorghiu also gave evidence that Mr Hindi complained about the planning ability and competence of the council staff and how long they were taking to progress the matter. He said Mr Hindi said that "they need to go" and "we'll sort it out once the Council is back". He said Mr Hindi was particularly critical of

Ms McMahon (manager of strategic planning at GRC) and that she was one of the people who "needed to go". He said Mr Hindi was also critical of the abilities of Meryl Bishop (director of planning at GRC). This aspect of Mr Gheorghiu's evidence was not challenged in cross-examination, except to clarify that Mr Hindi was concerned with the progress of matters at council generally, not specifically matters concerning the Landmark Square development.

Mr Gheorghiu said the meeting was unusual in that it occurred outside the normal setting of a professional meeting. He left the meeting wondering what was going on and what the point of the meeting was. He said neither councillor asked for more information about the proposal, nor provided any feedback. He said those in attendance did not end up having lunch. They left the restaurant together and Mr Gheorghiu walked in one direction while the other three walked in another.

The meeting demonstrates that Mr Badalati and Mr Hindi were still actively engaged in the planning proposal, even though at the time they were not councillors. It is highly likely, however, that they both considered there was a good chance they would be re-elected.

Mr Badalati connects One Capital with Sparke Helmore

One Capital decided it was dissatisfied with the service provided by Addisons.

Around 25 July 2017, Mr Badalati contacted his friend of 20 years, Bill Kritharas, a partner at Sparke Helmore. In his statement, Mr Kritharas said Mr Badalati explained to him he knew someone with a DA issue with GRC who needed some planning advice. Mr Kritharas suggested some meeting times and, on 26 July 2017, Mr Badalati emailed Mr Kritharas: "Elaine Tang from Capital One [sic] will send you an e-mail with a brief and request to meet Friday 3pm". Mr Kritharas said that Mr Badalati attended the meeting at Sparke Helmore, along with Ms Tang and Mr Gheorghiu. Ms Tang gave evidence that Mr Badalati attended the meeting, but this was denied by Mr Badalati. Mr Gheorghiu also could not recall Mr Badalati attending. Given Mr Badalati had no apparent motive to lie about his attendance, the Commission is not satisfied that he did attend. Nevertheless, Mr Badalati's role in arranging the meeting on behalf of One Capital was not disputed. Again, this demonstrates his ongoing involvement in the Landmark Square development.

Why were Mr Badalati and Mr Hindi continuing their involvement in the Landmark Square development?

The Commission has found that Mr Badalati and Mr Hindi were “on the hook” once they had received payment in respect of the Treacy Street development. They also had an expectation of financial gain if the progress of the Landmark Square development was resolved in favour of the proponent and Mr Uy.

Corrupt conduct

The Commission makes no findings of corrupt conduct in relation to the conduct of Mr Badalati and Mr Hindi addressed in this chapter. HCC was in administration during the period in which the conduct discussed in this chapter occurred. They were not public officials. Nevertheless, their conduct provides further insight into a course of corrupt conduct which had continued up to the date upon which an administrator was appointed to HCC and following their re-election to GRC.

Section 74A(2) statements

Statements are made pursuant to s 74A(2) of the ICAC Act that the Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of:

- Mr Hindi for giving false or misleading evidence contrary to s 87 of the ICAC Act in respect of his evidence concerning the reasons why he attended a meeting at Addisons lawyers concerning the Landmark Square development in June 2017
- Mrs Hindi for giving false or misleading evidence contrary to s 87 of the ICAC Act in respect of her evidence:
 - concerning the reasons why she attended a meeting at Addisons lawyers concerning the Landmark Square development in June 2017 and several meetings thereafter
 - concerning the reasons why she met or otherwise communicated with Ms Tang on many occasions following the trip to China in April 2016.

Chapter 8: Mr Badalati and Mr Hindi are re-elected to GRC in September 2017 and continue to make decisions regarding Landmark Square

On 9 September 2017, Mr Badalati and Mr Hindi were re-elected to GRC.

By this point, a revised Landmark Square planning proposal had been submitted to GRC. In August 2017, the administrators of GRC had voted in favour of the proposal being sent to the DPE for gateway determination and in favour of accepting One Capital's VPA offer. The gateway determination was issued in October 2017.

GRC votes on Treacy Street

On 3 July 2017, GR Capital Group had lodged a new DA with council to amend the existing approval for Treacy Street. The application was to build five additional storeys on the Treacy Street development. As noted in chapter 3, a similar application had been refused by the JRPP on 4 May 2016, with Mr Badalati and Mr Hindi voting against that decision. This new application was refused again, and GR Capital Group appealed the decision in the Land and Environment Court of NSW. On 9 February 2018, Wensheng Liu on behalf of GR Capital Group wrote to the general manager of GRC and councillors, including Mr Badalati and Mr Hindi, requesting a without-prejudice meeting. Ultimately, the appeal was resolved by consent. Council agreed to an additional 2.5 storeys for the Treacy Street development.

On 25 June 2018, GRC, including Mr Hindi and Mr Badalati, voted in favour of accepting GR Capital Group's VPA in connection with the application.

The disclosures Mr Badalati and Mr Hindi should have made at the GRC meeting on 25 June 2018, and whether their failure to do so constituted a breach of the GRC Code of Conduct and/or corrupt conduct, are addressed below.

The Commission has found that, by 19 November 2014, Mr Badalati had a significant non-pecuniary interest in the Treacy Street development by virtue of his relationship with Mr Uy. The Commission has also found that, by 20 April 2016, Mr Badalati had a non-pecuniary interest in that development by reason of his relationship with Wensheng Liu – whose company, One Capital, was the development proponent. As for Mr Hindi, the Commission has found that he had a non-pecuniary interest in the Treacy Street development, by virtue of his relationships with Mr Uy and Wensheng Liu. The Commission has also found that Mr Badalati received approximately \$70,000 from Mr Uy in 2015 and \$100,000 in 2018, while Mr Hindi had received similar payments from Mr Uy.

The Commission is satisfied that by 25 June 2018, there had been no material change to Mr Badalati and Mr Hindi's relationship with Wensheng Liu and Mr Uy. They continued to associate with each other in relation to the Landmark Square development and their private interests involving Variable Solutions and Yuqing Liu. The Commission is satisfied that Mr Badalati and Mr Hindi's relationship with Wensheng Liu and Mr Uy had not diminished in the period during which council was in administration.

The Commission is satisfied that by the time of the GRC vote on 25 June 2018:

- Mr Badalati had a significant non-pecuniary interest in the Treacy Street development by virtue of his relationships with Wensheng Liu and Mr Uy respectively.
- Mr Hindi had a significant non-pecuniary interest in the Treacy Street development by virtue of his relationships with Wensheng Liu and Mr Uy respectively.

The Commission is also satisfied that Mr Badalati and Mr Hindi failed to disclose their interests in accordance with clause 4.12 of the GRC Code of Conduct. Both were required to abstain from voting. They failed to do so. The Commission is satisfied that Mr Badalati and Mr Hindi's deliberate failure to declare their conflicts of interest in relation to Wensheng Liu and Mr Uy, and their participation in GRC's vote, constituted or involved the dishonest exercise of their official functions.

The options for the Landmark Square site are transferred to Prime, while One Capital retains an interest

In the meantime, in about August 2016, One Capital had been introduced to Prime as a potential purchaser of the Landmark Square site. Adrian Liaw was then head of development (Australia) of Aoyuan International. Aoyuan was the parent company of Prime. Mr Liaw was primarily responsible for the negotiations with One Capital.

Mr Liaw told the Commission he mostly dealt with Mr Uy, and Wensheng Liu to a "significantly less extent". He assumed Mr Uy was Wensheng Liu's partner as "in conversations he was always talking about his business with Mr Liu and the fact the options were in fact owned by the One Capital Group". Mr Hynd, who was engaged by Mr Liaw to assist with the purchase, gave evidence at the public inquiry. Mr Hynd said he also dealt primarily with Mr Uy and that Mr Uy seemed "to be the guy that was driving the negotiations ... from One Capital's side of things ... he was the main decision-maker that we were dealing with".

Initially, Prime proposed to purchase the site subject to rezoning. By late 2017, however, Prime was comfortable that the rezoning of the site would take place. The only remaining question of significance concerned the

permitted density. Prime decided to purchase the site. In November and December 2017, Prime exercised the options for the Landmark Square site and entered into contracts of sale. At this time, Aoyuan took over most of the discussions with GRC regarding the planning proposal, although One Capital was still involved from time to time.

Mr Liaw told the Commission he acquired a sufficient level of comfort regarding the rezoning of the site because of a meeting with Mr Badalati, Mr Hindi, Wensheng Liu and Mr Uy sometime between August 2016 and late 2016. He believed the meeting most likely occurred in late 2016. Mr Liaw's evidence was that the meeting took place at the office of One Capital on Forest Road in Hurstville. He said the councillors explained "who they were and what they had done as councillors in supporting the ... rezone at the time when they were in council". Mr Liaw could not recall what the councillors said. However, the "gist" was to "essentially give us comfort that council, or as councillors they were very supportive of the whole rezoning and unfortunately the fact that the administration took place, that caused disruption in that ... rezoning exercise". Mr Liaw said that Mr Uy explained to him that "they'd been working quite hard with all the councillors, in particular those two councillors". Mr Liaw's impression was that the planning proposal "involved those two councillors working with them", namely, One Capital and Mr Uy. Mr Liaw's evidence was unchallenged.

The total sale price paid by Prime was approximately \$40.5 million. However, that did not mean One Capital's interest in the Landmark Square planning proposal was at an end; far from it.

On 20 October 2017, One Capital, Wensheng Liu and Prime had entered into an agreement whereby One Capital would be paid an additional amount once the planning proposal was gazetted. The precise amount depended on the FSR ultimately approved. The agreement was varied on 3 August 2018, so that:

- If the land was rezoned to mixed use with an FSR of at least 4:1 on or before 30 November 2018, Aoyuan would pay One Capital the “First Gazettal Payment”. This was defined as the “(First Gazettal FSR x \$1,386 x 8486) – (\$3,000,000 + the Services Payment + Settlement Sum)”. The Services Payment was \$990,000 and the Settlement Sum excluding GST was \$38,467,360.91. For example, if the land was rezoned with an FSR of 4, the payment would have been (4 x \$1,386 x 8486) – (\$3 million + \$990,000 + \$38,467,360.91), totalling about \$4.5 million.
- If the LEP was amended to permit an FSR exceeding 4:1 on or before 29 February 2020, Aoyuan agreed to pay One Capital a “Second Gazettal Payment”. This was defined as “((First Gazettal FSR – Second Gazettal FSR) x \$1,386 x 8546) – IA Amount”. The “IA Amount” was \$1.5 million. For example, if the FSR was increased to 4.5:1, the payment would have been (0.5 x \$1,386 x 8486) – \$1,500,000, being approximately \$4,000,000.

The planning proposal was not gazetted until 7 August 2020. Accordingly, the deadlines outlined above were not met. One Capital was no longer entitled to be paid. However, Mr Liaw gave evidence that he had an oral agreement with One Capital whereby Prime would pay One Capital the relevant payments upon the gazettal occurring, whenever that might be. He said he had “verbally agreed that I would still pay the One Capital Group if gazettal eventually happened because, for my part, it was essentially the deal that we struck from day one”. He said that he made that agreement sometime in 2018. Mr Uy and Wensheng Liu agreed with this evidence, although Wensheng Liu said the agreement was reached with Mr Uy.

Prime paid One Capital several instalments in 2018, namely, \$990,000 on 13 August 2018 and \$1.01 million on 4 September 2018. Prime made further payments in 2019 and 2020. These are addressed below.

The Commission is satisfied that even after Prime purchased the Landmark Square site, One Capital retained a commercial interest. In addition, Mr Uy retained a commercial interest. He agreed he was to receive a portion of any payment made by Prime.

Both Mr Badalati and Mr Hindi denied knowing of any agreement between Prime and One Capital. Whether they understood One Capital continued to have a commercial interest in the Landmark Square site throughout 2018 and 2019 is addressed below.

Mrs Hindi is paid a commission on the Landmark Square sale

On 5 December 2017, Taylor Nicholas issued its invoices for the commission payable. The commission payable was: \$525,052 comprising \$245,300 for 61, 65 and 67 Forest Road, Hurstville; \$183,920 for 71 Forest Road, Hurstville; and \$95,832 for 73–75 Forest Road and 126 Durham Street, Hurstville.

In his statement to the Commission, Mr Constantine of Taylor Nicholas said that, in around March 2018, Mrs Hindi approached him seeking to be paid her co-agency fee for the Landmark Square sale, as well as other properties. There was also evidence that Mrs Hindi had referred buyers to Mr Constantine for 508–510 Kingsway, Miranda, which settled in June 2017, and 398–412 Princes Highway, Rockdale, which settled in about 2015 or 2016.

During the public inquiry, Mr Constantine said that while One Capital had not purchased the part of the site over which it held options, since Mrs Hindi arranged the “initial introduction” it was “only fair” she be paid something.

In his statement, Mr Constantine said Mrs Hindi attended his office and they agreed on a figure of \$67,400 for all properties. Both accepted that the payment of that money related, in part, to the Landmark Square site. In his statement, Mr Constantine said:

Whilst I was writing the cheque for the amount as agreed, I was about to write the address of Forest Road and Durham Street Hurstville, and I asked Miray Hindi, “What should I put down?” (on the cheque butt stub). She replied “Just put 508-510 the Kingsway Miranda.”

The cheque butt stub dated 15 March 2018 showed that Sydney Realty was paid \$67,400 for “Consultancy / Referral Fee. 508 Kingsway Miranda”. At the public inquiry, Mr Constantine initially expressed some uncertainty about whether he or Mrs Hindi suggested that the stub record 508–510 Kingsway, Miranda. Upon further questioning, he said that he understood the payment was primarily for Landmark Square and that it was Mrs Hindi who suggested 508–510 Kingsway, Miranda, be written on the cheque butt stub. He thought “Mrs Hindi didn’t want to put that [the Landmark Square] address down”.

Mrs Hindi told the Commission she did not have a clear recollection of who made the suggestion but was “leaning more towards that he suggested it”. She said she thought he might have put down that address because the address for Landmark was longer and would not fit on the cheque butt stub.

There are several possibilities which might explain the words “508-510 Kingsway, Miranda” appearing on the cheque butt stub rather than any reference to Landmark Square. One possibility is that Mrs Hindi suggested that the former address be recorded to hide the fact she had been paid an amount in respect of Landmark Square. Mrs Hindi denied this during the public inquiry. Another possibility is that Mrs Hindi was motivated to conceal the commission to minimise putting Mr Hindi in any position of conflict. However, as Counsel Assisting submitted, if she had been motivated to hide the fact of her commission, it is curious that she would prepare a draft conjunction agreement back in April 2016 and send it to Mr Constantine.

A further question arises as to whether Mr Hindi was aware that Mrs Hindi was paid the commission in around March 2018 and whether he was required to disclose that fact when voting on the Landmark Square planning proposal on 25 June 2018 and thereafter.

On 25 June 2018, there was a meeting of GRC during which it was resolved that GRC not proceed with affordable housing for the Landmark Square planning proposal. This was the first occasion upon which Mr Hindi and Mr Badalati were involved in council decisions concerning the development since being re-elected to GRC. The background to the affordable housing issue was that on 7 August 2017, the administrator of GRC had approved a motion that the Landmark Square development include some affordable housing within it. However, legal advice subsequently obtained by GRC indicated that as GRC did not have an affordable housing policy, a provision in relation to affordable housing could not be enforced. It was in this context that on 25 June 2018 Mr Badalati and Mr Hindi recommended that GRC not proceed with the affordable housing aspects of the previous resolution.

During the public inquiry, both Mr and Mrs Hindi denied that Mrs Hindi told Mr Hindi about receiving the commission. It was submitted for Mr Hindi that it was not open for the Commission to find that “Mr and Mrs Hindi should not be believed about sharing knowledge as to the payment of any commission absent cogent evidence to establish the contrary which meets the Briginshaw standard”.

Although it is likely Mrs Hindi informed her husband she had been paid, the Commission is not satisfied that this necessarily occurred prior to the GRC vote of 25 June 2018. Accordingly, the Commission is not satisfied that Mr Hindi had an obligation to declare payment of Mrs Hindi’s commission to GRC at the time of that vote.

Mr Badalati and Mr Hindi question GRC staff about planning proposal delays

In 2018, the Landmark Square planning proposal was not progressing as quickly as One Capital and Aoyuan would have liked.

In March 2018, the proponent and GRC were working to finalise the DCP. GRC’s position was that the planning proposal, DCP and VPA should be exhibited together.

A councillor briefing was held on 9 April 2018. Council staff briefed a group of councillors – including Mr Badalati and Mr Hindi – on the draft planning proposal, DCP and VPA. Ms McMahon was in attendance, as was Ms Bishop, GRC’s director of planning, to whom Ms McMahon reported. Such briefings were held prior to council meetings. All councillors were invited but not all of them necessarily attended.

The proposed timing for exhibition was July or August 2018. In her statement, Ms McMahon said that Mr Badalati and Mr Hindi “showed great interest in the matter and would not stop asking questions at the briefing session” and that it was “unusual for councillor Badalati to ask so many questions”. In her statement, Ms Bishop also described the councillors’ level of questioning as “exaggerated”. Ms Bishop said that the councillors were “greatly interested” in the Landmark Square site and their interest appeared to be “beyond their level of interest in any other planning proposals that we were assessing”, as evidenced by their understanding of the planning proposal and their awareness of the details of the proposed development. During the public inquiry, Ms Bishop said there was a “level of detail there that ... was somewhat ... surprising and challenging” and she “had not heard them do that on other planning proposals that we have ... been talking with them about over the years”. She said she had dealt with the two councillors on about 10 or 12 other proposals.

At this meeting, the councillors compared the design controls recommended for the site to the controls imposed for the Bing Lee site and 9 Gloucester Rd, which were both subject to rezoning proposals. In her statement, Ms McMahon said that these sites had different environmental contexts and it would not be appropriate for the same controls to apply. Ms Bishop also explained that the controls depended on the site analysis, concept and context. She gave evidence that she considered the team’s approach was consistent across planning proposals.

In her statement, Ms McMahon said that councillors Hindi and Badalati were also concerned about the requirement for the building heights to transition down along Roberts Lane. Ms McMahon explained that this was necessary to interface with lower-density residential

development on that side. She said the “nature of the issues raised by councillors Hindi and Badalati and their persistent questioning indicated to me that they were in support of the proponent’s planning proposal”.

On 19 April 2018, Ms Tang, acting “on behalf of The One Capital Group Pty Ltd” emailed four councillors – including Mr Badalati and Mr Hindi – and requested an “urgent meeting”, stating they were “very concerned about the progress of this Planning Proposal as it has been dragging on for approximately 4 years”. Ms Tang told the Commission she sent it to the four councillors on Mr Uy’s instructions because they were his “friends”.

On 23 April 2018, Ms Tang sent another email to GRC staff, copied to councillors including Mr Badalati and Mr Hindi, explaining they were “frustrated” with the process, that it was a “joke” that they were being required to obtain a further gateway determination regarding the widening of Roberts Lane, that they were “desperate” to get the planning proposal to exhibition, that the delays were placing significant pressure on the project, that they would like some councillors to be present at the meeting, and that “some former Hurstville Councillors have been on this journey with us for the past 4 years”. During the public inquiry, Ms Tang confirmed this was a reference to at least Mr Badalati and Mr Hindi.

Another councillor briefing was held on 12 June 2018. The briefing was arranged to discuss the applicant’s proposed amendments to the planning proposal to move the maximum heights on the corner of the site, at the intersection of Forest Road and Durham Street. Those who attended the meeting included Mr Badalati, Mr Hindi, Ms Bishop and Ms McMahon. In her statement, Ms McMahon said Mr Hindi questioned the height requirements along Roberts Lane and why GRC staff were limiting the height there to three storeys. Ms Bishop described the councillor’s questioning on this occasion as “exaggerated” as well.

On 25 June 2018, GRC resolved to remove the affordable housing element from the Landmark Square planning proposal. Mr Badalati and Mr Hindi voted in favour of that motion. As noted above, on this date, GRC also accepted the latest VPA offer for the modification to the Treacy Street development.

Once more, questions arise as to what disclosures Mr Badalati and Mr Hindi should have made at the GRC meeting of 25 June 2018, and whether their failure to do so constituted a breach of the GRC Code of Conduct and/or corrupt conduct.

Having regard to the Commission’s findings in this and other chapters, by the time of the GRC vote on 25 June 2018, the Commission is satisfied that, in relation to the Landmark Square planning proposal:

- Mr Badalati had significant non-pecuniary interests by virtue of his relationships with Wensheng Liu and Mr Uy.
- Mr Hindi had significant non-pecuniary interests by virtue of his relationships with Wensheng Liu and Mr Uy.

The Commission is satisfied that Mr Badalati and Mr Hindi failed to disclose their interests in accordance with clause 4.12 of the GRC Code of Conduct. Because their conflicts of interest were significant, they were also required to absent themselves from decision-making regarding the Landmark Square development, as required by clause 4.16(b) of the GRC Code of Conduct. The Commission is satisfied that they failed to do so.

Mr Badalati and Mr Hindi told the Commission that they understood their obligations under the GRC Code of Conduct from at least March 2013. The Commission is satisfied that Mr Badalati and Mr Hindi’s deliberate failure to declare and appropriately manage their conflict of interests in relation to Wensheng Liu and Mr Uy constituted or involved the dishonest exercise of their official functions.

In around July 2018, Ms Bishop attended a meeting in the GRC offices with Mr Liaw to discuss Landmark Square and, in particular, the content of the DCP. Ms Bishop created a file note of the meeting on 4 August 2020. Although a record of her conversation with Mr Liaw, it was not based on any contemporaneous notes. The file note recorded that she could not recall details like the date of the meeting or who attended. She said that after the meeting she and Mr Liaw had a conversation in the corridor. According to Ms Bishop, she asked Mr Liaw whether, given councillors Badalati and Hindi’s interest in the site, they were “awaiting something” when the rezoning occurred. She said Mr Liaw “ever so slightly nodded his head”. In her statement, Ms Bishop said she told the general manager at the time of the July 2018 meeting about this conversation, but she did not document the meeting at the time because it slipped her mind. She said that the general manager asked her to prepare the file note on or around 4 August 2020, because the general manager was aware of the meeting and the discussion with Mr Liaw.

During the public inquiry, Mr Liaw confirmed that he had a conversation with Ms Bishop in the hallway. He said he could not remember what was said but did not deny her account. When asked if the exchange occurred as Ms Bishop described, Mr Liaw said, “The discussion and exchange between Ms Bishop and myself did occur but insofar as contents, I don’t, the memory slips”.

Mr Hindi’s legal representative cross-examined Ms Bishop on her version of events. It was submitted on behalf of

Mr Hindi that Ms Bishop's evidence on this point "did not withstand cross-examination" and that it "became even more frayed" in light of several matters Ms Bishop "conceded" during cross-examination.

The Commission does not agree with these submissions. The Commission is satisfied Ms Bishop's evidence withstood cross-examination. The Commission accepts Ms Bishop's version of events.

During the public inquiry, Counsel Assisting asked Mr Liaw whether he had a belief that someone had promised Mr Badalati or Mr Hindi some kind of money or other benefit if the Landmark Square site was rezoned. Mr Liaw said:

I don't have concrete evidence or things to point to that but there was a concern that there might be untoward things that may happen and from our perspective we've always distanced ourselves from that sort of stuff.

Referring back to the introductory meeting with the two councillors in late 2016 at the Forest Road offices, Mr Liaw said: "that generally gives me an uncomfortable feeling to the extent that we wanted to make sure that everything was, for want of a better word, clean". He also found it "weird" that Mr Uy described the two councillors as "friends". Ultimately, nothing turns on this speculative evidence.

Mrs Hindi continues to liaise with Ms Tang

Throughout late 2017 and 2018, Mrs Hindi continued to interact with Ms Tang on a regular basis. There were text messages between them arranging, or attempting to arrange, meetings around 23 to 24 October 2017, 14 to 15 November 2017, 29 November 2017, 11 and 15 December 2017, 22 February 2018, 23 April 2018 and 6 June 2018.

The Commission has previously addressed one of the purposes for Mrs Hindi attending meetings with persons associated with the Landmark Square planning proposal. In chapter 3, the Commission found that one of the reasons Mrs Hindi attended meetings with, for example, Mr Dickson and others, was because she was acting as a "conduit" to Mr Hindi in relation to the Landmark Square planning proposal. In chapter 7, the Commission found that Mrs Hindi's interactions with Ms Tang while council was in administration were primarily directed towards Mrs Hindi passing information from Ms Tang to Mr Hindi, so that he might take some action regarding the Landmark Square planning proposal, such as talking to GRC staff. Mrs Hindi would pass advice from Mr Hindi back to Ms Tang regarding the planning proposal.

Mrs Hindi made no submissions on this topic.

It was submitted on behalf of Mr Hindi that it was "illogical to submit that Ms Tang required or treated Mrs Hindi as a conduit for information to pass to and from Mr Hindi" because he understood Ms Tang's role in the Landmark Square planning proposal ended in early 2018 and Mr Liaw was the proponent from that time. Further, he always made himself available to constituents and his mobile telephone number was on the GRC website. Finally, there was nothing preventing Ms Tang emailing Mr Hindi directly, as she had done in the past. He denied "that Mrs Hindi acted as a conduit for Mrs Tang".

The Commission does not accept Mr Hindi's submissions. Having previously found that Ms Tang and Mrs Hindi's interactions while council was in administration were primarily directed towards Mrs Hindi passing information from Ms Tang to Mr Hindi, there is no evidence to suggest that the status quo changed once Mr Hindi was re-elected to council. As set out in chapter 7, Ms Tang's evidence, which the Commission accepts, was that she was not friends with Mrs Hindi. Rather, they were "acquaintances". Given Ms Tang's evidence, the most likely explanation for Ms Tang's ongoing interactions with Mrs Hindi was because Mrs Hindi continued to act as Mr Hindi's "conduit" on the Landmark Square planning proposal. Ms Tang also gave evidence, which the Commission has accepted, that most of her meetings with Mrs Hindi were on instructions from Mr Uy.

One Capital raises concerns about the delay in exhibiting the Landmark Square planning proposal

On 27 August 2018, GRC endorsed an amended Landmark Square planning proposal to adopt the 3-metre widening of Roberts Lane and resolved to send it for gateway determination.

On 30 August 2018, Ms Tang emailed GRC staff (copying in Mr Badalati, Mr Hindi and other councillors) expressing "disappointment with the re-zoning process" for Landmark Square in "which The One Capital Group Pty Ltd has significant commercial interest". She said that if the proposal was not exhibited in the first week of October 2018 "we will have no choice but to withdraw the VPA and apply to the department for a rezoning review". The email came from Ms Tang's Gencorp email address.

Ms Tang told the Commission that Mr Uy provided her with an earlier draft of this email and that she believed it had been given to him by Mr Badalati or Mr Hindi. There is also in evidence a draft of this email with

handwritten annotations. Ms Tang's evidence was that she thought the handwritten annotations may have been made by Mr Badalati, Mr Hindi or Mrs Hindi. Her belief was based upon Mr Uy's limited command of the English language and his prior dealings with them on Landmark Square. Mr Uy did not say or do anything to indicate that either Mr Badalati or Mr Hindi had provided the draft. Mr Badalati and Mr Hindi denied assisting in the drafting of this email or making the handwritten annotations.

Importantly the email indicated that One Capital had retained a "significant commercial interest" in the planning proposal.

Mr Badalati said he was not sure what that meant in circumstances where One Capital had already sold the land. However, he said he understood Ms Tang was working with Mr Uy and he said that, having received cash payments from Mr Uy by this time, he was "on the hook" for that amount and felt a sense of obligation to keep assisting with the planning proposal.

Mr Hindi made two submissions in relation to Mr Badalati's evidence that he was "on the hook". Before dealing with those submissions, it should be noted that Mr Hindi's submissions extracted an exchange from the first day of the public inquiry between Mr Badalati, Counsel Assisting and the Commissioner. That exchange arose after Mr Badalati was shown Ms Tang's email dated 30 August 2018. Mr Badalati was asked questions about his understanding of matters as of August 2018, although those questions were not included in the evidence extracted by Mr Hindi in his submissions. Mr Hindi's submissions on this topic do not refer to Ms Tang's email dated 30 August 2018. Instead, they refer to Ms Tang's emails dated 19 April 2018 and 23 April 2018.

Mr Hindi's first submission was that, in relation to the evidence extracted in his submission, Mr Badalati was "asked a number of leading questions" and "Mr Badalati merely agreed to whatever proposition the Commissioner or Counsel Assisting put to him". Mr Hindi made similar submissions in relation to other matters addressed in this report. It was submitted for Mr Hindi that:

when Mr Badalati first gave evidence, he accurately represented that he did not know that One Capital continued to have any interest in the Landmark Square development after it was sold. It was only by leading and massaging Mr Badalati in the course of his evidence that Mr Badalati changed his initial view to then agreeing that he continued to be "on the hook".

Secondly, it was submitted for Mr Hindi that:

The Commissioner there invited Mr Badalati to consider, and to agree, that the impact of the money he had received by that stage (allegedly \$170,000)

must have conditioned his thinking about the Landmark Square site, such that the continued communication from Ms Tang was sufficient to cause him to feel obliged and "on the hook" in terms of the project regardless of the change in ownership. Of course, Mr Badalati had not given that evidence to begin with. The line of questioning set out above was predicated on a fallacy. Mr Badalati was later questioned to agree that he received the alleged \$100,000 payment in respect of Landmark Square in July 2018, namely well after the email exchange on which the earlier line of questioning was based.

Therefore, Mr Badalati gave evidence at T90.39-92.1 as to the existence of a state of mind, and to accept that he had a state of mind, which he could not possibly have had because of a payment received at that point. So, if the alleged payment occurred in July 2018, as Counsel Assisting asserts ... then Mr Badalati could not have considered himself "on the hook" because of that payment.

The Commission does not accept Mr Hindi's submissions. There is no basis to Mr Hindi's submission that "Mr Badalati merely agreed to whatever proposition the Commissioner or Counsel Assisting put to him". This has been addressed in chapter 6. Mr Badalati was not a witness who would agree to whatever was put to him. His acceptance of the proposition that he was "on the hook" was not only very much against his own interest but also accords with common sense. It is hardly controversial that having accepted a substantial and improper payment, a public official might feel obliged to provide further assistance because of an expectation of additional financial gain, a fear of being exposed if he did not do so, or both.

That Mr Badalati accepted the proposition is consistent with fact that he had accepted \$170,000 in cash from Mr Uy and that he had previously partially exercised his official functions as a councillor of HCC to vote in favour of both the Treacy Street and Landmark Square developments. As for Mr Hindi's second submission, it is plainly wrong. Mr Badalati's evidence about being "on the hook" was given in response to Ms Tang's email of 30 August 2018. He was asked about his state of mind as of that date. However, Mr Hindi's submission appears to be predicated on the false assumption that Mr Badalati's evidence was given in relation to Ms Tang's emails dated 19 or 23 April 2018. While Mr Hindi's submission is ambiguous in so far as it does not specifically identify the date of the "email exchange", the Commission has assumed the date of the "email exchange" to be either 19 or 23 April 2018. The paragraphs preceding Mr Hindi's submission on this issue refer to emails sent by Ms Tang on those dates and make no mention of Ms Tang's email dated 30 August 2018. Further, Mr Badalati's receipt of

the \$100,000 payment for Landmark Square in July 2018 was “well after the email exchange” being 19 or 23 April 2018, as contended by Mr Hindi’s submission.

Mr Hindi told the Commission that he could not recall whether he read the 30 August 2018 email at the time but denied having held a belief that One Capital retained a “significant commercial interest” in the project. He said he did not form any such belief. He thought Ms Tang was writing as a “concerned citizen”. Upon further questioning, Mr Hindi said that One Capital may have had a commercial interest, but he did not know what it was. He thought Ms Tang sent the email because she was trying to help the new owners.

The Commission does not accept Mr Hindi’s evidence. The weight of the evidence demonstrates that in or around August 2018 Mr Hindi understood that One Capital had retained a financial interest in the Landmark Square planning proposal. Mr Hindi knew Ms Tang had prior involvement in the planning proposal, and he accepted as much in the public inquiry. He had maintained a constant, if not obsessive, interest in the progress of the development and was fed information about the development from Mr Uy and Ms Tang via his wife from time to time. He had received a substantial sum of money from Mr Uy. He was a recipient of Ms Tang’s email of 30 August 2018. Even if he did not assist in drafting the email, it is inconceivable he did not read it. The email made clear that One Capital Group Pty Ltd had retained a “significant commercial interest” in the development proposal. The Commission is satisfied that by around August 2018, Mr Hindi knew that One Capital still had a financial interest in the Landmark Square planning proposal. The probabilities are that Mr Hindi knew of its retained interest well before receiving Ms Tang’s email of 30 August 2018.

For similar reasons, the Commission does not accept Mr Badalati’s evidence he did not know One Capital had retained a financial interest in the Landmark Square development. Ms Tang’s email of 30 August 2018, of which he was a recipient, makes this plain. The Commission is satisfied Mr Badalati knew of One Capital’s retained interest. The probabilities are that Mr Badalati knew of the retained interest well before receiving Ms Tang’s email of 30 August 2018.

Around this time, Aoyuan’s representatives and GRC staff were still in the process of finalising the Landmark Square VPA and the DCP. In her statement, Ms Bishop said that GRC staff wanted to exhibit the proposal and DCP together to give the community an understanding of the controls that were proposed to guide the design, built form and operational outcomes of the development. However, around this time GRC staff were having trouble finalising it with the applicant.

On 31 August 2018, Mr Badalati and Mr Hindi met with GRC staff and expressed their concern about the delays. This followed a telephone call from Mr Hindi to Ms Bishop in which he requested a meeting to discuss the planning proposal. Ms Bishop said the purpose of the meeting was to establish whether the planning proposal could be exhibited without the DCP. In her statement, Ms Bishop said it was unusual for councillors to request a meeting with her and Ms McMahon to discuss the process of a planning proposal in this level of detail. During the public inquiry, she also said it was unusual to get a call from a councillor requesting a meeting personally to discuss the progress of the planning proposal and in particular the need for a DCP, because councillors had an opportunity to speak with her every Monday night at council or committee meetings.

Mr Hindi disputed that such meetings were unusual. The Commission accepts Ms Bishop’s evidence. She had no reason to give untruthful evidence. The interest of Mr Hindi and Mr Badalati in the DCP is a further example of an activity undertaken as part of a course of conduct reflecting an abiding interest in seeing the Landmark Square planning proposal succeed. The Commission is satisfied there is no reasonable explanation for the depth and extent of their interest and involvement in the Landmark Square planning proposal other than their corrupt conduct, which has been addressed at various points throughout this report.

Ms Bishop and Ms McMahon attended the meeting with Mr Badalati and Mr Hindi on 31 August 2018. Ms McMahon explained that she created a contemporaneous file note of the meeting as it was an “uncomfortable encounter due to the level of interest expressed in the way council officers were assessing” the planning proposal. In her statement, Ms McMahon said she and Ms Bishop “felt the need to justify our actions because of the persistent questioning” and the questioning was “short in tone and tight” in contrast to other matters where the councillors were more jovial. She said the councillors claimed GRC staff progress was too slow and the delay would result in the loss of a hotel development and the monetary contribution. She said the councillors questioned why a DCP was required. Ms McMahon explained that the LEP only dealt with height and FSR and the only way to achieve the public benefits such as open space and pedestrian links was through the DCP controls. During the public inquiry, Ms McMahon agreed with the proposition that the councillors were seeking to have different procedures applied to this site as compared to other sites. In her statement, Ms Bishop said that, during the meeting, councillors Badalati and Hindi were requesting that the staff get the planning proposal on exhibition as soon as practical. During the public inquiry, Ms Bishop said the councillors were “persistent” in asking

about where the planning proposal was up to. She said they were asking if it was possible for the planning proposal to go on exhibition without the DCP.

Mr Badalati accepted that he raised such concerns at the meeting partly because of the email Ms Tang had sent the previous day. He accepted he was endeavouring to advance the interests of One Capital. Mr Hindi also accepted he may have been motivated to raise the issue by Ms Tang's email but denied he was doing it to advance the interests of Mr Uy or Wensheng Liu.

It was submitted on behalf of Mr Hindi that Ms Bishop's evidence was that during the 31 August 2018 meeting the councillors were "exploring various planning approaches to ascertain whether there was a way to address the concerns of the various correspondents who had been complaining about the unusual delay for the Landmark Square assessment process" and "ensuring the concerns of the planning staff were acknowledged and understood". Mr Hindi also submitted that the meeting could be summarised as no more than being responsive to the concerns that had been expressed to him. Mr Hindi raised with council staff the option of exhibiting the planning proposal prior to finalisation of the DCP. Ms Bishop explained her position that she would have preferred the planners to finalise the DCP. Mr Hindi thanked her respectfully and that was the end of the exchange on that topic.

The Commission does not accept Mr Hindi's submissions. Mr Hindi's summary of Ms Bishop's evidence and the meeting does not address an important question: what was the purpose of the meeting? It was a meeting which took place the day after Ms Tang's email of 30 August 2018.

On 31 August 2018, the two councillors also raised concerns about the delay with the general manager of GRC, who then sent an email to all councillors explaining why in her view GRC staff had not unduly delayed the planning proposal.

The Commission is satisfied that the necessity of a DCP was raised by Mr Badalati and Mr Hindi during their meeting with Ms Bishop and Ms McMahon in an endeavour to expedite the approval process and thereby advance the interests of One Capital and Mr Uy.

On 11 September 2018, Ms Tang had a meeting with Ms McMahon in which Ms Tang raised the DCP and stated she had been advised it was not required. Ms Tang also suggested that the VPA, DCP and planning proposal need not be exhibited together.

On 29 October 2018, GRC resolved that the planning proposal go on public exhibition, with Mr Hindi voting

in favour. Mr Badalati was an apology. This had previously been recommended by the GRC Environment and Planning Committee on 8 October 2018. Mr Badalati voted in favour. Mr Hindi was an apology.

On 30 October 2018, GRC was informed that One Capital had gone into administration and that Prime would be the developer under the VPA. This was confirmed in writing by Mr Liaw on 13 November 2018.

On 25 February 2019, a conversation occurred between Mr Badalati, Mr Hindi, Ms Bishop and Ms McMahon prior to a formal council meeting. Ms Bishop told the Commission that Mr Badalati requested that the VPA be removed from the officer dealing with it, Ms Stores, and be reallocated to someone else. Ms Bishop's account is consistent with a file note prepared by Ms McMahon in May 2019. The evidence of both Ms Bishop and Ms McMahon was that they had no concerns about Ms Stores' work. Mr Badalati said he could not recall this conversation. He claimed that if he did suggest Ms Stores should be removed, it was likely to do with the fact that, as he understood it, Ms Stores was working part time. The Commission is satisfied that whether or not Mr Badalati sought Ms Stores' removal because she was a part-time employee, his overriding concern was that the Landmark Square development was being delayed and that he considered Ms Stores was responsible. Mr Badalati wanted the matter resolved post haste. To achieve this, Ms Stores should be removed.

Meanwhile, Mrs Hindi and Ms Tang continued to meet from time to time. On 18 March 2019, Mrs Hindi messaged Ms Tang asking if they were still meeting that day. Ms Tang replied, "oh no ... I thought Philip told you", "no we are not meeting this morning", "Its [sic] been re-organised for this arvo", "I wont be there ... just the your friends and mine [sic]". During the public inquiry, Ms Tang said she was referring to Mr Badalati, Mr Hindi and Mr Uy meeting up.

As was noted in chapter 4, on 2 April 2019 the SMH published an article raising questions about Mr Badalati and Mr Hindi's involvement in the Treacy Street and Landmark Square developments and the trip to China in April 2016. The article also alleged that these matters had been referred to the Commission. At a GRC meeting on 23 April 2019, it was resolved that GRC request the Commission investigate the claims published by the SMH in the article of 2 April, and other articles, and that GRC should commence its own investigation as well, should the NSW Office of Local Government decline to do so. Both Mr Badalati and Mr Hindi declared significant non-pecuniary interests in relation to the issue.

On 22 July 2019, GRC resolved to forward the Landmark Square planning proposal to the DPE for gazettal.

Mr Badalati and Mr Hindi again voted in favour. The VPA was executed on 26 August 2019.

Further issues with the Landmark Square VPA, and the planning proposal is finally gazetted

In 2020, a further issue arose in respect of the VPA. Clause 30 of the VPA required that the VPA be registered on the title of the property on or before its commencement. Clause 32 provided that if the VPA was not registered by this time, a caveat could be registered on title and remain until the VPA was registered. GRC had asked the proponent to provide the necessary documentation to arrange for the registration of the VPA, but by early 2020 this had not yet been provided.

Mr Hindi follows up on the registration of the VPA

In January 2020, Mr Hindi followed up the issue by sending a text message to Ryan Cole (then acting director of environment and planning at the DPE), asking whether the caveat had been registered. The request was forwarded to Ms McMahon, who responded to Mr Hindi on 16 January 2020 explaining that clauses 30 and 32 of the VPA required that it be registered on title but that if it was not registered, a caveat could be lodged. She indicated it was GRC's position that the VPA should be registered. However, she had asked for a caveat to be prepared. Ms McMahon was indicating a caveat was an alternative if registration of the VPA was not achieved. Mr Hindi responded: "Thank you. I agree they must comply with our VPA procedures and we must ensure that council is fully protected."

On 7 February 2020, Ms Bishop also responded to Mr Hindi's query confirming that registration of the VPA was required and that use of the caveat "was not the preferred approach as it does not provide the same level of security for Council as registering the VPA details on the title of the land" and that this procedure had "been in place for a number of years and assists in reducing the risks to Council".

On 17 March 2020, Mr Liaw wrote to the mayor, Kevin Greene, and the deputy mayor, Mr Hindi, explaining the difficulties in obtaining the relevant tenants' consent and suggesting that the GRC's interests could instead be protected by lodging a caveat.

On 23 March 2020, Mr Hindi asked Ms Bishop, "is there any reasons why a caveat cannot be registered on title in accordance with clause 32 of the agreement?"

On 30 March 2020, he again wrote to Ms McMahon: "Could you please discuss with Meryl (Ms Bishop) to

ascertain whether a caveat would suffice to progress this issue. I have seen many councils use Caveat instead of registration of VPA such as Parramatta, Cumberland etc." However, the same day, Mr Greene wrote back to Mr Liaw confirming consents required for the VPA registration should be provided.

On 14 April 2020, Mr Hindi sent an email to himself, from his private Gmail account to his private Gmail account, addressed "Dear Councillors", with the subject "Landmark VPA", stating:

I am writing to you to request your assistance to finalise the above matter.

I want to thank the staff and councillors for working with us as the new owners and applicants of this planning proposal. It has been a long road but we are nearly there and that is thank you to all the staff who have been involved in the planning proposal including all the councillors that have supported this proposal.

The Honourable Rob Stokes Minister for planning and public spaces mentioned in his media release that in order to keep our state moving forward and to allow work to continue where possible the construction and development sector will need to be vital in keeping people in jobs and supporting the state's economic recovery that is why we are fast tracking approval and shovel read [sic] project to keep people in jobs to boost the construction pipeline and to keep our economy...

Mr Hindi admitted that he prepared this draft correspondence for potential use by Mr Uy but maintained there was nothing inappropriate about that. He said that from the time he took a redundancy with Ausgrid in October 2019 he started seeing Mr Uy and helping him on a more regular basis. He said he was just helping a "constituent" who "can't speak English".

The Commission does not accept Mr Hindi's evidence. It is troubling that a councillor at GRC would be drafting correspondence to GRC councillors (including himself) to assist a proponent while the staff of GRC were still addressing matters relating to the planning proposal, such as the VPA. The Commission is satisfied that this reflects yet another example of Mr Hindi engaging in a continuous course of conduct to assist Mr Uy.

On 21 May 2020, a solicitor named Cam Ly wrote to the then minister for planning, and copied the letter to GRC councillors, including Mr Hindi and Mr Badalati. Cam Ly – who purported to act for owners of properties located in Landmark Square and who also acted for Mr Uy from time to time – noted that the "VPA is at the stage of impasse" and described the caveat option as a "pragmatic approach".

The day before this letter was sent, Mr and Mrs Hindi met with Mr Uy at a picnic table in Carss Park. A photograph taken by Commission surveillance operatives depicts Mr Hindi holding a letter bearing Cam Ly's letterhead. Mr Hindi could not confirm whether this was the same letter sent by Cam Ly on 21 May 2020. He would not concede that he was advising Mr Uy on the contents of the letter he was holding in the photograph. The most logical explanation of this series of events, is that Mr Uy provided a draft of the letter sent on 21 May 2020 to Mr Hindi so that he could comment on it. The Commission is satisfied this is what occurred. This provides another example of Mr Hindi providing ongoing assistance to Mr Uy during this period – another example of a continuous course of corrupt conduct.

does council expect to receive the VPA money. Is it in instalment or a lump sum as council needs the money and can be used for capital projects as outlined by the minister.

Ms McMahon told the Commission that while it was not unusual for councillors to ask about the amount of VPA money and the staging, it was unusual for her to receive an email from a councillor asking about a particular VPA in this level of detail. During the public inquiry, Ms Stores agreed that for the Landmark Square VPA she "received the most of the approaches from Councillor Hindi, as compared to any other councillor or any ... other planning proposal at that stage".

Figure 27: Mr Hindi meets Mr Uy at Carrs Park and reads a letter on Cam Ly's letterhead



On 3 June 2020, Mr Hindi sent another email in response to Ms McMahon's email. He referred to Cam Ly's letter and asked if there had been any progress on the VPA. He wrote to Ms McMahon again on 17 June 2020:

When do you anticipate that the PP will be gazetted and is signed by GM. Subject to gazettal date when

On 17 June 2020, Ms McMahon informed Mr Hindi that the draft LEP had that day been lodged with the DPE, and that when the LEP took effect the developer would pay \$1,000,000 within 30 days, a further \$1,000,000 immediately prior to the development consent taking effect, with the balance of \$7,375,878 to be paid prior to the issuing of a construction certificate.

The planning proposal is gazetted

On 7 August 2020, Ms Bishop informed the councillors at GRC that the planning proposal had been gazetted, effective that day. The amending LEP rezoned the land to Mixed Use, adopted an FSR of 3.5:1 (albeit lower along Roberts Lane), increased the maximum building height to a range of 12 metres to 65 metres, and applied a bonus FSR incentive of 0.5:1 for the purpose of hotel accommodation. The applicable DCP also took effect that day.

The Commission lawfully intercepted a telephone conversation between Mr Badalati and Mr Hindi which took place the next day. Mr Badalati asked Mr Hindi if he had “heard from Faye” and said he had been “trying to get him”. This was a reference to Mr Uy. Mr Badalati mentioned “Meryl’s” email (referring to Ms Bishop). Mr Hindi said: “I told Meryl about it. She sent that email. I’m the one that told her”. Mr Badalati said: “Does – does Faye know?” Mr Hindi said he did not know, but: “He probably knows, probably because it’s on the gazettal. They, they read it, maybe they read it because it goes on the gazettal”.

The Commission is satisfied that Mr Badalati was keen to tell Mr Uy the planning proposal had been gazetted. During the public inquiry, Mr Badalati said it was just for Mr Uy’s “information” and denied that he knew at the time that Mr Uy or Wensheng Liu still had a financial interest in the planning proposal. Mr Hindi denied this too. Ultimately, it is unnecessary for the Commission to determine whether, at this point in time, they believed that Wensheng Liu or Mr Uy expected to receive any further benefit from the gazettal of the planning proposal. By this time, Mr Badalati’s and Mr Hindi’s role in voting on the planning proposal had come to an end.

Prime pays One Capital

In August 2020, Mr Liaw emailed Lan Liu, Wensheng Liu’s wife, his calculations of the amounts owing under the verbal rezoning agreement concluded between One Capital and Prime. Mr Liaw stated, based on the formula, the total amount required to be paid to One Capital was \$5,911,663.09. Prime had already paid: \$990,000 on 13 August 2018; \$1.01 million on 4 September 2018; \$1 million on 9 December 2019; and \$1 million following gazettal on 12 August 2020. He said \$1,911,633.09 was still owing to One Capital and, since the total FSR was about 4.22:1, “there is a potential 0.22 to be accounted once we can agree on how the hotel is to be treated”.

While the invoices for the 13 August 2018 and 4 September 2018 payments were issued by One Capital, the invoices for 9 December 2019 and 12 August 2020

were issued by a company called Vertex Corporation Pty Ltd (“Vertex”). Rongdi Shao, who had also travelled to Tangshan, China, for the signing ceremony in April 2016, was a director of Vertex and ran the company. Mr Shao had nominated Wensheng Liu’s wife Lan Liu to be his representative to deal with an insurance policy held by Vertex.

On 1 September 2020, Mr Yan sent an invoice to Mr Liaw, addressed to Prime, for \$1,911,633.09 plus GST. This invoice was again issued by Vertex. During the public inquiry, Mr Liaw said he understood Vertex to be a company nominated by Wensheng Liu and that this invoice was issued in response to his earlier email. He said he arranged for that invoice to be paid shortly thereafter.

One Capital went into administration in October 2018. However, Wensheng Liu and Mr Yan gave evidence that there was a separate deal between Vertex and Prime whereby Vertex would purchase the hotel business if the development went ahead. Mr Yan said the invoices were issued by Vertex because of a separate deal between Vertex and Prime and not pursuant to the verbal rezoning agreement between One Capital and Prime. However, that evidence is inconsistent with the terms of Mr Liaw’s email. While it is likely that the payments related to One Capital’s verbal agreement with Prime for the payment of a fee upon gazettal of the planning proposal, it is ultimately unnecessary to resolve this issue. What matters for present purposes is that One Capital had an agreement in place with Prime that it would be paid upon gazettal. It had an interest in the planning proposal when Mr Badalati and Mr Hindi came to vote on it. The fact that the payments were actually made by Prime serves to confirm that the agreement was a genuine one, but that was not disputed by Wensheng Liu, Mr Liaw or Mr Uy in any event.

For the same reasons, it is unnecessary for the Commission to make a finding about the purpose of further invoices issued by Wensheng Liu, Mr Uy or Wensheng Liu’s companies to Vertex:

- In 2021–2022, Wensheng Liu issued invoices to Vertex: for \$150,000 in January 2021, \$37,500 in March 2021 and \$150,000 in May 2021. Mr Liu gave evidence that these invoices were not issued to recover amounts that Prime had paid under the rezoning agreement but related to the new hotel deal.
- Mr Uy also instructed his solicitor to prepare a draft invoice to Vertex in September 2020. The subject was “service rendered for the project located as 61–67 & 73–75 Forest Road Hurstville” in the amount of \$1,030,000 (excluding GST). Mr Uy gave evidence that

he issued this invoice on his own behalf and on behalf of other investors in the Landmark Square development, but it was not paid.

- There is also an invoice from the One International Corporation to Vertex in June 2021 and an invoice from AEC Consulting to Vertex in June 2021. However, Mr Yan and Wensheng Liu's evidence is that these related to rent for warehouses rented out by those companies to Vertex.

Mr Liaw told the Commission that he believes that Prime has paid all money due to One Capital pursuant to the verbal agreement. He also said that Mr Uy was to this day claiming additional money on the basis that the FSR was in fact higher than the FSR calculated by Mr Liaw.

Corrupt conduct

Mr Badalati

On 25 June 2018, Mr Badalati attended a meeting of GRC at which both the Landmark Square planning proposal and another modification application for the Treacy Street development were considered. Mr Badalati voted without disclosing his significant non-pecuniary interest in both developments by virtue of his relationship with Wensheng Liu and Mr Uy.

This conduct on the part of Mr Badalati was corrupt conduct for the purpose of s 8 of the ICAC Act, as it constituted the dishonest and partial exercise of his official functions – as per s 8(1)(b)) – and involved a breach of public trust – as per s 8(1)(c).

The Commission is satisfied for the purpose of s 9(1)(b) of the ICAC Act that if the facts as found were to be proved on admissible evidence to the civil standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Badalati had committed a disciplinary offence, being a substantial breach of the requirements of the GRC Code of Conduct. His conduct therefore comes within s 9(1)(b) of the ICAC Act. Specifically, it could constitute or involve a substantial breach of the following clauses of the GRC Code of Conduct:

- clause 4.2, which required council officers to avoid or appropriately manage any conflicts of interest
- clause 4.12, which required disclosure fully and in writing of any non-pecuniary interest that conflicted with a public duty, even if the conflict was not significant

- clause 4.16, which required that significant non-pecuniary interests be managed by removing the source of conflict or by having no involvement in the relevant matter.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that if the facts as found, including evidence of further corrupt conduct addressed throughout this report, were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Badalati had committed the common law offence of misconduct in public office. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

For the purposes of s 13(3A) of the ICAC Act, the Commission is also satisfied that if the facts as found were to be proved on admissible evidence to the civil standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Badalati had committed a disciplinary offence, being a substantial breach of the requirements of the GRC Code of Conduct. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is also satisfied on this basis.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that the conduct was serious corrupt conduct for the same reasons identified in chapter 6 in respect of Mr Badalati's failure to disclose significant non-pecuniary interests to council.

Mr Hindi

On 25 June 2018, Mr Hindi attended a meeting of GRC at which both the Landmark Square planning proposal and another modification application for the Treacy Street development were considered. Mr Hindi exercised his official functions as a councillor of GRC by voting, without disclosing his significant non-pecuniary interest in both developments by virtue of his relationship with Wensheng Liu and Mr Uy.

This conduct on the part of Mr Hindi was corrupt conduct for the purpose of s 8 of the ICAC Act, as it constituted the dishonest and partial exercise of his official functions – as per s 8(1)(b) – and involved a breach of public trust – as per s 8(1)(c).

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts as found were to be proved on admissible evidence, including evidence of further instances of corrupt conduct addressed throughout this report, to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Hindi committed an offence of

misconduct in public office. His conduct therefore comes within s 9(1)(a) of the ICAC Act.

The Commission is satisfied for the purpose of s 9(1)(b) of the ICAC Act that if the facts as found were to be proved on admissible evidence to the civil standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that Mr Hindi had committed a disciplinary offence, being a substantial breach of the requirements of the GRC Code of Conduct. His conduct therefore comes within s 9(1)(b) of the ICAC Act. Specifically, it could constitute or involve a substantial breach of the following clauses of the GRC Code of Conduct:

- clause 4.2, which required council officers to avoid or appropriately manage any conflicts of interest
- clause 4.12, which required disclosure fully and in writing of any non-pecuniary interest that conflicted with a public duty, even if the conflict was not significant
- clause 4.16, which required that significant non-pecuniary interests be managed by removing the source of conflict or by having no involvement in the relevant matter.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that if the facts as found, including evidence of further corrupt conduct addressed throughout this report, were to be proved on admissible evidence to the criminal standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Hindi had committed the common law offence of misconduct in public office. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

For the purposes of s 13(3A) of the ICAC Act, the Commission is satisfied that if the facts as found were to be proved on admissible evidence to the civil standard of proof and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that Mr Hindi had committed a disciplinary offence, being a substantial breach of the requirements of the GRC Code of Conduct. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is also satisfied on this basis.

The Commission is satisfied for the purpose of s 74BA of the ICAC Act that the conduct is serious corrupt conduct for the reasons previously identified in chapter 6 in respect of Mr Hindi's failure to disclose pecuniary interests and significant non-pecuniary interests to council.

Section 74A(2) statements

The Commission is satisfied that Mr Badalati and Mr Hindi are "affected" persons for the purposes of s 74A(2) of the ICAC Act.

Vincenzo Badalati

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Badalati for giving false or misleading evidence contrary to s 87 of the ICAC Act in respect of his lack of knowledge that One Capital Group Pty Ltd had retained a financial interest in the Landmark Square development following the sale of the site to Prime Hurstville Pty Limited in 2017.

Mr Badalati's term as GRC councillor concluded in December 2021. Accordingly, the question of taking any disciplinary action against him for any specified disciplinary offence does not arise.

Constantine Hindi

The Commission is of the opinion that consideration should be given to obtaining the advice of the DPP with respect to the prosecution of Mr Hindi for:

- the common law offence of misconduct in public office
- giving false or misleading evidence contrary to s 87 of the ICAC Act in respect of his lack of knowledge that One Capital Group Pty Ltd had retained a financial interest in the Landmark Square development following the sale of the site to Prime Hurstville Pty Limited in 2017.

Mr Hindi's term as GRC councillor concluded in December 2021. Accordingly, the question of taking any disciplinary action against him for any specified disciplinary offence does not arise.

Chapter 9: Corruption prevention

Consistent with the Commission's principal functions, each investigation provides a new opportunity for the Commission to ask: How did the corrupt conduct occur? What changes could be made to systems, procedures, methods of work or laws to reduce, discourage or prevent corrupt conduct, or limit its harms?

This chapter consists of three parts.

- The first part deals with councillors' interactions with developers. These interactions compromised councillors' impartiality and increased their risk of capture.
- The second part addresses councillor decision-making processes. Deficiencies in these processes can facilitate corruption.
- The third part considers features of the complex NSW planning system that can create corruption risks.

Councillors play a key role in the realisation of land use and planning potential that can benefit developers. Their decisions are governed by legislative and policy frameworks that provide a level of control over factors that should be considered and processes that are followed. For example, councillors are expected to consider a range of relevant factors when making decisions about a potential development, including height and density, infrastructure needs and the acceptability of benefits offered in a planning agreement.

Flexibility in that legislative and policy framework can allow optimal outcomes that meet planning objectives. On the other hand, the flexibility and complexity in planning frameworks can generate uncertainty and a loose control environment. This allows varying interpretations of what is acceptable in terms of processes and outcomes. Mr Badalati, Mr Hindi, Mr Sansom and Mr Uy were able to leverage that discretion to their advantage.

This investigation provides examples, over a significant period, of councillors failing to maintain a professional distance from developers and their associates. They failed to be transparent in their interactions with developers and they failed to disclose their significant interests in matters before council.

Mr Badalati, Mr Hindi and Mr Sansom engaged in conduct and decision-making calculated to favour their own and the developers' private interests. They did so with little accountability in their decision-making.

Councillor and developer interactions

This investigation provides instances of councillors who, contrary to the public interest, formed social and business relationships with developers and subsequently advanced the developers' interests. These interactions create the impression that favourable planning decisions can be acquired by befriending and paying councillors.

Since the first iteration of the *Model Code of Conduct for Local Councils in NSW* ("the Model Code of Conduct") in 2005 (promulgated under the Local Government (General) Regulation 2005), councillors are required to disclose and manage their private interests in favour of their public duties. These requirements are longstanding and well established, with considerable case law emphasising the importance of disclosure and management of pecuniary and non-pecuniary interests.

In this report, the Commission need not make a further recommendation on conflicts of interest, as it has already recommended guidelines be developed to assist public officials to implement transparent, accountable and corruption resistant practices when subject to

lobbying approaches.¹⁶ Those recommendations are being implemented by the DPE through guidelines and a model policy.

While recognising that undisclosed off-site interactions between councillors and developers have been a key feature of this investigation, the Commission will not make any further recommendation on that topic in this report while the implementation of existing recommendations is ongoing.

Councillors' overseas travel

While councillors, both Mr Badalati and Mr Sansom travelled overseas and met with Mr Uy many times from at least 2007 to 2016. Both Mr Badalati and Mr Hindi also travelled overseas to meet with Mr Uy and other interested parties in 2016 and 2018.

As indicated in chapter 4, the purpose of Mr Badalati and Mr Hindi's travel to Tangshan in April 2016, just prior to their vote on the Landmark Square planning proposal and the Treacy Street planning agreement, was to promote and endorse both developments. Their invitation to Tangshan as guests of Xinfeng was to demonstrate their backing, as Australian local officials, to the cooperation between Yuqing Liu and Wensheng Liu. It would have left the impression on those who attended the signing

ceremony – including Chinese officials and bankers – that the developments were supported by HCC.

Although both HCC and GRC had policies concerned with councillor expenses and overseas sister cities during the relevant period, there was no policy at either council specifically requiring councillors to seek prior approval for overseas travel. There was also no general requirement for councillors to provide a report or notify the council about key events that occurred during any such travel, including whether meetings had been held and what matters had been discussed.

This investigation has shown that overseas travel poses corruption risks for elected representatives. In this context, these risks include:

- creating perceptions that development proposals have government backing
- misrepresenting or misunderstanding a councillor's ability to influence development outcomes
- taking advantage of a lack of detailed understanding about NSW planning processes among foreign parties
- being placed in situations that are personally compromising or likely to lead to conflicts of interest
- being offered gifts, benefits and hospitality, with an expectation of reciprocity
- making inappropriate commitments regarding developments or being perceived as having made promises
- harming Australia's reputation as a reliable trading and investment partner.

¹⁶ Relevant recommendations and findings made by the Commission are:

- Recommendations 8 and 9 in the March 2021 report *Investigation into the conduct of councillors of the former Canterbury City Council and others* (Operation Dasha)
- Key Finding 5 in the June 2021 report *Lobbying and the NSW public sector – the regulation of lobbying, access and influence in NSW* (Operation Eclipse)
- Recommendations 9 and 10 in the July 2022 report *Investigation into the conduct of the local member for Drummoine* (Operation Witney).

In relation to practices in China, Mr Sansom told the Commission that,

A mayor in China has more power than a Premier of a state in Australia. It's a very powerful position ... If someone, a Chinese person knows a mayor from Australia, well, then that raises them up in the, in the system...

The Commission agrees that the role of mayor is quite different in NSW and China. These cultural and legislative differences in local government have the potential to create misunderstandings and may give rise to corrupt practices. This means that NSW mayors and councillors need to be cautious about accepting offers of overseas travel and hospitality.

In NSW, state ministers must seek authority from the premier of NSW for official overseas travel.¹⁷ Frameworks also exist for members of the Australian Parliament to seek authority from the prime minister, the leader of the relevant political party or a presiding officer in connection with their overseas travel.¹⁸ The general purpose for seeking such an authority is to identify relevant risks and determine the circumstances under which the proposed travel should proceed, if at all.

There is currently no guidance provided by the DPE's Office of Local Government (OLG) concerning the approval of overseas travel by councillors. The Commission considers that more robust processes are needed for the approval and reporting of overseas travel by councillors, to manage potential corruption and other integrity risks. In particular, it is important that councils be aware of circumstances in which an individual councillor carries out official functions while overseas. Moreover, if official overseas travel is approved, the relevant council can properly consider the basis for any reimbursement of expenses for councillors or whether aspects of the travel are to be funded by a party other than council.

Approval and reporting requirements will assist councils to comply with their obligations under clause 217 of the

Local Government (General) Regulation 2021 to report the purpose of overseas visits undertaken by councillors while representing council. Formal approval of overseas travel may also ensure alignment with any international engagement strategy held by the NSW Government or council.

One way in which the Commission ensures procedural fairness is through a submissions process upon the conclusion of a public inquiry. The Commission serves submissions to the relevant parties – in this case, the DPE and GRC – proposing recommendations for reducing corruption risks. They were invited to respond to these submissions and the Commission considered their responses in developing its final recommendations.

In its corruption prevention submissions, the Commission proposed a recommendation that the DPE prepares guidelines for the approval and reporting of overseas travel by councillors.

GRC supported the proposed recommendation and made two suggestions. First, that any request by councillors for overseas travel should be determined at an open meeting of the council. Secondly, that councils should be required to maintain a register and notify OLG of authorised travel.

The DPE also supported the proposed recommendation and suggested any such guidelines should be made under s 23A of the *Local Government Act 1993* ("the LGA").

RECOMMENDATION 1

That the DPE issues guidelines under s 23A of the *Local Government Act 1993* addressing:

- approval and reporting requirements for overseas travel by councillors in an official capacity
- governance and probity guidance about councillors travelling overseas in an official council capacity, including related funding arrangements.

Councillors' acceptance of gifts and benefits

In chapter 5, the Commission made findings that, as a reward or inducement to favour the interests of the proponents of the Treacy Street and Landmark Square developments and himself, Mr Uy provided corrupt benefits to Mr Badalati and Mr Hindi while they were councillors.

During the public inquiry, Mr Badalati and Mrs Hindi claimed they had reimbursed Mr Uy and Yuqing Liu, with cash, for the cost of travel and hospitality they had received.

¹⁷ Department of Premier and Cabinet, *Ministers' Office Handbook*, NSW Government, February 2023, pp. 18, 21. Available at: www.nsw.gov.au/sites/default/files/noindex/2023-06/Ministers-Office-Handbook.pdf. Accessed on 7 March 2023; Pursuant to the Premier's Memorandum M2015-05, there is also a requirement for the Premier and ministers to publicly report on overseas travel. See: Department of Premier and Cabinet, M2015-05-Publication of Ministerial Diaries and Release of Overseas Travel Information, <https://arp.nsw.gov.au/m2015-05-publication-ministerial-diaries-and-release-overseas-travel-information/>. Accessed on 7 March 2023.

¹⁸ Independent Parliamentary Expenses Authority, *International travel*, from www.ipea.gov.au/travel/parliamentarians-travel/international-travel. Accessed on 24 March 2023.

The Commission is concerned that OLG's current Model Code of Conduct, which all councils in NSW must adopt, does not prohibit councillors from receiving gifts, loans, benefits or hospitality from developers. For example, as set out in chapter 2, Mr Sansom received free airfares to China in March 2014. As set out in chapter 4, Mr Badalati and Mr Hindi received travel, accommodation, meals and transfers in a luxury car.

Ultimately, the Commission found that Mr Badalati and Mr Hindi received these benefits as an inducement or reward to use their positions as councillors to favour the interests of the proponents of the Treacy Street and Landmark Square developments and Mr Uy. However, the Commission believes there is merit in prohibiting all gifts from property developers. This would also make it more difficult for councillors to recharacterise corrupt benefits from developers as gifts or loans.

In its corruption prevention submissions, the Commission identified a need for OLG's Model Code of Conduct to explicitly prohibit all public officials, including councillors, from accepting gifts, hospitality and contributions to travel from developers. The Commission noted that exemptions may be needed where hospitality is provided in connection with workshops, conferences, seminars or symposia sponsored by a developer or peak body. Such events allow public officials to engage with industry and provide opportunities for insights and knowledge sharing. Councillor education, professional development, and briefings about planning and development matters is important, as it can improve informed decision-making in this complex regulatory area. In addition, reasonable business courtesies at site visits could be permitted.

The DPE supported this recommendation. GRC also supported the recommendation but suggested any exemptions might be limited to instances where the developer sponsors an event. The council also suggested that the prohibition should apply to property developers as defined under NSW electoral laws.

RECOMMENDATION 2

That the DPE amends the *Model Code of Conduct for Local Councils in NSW* to prohibit council officials, including councillors, from accepting gifts and benefits (including hospitality and contributions to travel) from property developers. An exemption should be considered for situations where the receipt of hospitality is in connection with a councillor's attendance at industry briefing, educational, professional development and training events – such as workshops, conferences, seminars, symposia – that are provided, organised or sponsored by a property developer.

Accountability in decision-making

Transparency in decision-making involves understanding the rationale for decisions, what influenced those decisions and the processes involved in making the decisions. In the Commission's experience, a lack of transparency and accountability in government decision-making can be conducive to corruption.

Informal committees of council

On 3 February 2010, a mayoral minute at HCC's extraordinary council meeting established the City Centre Working Party ("the CCWP"). Its purpose was to review planning controls for the Hurstville CBD. The CCWP was led by four councillors, including the then mayor, Mr Sansom, and deputy mayor, Mr Hindi. The HCC general manager facilitated the CCWP and it held meetings, as required, with both HCC staff and consultants.

The CCWP was not a formal committee established under the LGA. As such, it was not subject to the governance, transparency and oversight requirements of s 355 of the LGA, Division 5 of the Local Government (General) Regulation 2005, or council's code of meeting practice.

The Commission recognises that informal committees such as the CCWP can allow greater flexibility in the deliberative process, assist with the exploration of ideas and provide a greater opportunity to ask questions.

On the other hand, informal committees can lack transparency and accountability. They can also create opportunities for undue influence and to withhold information between councillors. There is a risk that informal committees may be used to bypass council's requirements and processes, resulting in reduced accountability and transparency and increasing the potential for corrupt and unethical practices.

These corruption risks were present with the CCWP. There was a lack of records for meetings from 2011 onwards, including with respect to agendas and minutes. In addition, it was unclear what issues were raised or discussed by the CCWP during this period, how differing views and opinions were resolved, and when the CCWP ceased to operate. The Commission's investigation shows that councillors not involved in the CCWP were given no notice of when it would meet and no opportunity to participate.

The decisions being made by the CCWP were not insubstantial. For example, the CCWP report to an extraordinary council meeting of 12 April 2012 included recommendations that sought to amend height and FSR controls on more than 18 sites, following the public

exhibition of the draft Hurstville City Centre Local Environmental Plan 2012. The CCWP also recommended amendments to heights and FSR without following the normal process of seeking the expert advice of council's planning staff. Consequently, height changes in the Hurstville CBD were made, according to HCC's manager of strategic planning, "without any reference to any planning rationale or urban design principles". Mr Watt (then director of planning and development at HCC) advised the Commission that the CCWP involved:

cherry-picking various parcels of land in Hurstville and then councillors dictating what the height and floor space ratio should be on each of them and some of those, for no good planning reason.

The Commission submitted a proposed recommendation to set minimum standards of governance when establishing an informal working group. The Commission also suggested that the DPE considers the circumstances in which councils should not be permitted to create informal working parties.

In response to these submissions, GRC raised concern that it was not clear on what legal basis informal committees like the CCWP could be established to inform the exercise by a council of its statutory or administrative decision-making functions. It agreed, nonetheless, that all informal committees of council, irrespective of their role, should be subject to minimum standards of governance.

The DPE agreed to the recommendation, noting it was similar to the recommendation made by the Commission in its report *Investigation into the conduct of the local member for Drummoyne* (July 2022).¹⁹ It is relevant to note that the recommendation in that investigation dealt with a specific type of informal committee of council known as a council workshop.

RECOMMENDATION 3

That the DPE provides guidelines for councils stating that, when they propose to form an informal committee consisting of councillors, they should establish:

- (i) **clear terms of reference and objectives for the group, including its role**
- (ii) **governance arrangements, accountability and transparency measures (including proper record-keeping requirements and ensuring the group cannot direct staff)**

- (iii) **an obligation to report in a timely manner on the deliberations of the group to other councillors**
- (iv) **that the group does not have a decision-making function normally carried out through other council processes or activities.**

RECOMMENDATION 4

That the DPE also provides guidelines for councils in relation to when it is appropriate or inappropriate to establish informal working groups. For example, whether they should be convened to deal with statutory and administrative decisions including planning and other regulatory and procurement matters.

Councillors' providing reasons for their decisions

HCC and GRC adopted a code of meeting practice that applied from 18 September 2013 to 1 June 2019. If councillors did not adopt recommendations of council staff in relation to planning, development or related applications, this code required councillors to provide reasons.

Despite this requirement, councillors failed to provide reasons in respect of the development applications for 1–5 Treacy Street at the HCC meetings of 19 November 2014 and 20 April 2016.

Similarly, with respect to the Landmark Square planning proposal, the council decision on 20 April 2016 did not give reasons for granting favourable concessions. No reason was provided by the council explaining why it resolved to waive requirements for the preparation of a DCP, the preparation of a contamination assessment or an appropriate mechanism to address road and traffic infrastructure demands. Given the Commission's findings of corrupt conduct by Mr Badalati, Mr Hindi and Mr Sansom and their influence on the council (see chapter 5), one may conclude that there were no sound reasons for these concessions.

The OLG's *Councillor Handbook* (2021) establishes that the provision of reasons in decision-making is consistent with the principles of transparency, accountability and good practice. This handbook observes that:

When making decisions, councils should ensure their decisions are transparent and that decision-makers are accountable for decisions and omissions.

[...]

¹⁹ NSW ICAC, *Investigation into the conduct of the local member for Drummoyne*, Sydney, July 2022.

Ensuring good practice includes Council records that include staff recommendations, council resolutions and a rationale if the two differ.

[...]

Councillors are accountable to the community through community engagement, open and transparent decision making, as well as regular planning and reporting.²⁰

Providing reasons for decisions strengthens the integrity of government decision-making. It contributes to rational decision-making because it encourages the decision-maker to consider: the evidence; relevant criteria, standards, policies and practices; and conflicting arguments or positions. Providing reasons acts as a disincentive for corrupt conduct, as it makes it more difficult to hide a decision that is not supported by facts, requirements or the public interest.

The *Model Code of Meeting Practice for Local Councils in NSW 2021* does not require that reasons are provided by councillors when they resolve to adopt recommendations that vary from those provided by staff in respect of planning applications.²¹ While, as noted above, the former revision of HCC's code of meeting practice had such a provision, the current code for GRC does not.

The Commission considers there is value in requiring councillors to state their reasons publicly; it is a disincentive for corrupt conduct. If approval from a councillor is given in accordance with a planner's recommendation, they can adopt the reasons in the council staff report. If not, it will be council's responsibility to set out its reasons. The DPE and GRC expressed support for such a recommendation.

RECOMMENDATION 5

That the DPE amends the *Model Code of Meeting Practice for Local Councils in NSW* to require a council's governing body to provide reasons for approving or rejecting development applications, planning proposals and planning agreements where decisions depart from the recommendations of staff. These reasons should refer to the relevant merits criteria and explain why the decision is more meritorious than the recommended outcome.

²⁰ Office of Local Government, *Councillor handbook*, Nowra NSW, December 2021, pp. 10, 28, 30.

²¹ Office of Local Government, *Model Code of Meeting Practice for Local Councils in NSW 2021*, OLG website (www.olg.nsw.gov.au/). Accessed on 17 May 2023.

A "controlling bloc" on the council?

As set out in chapter 3, the Commission obtained evidence from Mr Watt that Mr Badalati, Mr Hindi and Mr Sansom were "basically the leaders of the controlling bloc" on the council and the motions they moved were usually accepted. Whether or not there was a controlling bloc, the Commission is satisfied that these three councillors exercised significant influence over their colleagues.

The main point of collective decision-making by elected councillors is to ensure a plurality of views that represent those of the broader community. But collective decision-making is also an important anti-corruption measure. It is undesirable for a controlling bloc to form on a council because a developer (or any other person seeking a favourable decision) need only persuade or corrupt the known "leaders" to secure their preferred outcome. Putting it another way, if a councillor uncritically defers to the views of a small number of leaders, they may be contributing to an environment that is conducive to corrupt conduct.

In addition, the existence of a controlling bloc may undermine the administrative law requirement to base decisions only on relevant planning merits.

These corruption risks are reflected in OLG's Model Code of Conduct, which prohibits binding caucus votes in relation to almost all matters before council or a committee. The model code also says, "You must avoid any occasion for suspicion of improper conduct in the exercise of land use planning, development assessment and other regulatory functions" and:

In exercising land use planning, development assessment and other regulatory functions, you must ensure that no action, statement or communication between yourself and others conveys any suggestion of willingness to improperly provide concessions or preferential or unduly unfavourable treatment.

It is important councillors know the risks that undermine effective decision-making. Decisions influenced by power blocs, information asymmetry, "horse-trading" and allegiances reflect a loss of objectivity and can lead to a failure of governance. It is also important that councillors understand the factors that promote effective decision-making.

The Kellar Review on councillor conduct accountability in NSW recommended mandatory training for councillors.²² The Commission supports education that will improve council governance and support ethical decision-making.

²² G Kellar PSM, *Focus on civic responsibility: Councillor conduct accountability in NSW*, Reinforcements Management Consulting, Kenmore QLD, October 2022. .

Council member composition of Sydney District and Regional Planning Panels

Sydney District and Regional Planning Panels deal with matters identified as having regional planning significance. Each panel consists of five members, with three appointed by the minister responsible for the planning portfolio and two nominated by the relevant council. Council nominees on panels are often councillors.

While councillors, Mr Hindi and Mr Sansom were appointed to represent their council and served for lengthy periods as members of the Sydney East Joint Regional Planning Panel (referred to earlier in this report as “the JRPP”). The investigation by the Commission found Mr Sansom served as one of council’s JRPP members for approximately six years, from 9 September 2009 to 8 September 2015. Mr Hindi, meanwhile, served as council’s JRPP member for a non-continuous period of approximately 10 years, between 9 September 2009 and 27 September 2021. As long-serving council representatives of the JRPP, they were able to accumulate knowledge and experience, and to influence approval of high-value developments in the local government area.

In November 2022, the DPE released new guidelines in respect of regional planning panels. The new guidelines now require councils to appoint a minimum of four alternate members to regional planning panels. Members and alternate members are to be regularly rotated to ensure a level of randomisation among decision-makers.

The Commission considers that regular rotation of panel members reduces corruption opportunities. This is because it lowers the probability that a councillor, such as Mr Hindi or Mr Sansom, is in a position to corruptly progress the business interests of a developer and its associates. In turn, this lowers the benefit that can be derived from cultivating a relationship with a particular councillor. The Commission supports the reform already actioned by the DPE in this area and, accordingly, has decided not to make further corruption prevention recommendations at this time.

Complexity and flexibility of the NSW planning system

The NSW planning system is known for its complexity and flexibility. The Commission considers that these factors can be conducive to corrupt conduct when combined with a lack of transparency and the potential for significant financial gains to developers.

Decision-making on planning agreements

Planning agreements are the subject of amendments to the EP&A Act that came into force in 2005.²³ They allow a developer to enter into an agreement on a voluntary basis with a council or another planning authority (or both) to “dedicate land free of cost, pay a monetary contribution or provide any other material public benefit, or any combination of them” for a “public purpose”. Section 7.4(2) of the EP&A Act states that a “public purpose” includes, without limitation, any of the following:

- (a) *the provision of (or the recoupment of the cost of providing) public amenities or public services,*
- (b) *the provision of (or the recoupment of the cost of providing) affordable housing,*
- (c) *the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,*
- (d) *the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,*
- (e) *the monitoring of the planning impacts of development,*
- (f) *the conservation or enhancement of the natural environment.*

The matters councils and other planning authorities must consider when dealing with a planning agreement are provided in practice notes that the secretary of the DPE may make under regulations to the EP&A Act. Two practice notes have been produced by the secretary of the DPE since 2005 – the first being in July 2005 (the “2005 Practice Note”)²⁴ and the second being in February 2021 (the “2021 Practice Note”)²⁵ – and both identify three matters that councils or other planning authorities should consider.

First, both practice notes identify “fundamental principles” that parties to a planning agreement should adhere to. While there are fewer principles in the 2021 Practice Note, both establish a common principle that planning

²³ Planning agreements have been known, and were referred to during the investigation period, as voluntary planning agreements or VPAs.

²⁴ NSW Department of Planning, Industry and Environment, *Planning Agreements: Development Contributions – Practice Note*, Sydney, 19 July 2005 (see Exhibit 324, pp. 33–56).

²⁵ NSW Department of Planning, Industry and Environment, *Planning Agreements Practice Note 2021*, Sydney, February 2021.

agreements should not be the reason for accepting a development that is otherwise unacceptable in planning terms. The 2005 Practice Note observed that “planning agreements must be governed by the fundamental principle that planning decisions may not be bought or sold”.²⁶ The 2021 Practice Note did not support the use of value capture “because of the perception that planning decisions could be bought and sold”.

Secondly, both practice notes set out an “acceptability test”, comprising five parts, that a council or other planning authority should apply to determine if a planning agreement should be accepted. The five parts of the acceptability test in both practice notes are similar and require that a planning agreement:

- be directed towards a proper or legitimate planning purpose
- provide benefits that are not wholly unrelated to the development
- produce outcomes that meet the general values and expectations of the public and protect the overall public interest
- provide a reasonable means of achieving the desired outcome and securing the benefit
- protect the community against adverse planning decisions.

Finally, both practice notes encourage, but do not require, councils and other planning authorities to publish policies and procedures concerning their use of planning agreements. Councils that seek to publish policies and procedures consistent with the practice notes must use the general policy-making powers under the LGA, as there are no such powers in the EP&A Act. Both HCC and GRC took this approach when they respectively produced planning agreement policy and procedures on 19 December 2006 and 10 August 2016. In both cases, they created procedures particular to these councils, but also included fundamental principles and acceptability tests generally consistent with the 2005 Practice Note.

Councils retain significant discretion in their dealings with planning agreements. First, the DPE practice notes are described as providing advice or guidance on planning agreements – they are not mandatory requirements. Secondly, consistent with *Stockland Development Pty Ltd v Manly Council* (2004) NSWLEC 472 at 92, while planning agreement policies produced under the LGA are a relevant public interest consideration in the NSW

planning system, their determinative weight will be influenced by such factors as the extent to which previous decisions have departed from policy. This position is reflected by the statement in the 2021 Practice Note that “[t]he weight given to the draft planning agreement and public submissions is a matter for the relevant authority acting reasonably”.²⁷

The broad discretion available to councils with respect to planning agreements means they are subject to a loose control environment. This raises significant concern that decisions in respect of planning agreements could be influenced by inappropriate or irrelevant considerations. The following evidence in this investigation demonstrates this flaw.

First, as set out in chapter 5, the Commission found that Mr Badalati and Mr Sansom failed to disclose their significant non-pecuniary conflict of interest when voting on the Treacy Street planning agreement on 19 November 2014. The development application attached to this planning agreement exceeded the prevailing height standard by 72% and the FSR by 63%. It also exceeded the limits set out in the draft LEP that had been approved by the council just two months prior, in September 2014, and was awaiting approval by the DPE (see Table 2).

The report to the JRPP of the Treacy Street DA dated 23 March 2015 points to the first Treacy Street VPA as justification for the excessive height and floor space in the DA. The VPA had been approved by the council on 19 November 2014, contrary to the advice of the planning staff. The report to the JRPP states:

The VPA Offer promotes the Council’s strategic objectives in relation to the use of planning agreements by: facilitating high density development close to facilities and services in Hurstville City Centre and providing a more flexible development contributions system for Council and supplementing the application of s94 contributions.

The report then states, as to whether the VPA could be taken into consideration in assessment of the development:

Yes. The VPA Offer was submitted with DA for 1-5 Treacy Street, Hurstville and the Council resolved on the 19 November 2014 “to accept the offer...”

Secondly, the Commission found in chapter 5 that Mr Badalati, Mr Hindi and Mr Sansom failed to disclose significant interests when voting at HCC’s 20 April 2016 meeting to accept a second planning agreement

²⁶ These sentiments are intended to explain the 2021 Practice Note advice to councils and planning authorities that planning agreements should not be used to capture a proportion of the change in land value that might come from rezoning or varying planning controls.

²⁷ NSW Department of Planning, Industry and Environment, *Planning Agreements: Practice Note*, Sydney, February 2021.

Table 2: Specifications of GR Capital Group development applications 1–5 Treacy Street

Applicable controls		Applications	Proposed height	Proposed FSR	% increase in height vs controls	% increase in FSR vs controls
Height	FSR					
23m (approx. 7 storeys)	3:1	DA2014/1083 (11 storeys, 76 residential units, 108 car spaces)	39.7m	4.9:1	+ 72%	+ 63%
23m (approx. 7 storeys)	3:1	MOD2015/0162 (+5 storeys, 103 residential units, 152 car spaces)	56.15m	6.9:1	+ 144%	+ 130%
23m (approx. 7 storeys)	3:1	DA2017/0205 (+5 storeys, 106 residential units, 144 car spaces)	55.3m	6.8:1	+ 140%	+ 127%

from GR Capital Group, attached to its application to modify the Treacy Street development. HCC staff had recommended the modification be refused because it significantly exceeded height and FSR requirements and the proposal was not substantially the same as the original application. It would have exceeded existing height controls by 144% and FSR controls by 130%. Additionally, HCC staff recommended the planning agreement be refused for providing insufficient public benefit. GR Capital Group had offered a monetary contribution of \$200,000. Ultimately, the planning agreement did not progress, as the substantive application was refused by non-council members of the JRPP.

These circumstances support the conclusion that planning agreements, coupled with the corrupt conduct of councillors, were used to effectively buy development consents. Those circumstances were:

- Both planning agreement offers contained an inadequate public benefit or provided insufficient information about the public benefit.
- Both offers provided minimal information as to how the planning agreements would operate. They did not address a range of matters including enforcement, registration, security and payment of council's costs.
- The first planning agreement offer had not yet been satisfactorily assessed to determine its suitability.
- The first planning agreement offer was unrelated to the development proposed, as it included land outside of the developer's ownership or control.

- The second planning agreement offer was unacceptable on planning terms, as the planning application was incapable of being approved.

This investigation shows that planning agreements are susceptible to corrupt conduct and improvements in the regulatory framework should be considered.

First, a central issue is the lack of oversight by the DPE of planning agreement decision-making. Although the DPE is not a party to such an agreement, the Commission considers the DPE could extend its oversight of a planning agreement. At the very least, the DPE could provide general oversight through a risk-based audit focused on compliance with its planning agreement practice notes. This would also assist the DPE by informing updates to its practice notes.

Secondly, the 2021 Practice Note includes no guidance to remind councils that planning agreements involve potentially high-risk negotiations that require post-finalisation scrutiny – such as, scrutiny by internal management review, an internal audit program, or review by the audit, risk and improvement committee of council. Similarly, no guidance or training is provided by the DPE to councillors in relation to exercising their decision-making role in respect of planning agreements.

Lastly, developers retain significant control in determining the quality and quantity of information that is submitted when offering a planning agreement. A lack of standardisation could delay decisions in the planning agreement process which, in complex systems like planning, is a recognised trigger for corruption.

The Commission proposed a number of recommendations to the DPE to strengthen the controls applying to planning agreements and to mitigate corruption opportunities from the loose control environment. The Commission proposed:

- That the DPE makes it a statutory requirement for councils and other planning authorities to demonstrate the following have been considered before entering into a planning agreement:
 - the fundamental principles in the 2021 Practice Note
 - the acceptability test in the 2021 Practice Note
 - probity principles
 - the public benefit
 - the methodology or structure used to determine what is a reasonable contribution and the value of what was offered.
- That the DPE updates the 2021 Practice Note to provide advice regarding how contributions can be determined regarding the principle of proportionality.
- That the DPE produces guidelines and provides training to assist councillors with the proper exercise of their decision-making role in respect of planning agreements.
- That the DPE develops a standard form for proponents offering to enter into a planning agreement, incorporating advice as to form and content where appropriate.
- That the DPE commences a regular program of conducting risk-based audits into planning agreements negotiated by councils, establishes guidelines for conducting risk-based audits and publishes the audit outcomes.

GRC, while noting the recommendations were matters for the DPE, expressed support for the proposed recommendations.

The DPE expressed support for creating guidelines for inclusion in the standard training for councillors. It also expressed support for establishing risk-based auditing to provide oversight of councils' planning agreements and, following further discussions, the creation of standards for developers offering a planning agreement.

The DPE did express concern that it was not feasible to prescribe a set of detailed matters a consent authority should consider before accepting a planning agreement. It was also concerned that the proposed recommendation

would not differentiate for the wide range of circumstances and that mandatory requirements would necessarily be too general or imprecise.

RECOMMENDATION 6

That the DPE seeks amendment of the Environmental Planning & Assessment Regulation 2021 to require councils and other planning authorities to demonstrate that the following have been considered before entering into a planning agreement:

- the fundamental principles (2.1) in the *Planning Agreements Practice Note 2021*
- the acceptability test (2.5) in the *Planning Agreements Practice Note 2021*
- the methodology or structure that was used to determine the reasonableness of the proposed contribution and its real value
- the public interest.

RECOMMENDATION 7

That the DPE produces guidelines and provides training to assist councillors regarding the proper exercise of their decision-making role in respect of planning agreements.

RECOMMENDATION 8

That the DPE develops guidance on the essential information that must be submitted with an offer of a planning agreement to a council or other planning authority.

RECOMMENDATION 9

That the DPE:

- conducts regular risk-based audits of planning agreements negotiated by councils
- establishes guidelines for conducting risk-based audits
- publishes audit outcomes
- uses the outcomes from audits to improve the processes and procedures governing negotiation and execution of planning agreements.

Recording councillor votes on planning agreements

Section 375A of the LGA requires that a council's general manager keep a register of voting in relation to "planning decisions". Planning decisions are identified as decisions relating to:

- a development application
- an environmental planning instrument
- a development control plan
- a development contribution plan.

The effect of this requirement is that a register must be kept containing, for each planning decision, "the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision".²⁸

The definition of "planning decision" in the LGA does not refer to planning agreements (see s 375A). Consequently, unless there is a formal request for a division (that is, a formal vote), there is no record to show how councillors voted in respect of a planning agreement. This includes circumstances like those in this investigation, where HCC councillors resolved on 19 November 2014 to accept the offer of a planning agreement before HCC staff had assessed its suitability.

On 19 November 2014, HCC voted on a planning agreement submitted with the planning proposal for Treacy Street. Other than showing that Mr Sansom moved the motion to accept the planning agreement and that Mr Badalati agreed to support his motion, there is no record in the minutes of how other councillors voted. This includes Mr Hindi.

RECOMMENDATION 10

That the DEP seeks amendment of s 375A of the *Local Government Act 1993* to include planning agreements in the definition of planning decisions that require a register of votes to be kept.

Imminence and certainty of draft local environmental plans

On 17 September 2014, HCC approved a draft *Hurstville Local Environmental Plan (Hurstville City Centre) 2014* ("the draft LEP"). The draft LEP set out proposed development standards for an area that included 1–5 Treacy Street.

Mr Hindi and Mr Sansom were council's representatives on the JRPP and participated in the decision on the DA for 1–5 Treacy Street. The decision, taken on 1 April 2015, provided the developer with 16.7 metres of additional height and 63% more floor space than the draft LEP would provide.

When determining the DA, the JRPP considered a report prepared by HCC staff. The report identified that the draft LEP was a relevant matter.

The report states:

The proposed development exceeds the maximum building height and FSR for the land under DCP No.2 and the draft Hurstville City Centre LEP which is currently with the Department of Planning and Environment for making. As planning controls for the site were only recently exhibited and adopted by the Council (17 September 2014), it is considered that there would be a reasonable planning expectation by the community that those controls relating to maximum building height and maximum FSR would be applied to any development application.

While noting that it had been exhibited and resolved to be adopted by council, the report identified that:

The LEP is not considered to be imminent and certain, however the provisions of the LEP have been considered in the assessment of this application. It is noted that the current height and floor space ratio requirements of DCP 2 will be the same under the new LEP.

The EP&A Act requires consideration be given to a draft LEP instrument prior to determining a DA. The determinative weight the consent authority should give to a draft LEP has been the subject of court appeals in NSW, including to the NSW Court of Appeal. It is generally identified that the weight can be determined by the imminence and certainty of the draft LEP.

Based on the circumstances under which the Treacy Street DA was approved, the Commission believes that councils would benefit from some guidance in relation to the way "imminence and certainty" ought to be interpreted and the weight that should be given to draft LEPs.

The DPE raised the possibility that such guidance could conflict with the decisions of the court. Consequently, the Commission makes the following recommendation.

²⁸ Section 375A(2) of the LGA.

RECOMMENDATION 11

That the DPE issues advice to councils and other planning authorities about the need to consider any proposed instrument, including any draft LEP, when determining a DA. The advice should address the:

- **case law and principles established by the courts**
- **weight to attribute to a draft LEP, with particular regard to its imminence and certainty.**

These recommendations are made pursuant to s 13(3)(b) of the ICAC Act and, as required by s 111E of the ICAC Act, will be furnished to the DPE (OLG) and the responsible minister.

As required by s 111E(2) of the ICAC Act, the DPE must inform the Commission in writing within three months (or such longer period as the Commission may agree to in writing) after receiving the recommendations whether it proposes to implement any plan of action in response to the recommendations and, if so, details of the proposed plan of action.

In the event a plan of action is prepared, the DPE is required to provide a written report to the Commission of its progress in implementing the plan 12 months after informing the Commission of the plan. If the plan has not been fully implemented by then, a further written report must be provided 12 months after the first report.

The Commission will publish the DPE's response to its recommendations, any plan of action and progress reports on its implementation on the Commission's website at www.icac.nsw.gov.au.

Concluding remarks: reducing corruption risks for councillors making planning decisions

Councillors in NSW have many roles in making key planning decisions. They may be asked to decide if planning proposals should proceed or not, determine if a VPA should be entered into, and are appointed by their council on regional planning panels. Additionally, for those councillors outside of councils in Sydney, Wollongong, and the Central Coast, they may be asked to determine DAs.

The Commission's investigations of corruption in planning decisions have exposed corrupt or undisclosed relationships between councillors and developers. In this investigation, for example, Mr Badalati and Mr Sansom had an association with Mr Uy that spanned over 15 years.

It is reasonable to expect that councillors will inevitably come into frequent contact with developers and their representatives. Currently, nothing precludes developers, real estate agents, or any other person associated with the development industry from being a councillor. Likewise, nothing prevents someone elected or seeking election as a councillor from having friendships or business associations with individuals involved in property development.

The proper management of contact with developers and their representatives hinges on councillors making honest disclosures of their interests and relationships. Failures to do so is a serious corruption risk for councils in NSW and it falls to the Commission to use its investigate powers to expose corrupt relationships.

OLG has recently announced an implementation roadmap for a new councillor conduct framework, to be established by January 2024.²⁹ Despite this welcome step, the Commission anticipates that the reforms will not eliminate corrupt relationships between councillors and developers. The Commission will monitor the situation with a view to reducing the likelihood of corrupt conduct occurring and promoting the integrity and good repute of public administration.

²⁹ Office of Local Government, *Councillor conduct Framework-Roadmap to Reform 2023*, OLG website (<http://www.olg.nsw.gov.au/>). Accessed on 17 May 2023.

Appendix 1: The role of the Commission

The Commission was created in response to community and Parliamentary concerns about corruption that had been revealed in, inter alia, various parts of the public sector, causing a consequent downturn in community confidence in the integrity of the public sector. It is recognised that corruption in the public sector not only undermines confidence in the bureaucracy but also has a detrimental effect on the confidence of the community in the processes of democratic government, at least at the level of government in which that corruption occurs. It is also recognised that corruption commonly indicates and promotes inefficiency, produces waste and could lead to loss of revenue.

The Commission's functions are set out in s 13, s 13A and s 14 of the ICAC Act. One of the Commission's principal functions is to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

- i. corrupt conduct (as defined by the ICAC Act), or
- ii. conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or
- iii. conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur.

The Commission may also investigate conduct that may possibly involve certain criminal offences under the *Electoral Act 2017*, the *Electoral Funding Act 2018* or the *Lobbying of Government Officials Act 2011*, where such conduct has been referred by the NSW Electoral Commission to the Commission for investigation.

The Commission may report on its investigations and, where appropriate, make recommendations as to any action it believes should be taken or considered.

The Commission may make findings of fact and form opinions based on those facts as to whether any particular person has engaged in serious corrupt conduct.

The role of the Commission is to act as an agent for changing the situation that has been revealed. Through its work, the Commission can prompt the relevant public authority to recognise the need for reform or change, and then assist that public authority (and others with similar vulnerabilities) to bring about the necessary changes or reforms in procedures and systems, and, importantly, promote an ethical culture, an ethos of probity.

The Commission may form and express an opinion as to whether consideration should or should not be given to obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of a person for a specified criminal offence. It may also state whether it is of the opinion that consideration should be given to the taking of action against a person for a specified disciplinary offence or the taking of action against a public official on specified grounds with a view to dismissing, dispensing with the services of, or otherwise terminating the services of the public official.

Appendix 2: Making corrupt conduct findings

Corrupt conduct is defined in s 7 of the ICAC Act as any conduct which falls within the description of corrupt conduct in s 8 of the ICAC Act and which is not excluded by s 9 of the ICAC Act.

Determining corrupt conduct

Section 8 defines the general nature of corrupt conduct. Subsection 8(1) provides that corrupt conduct is:

- (a) *any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or*
- (b) *any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or*
- (c) *any conduct of a public official or former public official that constitutes or involves a breach of public trust, or*
- (d) *any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.*

Subsection 8(2) specifies conduct, including the conduct of any person (whether or not a public official), that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority, and which, in addition, could involve a number of specific matters which are set out in that subsection.

Subsection 8(2A) provides that corrupt conduct is also any conduct of any person (whether or not a

public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters:

- (a) *collusive tendering,*
- (b) *fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources,*
- (c) *dishonestly obtaining or assisting in obtaining, or dishonestly benefitting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage,*
- (d) *defrauding the public revenue,*
- (e) *fraudulently obtaining or retaining employment or appointment as a public official.*

Subsection 9(1) provides that, despite s 8, conduct does not amount to corrupt conduct unless it could constitute or involve:

- (a) *a criminal offence, or*
- (b) *a disciplinary offence, or*
- (c) *reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or*
- (d) *in the case of conduct of a Minister of the Crown or Parliamentary Secretary or a member of a House of Parliament – a substantial breach of an applicable code of conduct.*

Subsection 9(1)(d) was inserted into the ICAC Act by the *Independent Commission Against Corruption (Amendment) Act 1994*. The object of the Bill which became the Act was to amend the ICAC Act so that conduct of a minister or member of Parliament that substantially

breaches a code of conduct is capable of being classified as corrupt conduct. The subsection was again amended in 2022 to include the office of parliamentary secretary.

In *Greiner v ICAC* (1992) 28 NSWLR 125 (at 136, 143) Gleeson CJ said the following in relation to s 9:

Reference has been made above to the conditional nature of a conclusion reached in relation to s 9(1). An accurate understanding of the operation of the word “could” in s 9 is essential to a proper performance of the task of evaluation required by that section.... However, it is of some assistance to an understanding of the way in which s 9(1) operates to consider what might be its effect in relation to a case where it is said that the conduct in question could constitute or involve a criminal offence.

It was common ground in these proceedings that, in determining whether conduct could constitute or involve a criminal offence, the Commissioner would be required to go through the following process of reasoning. First, he would be required to make his findings of fact. Then, he would be required to ask himself whether, if there were evidence of those facts before a properly instructed jury, such a jury could reasonably conclude that a criminal offence had been committed. (It is not necessary for present purposes to examine what happens in a case where the Commissioner’s findings depend in a significant degree upon evidence that would be inadmissible at a criminal trial.) I will return below to the significance of the approach to be taken to s 9(1).

...

... s 9(1) must be applied by the Commission, and by this Court, in a manner that is consistent with the purpose of the legislature, which was that the standards by which it is applied must be objective standards, established and recognised by law, and its operation cannot be made to depend upon the subjective and unexaminable opinion of the Commissioner.

Section 13(3A) of the ICAC Act

Section 13(3A) was inserted into the ICAC Act in 2005 by the *Independent Commission Against Corruption Amendment Act 2005*. It provides that the Commission may make a finding that a person has engaged or is engaged in corrupt conduct of a kind described in paragraphs (a), (b), (c), or (d) of s 9(1) only if satisfied that a person has engaged or is engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.

In *D’Amore v ICAC* [2012] NSW 473 at [75] McClellan CJ at CL described s 13(3A) (and s 9(5), referred to below) as creating jurisdictional facts. He held:

In those circumstances, the jurisdictional facts created by ss 13(3A) and 9(5) will be found to exist where the Commission forms, in good faith, an evaluative judgment that the person under investigation has committed an offence or breached an identified law, provided the Commission has properly construed relevant criteria such as the elements of the offence or the requirements of the identified law.

The application of s 13(3A) was also considered by the Court of Appeal in *D’Amore v ICAC* [2013] NSWCA 187. Basten JA said the following at [221]:

That leaves open the question as to the matter about which the Commission must be satisfied under s 13(3A). It would clearly be inconsistent with both the function of the Commission and the structure of the Act generally to hold that the Commission must be satisfied beyond reasonable doubt that an offence has been committed. The Commission is not a criminal court and is not required to reach conclusions on the basis of material which would constitute admissible evidence in a criminal proceeding: cf s 17(1). So understood, s 13(3A) requires that the Commission be satisfied that the conduct has occurred and that it is conduct of a kind which constitutes a criminal offence. The combined purpose of ss 13(4) and 74B, is to emphasise that the Commission is not delivering a verdict on a criminal charge.

In *Duncan v ICAC* [2016] NSWCA 143 Beazley P held, at [469]:

Effectively, therefore, there are two requirements at play. First, pursuant to s 9(1), conduct will only constitute corrupt conduct if it could constitute or involve conduct of the kinds specified in paras (a) to (d). Second, pursuant to s 13(3A), the power of the ICAC to make a finding of corrupt conduct is conditioned on the ICAC being satisfied that the relevant conduct constitutes or involves an offence or thing of the kinds specified in paras (a) to (d) of s 9(1). Thus, whilst the provisions overlap, there is a distinction between the meaning of corrupt conduct, which engages ss 7, 8 and 9 and the subsequent conditioning of power on the relevant state of satisfaction within the meaning of s 13(3A): see Bathurst CJ at [164]-[165]; Basten JA at [598].

Basten JA (with whom Beazley P agreed) held at [598]:

Section 8(2) and s 9(1)(a) of the ICAC Act refer to conduct which “could constitute or involve” a criminal

offence; s 13(3A) requires the Commission to be satisfied that a person “has engaged in ... conduct that constitutes or involves an offence”. It is clear from the legislative scheme identified above that s 13(3A) does not impose an obligation to be satisfied that an offence has in fact been committed. Rather, that as to which the Commission must be satisfied is the capacity of the facts found to constitute an offence, if proved by admissible evidence to the satisfaction of the appropriate court.

Subsections 9(4) and (5) of the ICAC Act

Subsection 9(4) of the ICAC Act provides:

Subject to subsection 9(5), conduct of a Minister of the Crown or Parliamentary Secretary or a member of a House of Parliament which falls within the description of corrupt conduct in section 8 is not excluded by this section if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

Subsection 9(5) of the ICAC Act provides:

Without otherwise limiting the matters that it can under section 74A(1) include in a report under section 74, the Commission is not authorised to include a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection (4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from this Act) and the Commission identifies that law in the report.

These subsections were inserted into the ICAC Act by the *Independent Commission Against Corruption (Amendment) Act 1994* to extend the grounds on which a finding of corrupt conduct could be made against a minister of the Crown or a member of Parliament.

At the time subsections 9(4) and (5) were inserted, s 13(3A) was not yet part of the ICAC Act. As noted above, it was inserted in 2005. Section 13(3A) does not apply to conduct characterised as corrupt by the operation of s 9(4) and s 9(5).

The application of subsections 9(4) and (5) was considered by the Commission in its June 2004 *Report on investigation into conduct of the Hon J. Richard Face*. At page 45 of that report the Commission noted the following:

It is clear from the words in s.9(4) that the provision was intended to catch conduct which fell within the description of corrupt conduct in s.8, but which would otherwise be excluded by s.9.

...

As a matter of construction, s.9(4) and (5) extend the range of permissible findings of corrupt conduct beyond those already contained in s.9(1) to those which would otherwise be excluded, but which fall within s.9(4) and (5).

...

...it is not necessary to undertake, in the context of the present investigation, a detailed analysis of the meaning of the term “breach of a law (apart from this Act)” in s.9(5). It seems clear, however, that “breach of a law” in s.9(5) ought to be construed as meaning breach of a civil, and not a criminal, law.

Support for this interpretation is found in the judgment of McClellan CJ at CL in *D’Amore v ICAC* [2012] NSW 473 at [22] that:

In relation to conduct of a Minister of the Crown or a member of Parliament, s 9(4) creates a limited “carve-out” from the operation of s 9(1)... Although this “carve-out” is not subject to the limitation in s 13(3A), it is expressly subject to s 9(5)...

His Honour identified both s 9(5) and s 13(3A) as jurisdictional facts.

Subsection 9(4) was amended in 2022 to include the office of parliamentary secretary.

Accordingly, the effect of subsections 9(4) and 9(5) is that the Commission may make a finding that a minister of the Crown, a parliamentary secretary or a member of a House of Parliament has engaged in corrupt conduct where, although that conduct does not come within s 9(1), it comes within subsections 9(4) and (5).

Section 74BA of the ICAC Act

Section 74BA of the ICAC Act provides that the Commission is not authorised to include in a report under s 74 a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct.

The path to findings

The Commission adopts the following approach in determining findings of corrupt conduct.

First, the Commission makes findings of relevant facts on the balance of probabilities (see below).

The Commission then determines whether relevant facts as found by the Commission come within the terms of any of subsections 8(1), 8(2) and/or 8(2A) of the ICAC Act.

If they do, the Commission then considers whether the conduct comes within s 9 of the ICAC Act.

In the case of subsection 9(1)(a), the Commission considers whether, if the facts as found in relation to any of subsections 8(1), 8(2) and/or 8(2A) were to be proved on admissible evidence to the requisite standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could reasonably conclude that the person has committed a particular criminal offence.

In the case of subsections 9(1)(b) and 9(1)(c), the Commission considers whether, if the facts as found in relation to any of subsections 8(1), 8(2) and/or 8(2A) were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal could find that the person has engaged in conduct that constitutes or involves a matter of the kind described in those sections.

In the case of subsection 9(1)(d), the Commission considers whether, having regard to the facts as found in relation to any of subsections 8(1), 8(2) and/or 8(2A) and the provisions of the relevant applicable code of conduct, there are grounds on which it could objectively be found that a minister of the Crown or parliamentary secretary or a member of a House of Parliament has substantially breached the relevant applicable code of conduct.

If the Commission finds that the relevant conduct could constitute or involve a matter set out in s 9(1)(a) – (d) of the ICAC Act, the Commission concludes that its findings for the purposes of any of subsections 8(1), 8(2) and/or 8(2A) are not excluded by s 9.

If the Commission finds the s 8 conduct is not excluded by s 9(1) – (d), the Commission considers the requirements of s 13(3A).

In the case of subsection 9(1)(a) the Commission determines whether it is satisfied that, if the facts as found were to be proved on admissible evidence to the criminal standard of beyond reasonable doubt and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that the person has committed a particular criminal offence.

In the case of subsections 9(1)(b) and 9(1)(c) the Commission determines whether it is satisfied that, if the facts as found were to be proved on admissible evidence to the requisite standard of on the balance of probabilities and accepted by an appropriate tribunal, there would be grounds on which such a tribunal would find that the person has engaged in conduct that constitutes or involves a thing of the kind described in those sections.

In the case of subsection 9(1)(d) the Commission determines whether on the facts as found it is satisfied there are grounds on which it would objectively be found that a person has engaged in or is engaging in conduct that constitutes or involves a substantial breach of an applicable code of conduct.

In the case of subsection 9(4) the Commission considers whether the conduct of a minister of the Crown or parliamentary secretary or a member of a House of Parliament which falls within the meaning of any of subsections 8(1), 8(2) and/or 8(2A) is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

In the case of subsection 9(5) the Commission identifies the relevant civil law and determines whether, having regard to the facts as found in relation to any of subsections 8(1), 8(2) and/or 8(2A) and the provisions of the relevant civil law, it is satisfied there are grounds on which it could objectively be found that a minister of the Crown or parliamentary secretary or a member of a House of Parliament has breached that law.

If satisfied the requirements of s 13(3A) have been met, the Commission then determines whether, for the purpose of s 74BA of the ICAC Act, the conduct the subject of the Commission's finding for the purposes of any of subsections 8(1), 8(2) and/or 8(2A) is serious corrupt conduct.

The Commission then determines whether, for the purpose of s 74BA of the ICAC Act, the conduct the subject of the Commission's finding for the purpose of any of subsections 8(1), 8(2) and/or 8(2A) is serious corrupt conduct.

If the above requirements are satisfied, the Commission may make a finding of serious corrupt conduct.

Standard of proof

A finding of corrupt conduct against an individual is a serious matter. It may affect the individual personally, professionally or in employment, as well as in family and social relationships. In addition, there are limited instances where judicial review will be available. These are generally limited to grounds for prerogative relief based upon jurisdictional error, denial of procedural fairness, failing to take into account a relevant consideration or taking into account an irrelevant consideration and acting in breach of the ordinary principles governing the exercise of discretion. This situation highlights the need to exercise care in making findings of corrupt conduct.

In Australia there are only two standards of proof: one relating to criminal matters, the other to civil matters. Commission investigations, including hearings, are not criminal in their nature. Hearings are neither trials nor committals. Rather, the Commission is similar in standing to a Royal Commission and its investigations and hearings have most of the characteristics associated with a Royal Commission. The standard of proof in Royal Commissions is the civil standard, that is, on the balance of probabilities. This requires reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as is required in criminal matters. The civil standard is the standard which has been applied consistently by the Commission when making factual findings. However, because of the seriousness of the findings which may be made, it is important to bear in mind what was said by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362:

...reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or fact to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

This formulation is, as the High Court pointed out in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 171, to be understood:

...as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.

See also *Rejček v McElroy* (1965) 112 CLR 517, the *Report of the Royal Commission of inquiry into matters in relation to electoral redistribution, Queensland, 1977* (McGregor J) and the *Report of the Royal Commission into An Attempt to Bribe a Member of the House of Assembly, and Other Matters* (Hon W Carter QC, Tasmania, 1991).

Findings set out in this report have been made applying the principles detailed in this Appendix.



Appendix 3: Responses to proposed adverse findings

Section 79(A)(1) of the ICAC Act provides that the Commission is not authorised to include an adverse finding against a person in a report under s 74 unless:

- a) the Commission has first given the person a reasonable opportunity to respond to the proposed adverse finding, and
- b) the Commission includes in the report a summary of the substance of the person's response that disputes the adverse finding if the person requests the Commission to do so within the time specified by the Commission.

Counsel Assisting the Commission made written submissions setting out, *inter alia*, what adverse findings it was contended were open to the Commission to make against various parties.

These submissions were provided to relevant parties on 9 September 2022. Written submissions in response were received by 16 October 2022. Counsel Assisting prepared submissions in reply, which were provided to relevant parties on 9 November 2022. Submissions in reply to the response were received by 2 December 2022. During the course of drafting the report additional potential adverse findings affecting some parties were identified. Those parties were advised of the further potential adverse findings on 27 March 2023 and given an opportunity to make submissions. The last submission was received on 28 April 2023.

The Commission considers that, in these circumstances, the parties had a reasonable opportunity to respond to proposed adverse findings.

Where adverse findings have been made in the body of this report, submissions made in response by individual parties to that finding have been included if requested by the party or if the Commission determined they ought to be reproduced.



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