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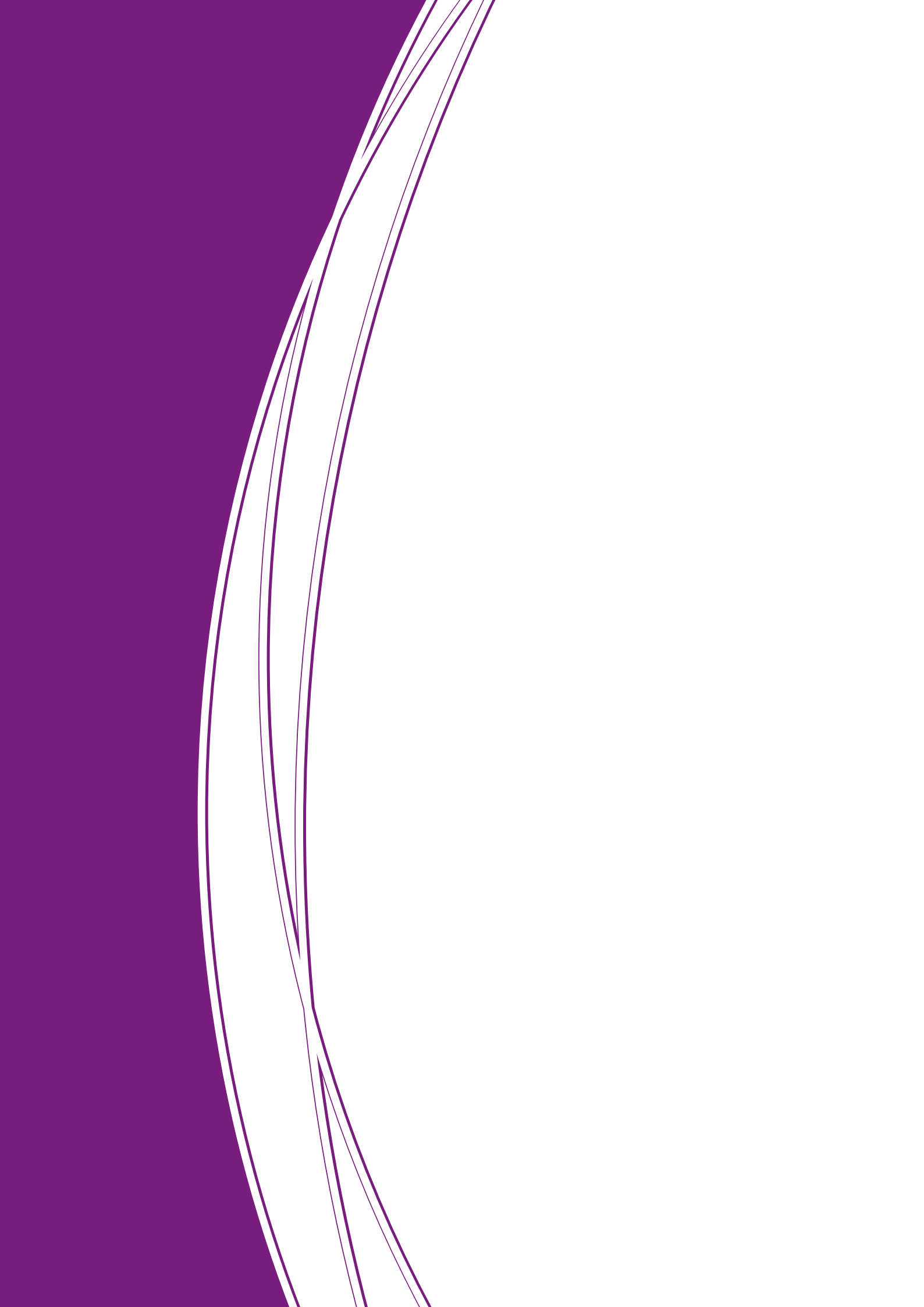
INDEPENDENT COMMISSION
AGAINST CORRUPTION
NEW SOUTH WALES



**INVESTIGATION INTO THE
CONDUCT OF THE CITY
OF CANADA BAY COUNCIL
MAYOR AND OTHERS**

(OPERATION TOLOSA)

**ICAC REPORT
NOVEMBER 2023**



ICAC

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AGAINST CORRUPTION
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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 the mayor of the City of Canada Bay Council and others (Operation Tolosa).

Chief Commissioner the Hon Peter Hall KC 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



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 Angelo Tsirekas, the City of Canada Bay Council (“the Council”) mayor, in relation to planning matters involving a number of developers and the conduct of those developers in their interactions with Mr Tsirekas. The Commission also examined the conduct of Joseph Chidiac, a businessman and friend of Mr Tsirekas, in relation to the planning matters. In particular, the investigation examined whether:

- since 2015, Mr Tsirekas sought and/or accepted benefits as an inducement or reward for partially and dishonestly exercising his official functions to favour the interests of the I-Prosperity Group (“I-Prosperity”) and Mr Chidiac in relation to planning matters affecting 1–9 Marquet Street and 4 Mary Street, Rhodes (“the I-Prosperity planning proposal”); Mr Tsirekas deliberately failed to declare or properly manage any conflict of interest arising from his relationships with representatives of I-Prosperity and Mr Chidiac; I-Prosperity and Mr Chidiac provided benefits, including overseas flights and accommodation, to Mr Tsirekas, as a reward or inducement to favour their interests in relation to Council decisions regarding the I-Prosperity planning proposal (chapter 4)
- since 2012, Mr Tsirekas partially exercised his official functions to favour the interests of Billbergia Group, Prolet Constructions Pty Ltd and Mr Chidiac, in relation to planning matters affecting them, and deliberately failed to declare or properly manage any conflict of interest arising from his relationships with representatives of Billbergia, Prolet and Mr Chidiac (chapter 5)

- since 2015, Mr Tsirekas partially exercised his official functions to favour the interests of Frank Bruzzano in relation to a development application for 168–172 Victoria Road, Drummoyne, and deliberately failed to declare or properly manage any conflict of interest arising from his relationship with Mr Bruzzano (chapter 6)
- between May 2015 and January 2018, then City of Canada Bay general manager Gary Sawyer partially and/or dishonestly exercised his official functions and failed to disclose the nature of his relationship with real estate agent Francesco Colacicco in relation to the sale of 231 Victoria Road; and whether Mr Tsirekas partially and/or dishonestly exercised his official functions and failed to disclose the nature of his relationship with Mr Colacicco in relation to the sale of 231 Victoria Road, or development applications associated with Mr Colacicco, in return for a financial benefit (chapter 7).

Corrupt conduct findings

Mr Tsirekas

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

- between November 2015 and February 2019, seeking and/or accepting benefits from I-Prosperity and/or Mr Chidiac, including overseas flights and accommodation, to the value of at least \$18,800, as an inducement or reward for exercising his official functions to favour the interests of I-Prosperity in relation to planning matters affecting 1–9 Marquet Street and 4 Mary Street, Rhodes, that came before the Council during the periods he was mayor (chapter 4)

- between November 2015 and February 2019, deliberately failing to disclose a conflict of interest arising from his relationships with representatives of I-Prosperty and Mr Chidiac, when he knew he was required to do so (chapter 4).

Mr Chidiac

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

- between December 2015 and February 2019, providing benefits to Mr Tsirekas as a reward or inducement to favour his or I-Prosperty's interests in relation to Council decisions regarding planning matters affecting 1–9 Marquet Street and 4 Mary Street, Rhodes (chapter 4).

Section 74A(2) statements

Statements are made pursuant to s74A(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.

Angelo Tsirekas

- for an offence of misconduct in public office and offences pursuant to s 249B of the *Crimes Act 1900* (NSW) ("the Crimes Act") (chapter 4)
- for offences of providing false or misleading evidence to the Commission contrary to s 87 of the ICAC Act (chapters 3 and 4).

Joseph Chidiac

- for offences pursuant to s 249B of the Crimes Act and an offence of aid and abet misconduct in public office (chapter 4)
- for offences of providing false or misleading evidence to the Commission contrary to s 87 of the ICAC Act (chapter 4).

Joseph Jacob

- for offences of providing false or misleading evidence to the Commission contrary to s 87 of the ICAC Act (chapter 5)
- for an offence of wilfully destroying a document or other thing knowing that the document or other thing is, or may be, required in connection with an investigation pursuant to s 88 of the ICAC Act, in that he deleted messages from his telephone between himself and Mr Tsirekas and Mr Chidiac (chapter 5).

Section 74C(2) recommendation

The Commission is of the opinion that consideration should be given to the suspension of Mr Tsirekas from civic office with a view to his dismissal in relation to the serious corrupt conduct findings set out in chapter 4. This recommendation under s 74C(2) of the ICAC Act is necessary because the Commission is of the opinion that prompt action is required in the public interest.

Recommendations for corruption prevention

Chapter 8 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:

- amends the Model Code of Conduct for Local Councils in NSW to expand the stand-alone categories of interests that require disclosure in written returns to include financial dealings conducted via trusts and partnerships
- produces a fact sheet and updates guidance material for councillors to provide details about their disclosure obligations to include financial dealings conducted via trusts and partnerships.

Recommendation 2

That the Department of Planning and Environment:

- amends the Model Code of Conduct for Local Councils in NSW to specifically require councillors to disclose political donations received under electoral laws of the Commonwealth, or another state or territory, as non-pecuniary conflicts of interest
- issues a circular to assist councillors in the disclosure of political donations, including those received in other jurisdictions, as non-pecuniary conflicts of interest.

Recommendation 3

That the Department of Planning and Environment:

- takes steps to require councils to proactively release relevant business papers, correspondence and reports where confidentiality under Part 1 of Chapter 4 of the *Local Government Act 1993* no longer exists, either via initiating an amendment to legislation or a regulation, and/or amending the Model Code of Meeting Practice for Local Councils in NSW and *The Closure of Council Meetings to the Public* guidelines
- advises councils of an appropriate framework for considering the release of information previously considered confidential.

Recommendation 4

That the Department of Planning and Environment limits the ability of a council to make decisions to advance planning matters at meetings in the absence of an assessment report considering relevant matters and an associated recommendation.

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 Department of Planning and Environment (including the Office of Local Government) and the responsible ministers.

As required by s 111E(2) of the ICAC Act, the Department 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 Department 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 Department'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.

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Chapter 1: Background

This chapter sets out some background information about the investigation and public inquiry conducted by the NSW Independent Commission Against Corruption (“the Commission”).

How the investigation came about

In August 2017, the Commission received a verbal complaint concerning Angelo Tsirekas, the mayor of the City of Canada Bay Council (“the Council”). The allegations made by the complainant included that Mr Tsirekas had not disclosed his personal relationship with Joseph Chidiac when dealing with a substantial development proposal involving I-Prosperity Group (“I-Prosperity”) and that Mr Tsirekas had advocated for the development knowing that Mr Chidiac had some sort of financial interest in it. Put simply, it was alleged that Mr Tsirekas had failed to disclose a conflict of interest in relation to his relationship with Mr Chidiac. It was also alleged that Mr Chidiac had donated large sums of money to Mr Tsirekas’ 2016 federal election campaign. The complaint was made under s 10 of the *Independent Commission Against Corruption Act 1988* (“the ICAC Act”), which provides that any person may make a complaint to the Commission about a matter that concerns or may concern corrupt conduct.

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 conduct reported to the Commission in 2017 was, if established, serious and would involve misuse of public office and a breach of public trust on the part of Mr Tsirekas. As mayor of the Council, Mr Tsirekas is responsible for maintaining the public trust placed in him by performing his duties with honesty and integrity. At the time of the complaint, the Council was considering large-scale, high-rise developments, which would potentially impact existing communities in various ways. In this context, it was important that development decisions were made honestly and impartially.

The Commission considers it to be a serious matter for the exercise of planning functions to be infected by an improper purpose, dishonesty, or partiality, particularly when it is hidden from public scrutiny. A failure by Mr Tsirekas to make conflict of interest disclosures contrary to his obligations to do so, or the exercise of his public official functions dishonestly or partially to favour developer interests, would impact public confidence in the integrity of government at a local level.

The Commission determined it was in the public interest to investigate the allegations.

The Commission commenced a preliminary investigation on 27 October 2017. The evidence gathered during the preliminary investigation tended to corroborate the allegation. On 4 May 2018, the Commission decided to undertake a more extensive investigation.

Conduct of the investigation

The Commission obtained information and documents from public authorities and other organisations by issuing 138 notices under s 22 of the ICAC Act and three combined notices under s 21 and s 22 of the ICAC Act, obtained statements from witnesses and conducted 23 compulsory examinations. As part of its investigation, the Commission executed five search warrants. The Commission also obtained warrants under the *Telecommunications (Interception and Access) Act 1979* (Cth) to lawfully intercept telecommunications sent to and from mobile telephones used by Mr Tsirekas and Mr Chidiac, and obtained access to call-charge records. The Commission also obtained two surveillance device warrants under the *Surveillance Devices Act 2007*.

The public inquiry

The Commission reviewed the information obtained during its investigation and, after taking into account each of the matters set out in s 31(2) of the ICAC Act, 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 Mr Tsirekas within the Council and the importance of the public functions involved. Further, the Commission had regard to the corruption prevention issues raised by the investigation.

The Commission determined that the public interest in exposing the conduct outweighed the public interest in preserving the privacy of the persons concerned.

Chief Commissioner the Hon Peter Hall KC presided at the public inquiry. Jamie Darams acted as Counsel Assisting the Commission. The public inquiry commenced on 26 April 2022 and was conducted over 30 sitting days.

The hearings concluded on 4 July 2022. A total of 20 witnesses gave evidence.

At the conclusion of the public inquiry, Counsel Assisting prepared written submissions setting out the evidence and the findings and recommendations he contended the Commission could make based on the evidence. The submissions were provided to all relevant parties on 16 August 2022. The last of the submissions in response was received on 19 June 2023. The Commission has taken all submissions into account in preparing this report. Further information is provided in Appendix 3.

City of Canada Bay Council

The City of Canada Bay Council is constituted under the *Local Government Act 1993* ("the LGA"). The Council formed in 2000, after the Concord and Drummoyne councils merged. The Council is located in Sydney's inner west area, about 6 to 12 kilometres from Sydney's CBD. The Council services over 96,000 residents and covers approximately 19.9 square kilometres. The suburbs it provides services to include Abbotsford, Breakfast Point, Cabarita, Canada Bay, Chiswick, Concord, Concord West, Drummoyne, Five Dock, Liberty Grove, Mortlake, North Strathfield, Rhodes, Rodd Point, Russell Lea, (part of) Strathfield and Wareemba. The Council is predominately residential, with commercial and industrial areas, parks, reserves and foreshores.

Angelo Tsirekas

In 1995, Mr Tsirekas was first elected a local councillor with the Drummoyne Council. He continued as a councillor when Drummoyne and Concord councils merged to form the City of Canada Bay Council. In 2002, Mr Tsirekas was elected mayor.

Mr Tsirekas remained a councillor and mayor until he resigned in June 2016 to run in the 2016 federal

election for the seat of Reid in Sydney. Mr Tsirekas was unsuccessful in that election. He ran again for mayor of the Council in September 2017 and regained that position. He was elected again as mayor in December 2021. He remains the mayor. In total, Mr Tsirekas has been an elected councillor for about 25 years.

Joseph Chidiac

Mr Chidiac is the sole director and shareholder of a company called Online Security Services Pty Ltd (Online Security Services). Mr Chidiac has no formal qualifications. He completed high school in 1985 and then commenced working in a service station business owned by his family. Mr Chidiac continued working in that business for several years before starting work in the security industry. For a period of time, he was a member of the Australian Army Reserve.

Mr Chidiac registered Online Security Services (then known as Proline) in 1995. Online Security Services continued operations until about 2014 or 2015, excluding a period in which Mr Chidiac was a “stay-at-home dad”. Since that time, Mr Chidiac has provided a business that he describes as being an “intermediary”, or providing intermediary services, getting “people around the table to resolve disputes”, including family and business disputes. Mr Chidiac does not advertise his services and obtains work by “word of mouth”. Mr Chidiac gave evidence that he has managed to pick up some “sophisticated clients” including Billbergia Group (“Billbergia”), I-Prosperty and Prolet Constructions Pty Ltd (“Prolet”).

Mr Tsirekas and Mr Chidiac’s relationship

Mr Tsirekas and Mr Chidiac have known each other since 2011 through their involvement with the Australian Labor Party. Mr Chidiac assisted Mr Tsirekas in his election campaigns from 2011 until Mr Tsirekas’ 2021 local government campaign when he ran as an independent. Mr Tsirekas and Mr Chidiac have travelled overseas together on a number of occasions and they frequently socialise with one another. Mr Chidiac has funded Mr Tsirekas’ travel expenses on occasions. On Mr Tsirekas’ evidence, they have been close friends since (at least) 2015. Mr Chidiac described Mr Tsirekas as a very close friend. The Commission is satisfied that Mr Tsirekas and Mr Chidiac have been close personal friends for many years, since at least 2015.

Credibility of Mr Tsirekas and Mr Chidiac as witnesses

Chief Commissioner Hall had regard to a number of factors in determining the credibility of a witness and the evidence they gave. These factors included the responsiveness or otherwise of answers, whether the witness was cooperative or otherwise, and a reluctance or otherwise to make appropriate concessions.

Chief Commissioner Hall determined that Mr Tsirekas’ evidence was not credible and should not be accepted unless corroborated by independent and objective evidence or was otherwise against his interest. Mr Tsirekas repeatedly avoided answering questions or provided non-responsive answers, failing to heed warnings from the presiding Commissioner. His evidence was deliberately confusing and often contradictory. On numerous occasions, when asked about his motivation for a particular decision, he said that there was “no real reason”. His evidence was inconsistent. For example, in the public inquiry, he sought to “correct” or change his evidence, in effect, withdrawing admissions he had made during his compulsory examination, without articulating a good reason for doing so.

Similarly, Mr Chidiac’s evidence was not accepted unless it was corroborated by independent and objective evidence or was otherwise against his interest. Mr Chidiac frequently gave non-responsive answers to questions and/or dissembled when answering questions. Many of his answers were implausible considering the probabilities of relevant events and the content of contemporaneous documents. He was deliberately obstructive when giving evidence.

Francesco Colacicco

Francesco Colacicco has practised as a real estate agent since 1993 in the Drummoyne area, which is within the local government area of the Council. Since 2020, he has operated a small property management business. Mr Colacicco and Mr Tsirekas have known each other for over 20 years and are close personal friends. They have travelled overseas together on a number of occasions and often socialise with one another.

Relevant Council staff

Between May 2006 and his retirement in January 2018, Gary Sawyer was the general manager of the Council. After Mr Sawyer’s retirement, Peter Gainsford was the general manager of the Council from January 2018 to April 2021.

The general manager's functions include the day-to-day management of the Council in accordance with its strategic plans, programs, strategies and policies. They must implement, without delay, the lawful decisions of the Council and exercise any functions that the Council has delegated to them.

Between 2004 and his retirement in 2018, Anthony (Tony) McNamara was the director of planning at the Council. Mr McNamara supervised about 50 to 60 staff within his department, which had a development control function, and dealt with development applications. It also had a strategic development function, which required it to consider zoning proposals and develop the planning scheme for the Council area. Mr McNamara reported to Mr Sawyer until Mr Sawyer retired, and then to Mr Gainsford. Scott Pedder took over as the director of planning when Mr McNamara retired.

Planning framework

The Commission's investigation was principally concerned with planning proposals, planning agreements and development applications. Planning decisions in NSW are made within the legislative framework of the *Environmental Planning and Assessment Act 1979* ("the EP&A Act") and regulations. The EP&A Act was amended on a number of occasions during the investigation, but the relevant provisions remained essentially the same. References to particular sections of the EP&A Act below are to the sections that currently apply.

In April 2011, the NSW Department of Planning became the Department of Planning and Infrastructure. In April 2014, the Department of Planning and Infrastructure became the Department of Planning and Environment. In July 2019, the Department of Planning and Environment became the Department of Planning, Industry and Environment. In December 2021, the Department of Planning, Industry and Environment became the Department of Planning and Environment. Any reference to "the Department" refers to what is now known as the Department of Planning and Environment.

Local environmental plans and planning proposals

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 area has its own LEP, which follows a standard form. The LEP guides the process of development in the areas to which it applies in two ways. First, the LEP identifies different land use zones operating within the local government area. In each land use zone, specified types of developments are permissible without consent, permissible with consent, or prohibited. Secondly, the LEP identifies development standards and other provisions that apply to land within the local government area. These provisions may include controls to establish the maximum height of buildings and permissible floor-space ratios ("FSRs"). An FSR is the "ratio of the gross floor area of all buildings within the site to the site area".

Two LEPs operated with respect to the Council area during the period of the Commission's investigation. The Canada Bay Local Environmental Plan 2008 ("CBLEP 2008") operated until it was repealed on 2 August 2013. From that time, the Canada Bay Local Environmental Plan 2013 ("CBLEP 2013") operated for the remainder of the period of the Commission's investigation.

A planning proposal is a document prepared by a council when seeking to make an LEP or amend an existing LEP. The purpose of a 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 planning proposal may be informed by a draft proposal requested by a proponent, including developers. Planning proposals are relevant to the allegations involving I-Prosperty (chapter 4) and Billbergia (chapter 5).

After a planning proposal is prepared, the council may forward it to the minister responsible for the planning portfolio to seek a key decision known as a "gateway determination". The purpose of a gateway determination is to make an early assessment about whether the commitment of further time and resources is justified and to eliminate proposals that lack apparent merit. The Department has delegated authority from the minister in respect of a gateway determination and determines, among other things, whether the planning proposal 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.

A gateway determination usually specifies the minimum public exhibition period for a planning proposal, failing which, the minimum period is 28 days. During that 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 this period and, if the minister (or their delegate) determines community consultation is required, the LEP cannot be made unless the community has had an opportunity to make submissions and those submissions have been considered.

Following community consultation, the council reviews any submissions received and decides whether to proceed with the proposal, revise it, or abandon it. 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. Once the LEP has been approved, it is published on the NSW legislation website and becomes law.

During 2018, a new ministerial direction meant that all councils were required to consider the advice of the Local Planning Panel before determining whether to forward a planning proposal for gateway determination. This change affected I-Prosperty's planning proposal for its site in the Rhodes West Station Precinct (see chapter 4).

Planning agreements

A planning agreement is a voluntary agreement or other arrangement between a planning authority such as a council and a developer. Planning agreements are entered into voluntarily by a developer 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". The EP&A Act states that a public purpose includes (without limitation) the provision of (or the recoupment of the cost of providing) public amenities or public services, affordable housing, transport or other infrastructure relating to land, the funding of recurrent expenditure, the monitoring of the planning impacts of development, and the conservation or enhancement of the natural environment. Planning agreements must be in writing and signed by the parties to the agreement. Planning agreements are sometimes referred to as "voluntary planning agreements" or "VPAs".

During the relevant period, the Council negotiated and signed planning agreements with I-Prosperty and Billbergia (see chapters 4 and 5). There were also amendments to planning agreements with Billbergia.

Development applications

Development applications seek consent from the relevant consent authority to authorise development on a particular site. Development applications were made with respect to Frank Bruzzano's development (see chapter 6) and the development at 231 Victoria Road, Drummoyne

(see chapter 7). "Development" has a broad definition in the EP&A Act and includes the use of land, the subdivision of land, the erection of buildings, the carrying out of a work and the demolition of a building or work, or any other act, matter or thing that may be controlled by an environmental planning instrument.

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

- mandatory considerations and the provisions of any applicable environmental planning instruments (including LEPs, such as CBLEP 2013) and development control plans
- the likely environmental, social and economic impacts of the development
- the suitability of the site
- any submissions made in respect of the development application
- the public interest.

The consent authority for a development application is the council, unless it is a kind for which a declaration has been otherwise made. For example, some development applications are declared to be of regional significance and are therefore determined by a regional planning panel. Relevant to the allegation relating to 231 Victoria Road, Drummoyne (see chapter 7), regional planning panels determine council-related developments, where council is the land owner and the capital investment value is \$5 million or more. Regional planning panels are intended to involve independent experts in the decision-making on significant developments, but the relevant local council may have members on the panel and they may also be councillors.

Key site areas relevant to the investigation

Rhodes West Station Precinct

The Rhodes West Station Precinct is an area of land containing multiple properties opposite the Rhodes Railway Station in metropolitan Sydney. The boundaries of the precinct are Walker, Mary, Marquet and Gauthorpe streets.

Between November 1999 and 2007, the NSW Government was responsible for the determination of development applications in the Rhodes West Station Precinct. On 20 April 2011, following amendments to CBLEP 2008, the Council took responsibility for

determining development applications and preparing planning proposals for the Rhodes West Station Precinct.

Both before and after this amendment to CBLEP 2008, the Council commenced planning studies to investigate the potential for greater height and floor space controls in the Rhodes West Station Precinct. These investigations led to a 2012 “concept plan”, which proposed changes to the urban form and density of the Rhodes West Station Precinct. The proposed changes were the subject of a planning proposal that, following a gateway determination and public exhibition, amended CBLEP 2013 on 18 December 2015.

The Rhodes West Station Precinct is relevant to the allegations in relation to I-Prosperty (see chapter 4) and Billbergia (see chapter 5).

Rhodes East Priority Precinct

The Rhodes East Priority Precinct is relevant to the allegations relating to Billbergia and Prolet (see chapter 5). In 2012, the NSW Government established priority precincts to provide a strategic approach to the delivery of housing and employment (these were initially termed “Urban Activation Precincts”). Criteria and procedures associated with establishing priority precincts included involving relevant councils and NSW Government agencies, preparing planning studies and investigations (including for infrastructure), and community engagement through public exhibition and consultation.

From November 2014, the Council and the Department pursued a Rhodes East Priority Precinct. The Rhodes East Priority Precinct was subject to two public exhibition periods, including one from December 2018 to February 2019. On 30 October 2021, the NSW Government amended CBLEP 2013 and introduced planning controls for the Rhodes East Priority Precinct.

The planning controls for the Rhodes East Priority Precinct in CBLEP 2013 apply to land within the Rhodes West Station Precinct, and the land north of Mary Street east of Blaxland Road and west of Homebush Bay Drive. The Rhodes West Station Precinct was not initially part of the Rhodes East Priority Precinct. However, it appears to have been included by the Department at some point before the second public exhibition period commenced in December 2018.

Chapter 2: Mr Tsirekas' role, duties and obligations as mayor

This chapter sets out Mr Tsirekas' roles, duties and obligations as mayor of the Council in accordance with the statutory and regulatory framework.

The legal framework

The LGA provides the statutory framework relevant to the Commission's investigation.

The role of the Council

The LGA provides that councils must uphold the principles of local government provided for in chapter 3 of the Act. Section 8A of the LGA provides guiding principles for councils in the exercise of their functions generally, and in relation to decision-making and community participation. The guiding principles for the exercise of functions include that councils should:

- a) provide strong and effective representation, leadership, planning and decision-making
- b) carry out functions in a way that provides the best possible value for residents and ratepayers
- c) plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community
- d) apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements
- e) work co-operatively with other councils and the NSW Government to achieve desired outcomes for the local community
- f) manage lands and other assets so that current and future local community needs can be met in an affordable way

- g) work with others to secure appropriate services for local community needs
- h) act fairly, ethically and without bias in the interests of the local community
- i) be responsible employers and provide a consultative and supportive working environment for staff.

The guiding principles for decision-making include that councils should:

- a) recognise diverse local community needs and interests
- b) consider social justice principles
- c) consider the long-term and cumulative effects of actions on future generations
- d) consider the principles of ecologically sustainable development
- e) engage in transparent decision-making processes and accountable decision-making.

The role of the mayor and councillors

Mr Tsirekas has held and continues to hold the role of mayor of the Council as a result of elections held in 2004, 2008, 2012, 2017 and 2021.

The LGA sets out the roles of mayors and councillors. These roles are directed at strategic leadership, governance and implementing the strategic plans and policies of a council rather than the delivery of day-to-day services by council. A council must have at least five and not more than 15 councillors. A councillor holds office for four years. A mayor elected by councillors holds the office for two years, while a mayor elected by electors holds the office for four years. Relevantly, Mr Tsirekas is a mayor elected by electors.

The mayor and councillors have the same role and responsibilities, which are set out in s 232 of the LGA. A council is a body politic and councillors, as the elected representatives, comprise its governing body. Section 232(1) provides that a councillor is accountable to the local community for the performance of council and that their role is as follows:

- a) to be an active and contributing member of the governing body
- b) to make considered and well-informed decisions as a member of the governing body
- c) to participate in the development of the integrated planning and reporting framework
- d) to represent the collective interests of the residents, rate payers and the local community
- e) to facilitate communication between the local community and the governing body
- f) to uphold and represent accurately the policies and decisions of the governing body
- g) to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor.

In addition to the role of the councillor, the mayor has additional responsibilities and obligations as set out in s 226 of the LGA. These include:

- a) to be the leader of the council and a leader in the local community
- b) to advance community cohesion and promote civic awareness
- c) to be the principal member and spokesperson of the governing body, including representing the view of the council as to its local priorities

- d) to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council
- e) to preside at meetings of the council
- f) to ensure that meetings of the council are conducted efficiently, effectively and in accordance with the LGA
- g) to ensure the timely development and adoption of the strategic plans, programs and policies of the council
- h) to promote the effective and consistent implementation of the strategic plans, programs and policies of the council
- i) to promote partnerships between the council and key stakeholders
- j) to advise, consult with and provide strategic direction to the general manager in relation to the implementation of the strategic plans and policies of the council
- k) in conjunction with the general manager, to ensure adequate opportunities and mechanisms for engagement between the council and the local community
- l) to carry out the civic and ceremonial functions of the mayoral office
- m) to represent the council on regional organisations and at inter-governmental forums at regional, state and Commonwealth level
- n) in consultation with the councillors, to lead performance appraisals of the general manager
- o) to exercise any other functions of the council that the council determines.

The code of conduct

Section 439 of the LGA requires that, in carrying out their functions, all councillors, council staff and delegates of a council are to act honestly and exercise a reasonable degree of care and diligence.

The Model Code of Conduct for Local Councils in NSW ("the model code") is prescribed under s 440 of the LGA and the Local Government (General) Regulation 2005. Section 440 of the LGA provides that all councillors, members of staff and delegates of a council are to act in accordance with the model code, or a council should adopt a code of conduct which incorporates the model code.

At all times since March 2009, the Council has had in effect a code of conduct for the purposes of s 440 of the LGA. The code of conduct expressly provides that councillors (and others) are required to comply with the applicable provisions of the code, an obligation that is expressed to be a "personal responsibility" of the councillor. It is a further responsibility of councillors to "regularly review" their personal circumstances with that obligation in mind.

One purpose of the code of conduct is to assist councillors to act in a way that enhances public confidence in the integrity of local government. In this regard, some specific obligations of the 2013, 2017 and 2019 iterations of the Council's code of conduct are identified:

- Councillors must not act in a way that is "improper or unethical" or is an "abuse of power" or otherwise amounts to misconduct (clauses 3.1(c) and 3.1(d) in the 2013, 2017 and 2019 codes).
- Councillors must act "lawfully and honestly and exercise a reasonable degree of care and diligence" in carrying out their functions under the LGA (clause 3.2 in the 2013, 2017 and 2019 codes).
- Councillors must avoid any occasion for "suspicion of improper conduct" in the development assessment process (clause 3.7 in the 2013 and 2017 codes, and clause 3.13 in the 2019 code).
- Councillors must avoid or appropriately manage conflicts of interest. The onus is on councillors to identify a conflict of interest and take appropriate action to manage the conflict in favour of their public duty (clause 4.2 in the 2013 and 2017 codes).
- When councillors are considering whether they have a conflict of interest, they must think about how others would view their situation (clause 4.3 in the 2013 and 2017 codes, and clauses 4.28 – 4.39 in the 2019 code).
- A pecuniary interest is an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person. The LGA requires that pecuniary interests be disclosed (clauses 4.5 and 4.7 in the 2013 and 2017 codes, clause 4.1 in the 2019 code and outlined further below).
- Non-pecuniary interests are private or personal interests a council official has, that do not amount to a pecuniary interest as defined by the LGA. These commonly arise out of family or personal relationships, or involvement in sporting, social or other cultural groups and associations, and may include an interest of a financial nature. Councillors must disclose non-pecuniary interests that conflict with their public duties fully and in writing as soon as practicable (clauses 4.10 and 4.12 in the 2013 and 2017 codes and clauses 5.1 – 5.5 in the 2019 code, and outlined further below).
- Significant non-pecuniary conflicts of interest must be managed by councillors in one of two ways: removing the source of the conflict or having no involvement in the matter by absenting themselves from and not taking part in any debate or vote on the matter. If a councillor determines that a non-pecuniary conflict of interest is less than significant and does not require further action, they must provide an explanation of why that is so (clauses 4.16 and 4.17 in the 2013 and 2017 codes, and clauses 5.6 – 5.17 in the 2019 code).
- Councillors are required to avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from the councillor (clause 5.1 in the 2013 and 2017 codes, and clause 6.3 in the 2019 code).
- Councillors must not seek gifts or benefits of any kind; accept any gift or benefit that may create a sense of obligation on their part or may be perceived to be intended or likely to influence them in carrying out their public duty; or accept any gift or benefit of more than a token value (clause 5.5 in the 2013 and 2017 codes and clauses 6.5 in the 2019 code). Free or discounted travel is a gift or benefit of more than a token value (clauses 5.4 – 5.7 in the 2013 and 2017 codes and clause 6.10 in the 2019 code).

Managing conflicts of interest in local government

The Council's code of conduct defines a conflict of interest as existing where a reasonable and informed person would perceive that a council official could be influenced by a private interest when carrying out their public duty. Any such conflict of interest should be avoided or appropriately managed, with the onus on the council official to identify the conflict and take appropriate action to manage the conflict in favour of their public duty.

A private interest can be two types: pecuniary or non-pecuniary. A pecuniary interest is defined in the Council's code of conduct as "an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to a person". At the relevant times, the LGA provided that councillors, the general manager and senior staff were to disclose pecuniary interests by:

- preparing and submitting written returns of interests in accordance with s 449 of the LGA
- disclosing, at meetings of council or committees, an interest in any matter with which the council is concerned as soon as practicable, in accordance with s 451 of the LGA (if a councillor)
- when dealing with Council matters, disclosing an interest in writing in accordance with s 459 of the LGA (if the general manager, to the councillors; if a member of senior staff, to the general manager).

Non-pecuniary interests are "private or personal interests that do not amount to a pecuniary interest" as defined in the LGA and "commonly arise out of family, or close personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature". Any conflict between a non-pecuniary interest and a council official's public duty is required to be disclosed fully, in writing and as soon as practicable, even if the conflict is not significant. If a disclosure is made at a council or committee meeting, both the disclosure and the nature of the interest must be recorded in the minutes and this constitutes disclosure in writing. If a significant non-pecuniary interest has been disclosed, then it must be managed by removing the source of the conflict, either by divesting the interest or reallocating the conflicting duties to another council official, or by having no involvement in the matter, including taking no part in a debate or vote on the matter. If the non-pecuniary conflict of interest is less than significant and does not require further action, an explanation of why the conflict does not require further action must be given.

Duties of public office

Public trust

During the relevant period, Mr Tsirekas was a public official, excluding the period between June 2016 and September 2017, when he was a candidate for the federal seat of Reid. In addition to the applicable duties and obligations set out in the Council's codes of conduct and other statutory obligations as examined earlier in this chapter, Mr Tsirekas was obligated to comply with the fundamental principle attached to public office, namely, the public trust principle. Broadly speaking, members of the community rely on and trust their public officials to act honestly, impartially and disinterestedly and not use their official position for personal advantage.

A key principle of representative democracy is that all the powers of government are derived from, and may only be exercised for, and on behalf of, the public. Those entrusted with such power therefore owe a fiduciary duty of loyalty to the public.

The Hon Professor Paul D Finn (later a judge of the Federal Court of Australia) described the public trust concept in the following terms:

Public officials occupy positions of public trust. Lawful remuneration and entitlements apart, they hold their positions and the authority these confer not for their own benefit but for the benefit of the public whom, ultimately, they serve.

Though their conduct in office can be regulated, variously, by employment obligation, constitutional/political convention, the standards set by professional bodies and by the general law, they are, as trustees (or fiduciaries), to be expected to serve the public honestly, impartially and disinterestedly. This is their fiduciary duty of loyalty.

As public office commonly provides (though in varying degree) the opportunity to use official power and position to serve interests other than the public's interests – and particularly those of the official himself or herself – the object of the fiduciary duty imposed on officialdom is to foreclose the exploitation of that opportunity. The duty exacts loyalty in the public's service by proscribing conduct either which is deemed to be disloyal or, in some instances, which can have the appearance of, or tendency to, disloyalty.¹

¹ PD Finn, "Abuse of Official Trust: Conflict of Interest and Related Matters", Integrity in Government Project, 2nd Report, Australian National University, Canberra, 1993, p. 3.

Notably, however, a breach of public trust by a public official requires more than mere inadvertence or error. The public official must be aware of the existence of the duty and wilfully act contrary to the duty, or in bad faith.

Conflict of interest

In common law terms, a conflict of interest and duty arises where a public official possesses, obtains or seeks to obtain a personal interest in a matter falling within the scope or ambit of the official function they are entrusted to perform as an official. The interest must also be one capable of influencing the exercise or performance of an official function, and the scope of official duties or functions of office is key to determining whether a conflict between public duty and private interest has arisen or could arise.

In circumstances in which an actual conflict between duty and interest arises, culpability will be determined by reference to a number of factors including:

- the nature and extent of the conflict of interest
- whether there has been any disclosure of the interest and, if so, the extent of disclosure and to whom the disclosure was made
- the nature and level of involvement and the importance of the official's role in the decision or action
- where a public official is aware or is taken to be aware of facts giving rise to a conflict of interest, a non-disclosure of the "conflict" may itself constitute evidence of a culpable state of mind.

Mr Tsirekas as mayor

The following submission was made on Mr Tsirekas' behalf:

AT [Mr Tsirekas] as a councillor and Mayor provided a relaxed, communal, open door, style of access and support, lacking in formalities and protocols, and characterised by a somewhat indiscriminate albeit well-intentioned lack of boundaries, to residents and landowners in the Canada Bay LGA [local government area] without fear or favour, irrespective of whether the topic was a development application or a locked lavatory. This explains why AT would meet residents, landowners, developers large and small, in cafes, inside and outside of standard working hours and inside and outside of his LGA. AT's remarkable election records bespeak his ability to comfort such folk that their concerns were his concerns and that he was on their side. Such conduct could be perceived, mistakenly, as corrupt, if one focuses, as CAS

[Counsel Assisting] do, on a small subset of the beneficiaries of AT's indiscriminate approach.

In effect, it was submitted that Mr Tsirekas as mayor was universally helpful to everybody, including developer interests. On this issue, Mr Tsirekas gave the following evidence during cross-examination by his senior counsel:

The way I operate is that I'm out in the community, I'm an open door, people do come to me while I go for walks or at the coffee shop or locally. I'm not one to say, look, don't talk to me now, ring my office for an appointment. They're all busy, I'm a busy person. I frequently say to them, if you can meet me before work, 9 o'clock, I'll have a coffee. If not, after 4:00 [pm] we can meet at Council. I think I've done a pretty good job trying to serve the community and deal with items of importance to everybody. Whether they're big issues or small issues I'm willing to do the best I can to resolve things to try and get people together and to do the best I can as the mayor of the community.

A number of witnesses gave evidence of their observations of or dealings with Mr Tsirekas. Heather Crichton, Mr Tsirekas' current partner, described Mr Tsirekas as "very accessible" to "one and all" and available to talk with constituents, including developers with applications before the Council.

Mr Chidiac said that Mr Tsirekas had an "open door policy" and that anyone could approach him and anyone could get a meeting with him.

Mr Sawyer, the former general manager of the Council, said that Mr Tsirekas was "certainly very engaged with the community" in answer to a question from Mr Tsirekas' counsel as to whether it would be fair to say that Mr Tsirekas was a "hands-on", "proactive" mayor with an open-door policy.

Mr McNamara, the Council's former director of planning, said that there was a process whereby Mr Tsirekas met with the Council executive (the general manager and the directors) every Thursday for a briefing. These initially took place at Council. At a later point in time, the meetings occurred outside of Council at coffee shops in the Canada Bay area. At the meeting, the directors would give an account of major points of interest, some of which would concern matters that would be coming up in reports to Council in the near future. The meetings were unstructured, generally ran for about an hour and Mr McNamara was required to be there. These meetings started before Mr Sawyer's tenure as general manager and continued from that point. Mr McNamara said that they did not engage or consult with members of the public during the meetings that occurred in coffee shops. There were also other ad hoc meetings with Mr

Tsirekas, which usually took place at the end of a working day, when Mr Tsirekas would invite Mr McNamara and usually the general manager to his office to discuss any particular issue that he wanted to be informed about. Mr McNamara explained that planning matters are often lengthy and complicated and Mr Tsirekas took time to understand the progress of matters that would normally come before Council in a formal report. Mr McNamara said that none of the questions or topics that he would discuss raised any concern with him. Mr McNamara said it was not appropriate for members of staff or councillors to meet with developer representatives in coffee shops if the developer had current business before the Council. In his view, the Council chambers was the appropriate place to hold such meetings.

Narelle Butler, the Council's former manager of statutory planning between May 2008 and October 2019, said it was Council policy that any enquiries from the mayor were to go through the director of the relevant department. Ms Butler reported to Mr McNamara. The mayor was not supposed to contact Council staff directly. The purpose of this policy was to maintain some separation between the mayor and the staff to enhance the integrity in the administration and protect the staff from influence. She said that the enquiries that came from the mayor's office could be about development applications or strategic planning matters. In relation to enquiries about development applications, she said they would often be about the progress of an application. Ms Butler agreed that, in the past, she regarded that Mr Tsirekas operated his "own little fiefdom" at Council. Ms Butler explained her opinion:

Well, Mr Tsirekas had conducted his, well he used his office space as an opportunity for people to come and meet with him but there was, he had developed a certain culture, I suppose, and an expectation amongst members of the development industry in particular, who were seeking to either do development in Canada Bay or who had actually lodged applications with us to do development, that his door was open if you like, and that they could come and talk to him, they could contact him to seek a meeting with him, that, that he would have council staff assist with that process as well.

Ms Butler said she did not think that this should occur and that she and her team should be left to their development assessment work without influence or pressure to progress things more quickly than they might otherwise have been. Ms Butler said no minutes were taken of the meetings with developers. She said that her team did receive enquiries from other councillors via Mr McNamara, but the vast majority of the enquiries came from Mr Tsirekas. Ms Butler said that she was

even asked to provide responses to queries raised by Mr Tsirekas during the time he was not mayor (between June 2016 and September 2017) and expressed concerns about providing information to a member of the public, as Mr Tsirekas was at the time. She said that she tried to provide the responses in the same way that she would to any applicant or a person objecting to a development application.

Mr Gainsford, who was the general manager between January 2018 and April 2021, said he and the directors would meet with the mayor once a week to discuss anything of note the directors wished to raise, or any particularly important Council matters. These meetings took place at Council. Mr Gainsford said that, during his first week at the Council, Mr Tsirekas arranged for him to meet Belinda Li and David Furlong in relation to the I-Prosperty planning proposal. He also met John Kinsella of Billbergia, and Joseph Jacob and/or Pierre Jacob of Prolet. Mr Gainsford said that Mr Tsirekas said these meetings were arranged because "things have been taking a long time" and the "priority" was to "deal with" these particular matters. Mr Gainsford said that although it was part of his role to maintain the register of annual disclosures, Mr Tsirekas never disclosed a relationship with any of these developers.

In the following chapters of this report, the Commission will examine the nature of Mr Tsirekas' relationships with the developers relevant to the allegations, whether his relationships with them reflected an informal, open door and indiscriminate approach to his mayoral duties, or whether, due to the nature of those relationships, Mr Tsirekas was required to disclose any conflict of interest and, if so, why he failed to disclose the conflict.

Mr Tsirekas' understanding of his obligations

On 25 September 2012 and 19 September 2017, Mr Tsirekas was invited to workshops that included training on the code of conduct. Mr Tsirekas said that he would have been taken through the code of conduct at the workshops.

Mr Tsirekas agreed that, from 2013 (at the latest), he understood that he was required to comply with the obligations set out in the Council's code of conduct. He understood it was his "personal responsibility" to comply with the code of conduct, and to regularly review and consider his personal circumstances. He said he knew there were penalties for not complying with the code, although he claimed to not know what they were.

He agreed that, as a councillor, he should not give the impression that a friendship could interfere with his independence. He agreed that he was obligated to act independently, honestly and impartially as a councillor. Mr Tsirekas said in the “real world” it was hard to please everyone, but conceded that the code of conduct was designed and intended to operate in the “real world” of local government. He also agreed that it was not his role to please or satisfy a particular party but to act honourably, objectively and independently, regardless of others’ views.

Mr Tsirekas agreed that the provision of gifts, benefits and hospitality could give rise to an appearance that the donor is attempting to secure favourable treatment. Mr Tsirekas agreed that the following gifts, benefits and hospitality could give rise to an appearance that the donor was attempting to secure favourable treatments: payment for accommodation when travelling, loans of money, provision of entertainment, payment for trips and sightseeing.

Mr Tsirekas did not contend that it was impossible to comply with the relevant code obligations, or that he encountered any particular difficulty in doing so. There is no evidence before the Commission to that effect. In fact, there is evidence that Mr Tsirekas made some disclosures, including about contributions to travel by persons or entities not relevant to the Commission’s investigation. Mr Tsirekas denied that he deliberately refrained from declaring any conflict of interest.

As set out above, s 226 of the LGA makes abundantly clear that, in the role of mayor, Mr Tsirekas had a large and important role in the leadership and administration of the Council. Further, the emphasis of the statutory functions of the mayor is on individual accountability and responsibility, as well as community service and leadership.

In the Commission’s view, any deliberate failure to comply with the code of conduct is inconsistent with the duties and responsibilities of a person who occupies the important role of mayor. Further, the honest and impartial exercise of official functions by Mr Tsirekas as mayor was critical to achieving outcomes which are in the best interests of the community. In relation to the code of conduct, mayors must lead by example through complying with their code of conduct and disclosing conflicts of interest as required. Transparency in local government decision-making is critical. The failure by a mayor to declare or properly manage conflicts of interest places council staff in the difficult position of not knowing why the mayor is advocating for or supporting a particular position, and means other councillors and staff are not able to manage any conflict of interest. When conflicts of interest are not properly managed by public officials, it may undermine public confidence in a council and deliver poor outcomes for the community that the council serves. It is through this lens that Mr Tsirekas’ conduct will be examined in the following chapters of this report.

Chapter 3: Mr Tsirekas' finances

The Commission analysed Mr Tsirekas' financial position, including his known sources of income, living expenses, loans from others and travel history. Additionally, given his claim that his father gave him money, his parents' financial position was analysed with a particular focus on the years between 2015 and 2020. The purpose of this analysis was to determine whether there was any evidence of Mr Tsirekas having unexplained wealth, which might indicate that he received improper financial benefits.

Mr Tsirekas did not dispute the validity or accuracy of the Commission's analysis of his financial position.

Mr Tsirekas separated from his wife in March/April 2013 and a divorce was granted in 2014. After the separation, he lived with his parents for about 16 months until about mid-2014, when he moved into rented accommodation. The property settlement took place in 2020.

Mr Tsirekas' financial position and known sources of income

Mr Tsirekas told the Commission that, between 2013 and mid-2016, his two main sources of income were from the City of Canada Bay Council (through his mayoral stipend) and the-then Canterbury City Council (through his paid employment as a health and building inspector). He said that in mid-2016, he resigned from his positions at both councils to contest the federal election as the candidate for the seat of Reid in Sydney's inner west and, during this period, he had no source of income. He was re-elected as mayor in September 2017 and thereafter that was his only paid employment.

Mr Tsirekas' evidence was that, between 2013 and 2020, he did not engage in work for which he was paid in cash. He said that during this period, his father gave him cash, others loaned him money, he received sums of money from his superannuation, was paid entitlements by Canterbury City Council and had his property settlement in 2020.

The analysis carried out by the Commission confirmed Mr Tsirekas' evidence that, prior to May 2016, his main sources of income were his salaries from the City of Canada Bay Council (around \$60,200 in 2015) and Canterbury City Council (around \$47,900 in 2015), but after he resigned from both positions to contest the federal election in May 2016, he had no source of income. When he returned to the position of mayor in September 2017, he had no other paid employment. He received approximately \$91,000 in a payout of entitlements from Canterbury City Council in 2016. In 2016 and 2017, he received superannuation monies (\$50,000 and \$76,000 respectively). In July 2020, he received \$665,000 from his divorce settlement.

Figure 1 summarises Mr Tsirekas' known income, known expenditure and overall financial position between 2013 and 2020. The analysis demonstrates that in the calendar years 2015, 2017 and 2019, Mr Tsirekas spent more than he received from known sources of income and, consequently, ended those calendar years in a negative net financial position.

Figure 1: Analysis of Angelo Tsirekas' financial position, 2013–2020 calendar years

	2013	2014	2015	2016	2017	2018	2019	2020	Totals
Opening position	- 22,358.42	25,281.18	43,348.50	12,611.29	31,998.95	3,453.27	66,925.05	4,709.96	
Family Law Settlement (\$)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 665,000.00	\$ 665,000.00
Salary - Canada Bay Council	\$ 52,579.81	\$ 56,617.91	\$ 60,234.58	\$ 23,088.55	\$ 20,868.79	\$ 76,055.97	\$ 75,039.36	\$ 70,309.17	\$ 434,794.14
Salary - Canterbury Council	\$ 45,815.97	\$ 46,935.12	\$ 47,906.71	\$ 19,117.31	\$ -	\$ -	\$ -	\$ -	\$ 159,775.11
Superannuation payments	\$ -	\$ -	\$ -	\$ 50,000.00	\$ 76,000.00	\$ -	\$ -	\$ -	\$ 126,000.00
Canterbury Council - lump sum payment of entitlements	\$ -	\$ -	\$ -	\$ 91,650.20	\$ -	\$ -	\$ -	\$ -	\$ 91,650.20
Incoming - CEG Direct Securities	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 91,176.55	\$ 91,176.55
Income - Mills Oakley Lawyers (rescission of contract on Ashfield unit)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 81,120.96	\$ -	\$ -	\$ 81,120.96
Income - Revenue NSW (return of stamp duty)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 40,271.50	\$ -	\$ -	\$ 40,271.50
Other	\$ 31,626.41	\$ 10,816.53	\$ 1,254.33	\$ 15,678.38	\$ 13,952.28	\$ 37,866.70	\$ 5,754.80	\$ 13,707.09	\$ 130,656.52
Total income	\$ 130,022.19	\$ 114,369.56	\$ 109,395.62	\$ 199,534.44	\$ 110,821.07	\$ 235,315.13	\$ 80,794.16	\$ 940,192.81	\$ 1,820,444.98
Transfer - Outgoing	- \$ 4,055.11	- \$ 17,970.26	- \$ 11,056.10	- \$ 11,909.27	- \$ 10,050.60	- \$ 22,213.54	- \$ 25,137.05	- \$ 217,375.48	- \$ 319,767.41
Rent expense	\$ -	- \$ 16,035.72	- \$ 39,107.16	- \$ 39,107.16	- \$ 42,777.16	- \$ 39,367.88	- \$ 37,282.25	- \$ 40,671.23	- \$ 254,348.56
Misc. expense	- \$ 32,570.00	- \$ 26,145.02	- \$ 18,275.04	- \$ 10,552.20	- \$ 9,715.23	- \$ 11,775.70	- \$ 11,388.47	- \$ 26,256.62	- \$ 146,678.28
Travel expense	- \$ 3,871.15	- \$ 16,312.76	- \$ 28,934.58	- \$ 40,001.09	- \$ 3,606.69	- \$ 13,690.41	- \$ 12,366.22	- \$ 1,328.52	- \$ 120,111.42
Credit card expense - Misc.	- \$ 21,889.60	- \$ 5,683.45	- \$ 1,806.92	- \$ 5,045.23	- \$ 2,965.73	- \$ 10,587.53	- \$ 12,793.85	- \$ 7,041.12	- \$ 67,813.43
Misc. expense - Overseas	\$ -	\$ -	\$ -	\$ -	- \$ 10,000.00	- \$ 45,000.00	- \$ 5,485.00	\$ -	- \$ 61,431.70
Other	- \$ 19,996.73	- \$ 13,208.33	- \$ 40,753.03	- \$ 73,731.83	- \$ 60,251.34	- \$ 27,208.29	- \$ 40,556.41	- \$ 97,777.60	- \$ 373,483.56
Total expense	- \$ 82,382.59	- \$ 96,302.24	- \$ 139,932.83	- \$ 180,346.78	- \$ 139,366.75	- \$ 169,843.35	- \$ 145,009.25	- \$ 390,450.57	- \$ 1,343,634.36
Closing Cash Position (Bank)	\$ 25,281.18	\$ 43,348.50	\$ 12,811.29	\$ 31,998.95	\$ 3,453.27	\$ 68,925.05	\$ 4,709.96	\$ 454,452.20	\$ 476,810.62
Net movement	\$ 47,639.60	\$ 18,067.32	- \$ 30,537.21	\$ 19,187.66	- \$ 28,545.68	\$ 65,471.78	- \$ 64,215.09	\$ 449,742.24	\$ 476,810.62

Mr Tsirekas' living expenses

The Commission undertook an analysis of Mr Tsirekas' expenditure on entertainment, groceries, restaurants and retail items for the calendar years between 2014 and 2020. This analysis was based on Mr Tsirekas' electronic financial records.

Figure 2 summarises how much was spent by Mr Tsirekas in each category for each year, based on his electronic financial records.

as recorded in relevant electronic financial records increased. The Commission notes that NSW also spent part of 2020 in lockdown conditions.

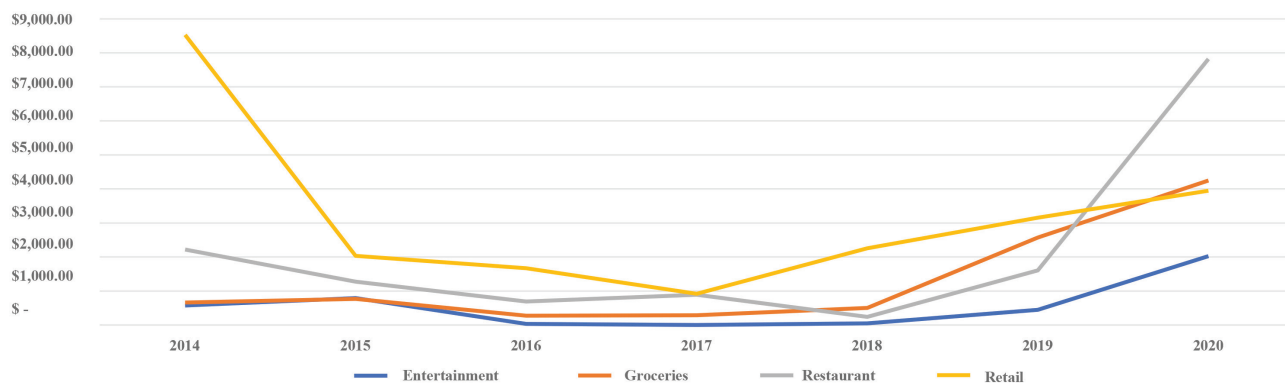
Thirdly, the analysis shows that the amount of cash withdrawals made by Mr Tsirekas decreased between 2014 (\$7,716.46) and 2015 (\$5,000). His cash withdrawals remained fairly low in 2016 (\$4,300), 2017 (\$2,700) and 2018 (\$4,800), and stayed low while his electronic expenditure on living expenses also decreased.

Figure 2: Angelo Tsirekas' living expenses, 2014–2020 calendar years

Expense type	2014	2015	2016	2017	2018	2019	2020	Totals
Entertainment	\$576.85	\$790.63	\$32.50	\$ -	\$49.80	\$448.14	\$2,026.35	\$3,924.27
Groceries	\$661.72	\$766.20	\$271.29	\$285.27	\$502.66	\$2,569.71	\$4,246.60	\$9,303.45
Restaurant	\$2,217.60	\$1,272.17	\$693.30	\$890.74	\$240.58	\$1,603.87	\$7,822.41	\$14,740.67
Retail	\$8,528.32	\$2,031.66	\$1,667.38	\$917.74	\$2,252.32	\$3,150.93	\$3,944.54	\$22,492.89
Totals	\$11,984.49	\$4,860.66	\$2,664.47	\$2,093.75	\$3,045.36	\$7,772.65	\$18,039.90	\$50,461.28

Cash withdrawal	\$7,716.46	\$5,000.00	\$4,300.00	\$2,700.00	\$4,800.00	\$9,350.00	\$5,960.00	\$39,826.46
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Figure 3: Graph showing Angelo Tserikas' living expenses, 2014–2020 calendar years



The following observations arise from the analysis of the information in Figure 2. First, and generally speaking, in the years between 2015 and 2019, the relevant electronic financial records indicate low expenditure on living expenses. For instance, in 2016, those records show Mr Tsirekas spent a total of \$271.29 on groceries and \$693.30 at restaurants, while in 2017, he spent \$285.27 on groceries and \$890.74 at restaurants.

Secondly, there was a sharp decline in the record of Mr Tsirekas' total living expenses between the calendar years 2014 (\$11,984.49) and 2015 (\$4,860.66). Mr Tsirekas' living expenses remained fairly stagnant and objectively low in 2016 (\$2,664.47), 2017 (\$2,093.75) and 2018 (\$3,045.36). In 2019, this figure increased to \$7,772.65 and in 2020, it increased to \$18,039.90. The Commission notes that Mr Tsirekas became aware of its investigation on 12 June 2019 after a search warrant was executed at his premises and, after this time, Mr Tsirekas' expenditure

Then, in 2019, his cash withdrawals increased again (\$9,350) as did his recorded living expenses.

When giving evidence to the Commission, Mr Tsirekas did not contest the accuracy of the figures in Figure 2. His evidence was vague and non-committal about why the observed changes occurred. For example, his explanation for his apparently limited expenditure on groceries in 2016 (\$271.29) was that he ate out a lot.

However, when it was pointed out to him that the relevant financial records showed he had spent only \$693.30 at restaurants in 2016, and this was less than the year prior in 2015 when he spent \$1,272.17, he said he ate at his parents' place, or with his partner (sharing expenses) or at Council or functions. He stated, "I, I wasn't home much, so my grocery bills, you know, were low. That's my explanation". Mr Tsirekas claimed that his daughter (who started living with him in 2015) purchased "the staples" in terms of groceries, including milk, bread, eggs and cereal, but also said that they each separately bought their own food. He said that he generally did not eat much. He could not explain why his yearly entertainment costs decreased between the years 2015 (\$790.63) and 2016 (\$32.50). When asked why his expenditure on groceries increased between the years 2018 (\$502.66) and 2019 (\$2,569.71), and in the same period his restaurant expenditure also increased from \$240.58 to \$1,603.87, he denied the changes were connected with him becoming aware of the Commission's investigation.

Mr Tsirekas denied that there was another undisclosed source of money he used for travel and living expenses, such as Mr Chidiac or an unidentified source.

There are a number of possible explanations for the observed changes in expenditure as recorded by the relevant financial records. One is that Mr Tsirekas significantly changed his spending habits, and reduced his overall expenses, in the years between 2015 and 2019, although this was not his evidence. Another explanation is that Mr Tsirekas did not change his habits, but paid in cash for more of the expenses so there were no electronic records evidencing the payments. However, this possibility is not borne out by the analysis which indicates that his cash withdrawals in the period between 2015 and 2019 also decreased. However, a variation of this second possibility is that Mr Tsirekas did pay for more of his living expenses in cash, but he had a source of cash other than his own resources. This possibility is examined further in this chapter.

Mr Tsirekas' loans

Mr Tsirekas gave evidence that he received funds or "loans" from Mr Chidiac, Mr Colacicco and Giovanni (John) Panuccio. In effect, he said that he borrowed money to finance his overseas travel and the money was largely repaid after his property settlement in 2020. He denied that the "loans" were repaid because of the Commission's investigation, of which (as noted above) he became aware in June 2019.

Mr Tsirekas said he considered Mr Chidiac and Mr Colacicco were in his "top five" close friends. Mr Tsirekas described Mr Panuccio as a good friend of probably 15 or more years. He also said that he did not know what Mr Panuccio did for a living, although he previously worked "on the docks". Mr Tsirekas said that he stayed at Mr Panuccio's holiday home in Italy and Mr Panuccio had assisted Mr Tsirekas during his election campaigns.

Mr Panuccio gave evidence that Mr Tsirekas was his long-time close friend. Mr Panuccio said he retired in 2019, having previously worked for a crane company, owned his own seafood shop and worked as a rigger on the docks.

Money from Mr Chidiac

On 22 July 2020, Mr Tsirekas electronically transferred \$9,000 to Mr Chidiac's bank account.

Mr Tsirekas told the Commission this transfer was repayment of money he borrowed from Mr Chidiac during a 2016 trip to Lebanon with Mr Chidiac and "the accommodation" (for an initially unspecified trip). He later stated that \$8,000 related to a 2016 trip to Lebanon and the other \$1,000 related to accommodation costs for a January 2016 trip to China.

Mr Chidiac was reluctant to describe any money he gave to Mr Tsirekas and was later repaid as "loans" but said that he had paid airfare and accommodation expenses for Mr Tsirekas. He said he made a "mental note" but no written record of the money he gave to Mr Tsirekas. He initially denied giving Mr Tsirekas any money, but later clarified that he meant he never lent any cash to Mr Tsirekas.

Mr Chidiac said he had paid for a January 2016 trip to Shanghai (the airfare and part of the accommodation at The Langham hotel), and for a trip that he and Mr Tsirekas made to Nanjing in January 2016. Mr Tsirekas' trips to China are dealt with in chapter 4.

Mr Chidiac said he had paid for Mr Tsirekas' expenses during a trip to Lebanon in October 2016, being his airfare and accommodation. He said Mr Tsirekas repaid about \$9,000 after his divorce proceedings were finalised.

The Commission is satisfied that the evidence demonstrates that, from 2016 to July 2020, Mr Tsirekas had the benefit of what was, in effect, an interest-free loan from Mr Chidiac.

Money from Mr Colacicco

Mr Tsirekas' banking records reveal three occasions on which Mr Colacicco electronically transferred money to Mr Tsirekas:

- \$5,000 on 24 August 2017
- \$10,000 on 11 January 2018
- \$5,000 on 14 January 2018.

Mr Tsirekas said he could not recall receiving \$5,000 in August 2017 or why Mr Colacicco transferred this amount to his account. He could not recall if it was a gift or a loan. Mr Tsirekas said he borrowed money from Mr Colacicco in January 2018 (\$10,000 and \$5,000) to pay expenses associated with a trip to the USA with the Wests Tigers Football Club ("the Wests Tigers"), which he took with Mr Chidiac in October/November 2017 (Figure 6, trip 14).

Mr Tsirekas said that in mid- and late-2018, he borrowed two \$3,000 cash amounts from Mr Colacicco (totalling \$6,000). He said that to the best of his recollection, he asked for the cash so it could be used on a trip, but he did not know for which trip he was intending to use it. He said he kept the cash at home in a shoebox. He said he borrowed the money because he was low on cash at the time. However, his bank account records revealed that in October 2018, \$81,000 was paid into his account due to the rescission of his purchase of a unit at Ashfield. He said he asked Mr Colacicco for cash because he was going through a divorce settlement and "wrong or right" he believed it was a way for him to hide money from his ex-wife. He denied that his evidence was false and that his claim the money was a "loan" was an explanation made up after the Commission had executed the search warrant in June 2019 to account for cash seized at Mr Tsirekas' premises (this matter is dealt with later in this chapter).

Mr Colacicco gave evidence that he lent Mr Tsirekas approximately \$21,000 which he transferred electronically to Mr Tsirekas' account (records show that it was in fact \$20,000) and also two payments of \$3,000 cash in 2018. He said the majority of this money was repaid once Mr Tsirekas' divorce was finalised in 2020, although the \$5,000 amount from August 2017 was still owed because Mr Colacicco had forgotten about it. He said he agreed to lend Mr Tsirekas money because he needed "help" and was going through a "pretty rough patch" with the "whole divorce thing".

In total, between 24 August 2017 and 14 January 2018, Mr Colacicco electronically transferred \$20,000 to Mr Tsirekas and lent him \$6,000 cash in 2018. On 17 July 2020, Mr Tsirekas electronically transferred \$21,000 to Mr Colacicco. As at the time of the public inquiry, Mr Tsirekas still owed Mr Colacicco \$5,000.

Money from Mr Panuccio

Mr Panuccio gave evidence that in June 2019, Mr Tsirekas asked him for a loan of \$5,000 "to upgrade his trip" to Italy. Mr Panuccio said he gave the money to his daughter, who worked for a travel agency, and she arranged to upgrade Mr Tsirekas' aeroplane ticket from economy to business class. Mr Panuccio said he took the \$5,000 from a cupboard at home. He said he agreed to do this for Mr Tsirekas "because he asked me" and because Mr Tsirekas was a "very good friend" who was going through a "bad period". Mr Panuccio described this as a "loan". However, he agreed that he never had a conversation about the terms of the loan with Mr Tsirekas or when he would repay the money. Mr Panuccio said the money was repaid to him in three instalments (\$2,500, \$1,000 and \$1,500) by electronic transfer to his bank account, the first payment being made in about August 2019 and the rest within the next six months (after the Commission's June 2019 search warrant).

When giving evidence to the Commission, Mr Tsirekas said he hardly remembered the details of the conversation in which it was arranged for Mr Panuccio to lend him the \$5,000. He said that to the "best of my recollection", Mr Panuccio lent him between \$4,000 and \$5,000 for a trip to Europe in 2019. Later in his evidence, Mr Tsirekas clarified that in June 2019, Mr Panuccio lent him \$5,000 in cash to upgrade his flights from economy to business class for a flight to Rome. Mr Tsirekas described this payment as a "loan", which he paid back to Mr Panuccio. He said Mr Panuccio had never before offered to do this and nor has he done so since. He could not explain why Mr Panuccio paid for the upgrade when he had the money in his bank account at the time and could pay for his own upgrade. He also could not explain why, on 27 June 2019, he repaid part of the amount (\$1,000) shortly after he received the loan and while overseas. He said that he repaid Mr Panuccio a large portion within the first two months of borrowing the money (in June and August 2019), and the rest upon receipt of his divorce settlement in mid-2020. He never declared receipt of the loan to Council in his annual disclosures.

In the Commission's view, Mr Tsirekas' evidence as to how he came to receive the loan from Mr Panuccio for the flight upgrade was vague, unconvincing and implausible. Mr Panuccio's evidence was also vague, unconvincing and implausible. The Commission rejects the evidence of both Mr Tsirekas and Mr Panuccio in relation to this issue. The Commission is satisfied that the \$5,000 amount was either from Mr Panuccio, or from a person or persons unknown. The Commission is satisfied that the money was not given as a loan to Mr Tsirekas but as a gift, and was repaid only after Mr Tsirekas became aware of the Commission's investigation.

Cash found at Mr Tsirekas' premises

On 12 June 2019, the Commission executed a search warrant at Mr Tsirekas' premises. During the search, Commission officers seized amounts of cash. Two of the cash amounts are relevant to the Commission's investigation, namely \$6,043 and \$7,040. The sum of \$6,043 was found in a shoebox and the sum of \$7,040 was found in an envelope in the pocket of a jacket hanging in a wardrobe

Figure 4: The \$6,043 cash "shoebox money" found at Mr Tsirekas' premises



Figure 5: \$7,040 cash found in an envelope in a jacket pocket hanging in a wardrobe at Mr Tsirekas' premises



On 2 September 2019, Mr Tsirekas' former lawyers advised that they were instructed that the \$6,043 was money held by Mr Tsirekas for "holiday/travel expenses". Further, they were instructed that the \$7,040 was held by Mr Tsirekas "on behalf" of Mr Panuccio. The \$6,043 is dealt with later in this chapter. Mr Tsirekas and Mr Panuccio gave evidence about the \$7,040.

During the public inquiry in 2022, Mr Panuccio stated that he gave Mr Tsirekas \$7,040 in cash on Monday 3 or Tuesday 4 June 2019 because he, Mr Panuccio, had a "bit of a gambling problem" and wanted Mr Tsirekas to hold the money for him so that it would be available to Mr Panuccio to spend on a trip he was planning to take to Italy with his wife and daughters. He said the money was his, about \$5,000 being money that he had saved at home "for years" and \$2,000 came from his winnings from gambling.

Mr Panuccio said he did not give the money to his wife or daughters but to Mr Tsirekas because it was "very hard to contact him (Mr Tsirekas)" to take money back from him. He also said he did not want his family to know about his gambling problem and made the "choice" to give the money to Mr Tsirekas.

Mr Panuccio agreed that – although he could not remember the exact words – he told Mr Tsirekas when he gave him the money that he would collect the money a day or two before leaving to travel overseas. Mr Panuccio conceded that he knew that Mr Tsirekas was leaving Australia to travel overseas in June 2019, prior to Mr Panuccio's own departure date.

Mr Panuccio said he gave the money to Mr Tsirekas at the same time that he gave him envelopes containing money that had been raised for Mr Tsirekas at a political fundraiser. He could not remember where he gave him the money.

During Mr Panuccio's earlier interview with Commission officers in March 2022, he had given a different account of the source of the money given to Mr Tsirekas for safe-keeping, saying it came from his superannuation fund. During the public inquiry, Mr Panuccio was asked about the inconsistency and said he "did my best" at the time of the interview, that it was "hard to recall" everything that was being asked of him and "to the best of my knowledge" he gave truthful answers. He accepted that he gave different accounts of the source of the money during the interview and when giving evidence at the public inquiry, although, shortly after, he denied that he gave two inconsistent explanations. He denied that the money he gave Mr Tsirekas came from someone else entirely.

During the public inquiry in 2022, Mr Tsirekas said that Mr Panuccio asked him to look after the \$7,040 prior to both their respective departures for Italy in June (Mr Tsirekas) and July (Mr Panuccio) 2019 so that Mr Panuccio would not spend the money before his trip. Mr Tsirekas said he agreed to hold the money as a favour for his friend, Mr Panuccio. He could not remember where the money was given to him, stating it could have been in a car or coffee shop. He could not explain why he did not tell Mr Panuccio to put the money in the bank. He said he did not question why Mr Panuccio wanted him to hold the cash. He said Mr Panuccio had not made such a request before or since. He could not explain why a mature man (Mr Panuccio was in his sixties) needed him to hold money so that Mr Panuccio would not spend it. Later in his evidence, he stated that Mr Panuccio “does like to gamble” and that he understood the money was given to him because Mr Panuccio did not want to “spend it or lose it”. He did not count the money or provide Mr Panuccio an invoice to account for the money.

Mr Tsirekas accepted that both interactions with Mr Panuccio (the \$5,000 flight upgrade and the \$7,040 cash amount) occurred shortly before the Commission executed its search warrant on 12 June 2019. He denied that he came up with a story to explain the \$5,000 and the \$7,040 cash found in his premises.

During an earlier interview with Commission officers in September 2020, Mr Tsirekas said he was sitting in Mr Panuccio’s motor vehicle when Mr Panuccio handed him some cash. According to Mr Tsirekas, some of the cash related to donations and Mr Panuccio requested that he “hold on” to another amount. He did not know how much Mr Panuccio gave him until it was counted by the Commission during the execution of the search warrant. He was asked why Mr Panuccio gave him the money and replied that he was simply asked to “hold it” as Mr Panuccio was going overseas and he did not ask any other questions at the time. Mr Tsirekas did not mention Mr Panuccio’s gambling habit during this interview.

The Commission notes that Mr Tsirekas’ previous legal representatives indicated in their correspondence to the Commission that the relevant fundraiser was held on 30 May 2019. In accordance with Mr Panuccio’s evidence, he must have given Mr Tsirekas this money (including the \$7,040) after 30 May 2019. Mr Panuccio’s evidence was that he gave it to Mr Tsirekas around 3 or 4 June 2019. Further, implicit in the claim that Mr Tsirekas was holding the \$7,040 “on behalf” of Mr Panuccio is that Mr Tsirekas was obliged to return the money to Mr Panuccio. Mr Panuccio’s travel movement records indicate that Mr Panuccio left Australia for Italy on 9 July 2019 and returned on 2 October 2019. Mr Tsirekas departed Australia on 19 June 2019 and returned on 23 July 2019.

The Commission rejects Mr Panuccio and Mr Tsirekas’ evidence about the provenance of the \$7,040 for the following reasons. First, when Mr Panuccio gave the money to Mr Tsirekas – on his evidence 3 or 4 June 2019 – he knew that Mr Tsirekas himself was going overseas in June 2019 (he left on 19 June 2019). Mr Panuccio was unable to provide any satisfactory explanation for why he gave the money (which on his account he intended to use on his trip to Italy) to Mr Tsirekas when Mr Tsirekas was leaving for overseas before him in June 2019.

Secondly, Mr Panuccio gave different and conflicting evidence as to the source of the \$7,040 cash amount during the public inquiry and his interview.

Thirdly, Mr Tsirekas’ evidence as to how he came into possession of the \$7,040 was vague and implausible. During his 2020 interview, he did not mention Mr Panuccio’s gambling as the reason why Mr Panuccio gave him the money, as he did during the public inquiry.

Finally, there is no other evidence that corroborates the evidence of either of Mr Panuccio or Mr Tsirekas. The Commission is satisfied that Mr Tsirekas and Mr Panuccio’s evidence was invented in order to explain why Mr Tsirekas was in possession of the \$7,040 cash sum.

The Commission is unable to determine the provenance of the \$7,040.

Mr Tsirekas’ travel

The Commission analysed Mr Tsirekas’ travel between April 2015 and July 2019, a period during which Mr Tsirekas travelled overseas on 24 occasions. Eight of the trips were to China. The relevant China trips are examined in chapter 4.

The Commission obtained the travel movement records for Mr Tsirekas, Mr Chidiac, Mr Colacicco and Ms Crichton and analysed banking records to determine each person’s expenditure for each trip, including each occasion on which it can be shown that cash was used (the “cash” column in Figure 6). Figure 6 shows when Mr Tsirekas travelled overseas, with whom he travelled, and how much each attendee spent.

Figure 6: Angelo Tsirekas' overseas travel, 2015–2019 calendar years

Trip ref.	Location	Attendees	Date from	Date to	Expenditure (\$)					TOTALS
					Chidiac	Tsirekas	Crichton	Colacicco	Cash spent*	
Trip 1	Port Moresby	Tsirekas, Crichton	14-Apr-15	28-Apr-15		1,117.42	1,009.54			2,126.96
Trip 2	United States	Tsirekas Crichton	18-Jun-15 27-Jun-15	7-Jul-15		13,420.71	6,027.59			19,448.30
Trip 3	Shanghai (Chidiac onwards to Beirut)	Tsirekas Chidiac Colacicco	4-Nov-15	25-Nov-15	7,120.17	1,895.55		4,044.84		13,060.56
Trip 4	Shanghai	Tsirekas, Chidiac	1-Jan-16	6-Jan-16	-	3,300.00				3,300.00
Trip 5	Honolulu	Tsirekas	8-Jan-16	16-Jan-16		13,170.73				13,170.73
Trip 6	Dubai	Tsirekas Colacicco	9-Feb-16 16-Feb-16	15-Feb-16 16-Feb-16		5,105.45		8,611.13		13,716.58
Trip 7	Shanghai	Tsirekas	12-Apr-16	16-Apr-16		1,329.78				1,329.78
Trip 8	Rome	Tsirekas Crichton	7-Jul-16	26-Jul-16		3,110.44	3,169.33		9,900.00	16,179.77
Trip 9	Shanghai	Tsirekas, Chidiac	1-Aug-16	8-Aug-16		-				-
Trip 10	United States	Tsirekas, Chidiac	7-Oct-16	16-Oct-16	29,767.86	27,520.11				57,287.97
Trip 11	Abu Dhabi/Lebanon	Tsirekas Chidiac	19-Oct-16	30-Oct-16	13,131.24	94.00				13,225.24
Trip 12	Denpasar	Tsirekas, Crichton	5-Jan-17	13-Jan-17		-	158.77			5,224.87
Trip 13	Denpasar	Tsirekas, Crichton	29-Jun-17	8-Jul-17		-				-
Trip 14	United States	Tsirekas, Chidiac	29-Oct-17	8-Nov-17	27,544.35	20,832.23				48,376.58
Trip 15	Shanghai	Tsirekas Chidiac Colacicco	22-Nov-17	29-Nov-17	8,414.10	-		2,817.03		11,231.13
Trip 16	Honolulu	Tsirekas, Crichton	11-Jan-18	19-Jan-18		-	17.12		13,949.00	13,966.12
Trip 17	Shanghai	Tsirekas Chidiac Colacicco	15-Mar-18	22-Mar-18	3,044.90	3,867.25		410.06		7,316.21
Trip 18	Port Moresby	Tsirekas Crichton	14-Apr-18 23-Apr-18	29-Apr-18		150.00	814.94			964.94
Trip 19	Port Moresby	Tsirekas Crichton	6-Aug-18 15-Aug-18	19-Aug-18		1,204.39	1,070.76			2,275.15
Trip 20	United States	Tsirekas, Chidiac	12-Oct-18	24-Oct-18	27,903.73	35,032.16				62,935.89
Trip 21	Shanghai	Tsirekas, Crichton	25-Oct-18	2-Nov-18		4,437.33	547.99			4,985.32
Trip 22	Shanghai	Tsirekas, Chidiac, Colacicco	30-Jan-19	5-Feb-19	3,574.70	3,759.54		1,726.32		9,060.56
Trip 23	Port Moresby	Tsirekas Crichton	13-Apr-19 22-Apr-19	28-Apr-19		846.74	1,152.00			1,998.74
Trip 24	Rome	Tsirekas Crichton	19-Jun-19	23-Jul-19		13,107.51	2,547.13		5,000.00	20,654.64
			9-Jul-19	Totals	120,501.05	158,361.44	16,515.17	17,609.38	28,849.00	341,836.04

*Cash payments paid to travel agents and third parties for holiday packages.

The Commission is satisfied the analysis in Figure 6 demonstrates that:

- While Mr Tsirekas was unemployed between mid-June 2016 and September 2017, he travelled overseas on six occasions (trips 8 to 13).
- Substantial cash payments (\$28,849) were contributed for three trips (trips 8, 16 and 24) undertaken by Mr Tsirekas but these cash payments do not align with cash withdrawals from any of his accounts.
- In 2016, 2017 and 2018, Mr Tsirekas attended “study trips” with the Wests Tigers rugby league club in the USA, which cost him a total of over \$80,000 (trips 10, 14 and 20). One of these trips took place when Mr Tsirekas was not employed.
- Mr Tsirekas’ recorded expenditure was between nil and \$1,000 on seven trips (trips 9, 11, 13, 15, 16, 18 and 23), including four trips during which he spent nothing (trips 9, 13, 15 and 16). He spent less than \$2,000 on 11 trips (trips 1, 3, 7, 9, 11, 13, 15, 16, 18, 19 and 23).
- Mr Tsirekas was often accompanied on overseas trips by Mr Chidiac, Mr Colacicco and/or Ms Crichton.

During the public inquiry, Mr Tsirekas was questioned about how he could afford to travel extensively, particularly as he was unemployed between mid-2016 and September 2017. Mr Tsirekas’ evidence was that he kept cash at home in a shoebox, which he used as his “travelling money”, and he received cash money from his father for the purpose of international travel.

Mr Tsirekas did not claim that any of the cash he received from his father was used for living expenses. He claimed that it was used for two purposes: as part of the deposit for his purchase of a unit at Ashfield and for travel.

Mr Tsirekas’ shoebox money

It will be recalled that Mr Tsirekas claimed that \$6,043 in cash found in a shoebox at his home was held for “holiday/travel expenses”.

During Mr Tsirekas’ interview with Commission officers in September 2020, he variously described the \$6,043 cash as his “travelling money” or money for “holiday expenses”. He claimed to have saved it over a long period of time, since his separation. He said when he started collecting the money, he had a couple of thousand in the shoebox. In about 2016, he had only a “couple of thousand” but less than \$5,000 cash in the shoebox. He said there could have been more as he did not count it. He was questioned about whether he used any of the

shoebox money to fund trips or had another source of cash. His evidence was vague but he claimed that he did not spend a lot when travelling overseas. He said he put in the shoebox any cash he had when he returned from a trip. He said he borrowed two amounts of \$3,000 in cash (\$6,000) from Mr Colacicco in mid- and late-2018, which he placed in the shoebox (noting that when the cash was seized in June 2019, there was \$6,043 in the shoebox). He also said if he had spare cash, he may have put it in the shoebox.

During his interview, Mr Tsirekas said he used the shoebox cash to pay for the following:

- Accommodation for the 2016 trip to Italy (Figure 6, trip 8).
- Conversion of \$2,500 into foreign currency prior to his departure on the 2016 trip to Italy. He said he used money from his shoebox or “whatever I had” (Figure 6, trip 8).
- Expenses in relation to two trips to Bali in January and June 2017. He and Ms Crichton returned early from the first trip as his father was ill. He said he spent very little on those trips because he funded his expenses from money in the shoebox and not from another source (Figure 6, trips 12 and 13).
- Flights and accommodation for the January 2018 Hawaii trip, which totalled about \$3,000 (Figure 6, trip 16).
- A trip to China in October 2018 (Figure 6, trip 21).
- Some expenses relating to his January to February 2019 trip to China (Figure 6, 22).

During his compulsory examination on 7 April 2022, Mr Tsirekas again stated that he kept cash at home in a shoebox. He said the cash came from savings and his father (who died in April 2017). He said the cash he kept at home was over \$1,000 but under \$10,000. He said there was “no real reason” as to why he did not bank the money except that he wanted cash at home and he was still going through settlement with his ex-wife. He said that, as at late 2017, it was not uncommon for him to hold up to \$8,000 to \$10,000 at home but the amount varied because he was spending the money from time to time. He estimated his father gave him about \$70,000 in cash payments from the time he was living with his parents until his father passed away. He said he had no evidence to establish how much his father paid him over the years.

During the public inquiry, Mr Tsirekas was shown a picture of the shoebox containing the \$6,043. Mr Tsirekas said that since his separation, he had stored cash at home in a shoebox/travel bag and he described it as his "travelling money". Mr Tsirekas gave evidence to the effect that he used cash from this source to meet some of his travel expenses. He said he had always had some cash at home, some of which he had withdrawn from his bank account, and some that had been given to him by Mr Colacicco (two \$3,000 cash amounts given in mid- and late-2018). He could not explain why he kept it at home in a shoebox rather than in a bank. He claimed he used the shoebox money for both travel and living expenses, but then said that he did not use the shoebox money to pay for living expenses between 2015 and 2018.

During cross-examination by his legal representative, Mr Tsirekas claimed that he started keeping cash at home from about late-2012 when "things got a bit difficult at home". He said that he started withdrawing cash and putting it in a box and saving it.

Mr Tsirekas' evidence in respect of the shoebox money was vague and inconsistent and therefore unreliable. The Commission rejects Mr Tsirekas' public inquiry evidence, which was later seemingly retracted, that the shoebox money was used for living expenses. The Commission is satisfied that Mr Tsirekas invented this evidence during the public inquiry in an effort to account for his low living expenses. During Mr Tsirekas' interview and two compulsory examinations, he said the shoebox money was only used for travelling and holiday expenses. The correspondence from his previous lawyers in September 2019 also indicated that the shoebox money was for "holiday/travel expenses".

Further, the Commission rejects his evidence at the public inquiry that he started withdrawing money from his accounts in late-2012 and saving it in a box at home. He had previously stated that he had saved the money "since" his separation and not before his separation. The Commission is satisfied Mr Tsirekas invented this evidence at the public inquiry when he became aware (through his tendered banking records) there were insufficient cash withdrawals between 2014 and 2018 to account for the cash in the shoebox.

It is not possible on the evidence before the Commission to determine the provenance of the shoebox money, other than the \$6,000 cash given to Mr Tsirekas by Mr Colacicco in mid- and late-2018. Further, it is not possible to ascertain how much money was kept in the shoebox at any given time prior to when it was seized by Commission officers on 12 June 2019. Mr Tsirekas' financial records do not show cash withdrawals which would account for large amounts of cash kept at home in a shoebox.

His evidence in respect of the shoebox of cash was inconsistent in terms of the amounts held in the shoebox (other than the \$6,000 cash amount from Mr Colacicco in 2018) and how it was spent. The accounts he gave the Commission were inconsistent. At the public inquiry, he moved away from his claim that his father was the source of the shoebox cash, instead claiming that his father gave him cash amounts to put towards certain trips.

Mr Tsirekas Senior's contributions to travel

Mr Tsirekas claimed his father gave him cash towards payment for certain trips.

Trip to Italy – July 2016 (Figure 6, trip 8)

In July 2016, Mr Tsirekas and Ms Crichton travelled to Italy. The records show that on 19 May 2016, cash payments totalling \$9,900 were made to a travel agency to pay for business class flights to Italy for Mr Tsirekas and Ms Crichton.

During the public inquiry, Mr Tsirekas said that in mid-2016, while he was a candidate for the seat of Reid, his father gave him \$10,000 in cash, which he used to pay for the flights to Italy. He did not ask where his father got the money. He could not recall the conversation which led to him receiving the money.

Ms Crichton told the Commission that in July 2016, when Mr Tsirekas did not win the federal seat of Reid, his father assisted with payment for a trip to Italy. She said that she understood that Mr Tsirekas' father paid for the airline tickets although she did not see the paperwork. She did not know the amounts which were contributed by Mr Tsirekas' father. She estimated that the cost of the business class flights was about \$10,000. She said Mr Tsirekas' father was extremely unwell at the time he contributed the money. She could not say for how long he had been ill but she said he was very unwell during Mr Tsirekas' federal election campaign in 2016. She did not know where Mr Tsirekas' father obtained the money but said he was retired by this time. She said she believed he was occasionally detailing some cars as he had an interest in cars but he did not do so in 2016 (presumably because he was too ill).

Trip to Hawaii – January 2018 (Figure 6, trip 16)

In January 2018, Mr Tsirekas and Ms Crichton travelled to Hawaii. The records available for this trip demonstrate that between 5 and 7 December 2017, cash amounts totalling \$13,949 (\$8,500, \$5,000, and \$449) were paid to a travel agency for their trip to Hawaii (including airfares and accommodation).

Mr Tsirekas claimed that his father was “withdrawing a fair bit of cash” in late-2016 and January 2017, clarifying that he meant “thousands of dollars” and that his father gave him around \$8,000 to \$10,000 in that period. According to Mr Tsirekas, his father, who died in April 2017, was ill for some time but was not diagnosed with cancer until January 2017. He denied his father was extremely generous in giving him this amount of cash. He did not keep a record of the money provided by his father. His father told him he was withdrawing money but he did not show him the bank account from which he was withdrawing it. The money was not given to Mr Tsirekas in a lump sum. He kept the cash at home and did not bank the money as he wanted to hide the money from his ex-wife. He also said he kept it at home because he intended to use the money for living expenses and holidays. He did not accept the proposition advanced by Counsel Assisting that he could still spend the money if he banked it.

Mr Tsirekas said he spent this money from his father over time but, specifically, he used it for the 2018 trip to Hawaii with Ms Crichton. He could not recall how much of the \$8,000 to \$10,000 amount he used on this trip. Mr Tsirekas made three cash payments towards the cost of the trip: \$8,500, \$5,000 and \$449. He believed the \$5,000 came from Ms Crichton and the remaining amount (\$8,949) was from his father and “travelling money” he kept at home.

Ms Crichton gave evidence that she travelled with Mr Tsirekas to Hawaii in January 2018. She said that she contributed \$5,000 in cash towards the cost of that trip, which she had saved at home over the course of 12 to 14 months. She initially said that Mr Tsirekas’ father had not contributed to the cost of the trip. However, later in her evidence, she said that Mr Tsirekas had told her that his father contributed about \$2,000 towards the trip. When it was pointed out to her that Mr Tsirekas’ father died in early 2017, she said Mr Tsirekas’ father left money aside for him prior to his death. Her evidence is of limited assistance as it was based on what Mr Tsirekas told her.

For the reasons set out later in this chapter, under “Was Mr Tsirekas Senior the source of the money?”, the Commission rejects Mr Tsirekas’ evidence that his father was the source of any of the money put towards these trips (and part of the deposit on the Ashfield unit). The money did not come from any account controlled by Mr Tsirekas Senior. The true source is unknown.

“Did you get your cashy, cashy?”

The Commission lawfully intercepted the following telephone conversation between Mr Tsirekas and Ms Crichton on 29 January 2019:

Crichton: Did you get your money?
Did you get your cashy, cashy?

Tsirekas: No, no... No, I'll just get some there.

Crichton: I thought Frank was gonna go Strathfield or something –

Tsirekas: No he didn't go –

Crichton: – and get the cheque (Laughs).

Tsirekas: – so I'll just get it tomorrow (Laughs).

In his evidence to the Commission, Mr Tsirekas said he could not recall what Ms Crichton was talking about in this conversation, but she may have been worried about him having cash as he was about to travel to Shanghai. He said he knew there was a money exchange at Strathfield.

In her evidence to the Commission, Ms Crichton said that she had no knowledge or recollection of a conversation with Mr Tsirekas in which she asked him if he had gone to Mr Colacicco to collect some money. She said that she knew that Mr Colacicco did lend Mr Tsirekas some money (around \$20,000). She said that she could not recall the conversation quoted above. She claimed she did not know who “Frank” was. When told that Mr Tsirekas travelled to Shanghai the day after the conversation, she said that she could have been referring to the money that Mr Colacicco lent him (around \$20,000).

The Commission is unable to make any firm conclusions about what Mr Tsirekas and Ms Crichton were talking about. However, the Commission is satisfied that the telephone conversation demonstrates an understanding between them that Mr Tsirekas would have access to cash (“casy, casy”) and it is likely that they were talking about Mr Tsirekas’ need for cash prior to travelling to Shanghai the next day.

Machonic Pty Ltd and the Ashfield unit

On 14 November 2014, Machonic Pty Ltd was registered. Mr Colacicco was its sole director and shareholder through another company called Four 11 Pty Ltd.

On 14 January 2015, Mr Colacicco arranged for a bank account to be opened in Machonic's name ("the Machonic account"). Based on the bank records and Mr Colacicco's evidence, between 14 January 2015 and 25 February 2016, Mr Tsirekas gave Mr Colacicco a total of \$41,250 to deposit in the Machonic account.

Between October 2015 and August 2016, Mr Tsirekas made payments towards the deposit money and stamp duty on a unit in Liverpool Road, Ashfield, which he purchased off-the-plan for \$994,700. Mr Tsirekas exchanged contracts on 24 December 2015.

Part of the deposit money came from the Machonic account. Between December 2015 and February 2016, \$49,765 was paid from the Machonic account toward the deposit on the Ashfield unit (a bank cheque for \$10,015 on 23 December 2015 and another bank cheque for \$39,750 on 29 February 2016). Mr Tsirekas paid the remaining deposit money (\$54,735) with funds from a personal bank account. On 3 August 2016, Machonic was voluntarily deregistered.

On 25 September 2018, Mr Tsirekas rescinded the contract for sale of the Ashfield unit and, on 4 October 2018, an amount of \$81,120.96 was credited to his personal bank account, representing the refund of the deposit money less penalties. The stamp duty was refunded to Mr Tsirekas in 2018.

Mr Colacicco's evidence

Mr Colacicco gave evidence that Mr Tsirekas requested assistance to set up a company and Mr Colacicco agreed to provide it. At the time, Mr Tsirekas was going through a "crazy divorce" and was in a "dark place". Mr Colacicco said that Mr Tsirekas had told him that he was thinking of leaving his employment (with Canterbury City Council) and doing consultancy work and he did not want his ex-wife to know what was happening. Mr Colacicco said he told Mr Tsirekas, "Look, I'm happy to help out. As long as we go to my accountant and everything's okay, I'm happy to do that." Mr Tsirekas was going to use the company as the corporate vehicle through which his services were to be provided. Mr Colacicco said he thought this conversation took place before 14 November 2014 when Machonic was formed. The company was named after a horse in which Mr Colacicco had part ownership.

Mr Colacicco said Mr Tsirekas asked him to be the director of the company because he did not want his ex-wife to know about the company or any income he might earn. Mr Colacicco said he "was basically helping. I got asked to help a friend. In hindsight now it's a mistake that I've made but . . .".

Mr Colacicco said he came to know that Mr Tsirekas never used Machonic to provide consultancy work and the company did not trade at all. As far as he was aware, it did not provide services to anyone.

Mr Colacicco said that Mr Tsirekas asked him to open a bank account for Machonic and he did so because he was helping a friend. His further evidence was that he just did what Mr Tsirekas asked him to do. Mr Colacicco was the sole signatory on the account and Mr Tsirekas did not have access to any passwords or online banking details for the account. He agreed that the arrangement with Mr Tsirekas involving Machonic was "unusual". He said he thought it "was because he didn't want to, he, as you will see later on, there's some money that's gone in that he didn't want his wife to know, ex, or ex-wife to know and I thought I was helping a friend and I, I made a, a bad, bad mistake".

Mr Colacicco also gave evidence that he personally made the cash deposits identified in the Machonic account statement. He said the money for these deposits came from Mr Tsirekas. He did not ask Mr Tsirekas where he obtained the money.

Mr Colacicco said that on occasion he may have borrowed money from the Machonic bank account due to "cash flow" issues he was having and then repaid it through electronic transfers. Mr Colacicco also gave evidence that a transfer of \$15,200 on 29 April 2015 into the Machonic account comprised the sum of \$10,000 cash given to him by Mr Tsirekas, which Mr Colacicco had deposited in another of his accounts along with \$5,200 that Mr Colacicco had borrowed or taken from the Machonic account and was transferring back. Based on Mr Colacicco's evidence, the total sum of cash that Mr Tsirekas gave him to deposit into the Machonic account in the period 14 January 2015 to 25 February 2016 was \$41,250.

In relation to the payments made towards the deposit on the Ashfield unit, Mr Colacicco's evidence was that Mr Tsirekas asked him to withdraw the money and purchase the bank cheques on both occasions. Mr Colacicco said he gave Mr Tsirekas advice to not proceed with the purchase of the unit because, in his opinion, it was not a "good buy". He was aware the deposit money had been returned to Mr Tsirekas.

Mr Tsirekas' evidence

During the public inquiry, Mr Tsirekas claimed the money he gave Mr Colacicco to pay into the Machonic account came from his father. He explained that the money was paid into the account to conceal it from his ex-wife. He said he explained to Mr Colacicco that his father was assisting him to try and buy a property, and he was trying to hide it from his ex-wife.

According to Mr Tsirekas, his father gave him the cash amounts totalling \$41,250 between January and December 2015 (in addition to the amounts given to finance his travel). Mr Tsirekas said his father was 79 or 80 years old when he passed away in 2017. He had been retired for many years and, by 2015, he was receiving the aged pension, as was Mr Tsirekas' mother. In answer to questions as to how his father obtained \$41,250 to give to him between January and December 2015, he responded:

I know that my father always had cash. He did, you know, frequently did on-the-side jobs of detailing [motor vehicles]. He, he has done that for a number of years, that was his full-time job prior to building. He always had cash and he also liked a bit of club, pub poker machines that he would go out and, and enjoy.

Mr Tsirekas agreed that "detailing cars" involved washing the interior and exterior of cars. He did not know how much his father charged for that service or how many cars he cleaned each week. Mr Tsirekas agreed that "as part of the human condition" by the age of 77 or 78, one's ability to do physical or manual work declined.

Mr Tsirekas described his parents' financial position as "comfortable" and claimed that his parents did not have a mortgage. Mr Tsirekas rejected the proposition that they were "frugal" and said that they "enjoyed themselves". However, he accepted when it was put to him that his parents had taken out a reverse mortgage on their home, effectively borrowing money against their home, saying that it was something of which he had only recently become aware.

Mr Tsirekas said his father, who emigrated from Greece, was a "typical European" who did not trust banking institutions and liked to keep cash at home. He did not know where at home his father kept the cash or whether he had a safe or a shoebox. However, he did concede that his father and mother did use Australian banking institutions and had their pensions paid into these accounts.

Mr Tsirekas was unable to comment or provide any information about his parents' spending habits in relation to their living expenses. For instance, he said he did not know

that, in 2015, Mr Tsirekas Senior received approximately \$650 per fortnight from his aged pension payments (his mother would have received the same amount).

Mr Tsirekas gave evidence that his father gambled on poker machines. He understood his father enjoyed the company of his friends and he thought that they had dinner and occasionally gambled at a club. He did not know to what extent his father gambled, although his father had a habit of gambling.

Mr Tsirekas said that, apart from his (now deceased) father, no one else could corroborate the source of the money he gave to Mr Colacicco to pay into the Machonic account. He said that his mother could possibly provide information, but he could not recall discussing this with her. He said later in his evidence that his mother had "[a] bit of dementia".

When asked whether the cash amounts given to him by his father could be described as gifts or loans, he stated, "We didn't really talk about it. It was a loan, yeah", but then said, "Well, can I correct that? You asked me whether it was a loan or a gift. It was neither ... He was supporting me." He went further stating, "The simple answer is that he was going [to] support me [to] get back on my feet and to look at somewhere, somehow to purchase a property".

Mr Tsirekas denied that money that was put into the Machonic account came from people other than his father. He denied that it came from Mr Chidiac or other developer interests in the local area.

Mr Tsirekas' evidence in respect of the source of the money was not consistent. During his interview with Commission officers in September 2020, he said the "bigger payments" that were paid towards the deposit money on the Ashfield unit came from his superannuation. He said his father also helped him out, but the majority came from Mr Tsirekas himself.

During Mr Tsirekas' first compulsory examination, on 24 March 2022, he said the money for the deposit came from his superannuation fund and from a payment from Canterbury City Council resulting from his resignation. He said his father helped him as well but could not remember how much he gave him, although it was approximately \$10,000. He denied asking anyone to be a director of a company or to open a bank account that they would control on his behalf. He denied that the company name Machonic Pty Ltd was familiar to him and could not recall having a conversation with Mr Colacicco about forming the company on his behalf. When asked about each of the Machonic deposits, Mr Tsirekas either denied that he gave money to Mr Colacicco to deposit into the Machonic bank account, or could not recall. He could not

recall asking Mr Colacicco to hide money on his behalf. He said that he would remember if he had given Mr Colacicco money to put into a bank account on his behalf. He said he did not think he asked Mr Colacicco to pay any money towards the deposit on the Ashfield unit on his behalf and that would be something he would remember.

During his compulsory examination, Mr Tsirekas was shown the Machonic bank account statements, which showed that part of the deposit for the Ashfield unit came from the Machonic account. After some prevarication, he stated, "Well, it, it is the deposit, I think". He then went on to state, "Frank and, he, this account, it looks like it was getting funds into it to help me get the unit". He claimed he did not know from where Mr Colacicco got the funds. He agreed the deposit money was returned to him but said he never repaid Mr Colacicco. When asked whether the money provided by Mr Colacicco through Machonic was a loan or a gift, he stated "No, it's not a gift. No. He was helping me out, trying to get me on my feet and support me with, with the funds."

On 7 April 2022, during his second compulsory examination, Mr Tsirekas stated that, "it's fair to say that I wasn't being truthful [on the last occasion]". He accepted that he had lied on 24 March and that he did not want to tell the Commission that he was attempting to hide money from his ex-wife. He said the money was not Mr Colacicco's but money Mr Tsirekas received from his father to put towards the unit. He said he and his father did not want his ex-wife to "get her hands on" the money because he was going through a divorce settlement so Mr Tsirekas gave the money to Mr Colacicco. He said the reason he lied to the Commission on 24 March 2022 was that he was "embarrassed" and "ashamed" to tell the Commission that he was hiding money from his ex-wife. He also said he had a "mental block" about the name Machonic. When asked why his father did not pay part of the deposit directly, he said his father was "old school" and did not trust banks. He said he did not think his mother knew that his father was giving him the cash and he never told her.

During the public inquiry, when asked about his evidence of 24 March 2022, Mr Tsirekas said, "At that stage, I did say no". He denied he was lying and said that at the time he gave that evidence, he had no recollection of the name Machonic. He denied that he was deliberately untruthful.

The Commission is satisfied that Mr Tsirekas gave false evidence during his compulsory examination on 24 March 2022 regarding the source of the cash deposited into the Machonic account and the source of the funds withdrawn from the Machonic account to pay part of the deposit on the Ashfield unit.

Was Mr Tsirekas Senior the source of the money?

The Commission undertook a financial analysis of Mr Tsirekas' parents' finances. The Commission obtained the bank statements for all bank accounts held by Mr Tsirekas' parents and analysed their sources of income and patterns of expenditure. Mr Tsirekas' parents held two accounts: a savings account and an account for a reverse mortgage taken out on their home. The purpose of the analysis was to determine if Mr Tsirekas Senior was the source of the money Mr Tsirekas claimed he gave to Mr Colacicco to pay into the Machonic account, being \$41,250, and/or the \$18,000 to \$20,000 purportedly used by Mr Tsirekas for international travel. The Commission is satisfied the analysis demonstrates the following:

- Mr Tsirekas Senior and Mrs Tsirekas received the aged pension into their joint savings account. Between April 2015 and April 2017, Mr Tsirekas Senior and Mrs Tsirekas each received between approximately \$645 and \$670 per fortnight paid into their joint account. After Mr Tsirekas Senior's death, Mrs Tsirekas received an aged pension of between approximately \$888 and \$933 per fortnight between May 2017 and December 2019.
- Available records for Mr Tsirekas Senior and Mrs Tsirekas' reverse mortgage account reveal that in April 2015, the account had a closing balance of minus \$13,990.74. Between April 2015 and December 2020, no amounts were repaid to the reverse mortgage account. Cash withdrawals totalling \$15,300 were taken from the reverse mortgage account, and interest and loan service fees were charged to the account. By 31 December 2020, Mr Tsirekas' parents' reverse mortgage account had a balance of minus \$37,954.59.
- Between 1 March 2015 and 31 December 2020, Mr Tsirekas Senior and Mrs Tsirekas made cash withdrawals totalling approximately \$106,200 from their accounts (the savings account and the reverse mortgage account). Mr Tsirekas' parents did not often use the debit card associated with their savings account to make purchases. The Commission is satisfied that the evidence supports an inference they used the cash withdrawn from their accounts for purchases such as groceries and other living expenses.
- The pattern of cash withdrawals from Mr Tsirekas' parents' bank accounts does not correlate with cash amounts allegedly given to Mr Tsirekas by his father for the deposit on the Ashfield unit or for travel. In particular, Mr

Tsirekas claimed that his father was “withdrawing a fair bit of cash” in late-2016 and January 2017, clarifying that he meant “thousands of dollars”, and gave him around \$8,000 to \$10,000 in those months (his father died in April 2017), which he put towards the January 2018 trip to Hawaii. However, his parents’ accounts do not show significant withdrawals in those months.

For the following reasons, the Commission rejects Mr Tsirekas’ evidence that Mr Tsirekas Senior was the source of the \$41,250 transferred to the Machonic account and the cash put towards Mr Tsirekas’ international travel (\$18,000 to \$20,000). First, there is no evidence corroborative of Mr Tsirekas’ evidence that his father was the source of the funds. Mr Tsirekas’ father passed away in April 2017 and could not be questioned by the Commission. Mr Tsirekas accepted that, apart from Mr Colacicco, there was no other information, whether in documentary form or from another person, which could corroborate his evidence. The effect of Mr Tsirekas’ evidence was that Mr Colacicco was aware that Mr Tsirekas’ father was the source of the cash. However, Mr Colacicco denied knowing that Mr Tsirekas’ father was the source of the money Mr Tsirekas gave him to pay into the Machonic account. Mr Tsirekas said that Mr Colacicco’s evidence was not correct.

Mr Tsirekas’ evidence about whether his mother was aware of his father as the source of the Machonic money was inconsistent and therefore unreliable. During his compulsory examination on 7 April 2022, Mr Tsirekas said he did not think his mother knew that his father was giving him cash and he never told his mother about receiving cash from his father. However, as previously noted, he said that while his mother could possibly provide information, he could not recall discussing it with her and that she had “[a] bit of dementia”.

The Commission prefers the evidence of Mr Colacicco and is satisfied that Mr Tsirekas did not tell him that Mr Tsirekas Senior was the source of the cash. Mr Tsirekas was a witness who lacked credit and there was no reason for Mr Colacicco to lie about this issue.

Secondly, on the available objective evidence, Mr Tsirekas’ father lacked the means to give him substantial amounts of money. According to Mr Tsirekas, his father had been retired from full-time employment for many years. In 2015 and 2016, when the Machonic money was allegedly being given to Mr Tsirekas, his father was about 77 or 78 years old. The evidence of Mr Tsirekas’ parents’ financial position does not show any significant wealth. It establishes that they both received the aged pension and had taken out a reverse mortgage on their home. The Commission’s analysis of that evidence indicates that his

parents were using their pension and the money from the reverse mortgage for their living expenses.

The Commission is satisfied that it is also improbable that, to the extent that Mr Tsirekas Senior was still doing car detailing work, at the age of 77 or 78, he could do the volume of work required to generate the amount of more than \$41,000 paid into the Machonic account during 2015 and 2016, particularly when one considers Mr Tsirekas’ evidence that his father also gave him an additional \$18,000 to \$20,000 in 2016/2017 to fund Mr Tsirekas’ international travel. Further, Mr Tsirekas’ father had been ill before the July 2016 federal election, was very ill at the time of the election, and thereafter his health deteriorated until he passed away in April 2017. In the Commission’s view, Mr Tsirekas Senior would not have been physically able to carry out the amount of car detailing work needed to generate the cash amounts purportedly given to Mr Tsirekas by his father. The Commission rejects Mr Tsirekas’ evidence that any cash amounts came from car detailing purportedly carried out by Mr Tsirekas Senior.

Further, the pattern of cash withdrawals from the two bank accounts does not correlate with the cash amounts allegedly given to Mr Tsirekas by his father for the deposit for the Ashfield unit or Mr Tsirekas’ international travel. Specifically, Mr Tsirekas’ parents’ bank records do not support Mr Tsirekas’ evidence that his father was “withdrawing a fair bit of cash” in late-2016 and January 2017. The Commission notes that it remains unexplained why, if he had the requisite funds, Mr Tsirekas’ father did not simply give his son the money in a lump sum to deposit into the Machonic account.

The Commission also rejects Mr Tsirekas’ evidence that his father kept cash at home and had always done so because of his mistrust of banking institutions. This evidence is uncorroborated and the Commission notes that if his father had access to cash amounts at home, it is implausible that he would have needed to take out a reverse mortgage on his home for which he was charged interest and fees. Mr Tsirekas’ evidence that his father mistrusted banking institutions is also at odds with the fact that his father did, in fact, use Australian banking institutions to receive his aged pension and to access a reverse mortgage. It remains unexplained why, if Mr Tsirekas’ father had cash at home, he did not simply give him the money in a lump sum.

There is no evidence to support gambling as the source of the cash money. Mr Tsirekas’ evidence about the extent and nature of his father’s gambling was vague and unreliable. Available records obtained from one of the clubs purportedly frequented by his father, Wests Ashfield Club, demonstrates gambling of low amounts (5 cent or 10 cent bets) on the poker machines on an account held by Mr Tsirekas’ mother alone.

Finally, and most importantly, Mr Tsirekas was not a credible witness. During his compulsory examination on 24 March 2022, he lied about his knowledge of the source of the cash deposits made into the Machonic account. Mr Tsirekas generally lacked credit but he was dishonest about this specific issue – the source of the cash. In the end, as Mr Tsirekas accepted, the issue largely comes down to whether the Commission should accept his uncorroborated evidence that his father was the source of the cash deposits into the Machonic account. The Commission rejects his evidence that the source of the cash deposited in the Machonic account was his father.

It follows that there is no evidence before the Commission as to the true source of those deposits.

Mr Tsirekas is the person who is in a position to tell the Commission the true source of the cash but has not done so. The Commission is satisfied that another person or persons were the source of the funds and it is likely that the money was given to Mr Tsirekas as a reward or benefit for some unlawful or corrupt purposes relating to his public office or the exercise of his public duties.

Section 74A(2) statement

In making a public report, the Commission is required by 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 Director of Public Prosecutions (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.

The Commission is satisfied that, in relation to the matters set out in this chapter, Mr Tsirekas is an “affected” person.

Angelo Tsirekas

Although the evidence Mr Tsirekas gave was subject of a direction under s 38 of the ICAC Act and therefore cannot be used against him in criminal proceedings, it is available to be used against him with respect to offences under the ICAC Act. There is also other admissible evidence, including financial records and the evidence of Mr Colacicco.

In all the circumstances, 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 Tsirekas for the following offences of giving false or misleading evidence to the Commission contrary to s 87 of the ICAC Act:

- Mr Tsirekas’ compulsory examination evidence on 24 March 2022 when he denied that he was the person and/or could not recall whether he was the person who gave money to Mr Colacicco to deposit into the Machonic bank account.
- Mr Tsirekas’ compulsory examination evidence on 24 March 2022 when he said he could not recall whether he asked Mr Colacicco to hide some money on his behalf.

Chapter 4: I-Prosperity

This chapter examines allegations in respect of I-Prosperity that since 2015:

- a) Mr Tsirekas sought and/or accepted benefits as an inducement or reward for partially and dishonestly exercising his official functions to favour the interests of I-Prosperity and Mr Chidiac in relation to planning matters affecting 1-9 Marquet Street and 4 Mary Street, Rhodes (“the I-Prosperity planning proposal”)
- b) Mr Tsirekas deliberately failed to declare or properly manage any conflict of interest arising from his relationships with representatives of I-Prosperity and Mr Chidiac
- c) I-Prosperity and Mr Chidiac provided benefits, including overseas flights and accommodation, to Mr Tsirekas, as a reward or inducement to favour their interests in relation to Council decisions regarding the I-Prosperity planning proposal.

The Commission examined the relationships between Mr Tsirekas, Mr Chidiac and those associated with I-Prosperity. Throughout the period relevant to these allegations, Mr Tsirekas travelled extensively, including eight trips to China. Of those eight trips, six are relevant to Mr Tsirekas’ relationship with Mr Chidiac and I-Prosperity. Mr Tsirekas’ ability to fund his travel and lifestyle from legitimate sources has been examined in detail in chapter 3.

The I-Prosperity Group

The I-Prosperity Group of companies commenced its operations in Sydney in 2005. Its core business involved funds investment management dealing in Australian real estate assets for high-net-worth Chinese foreign investors, including those applying for a visa through the Significant Investor Visa program. The Significant Investor Visa is a provisional visa which allows entry to Australia for people who invest at least \$5 million AUD in Australian investments. Certain requirements must be met and investment activity in Australia must be maintained.

The I-Prosperity Group’s structure was complex and comprised 38 key entities under the directorship of Menghong (Michael) Gu and/or Zhouxiang (Harry) Huang, both of whom were Chinese nationals. I-Prosperity Pty Ltd, which was registered on 17 February 2010, was the main entity within the I-Prosperity Group, and at the time of liquidation, had 21 employees.

On 18 September 2015, I-Prosperity Waterside Rhodes Pty Ltd was registered. The company was set up for the purpose of pursuing the development of the Rhodes site (outlined later in this chapter). The directors of the company were Mr Huang and Xiaolu (Belinda) Li. The I-Prosperity Group had an interest in I-Prosperity Waterside Rhodes.

On 15 July 2020, Cor Cordis was appointed as voluntary administrator of the I-Prosperity Group. The administrator considered a number of factors that contributed to the failure of the companies, including the potential misappropriation of investor funds and loans, significant payments to related parties including directors, potential misuse of assets owned by the companies and “manifestly inadequate” recordkeeping. Cor Cordis formed the view that the companies may have been insolvent for more than a year prior to the appointment of Cor Cordis as administrator.

On 26 July 2020, Mr Gu and Mr Huang departed Australia. They have not returned. On 19 August 2020, Cor Cordis was appointed as liquidators to wind up the I-Prosperity Group and its associated entities.

I-Prosperity – key figures

The Commission's investigation was impeded by the unavailability of key witnesses, in particular, Mr Gu and Mr Huang. However, other witnesses, such as Ms Li, were available to give evidence.

Ms Li has a background in the construction and development of small-scale developments. She has university qualifications in finance accounting, fund management and construction.

Ms Li said she met Mr Gu for the first time on a trip to China, possibly in early-2014. Ms Li's nickname for Mr Gu was "Chubby" or "Fatty". Ms Li used this nickname because, according to her, Mr Gu was "very fat". She said she approached Mr Gu to enter a joint venture to purchase the sites at Rhodes. Mr Gu and Mr Huang set up a fund and the money from the fund was used to purchase the land in Rhodes. In total, Ms Li and her close friends contributed \$6 million to this fund.

Ms Li said that she reported to Mr Huang about the progress of the projects in Rhodes and she dealt regularly with the consultants on the project, including the town planner and architect. Ms Li said that she and her friends ultimately lost millions of dollars in the venture.

Chun Zhou, former director of customer relations at I-Prosperity, also gave evidence. Between 2012 and 2020, Mr Zhou worked for I-Prosperity in Australia and China. He is currently unemployed. Mr Zhou described his job as "looking after our investors", and also said it was similar to a "butler job". He assisted I-Prosperity's Chinese investors to establish themselves in Australia by finding them accommodation and schools for their children. Ms Li said she passed any administrative tasks to Mr Zhou, such as travel arrangements and restaurant bookings.

In the period between 2016 and 2019, David Furlong was engaged as I-Prosperity's town planner in relation to the proposed development at Rhodes. Mr Furlong is an experienced town planner, having obtained his qualifications in 1985. He worked at various councils, including Drummoyne Council, from about 1994 where he commenced as the manager of development assessments and later became director of planning. In 2000, Drummoyne Council merged with Concord Council to become the City of Canada Bay Council and Mr Furlong was employed there until February 2004, rising to the position of director of planning. He started a company, Plan Urban Services Pty Ltd, in about

mid-2004. Plan Urban Services provides town planning advice on planning proposal applications, development applications and property zoning, and carries out strategic work in relation to development applications. Mr Furlong currently provides expert advice on two local government planning panels. He described Mr Tsirekas as a friend, having met him in 1997, when he worked at the Council. He assisted Mr Tsirekas' partner, Ms Crichton, with issues in relation to a development application, free of charge.

I-Prosperity – credibility issues of key witnesses

The Commission's determination of the credibility of Mr Tsirekas and Mr Chidiac's evidence is set out in chapter 1. The credibility issues in relation to the evidence of Ms Li and Mr Zhou are set out below and reflect the assessments made by former Chief Commissioner Hall, who presided over the public inquiry.

Ms Li was a purposely obstructive and uncooperative witness. She was inconsistent, unreliable and chaotic in her evidence. She had no intention of assisting the Commission in its investigation and claimed to suffer from memory issues, which had plagued her for her entire life. Throughout her evidence, Ms Li sought to minimise her relationship with Mr Tsirekas and Mr Chidiac, and only when faced with contemporaneous records did she give coherent evidence. She agreed that, on a number of occasions, the text message conversations the subject of many mobile telephone extraction reports were an accurate reflection of her dealings with Mr Chidiac and Mr Tsirekas. Ms Li's evidence was only accepted when corroborated by objective, independent evidence, made against interest or consistent with the probabilities of an event.

Mr Zhou was a wholly unsatisfactory witness whose evidence should be approached with caution due to his relationships with Mr Tsirekas and Mr Chidiac and his reluctance to answer questions. Mr Zhou also claimed to suffer from memory problems and could not recall many key events.

Mr Tsirekas' early interactions with I-Prosperity, after I-Prosperity acquires the Rhodes site

In September 2015, I-Prosperity, through its related entity I-Prosperity Waterside Rhodes, started to acquire properties at 1–9 Marquet Street and 4 Mary Street, Rhodes (“the I-Prosperity site”). Ultimately, six individual titles were acquired for approximately \$47.2 million. The last site to be acquired was 1 Marquet Street, Rhodes. These properties were located within the Rhodes West Station Precinct. The I-Prosperity site was contiguous to the Billbergia development site, which is discussed in the next chapter.

I-Prosperity's first approach to Mr Tsirekas

On 8 October 2015, Peter Thornton, director of investments & strategy for I-Prosperity, sent an email to Mr Tsirekas. Mr Thornton introduced I-Prosperity as an investment house with significant investment in property. He stated that, through related entities, I-Prosperity had sponsored the Wests Tigers, the team that Mr Tsirekas supported. He referred to previously meeting Mr Tsirekas at a function involving the Wests Tigers. Mr Thornton informed Mr Tsirekas that I-Prosperity had a “project in Rhodes”, at Mary and Marquet Streets, and that Mr Gu was in the country from China. Mr Thornton wanted to introduce Mr Tsirekas to Mr Gu. He also asked whether Mr Tsirekas would participate as a jury panel member for a design competition for the I-Prosperity site at Rhodes.

A meeting was arranged for 7:30 am on 14 October 2015 at a café in Rhodes. Later that day, at 3:07 pm, Mr Tsirekas forwarded an email from his personal email address to Mr Chidiac's personal email address. It is not clear who authored the email but it appears to be from someone associated with I-Prosperity, who had attended the meeting with Mr Tsirekas that morning. The email stated:

Thank you for so much for the catchup [sic] this morning and it was great to have meet [sic] you in person in regards to the opportunity that we are pursuing in Rhodes.

As mentioned, I-prosperity (being the parent holding group of Planet Tel, Atlas Capital and SBG) have always been involved in private equity deals and yield asset (attached reference on what we are doing on yield assets). Although we have a good foundation with the banks and asset management we are new to developments and we would like the Rhodes opportunity to be our Flagship project. We are missioned and very keen to create something iconic

in the location while provide great positive awareness and contribution to the community of Canada Bay.

I would like to thank you in allowing us to include you on our jury panel in a design competition for the site. Stephen is in the process of commencing the competition as soon as next week and he will be in contact with us in regards to the processes and procedures.

Iprosperity have been able to secure the 5 sites of wholesale group and have granted verbal agreements with B1 [B1 Central Pty Ltd, property developers and owners of 1 Marquet Street, the sixth and last site to be purchased by I-Prosperity] in regards to 1 Marquet St. I've attached our offer to B1 for your reference and their response was a shorter settlement term. I believe this will not impact on the design competition as 1 Marquet st will either settle before or after Christmas after a few exchange of emails between B1 and us.

Joseph has also engaged me this morning and we are going to meet up with him tomorrow in regards to collaboration with Billbergia [emphasis added].

To conclude, thanks once again for the catchup [sic] this morning and we are looking forward in working with you and Canada bay [sic] council to create a great community where residents all enjoy where we live.

Cheers

During the public inquiry, Mr Tsirekas recalled attending the meeting but said he was the only person from Council present. Mr Tsirekas gave evidence that he was not certain that Mr Gu was present at that meeting. However, during an interview with Commission officers in September 2020, Mr Tsirekas said he met Mr Gu for the first time “very early on” in I-Prosperity's dealings with Council at a café. Further, Mr Zhou gave evidence that he recalled meeting Mr Tsirekas for the first time when he collected Mr Gu from a café in Rhodes.

The Commission is satisfied that Mr Gu did attend the meeting on 14 October 2015, as Mr Thornton had sought the meeting for the purpose of introducing Mr Gu to Mr Tsirekas. The Commission is satisfied that Mr Tsirekas met Mr Gu for the first time on 14 October 2015.

Mr Tsirekas could not tell the Commission who had written the email on behalf of I-Prosperity, which he forwarded to Mr Chidiac on the afternoon of 14 October 2015. He said he could not recall why he forwarded the email to Mr Chidiac. He did not accept that the “Joseph” referred to in the email was a reference to Mr Chidiac, stating, “It could be any Joseph”.

The Commission is satisfied that the email was sent by or on behalf of Mr Gu and is a contemporaneous record of what was discussed at the meeting on 14 October 2015. The Commission rejects Mr Tsirekas' evidence that the "Joseph" in the email could be "any Joseph". The Commission is satisfied that the "Joseph" referred to in the email is, in fact, Mr Chidiac, and that Mr Tsirekas' intention in forwarding the email to Mr Chidiac was to update him in relation to his meeting with I-Prosperity. There is no other plausible explanation for Mr Tsirekas sending the email to Mr Chidiac and, as set out in chapter 5, by this time, Mr Chidiac was engaged by Billbergia.

Ultimately, the design competition for which I-Prosperity sought Mr Tsirekas as a potential jury panel member did not proceed. Instead, I-Prosperity lodged a planning proposal with Council.

Trip to China as part of the Dongtai delegation – November 2015

Between 4 and 15 November 2015, Mr Tsirekas, Mr Chidiac and other members of a Council delegation, including Mr Colacicco and Mr Sawyer (the then general manager), travelled to China to establish a sister-city relationship between the City of Canada Bay and Dongtai. The delegation was associated with the Rhodes Multicultural Community Association (Figure 6, trip 3).

During the trip, on or around 10 November 2015, Mr Chidiac and Mr Tsirekas met with Mr Gu and had dinner with him. The dinner was arranged by Mr Chidiac through Ms Li.

Ms Li initially denied knowing that Mr Tsirekas had met Mr Gu or Mr Zhou on this occasion. However, she was then asked about a text message conversation on 10 November 2015 between herself and Stephen Bowers, I-Prosperity's original project architect (who passed away in July 2017) in which she asked Mr Bowers, "Stephen, are you able to send formal letter to Angelo [Angelo]? He is in China will have dinner with Michael [Gu] tonight. Just confirm he would participate our jury and available 7th 8th Dec." Mr Bowers responded, "Okey dokey". Ms Li accepted that the message indicated her knowledge of Mr Tsirekas' meeting with Mr Gu on or around 10 November 2015.

On 18 November 2015, after Mr Tsirekas met with Mr Chidiac and Mr Gu in Shanghai, Ms Li sent a series of messages to her long-time friend, "Liz". Ms Li gave evidence that Liz was an investor in the Rhodes project in its early stages. Ms Li informed Liz, "The Mayor said to support 45 levels". Ms Li told the Commission the "Mayor" was Mr Tsirekas and Mr Gu had indicated Mr Tsirekas' support for a 45-storey development in Rhodes. She said she was unable to recall further details about the conversation with Mr Gu.

In his evidence to the Commission, Mr Tsirekas recalled that the only persons present at the dinner on 10 November 2015 were Mr Gu, Mr Chidiac and himself. Mr Tsirekas said that he did not arrange the dinner and did not recall what was discussed, although he claimed to be "very familiar" with the November 2015 trip to China. Mr Tsirekas did not pay for the dinner and said that he did not know who paid for it.

In his evidence to the Commission, Mr Chidiac could not recall meeting up with Mr Gu and having dinner with Mr Gu and Mr Tsirekas in November 2015.

Mr Tsirekas accepted, and the Commission is satisfied, that a dinner involving Mr Gu, Mr Tsirekas and Mr Chidiac took place in Shanghai on or around 10 November 2015.

For the following reasons, the Commission infers that I-Prosperity's proposal to develop the Rhodes site was discussed during the dinner with Mr Gu:

- Ms Li's message to Mr Bowers on 10 November 2015 indicated that Mr Gu would discuss I-Prosperity's proposal with Mr Tsirekas.
- Ms Li's message to "Liz" on 18 November 2015 indicated that "The Mayor" (Mr Tsirekas) was said "to support 45 levels".
- As there is no evidence to suggest that either Mr Chidiac or Mr Tsirekas were friends with Mr Gu at this time, the only reason for them to meet in China was to discuss the I-Prosperity planning proposal, of which Mr Tsirekas had been aware since 14 October 2015 when he met with Mr Gu for the first time.
- Shortly after the 10 November 2015 dinner took place, Mr Chidiac's engagement with I-Prosperity commenced.

The Commission infers that during the dinner, Mr Gu, Mr Chidiac and Mr Tsirekas discussed the services that Mr Chidiac would and/or could provide to I-Prosperity. Mr Chidiac gave no other evidence as to when he discussed and arranged the terms of his engagement with I-Prosperity.

Further, the Commission is satisfied that, as only Mr Tsirekas, Mr Chidiac and Mr Gu attended the dinner, and Mr Tsirekas said that he did not pay for the dinner, it is likely that either Mr Gu or Mr Chidiac paid for it.

Mr Zhou said he took Mr Tsirekas and Mr Chidiac to the Linx Nightclub in Shanghai during this trip to China. Ms Li's view in a subsequent message to Mr Zhou, Mr Gu and Mr Huang was that Mr Tsirekas had "relished the fun" on this occasion.

Mr Chidiac is engaged by I-Prosperity

Mr Chidiac first provided a service to I-Prosperity on 30 November 2015, when Ms Li wrote an email to Mr Gu, Mr Huang and Mr Bowers indicating that "Joseph" could organise a dinner with John Kinsella of Billbergia.

Mr Chidiac's formal arrangement with I-Prosperity commenced on 1 December 2015. The agreement was between Mr Chidiac's company, Online Security Services, and I-Prosperity. It was signed by Mr Gu as director and secretary of I-Prosperity and Mr Chidiac as sole director and secretary of Online Security Services. The agreement provided that Mr Chidiac was entitled to a payment comprised of a "Retainer" of \$250,000 per annum (\$20,833.33 per month) and a further amount based upon the "Gross Sales" of I-Prosperity's "Project" for providing his "Services". The "Services" were vaguely defined to be "consulting services in relation to the business" of I-Prosperity as "provided by [Mr Chidiac] to [I-Prosperity] from time to time". The retainer was paid monthly in arrears. In the agreement, I-Prosperity was described as a "Developer" and Online Security Services as a "Consultant". While the agreement makes clear that Mr Chidiac was engaged as an independent contractor, it does not clarify the nature of the work that he was to undertake for I-Prosperity. There is no evidence that an amount referable to the "Gross Sales" of I-Prosperity's "Project" was ever paid to Mr Chidiac, most likely because the development did not proceed.

From 1 June 2016, Mr Chidiac's retainer was increased to \$35,000 per month.

Between 4 February 2016 and 22 October 2018, Mr Chidiac or his company received payments totalling approximately \$1,400,305 from I-Prosperity.

In his evidence to the Commission, Mr Chidiac said he believed he was engaged by Mr Gu. He understood that Mr Gu, Mr Huang, Mr Zhou and Ms Li were associated with I-Prosperity. In Mr Chidiac's view, his remuneration reflected a "fair price" but after some questioning, he agreed he was paid a "large amount" by I-Prosperity.

When questioned about why I-Prosperity engaged him when he held no relevant qualifications, Mr Chidiac said,

"They obviously could see talent, they looked at me and they see talent and I've got a good track record". He described himself as an "intermediary" with an ability to "get people around the table" and to "communicate", stating "I can get bankers around a table, I can get union officials around a table, I can get councillors around the table, I can get local business people around the table, I can get your mum and dads around the table". When asked during the public inquiry if he was a "wheeler dealer", Mr Chidiac responded that the description was a "bit harsh". He accepted that he had been able to get Mr Tsirekas "around the table" on a couple of occasions.

In terms of services provided to I-Prosperity, Mr Chidiac said he introduced the town planner, Mr Furlong, to I-Prosperity and assisted I-Prosperity with "any issues", of which there were "multiple". He said that I-Prosperity wanted his assistance to "navigate through the actual process". He denied that part of his service was to provide access to Mr Tsirekas, stating he had "multiple talents". He could not recall telling I-Prosperity that he could arrange meetings with Mr Tsirekas to discuss their proposed development in Rhodes. However, he also said that if I-Prosperity ever hit a "brick wall" in its dealings with the Council, he would seek Mr Tsirekas' help to show that I-Prosperity had been unfairly treated by Council staff. He never attempted to get Council staff "around a table" to discuss issues. There is no evidence that Mr Chidiac had relationships of any note with any other persons involved with the Council, apart from Mr Tsirekas.

On many occasions, Ms Li arranged meetings with Mr Tsirekas through Mr Chidiac. Ms Li frequently referred to Mr Tsirekas as "our friend" and sought his assistance in relation to the I-Prosperity planning proposal. Mr Chidiac agreed that he communicated with Mr Tsirekas about the I-Prosperity project in Rhodes, and that part of his role was to bring people together to talk about matters of common concern. He agreed it was more likely than not that Ms Li wanted to discuss I-Prosperity's planning proposal when she sought meetings with Mr Tsirekas. However, he also said it was "standard operating procedures" that Mr Tsirekas would make himself available to any business or ratepayer in the area. He did not accept that one of his services was to provide access to Mr Tsirekas. He said that meetings with Mr Tsirekas were arranged directly with Mr Tsirekas, held in coffee shops and, as far as he could recall, did not take place on Council premises. He claimed that he would not tell Mr Tsirekas the reason for a meeting, or the purpose of the meeting. He claimed he never told Mr Tsirekas that he was providing a service to Ms Li or I-Prosperity. He claimed he never told Mr Tsirekas what he did for a living, that he acted for corporate developers or that he received large sums of money from I-Prosperity.

At another point in his evidence, Mr Chidiac denied that he brought Mr Tsirekas to meetings to discuss with Ms Li the proposed development in Rhodes. He said Mr Tsirekas came to meetings on “numerous occasions” because Mr Tsirekas and Mr Chidiac wanted I-Prosperity to sponsor their football team, the Wests Tigers. On other occasions, he said it could have been a social catch-up with Mr Tsirekas. When taken to examples of Mr Chidiac telling Ms Li that he had caused Mr Tsirekas to rearrange his diary to suit I-Prosperity, Mr Chidiac dismissed this as “bragging”, “self-promoting” or “exaggerating a little”. However, he accepted that one of the “services” that he provided to I-Prosperity was arranging for Mr Tsirekas to reschedule appointments so that he could meet with I-Prosperity.

When it was suggested to Mr Chidiac that one of the services he provided to I-Prosperity was to lobby the Council, predominantly Mr Tsirekas, on I-Prosperity’s behalf, Mr Chidiac said that he would not “use the word lobby”. Rather, he would use the word “intermediary”. When asked to explain the difference, Mr Chidiac said that a lobbyist had to be registered – and he was not – and that normally a lobbyist engaged government at federal, state and local level, and he “never engaged or advocated on behalf of anyone at a state or federal level”.

Mr Chidiac’s evidence in his compulsory examination on 5 April 2022 is perhaps the most illuminating. Mr Chidiac said he had no dealings with Council officers or staff. He always had a “political side of things” and he went straight to Mr Tsirekas if he had an issue with the Council. His role was to get I-Prosperity “around a table” with Mr Tsirekas where he could “hear their issues”, which happened “quite often”. The issues that they discussed included the height of the I-Prosperity planning proposal and contributions that I-Prosperity would be required to make to the Council to obtain development approval.

Ms Li told the Commission that she understood that Mr Chidiac was retained by Mr Gu to render services to I-Prosperity. She could not remember when or where she first met Mr Chidiac but said that Mr Gu introduced her to him, describing Mr Chidiac as a “consultant” who would assist with the Rhodes project. She did not ask what qualifications Mr Chidiac held as Mr Gu had already engaged him. She said that she could not remember whether Mr Gu or Mr Huang had told her that Mr Chidiac could lobby the Council on behalf of I-Prosperity as part of the services he provided. She understood that Mr Chidiac contacted Mr Tsirekas to lobby him. Ms Li said that Mr Chidiac and Mr Tsirekas were “always together” and she thought they “should be” good friends. In late-2016 or early-2017 she came to understand that, by engaging Mr Chidiac, I-Prosperity had obtained access to meet and speak to Mr Tsirekas, and that Mr Chidiac

could ensure that Mr Tsirekas was available to deal with matters concerning the Rhodes development.

Contrary to Mr Chidiac’s own evidence, Ms Li also said that Mr Chidiac’s role included booking meetings with Council staff. He also introduced a couple of consultants to I-Prosperity and checked the progress of the I-Prosperity planning proposal. By way of example, Ms Li said that Mr Chidiac introduced the town planner, Mr Furlong, and the valuer retained in connection with the purchase of the six lots in Rhodes.

In relation to the Rhodes project, Ms Li told the Commission that she was the main point of contact with Mr Chidiac for I-Prosperity, stating she met him in coffee shops and sometimes in her office. She said that they usually communicated via text message. When asked whether she ever attended Mr Chidiac’s office, she replied, “Has he got office?” and said that she had never attended his office.

Mr Tsirekas could not recall suggesting Mr Chidiac to I-Prosperity. He claimed that he did not know what Mr Chidiac did for a job. Mr Tsirekas believed Mr Chidiac had “a lot of time to himself”, that he had sold a security company and had a few investment properties. He claimed that he had never discussed work-related issues with Mr Chidiac, although he did concede that Mr Chidiac had discussed matters involving I-Prosperity and Billbergja, and tried to arrange meetings and enquired about the progress of their matters before the Council. Mr Tsirekas said Mr Chidiac never discussed anything else about the work he carried out, how he did it, for whom he did it or whether he was paid for it. He conceded that he came to know that Mr Chidiac was assisting I-Prosperity by arranging meetings and “firing up on things”. He agreed that he attended “informal” meetings with Mr Chidiac and representatives of I-Prosperity.

However, later in his evidence at the public inquiry, Mr Tsirekas appeared to deny that he understood Mr Chidiac’s association with I-Prosperity, stating, “I didn’t know the relationship until evidence given here in this Commission”. He claimed that he had no idea that Mr Chidiac had rendered any services to I-Prosperity until he heard the evidence during the public inquiry. He claimed he did not know that Mr Chidiac was financially well-off or that he was well remunerated for the services he provided.

The Commission is satisfied that the predominant motivation for I-Prosperity engaging Mr Chidiac was that he could provide access to Mr Tsirekas. Mr Chidiac arranged numerous meetings with Mr Tsirekas, but contrary to Ms Li's claim and consistent with Mr Chidiac's own evidence, none with Council staff. In the absence of Mr Gu's evidence, the Commission cannot determine who recommended that I-Prosperity engage Mr Chidiac.

The Commission is satisfied that Mr Chidiac's role included lobbying Mr Tsirekas on behalf of I-Prosperity. The evidence before the Commission is consistent with Mr Chidiac's version of events in his compulsory examination. Mr Chidiac was the "intermediary" between I-Prosperity and Mr Tsirekas. There are many examples of Ms Li contacting Mr Chidiac and asking him to arrange a meeting with Mr Tsirekas. On many occasions, Mr Chidiac arranged, or sought to arrange, a meeting between Mr Tsirekas, Ms Li and others (for example, Mr Furlong). These activities commenced soon after I-Prosperity made contact with Mr Tsirekas in October 2015 and continued throughout the relevant period. Despite Mr Chidiac's denials, the Commission is satisfied that one of the services he provided to I-Prosperity was access to Mr Tsirekas.

The Commission is satisfied that, in the main, the significant sums of money that I-Prosperity paid Mr Chidiac were to recompense him for the service of providing access to Mr Tsirekas. Mr Chidiac has no formal planning or other qualifications. There is no evidence that he had previous experience in multi-storey, high-rise residential apartment developments. However, he did have a close friendship with Mr Tsirekas. The Commission is satisfied that Mr Chidiac was "trading on" or "using" his relationship with Mr Tsirekas for financial reward.

Mr Tsirekas accepted that Mr Chidiac could have been using their relationship in connection with I-Prosperity but denied that he had understood that Mr Chidiac was using the relationship.

However, the Commission is satisfied that Mr Tsirekas did know that Mr Chidiac was trading on his relationship with him in relation to I-Prosperity. For the reasons outlined below, the Commission is satisfied that Mr Tsirekas and Mr Chidiac worked in partnership to further the interests of I-Prosperity.

Trip to China for Harry Huang's wedding – January 2016

The invitation

On the evening of 12 December 2015, Mr Chidiac and Mr Tsirekas attended an event at a function centre in Lilyfield, Sydney. Mr Chidiac sent Ms Li an SMS message inviting her to attend with Mr Tsirekas and himself, telling her it would be a "good opportunity to have a chat". The Commission is satisfied that Mr Chidiac meant that the event would provide an opportunity to chat about I-Prosperity's proposed development in Rhodes.

At 5:29 pm on 12 December 2015, Ms Li sent a message to Mr Bowers, the architect engaged by I-Prosperity for the proposed development, saying: "Let me chat with the Mayor tonight see how fast they could push". This message responded to Mr Bowers' question about what they were going to do in relation to the design competition for the Rhodes site.

The electronic messages between Ms Li and Mr Chidiac indicate that she attended the event. While she was there, Ms Li communicated with Mr Gu, Mr Huang and Mr Zhou through a WeChat messaging group. Ms Li sent a photograph of the venue to the group, indicating that the conversations likely took place while she was at the function with Mr Tsirekas and Mr Chidiac. The conversation was:

Li: The mayor asked to go to your wedding... Asking for 1.1 – 1.5 [1 January to 5 January]. He said very seriously that he'd never been to a Chinese wedding.

Huang: Huh? Angelo?

Li: Yes

Gu: LOL [Laugh out loud]... Holy shit... Send an invitation then... It's gone too far!

Li: Indeed

Gu: So?

Huang: Err...

Li: So will you send an invitation?

Zhou: who pay

Li: He said that they would pay for their air tickets themselves.

- Li: *Chun did you take them to somewhere for fun?...He kept saying that he is single.*
- Huang: *LOL...Really coming? Come then...I just need to know the name and the number of people.*
- Li: *He said he didn't have to report his trip to China to anyone... He's single...He sounded like he really relished the fun last time... Where have you taken him to last time? He's serious about going... He told me it'd be 1.1 – 1.5 [1 January to 5 January]*
- Zhou: *Grab him here and let him do a speech, and let harry show off...A mayor coming to the wedding.*
- Li: *That's right. What a grand wedding this would be.*

At 9:43 pm that evening, Ms Li wrote to Mr Bowers, “Stephen, Angelo recon [sic] to stop everything now until next year ... Cause everyone talk and before we get the site [1 Marquet Street] we better keep everything confidential.” 1 Marquet Street was the final site I-Prosperity wanted to purchase.

When giving evidence at the public inquiry, Ms Li could not remember the occasion of 12 December 2015 with Mr Tsirekas and Mr Chidiac, but recalled going to a function centre. She was asked questions about her interaction with Mr Gu, Mr Huang and Mr Zhou on this day, but claimed to have no memory of the conversation. She conceded that the messages reflected what occurred, stating, “If that’s the message, then that’s it. I’m not denying my message.” She said she thought that Mr Huang invited Mr Tsirekas to the wedding as a friend but said, “I don’t think I know before the wedding but the day when they arrive, I know”. She could not recall telling Mr Huang that Mr Tsirekas wanted to attend Mr Huang’s wedding. During cross-examination by Mr Tsirekas’ representatives, Ms Li agreed that in Chinese culture, it was considered good fortune for the people holding a wedding to have a foreign person with the title of mayor at the wedding. She went on to say that there was no comparison between a mayor in Australia and a similar position in China, stating that in China “It’s one person say yes or no, all right ... Very, very different. Very different.”

In his evidence to the Commission, Mr Zhou said he thought it was important to have Mr Tsirekas at the wedding to allow Mr Huang to “show off” because it

would show Mr Huang had a close friend in Australia who was a mayor.

Mr Tsirekas told the Commission he could not recall the conversation with Ms Li at the function centre but he did not dispute Ms Li’s account of the conversation. He did, however, deny that he knew Ms Li was associated with I-Prosperity as at January 2016, the month of the wedding. He said that he was invited by Mr Chidiac to accompany him to the wedding.

Mr Chidiac’s evidence was that he met with Ms Li on many occasions and could recall neither the meeting at the function centre nor the conversation that occurred there. He disagreed that the purpose of the January 2016 trip to China was to attend Mr Huang’s wedding. He claimed that in 2015, Mr Tsirekas’ late father and Mr Tsirekas’ partner had told him that Mr Tsirekas was in a “dark spot” and asked Mr Chidiac to take him out of Sydney. He said that it would have been a “coincidence” that Mr Huang’s wedding was on at the same time and said it was probably not a “motivating factor”.

The Commission is satisfied that the conversation between Ms Li, Mr Gu, Mr Huang and Mr Zhou demonstrates that these members of I-Prosperity were excited by the prospect of inviting Mr Tsirekas to Mr Huang’s wedding, and considered the presence of a mayor at the wedding to be an honour or privilege. Mr Tsirekas asked Ms Li if he could attend Mr Huang’s wedding, having “relished the fun” during his trip to China in November 2015. The Commission rejects Mr Tsirekas’ evidence that he did not know Ms Li was associated with I-Prosperity by the time of the wedding. The Commission is satisfied that Mr Chidiac’s message to Ms Li that the event at the function centre with Mr Tsirekas would be an opportunity to “chat”, and Ms Li’s messages to Mr Bowers, demonstrate that Mr Tsirekas did in fact “chat” to Ms Li about the I-Prosperity planning proposal. Further, the Commission rejects the evidence of Mr Tsirekas and Mr Chidiac that Mr Chidiac invited Mr Tsirekas to the wedding. It is clear from Ms Li’s messages to the I-Prosperity group that Mr Tsirekas himself sought an invitation to Mr Huang’s wedding.

Mr Huang’s wedding and other events

On 15 December 2015, Mr Huang sent an email to Mr Zhou with an attachment described as “Wedding guest list”. “Angelo” and “Joseph” appeared on the list. On 16 December 2015, Ms Li sent the following message to Mr Chidiac: “Joseph, Harry wondering if An [Angelo] like to do a quick speech? If not, no worries.” Mr Chidiac responded, “In Mandarin?” and Ms Li asked, “Can he?”. Mr Chidiac does not appear to have responded.

Arrangements were made by persons associated with I-Prosperity, including Ms Li and Mr Zhou, for Mr Tsirekas and Mr Chidiac to attend Mr Huang's wedding. Those arrangements included booking accommodation at The Langham hotel in Shanghai, and arranging flights and visas for the trip. Ms Li arranged to have I-Prosperity business cards printed for Mr Chidiac, describing him as "Consultant".

In evidence to the Commission, Mr Zhou agreed he arranged the air tickets and airport pick-up for Mr Tsirekas and Mr Chidiac, stating he was able to get a special deal with the travel agent. Mr Zhou gave evidence that he was aware hotel accommodation had been booked for Mr Tsirekas and Mr Chidiac by an I-Prosperity employee. He said that Mr Huang received 10 free rooms because he held his wedding at the hotel. Mr Zhou could not remember whether Mr Tsirekas and Mr Chidiac paid for their hotel rooms with cash or whether their rooms were part of Mr Huang's free room arrangement. He said an I-Prosperity company car was sent to collect them from the airport. On 3 May 2016, Mr Zhou sent Mr Huang and Mr Gu an expenses claim form that included a claim for \$574 for "Angelo & Joseph", which Mr Zhou said related to the costs associated with obtaining the visas for Mr Tsirekas and Mr Chidiac (being \$574).

There is no dispute that Mr Chidiac and Mr Tsirekas travelled to Shanghai in January 2016 and attended Mr Huang's wedding (Figure 6, trip 4).

On 19 December 2015, Mr Zhou was told by Ms Li in a WeChat message that he was "the main person to accompany the mayor". Ms Li wrote again to Mr Zhou on 23 December 2015, "Angelo asked what plans you have for him for the three days ... They want a packed itinerary". Then, on 28 December 2015, Ms Li asked, "Have you sorted out the itinerary for the mayor? ... Send it to me as soon as possible." Mr Zhou responded the next day, "Just arrange for some sightseeing around Shanghai". Ms Li responded, "ok ... So I will tell him the itinerary is full already." Mr Zhou agreed that he was asked to sort out an itinerary for Mr Tsirekas and Mr Chidiac while they were in Shanghai and he did so.

On 29 December 2015, Ms Li told Mr Chidiac in a WeChat conversation that their time in China had been "fully arranged" and "We will take you to catch up the big investors in Shanghai". Mr Chidiac responded, "Great looking forward 2 it". On 1 January 2016, she and Mr Gu collected Mr Tsirekas and Mr Chidiac from the airport. Ms Li sent a message to Mr Chidiac that she and "Michael" (Mr Gu) were outside waiting for them and that it "Should be easy to see fatty [Mr Gu]" when they left the airport. Ms Li also assisted them with some problems they had with their visas for entry.

On 2 January 2016, Mr Huang was married. There was a wedding reception and an after-party. On that day, Ms Li told Mr Chidiac, "Joseph, Michael already arranged tonight ... And he fully arranged for tomorrow and we leave for Nanjing on 4th morning."

Through I-Prosperity, Mr Tsirekas and Mr Chidiac enjoyed extensive hospitality during this trip, including the wedding and associated festivities, trips to the Linx Nightclub and a soccer match, and lunches and dinners.

On 4 January 2016, a group including Ms Li, Mr Tsirekas and Mr Chidiac stayed overnight in Nanjing. Ms Li sent a text message to Mr Chidiac indicating that they would need to be back in Shanghai the next day to meet the "funding group".

Figure 7: Photograph of Ms Li and Mr Tsirekas in Shanghai on 3 January 2016



Figure 8: Photograph of Mr Tsirekas, Mr Chidiac, Kevin Fan (I-Prosperity), Mr Gu (I-Prosperity) and others at dinner in Shanghai on 3 January 2016



Figure 9: Photograph of Ms Li, Mr Tsirekas, Mr Chidiac and I-Prosperity employees on a trip to Nanjing, 4 January 2016



Ms Li recalled attending Mr Huang's wedding with other I-Prosperity staff. When asked whether she had socialised with Mr Tsirekas or Mr Chidiac in Shanghai, Ms Li said that she had met them in the hotel lobby but not at a party. She was then shown photographs extracted from her mobile telephone of Mr Tsirekas and Mr Chidiac attending various events in Shanghai. At this point, she reluctantly conceded that she had socialised with them in China.

When Ms Li was questioned at the public inquiry about a trip to Nanjing on or around 4 January 2016, she volunteered that she had travelled there with Kevin Fan and Mr Thornton, employees of I-Prosperity.

She did not recall anyone else travelling with her. When asked whether Mr Chidiac also travelled to Nanjing, she said, "I can't remember, too many people, too many faces", and in relation to Mr Tsirekas she said, "I can't remember exactly, too many people on that trip. Maybe yes." However, after Ms Li was shown photographs of the trip to Nanjing extracted from her telephone in which she was pictured with Mr Tsirekas, Mr Chidiac, Mr Thornton and Mr Fan, she agreed she travelled to Nanjing with them.

On 12 January 2016, Mr Fan submitted a Staff Monthly Reimbursement Form by email to Cherry Xu of I-Prosperity in which he claimed expenses associated with the "Mayor trip" to Nanjing. This included return train tickets to Nanjing and hotel accommodation for Mr Tsirekas and Mr Chidiac, car rental, lunch, snacks, taxis, admission fees to the Niushoushan temple and payment for a tour guide. Mr Fan was not available to give evidence to the Commission and now resides overseas. Ms Li said that Mr Fan worked in I-Prosperity's Melbourne office, and his role may have been to raise funds for I-Prosperity. Mr Zhou believed that Mr Fan was manager of I-Prosperity's Singapore and Shanghai offices.

Mr Chidiac was "not certain" that Ms Li and Mr Gu had met them at the airport when he and Mr Tsirekas arrived in Shanghai in January 2016. Initially, when shown the text messages that indicated Ms Li and "Michael" were waiting for them outside the airport, Mr Chidiac said he met "quite a few" or a "couple" of people named "Michael" in China, and the message did not necessarily refer to Mr Gu. When it was pointed out that in these messages, Ms Li had referred to Mr Gu as "Fatty" (a nickname she had for Mr Gu), and not Michael, he said she may not have been referring to Mr Gu on this occasion because each time he had seen Ms Li at the airport, there were also "quite a few fat people" with her. He agreed that Ms Li "very often" referred to Mr Gu as "Fatty". He later said that Ms Li was there, but he could not "honestly" say if Mr Gu was there.

During the public inquiry, Mr Tsirekas said that although originally he could not recall attending Mr Huang's wedding during his earlier compulsory examinations, "Something came back to me because I... the, the fact that we did go to a banquet and it was the banquet for the wedding". He recalled going to a nightclub after the wedding. When asked whether he met up with Ms Li on the trip, he said the evidence from the public inquiry "refreshed my memory", including his memory of the side trip to Nanjing with Ms Li, Mr Chidiac and Mr Thornton and nights out in Shanghai.

The expenses associated with the trip

Only one expense associated with this trip was paid electronically by Mr Tsirekas or Mr Chidiac – Mr Tsirekas paid for his airfare from his own bank account. There is a receipt dated 15 December 2015 for \$3,300 paid to Longway Travel by Mr Tsirekas for his flights (Figure 6, trip 4).

Mr Tsirekas' evidence about what he paid for during this trip was unclear and conflicting. He initially said that he did not pay for his airfare and that Mr Chidiac had paid for it. He eventually accepted that the records showed that he paid for his airfare.

Mr Tsirekas agreed that he did not pay for his accommodation in Shanghai but told the Commission he had "no idea" who paid for it. He said he never asked who paid for the accommodation. He claimed to be under the impression that Mr Chidiac had paid for it because he had invited him on the trip. At the public inquiry, Mr Tsirekas was questioned about an account he had given to Commission officers during an interview in September 2020, in which he claimed that he paid for his accommodation at The Langham hotel. During that interview he stated that "I paid for my accommodation" and, "to the best of my recollection", he had paid cash from his "holiday expenses". He described his "holiday expenses" as "a bit of cash at home" kept in a box (this being Mr Tsirekas' shoebox money). When asked to explain the inconsistency between the account he gave in the interview and his evidence at the public inquiry, Mr Tsirekas said that at the time of the interview he was trying to answer truthfully, but he may have been confused with another trip, and he had sought to "correct" his evidence.

At the public inquiry, Mr Tsirekas first gave evidence that he paid "around \$3,000" in cash to Mr Chidiac towards the end of 2016 as repayment for the accommodation associated with the January 2016 trip. Almost immediately after giving this evidence he sought to "correct himself" and said that the \$3,000 was for the airfares. He repeated that evidence a short time later. Later, he claimed that repayment of the accommodation for the January 2016 trip occurred in 2020 when, after his divorce settlement, he transferred \$9,000 to Mr Chidiac (\$8,000 for a trip to Lebanon in October 2016 and \$1,000 for the January 2016 accommodation in Shanghai).

Mr Tsirekas agreed he travelled outside Shanghai (the trip to Nanjing) with Ms Li, Mr Chidiac, Mr Thornton and Mr Fan and did not pay for the travel from Shanghai to Nanjing, or the hotel accommodation in Nanjing. He did not pay for taxi journeys and he did not pay for large meals. He did not know whether Mr Huang or someone else from I-Prosperity paid for the trip, stating, "I've got no idea who paid" and he had never questioned who paid.

Mr Chidiac told the Commission he could not recall if Ms Li arranged the accommodation for this trip. He agreed that his flights were arranged by Ms Li but said that he paid for them by credit card (there is no record of this). He said he assumed that he paid for Mr Tsirekas' flight because he was his guest and he had "talked him" into coming (there is no record of this). Mr Chidiac claimed that Mr Tsirekas repaid the cost of the flight, being \$3,000, in cash towards the end of 2016 (there is no record of this). However, he later claimed that the \$3,000 cash payment from Mr Tsirekas related to the whole trip and not just the airfare. Earlier, in a compulsory examination, Mr Chidiac had claimed that the \$3,000 cash repayment related only to the airfares. He said he believed he paid for the airfares because Mr Tsirekas was his guest and Mr Tsirekas was not in a financially comfortable position. Despite being shown the evidence that Mr Tsirekas paid for his own airfare on this occasion, Mr Chidiac was "still convinced" he paid for the trip, including the airfare (there is no record of this). Mr Chidiac said it was a coincidence that he helped to fund Mr Tsirekas' travel expenses after he was engaged by I-Prosperity.

Mr Chidiac gave evidence that he paid for both men's accommodation at The Langham hotel because their credit cards were rejected when they tried to pay for the accommodation. Mr Chidiac claimed Mr Tsirekas and he pooled their cash (he had \$3,000 and Mr Tsirekas had \$600–\$800 cash) and he used this cash to pay for the accommodation. However, he said he was also ultimately charged and re-credited the \$3,300 for the hotel stay. He alleged that the Commission had "conveniently" not referred to the credit-card statement in which he was charged for the accommodation. However, the relevant statement demonstrated that the charge on Mr Chidiac's credit card was unrelated to The Langham hotel. Mr Chidiac said he and Mr Tsirekas each "chipped in" and took turns to pay for meals and whatever entertainment they engaged in.

At the public inquiry, Mr Chidiac accepted that he and Mr Tsirekas travelled to Nanjing with those associated with I-Prosperity. Mr Chidiac said that Mr Huang told him the trip cost about \$1,000 for Mr Chidiac and Mr Tsirekas, and he attempted to repay Mr Huang for the trip, but Mr Huang would not accept cash. Instead, Mr Huang told Mr Chidiac to buy him a couple of boxes of cigars and whisky, as Mr Huang collected cigars and whisky, like Mr Chidiac. Mr Chidiac said Mr Fan, whom he understood to be associated with I-Prosperity, had organised the trip to Nanjing. He later said he had spoken to Mr Fan and Mr Huang about repaying the cost of the Nanjing trip, and that it was Mr Fan who had estimated the cost of the trip to be \$1,000. Mr Chidiac said he believed he gave Mr Huang three boxes of cigars and two bottles of whisky

as repayment for the trip. He said he made it very clear to anyone associated with I-Prosperity that he and Mr Tsirekas were to pay their own costs. He said he paid for Mr Tsirekas because he was Mr Chidiac's guest on the trip to Shanghai.

The Commission rejects Mr Chidiac's evidence that he and Mr Tsirekas planned to travel to Shanghai anyway in January 2016 and their plan simply coincided with Mr Huang's wedding. There is no evidence that either Mr Tsirekas or Mr Chidiac had arranged travel or accommodation, or had even discussed travelling to Shanghai in January 2016 before they met Ms Li on 12 December 2015. The Commission is satisfied that the purpose of the trip to Shanghai in January 2016 was to attend Mr Huang's wedding and to obtain the benefits associated with that travel. The Commission is satisfied that Ms Li and Mr Gu collected Mr Chidiac and Mr Tsirekas from the airport and that I-Prosperity arranged flights, accommodation, visas and entertainment for them.

Mr Chidiac's evidence that he and Mr Tsirekas "chipped in" and took turns to pay for meals and entertainment is not supported by the financial records and is inconsistent with Mr Tsirekas' evidence that Mr Chidiac paid for him. It is rejected. Further, Mr Tsirekas' evidence that he believed that Mr Chidiac paid for him is not supported by the financial records and is rejected. The Commission is satisfied that the evidence demonstrates that, on the trip to Shanghai in January 2016, Mr Chidiac and Mr Tsirekas enjoyed entertainment that was likely paid for by I-Prosperity and/or Mr Huang.

There is no dispute that Mr Tsirekas and Mr Chidiac travelled from Shanghai to Nanjing with Ms Li, Mr Thornton and Mr Fan. Mr Tsirekas did not pay for the costs of that travel, the accommodation in Nanjing, meals or sightseeing on this trip. Mr Tsirekas' evidence was that he accepted those benefits and did not know who was paying for them.

The Commission rejects this evidence and is satisfied that the benefits extended to Mr Tsirekas and Mr Chidiac were paid for or ultimately met by I-Prosperity. The Commission rejects Mr Chidiac's uncorroborated and implausible evidence that he repaid Mr Huang for the trip to Nanjing with whisky and cigars. The Commission is satisfied that Mr Chidiac's purported conversations took place with those he knew were not able to give evidence (Mr Huang and Mr Fan) and Mr Chidiac is not a witness of truth.

Mr Tsirekas did not pay for his accommodation at The Langham hotel in Shanghai. Mr Tsirekas first gave evidence that towards the end of 2016, he paid cash of "around \$3,000" to Mr Chidiac for the accommodation. Later, he claimed the \$3,000 was for the airfares; this

cannot be correct as the receipt from Longway Travel shows that he paid for his own airfare. There is no record of any such payment from Mr Tsirekas to Mr Chidiac. His evidence that the \$9,000 payment transferred electronically to Mr Chidiac in 2020 was in part payment for the accommodation is rejected. It is inherently inconsistent and implausible. Further, as outlined below, there is no corroborating evidence to demonstrate that Mr Chidiac paid for the accommodation on the January 2016 trip.

Mr Chidiac's evidence about paying cash for the accommodation is not accepted. His uncorroborated evidence in relation to the credit card charges was a spurious and deliberate attempt to mislead the Commission. Mr Tsirekas did not claim to have "pooled" cash to pay for the accommodation. He did not know who paid for it but knew he did not. The Commission is satisfied that neither Mr Tsirekas nor Mr Chidiac paid for the accommodation at The Langham hotel in January 2016; rather, I-Prosperity paid for it.

Mr Tsirekas implied that, to his understanding, some of his travel expenses (on this trip and others) were paid for by Mr Chidiac.

In the Commission's view, in relation to the January 2016 trip to China, the financial records do not demonstrate that Mr Chidiac paid any expenses on behalf of Mr Tsirekas. The Commission is satisfied that Mr Chidiac was engaged by I-Prosperity and was working for it from 1 December 2015 and was its agent. Part of Mr Chidiac's role was to assist I-Prosperity to progress its proposed development through the Council. It is immaterial whether Mr Tsirekas received benefits directly from I-Prosperity or indirectly through Mr Chidiac. The Council's code of conduct prohibited Mr Tsirekas from accepting any benefit that may create a sense of obligation on his part or be *perceived* to be *intended or likely* to influence him in carrying out his public duties.

The Langham reservation confirmation establishes that in January 2016, it cost 1,840 RMB per night to stay at the hotel. Mr Tsirekas stayed four nights. The cost was 7,360 RMB or (using the exchange rate at the time) approximately \$1,582 AUD. Based on the spreadsheet submitted by Mr Fan, the benefit of the Nanjing trip is estimated to be \$352 AUD.

Consequently, in relation to the January 2016 trip to China, the Commission is satisfied that Mr Tsirekas received benefits worth at least \$1,934, excluding the extensive entertainment I-Prosperity paid for, the cost of which is unknown.

Mr Tsirekas meets an I-Prosperity investor – March 2016

Ms Li organised a dinner at the Golden Century restaurant in Sydney on Thursday 3 March 2016, with the following text exchange between Ms Li and Mr Chidiac:

Li: *Joseph, does Angelo [Tsirekas] have time this Thursday night? Michael wants to introduce his investor to you*

Chidiac: *Do golden century [sic]*

Li: *OK ... Booked*

Chidiac: *Tell them u want table at the back with privacy*

Li: *I booked room*

Li: *Joseph, the room is booked under my name 8 pols Ppl And in front of investor just say the rhodes [sic] sites all secured.*

During her evidence, Ms Li initially denied that Mr Gu had asked her to arrange a meeting with Mr Chidiac and Mr Tsirekas so that Mr Gu could introduce an investor to at least Mr Chidiac. However, after reading her messages, she accepted that the meeting must have occurred, although she claimed not to remember going to the restaurant. Ms Li's evidence was that Mr Gu requested that Mr Tsirekas be present because he believed it would be "good" for Mr Tsirekas to be present when Mr Gu met the investor.

Mr Tsirekas said he did not recall a dinner at Golden Century with Ms Li and Mr Chidiac. Mr Chidiac said that he could not recall either, and claimed that they would "not necessarily" have discussed I-Prosperity's proposed development in Rhodes. Given the terms of the text exchange, this claim is implausible.

It is probable that the dinner proceeded as booked, that both Mr Tsirekas and Mr Chidiac attended, and there was an investor present.

But regardless of whether it did or did not proceed, the text message conversation demonstrates that Mr Chidiac understood that a purpose of Mr Tsirekas being present at the proposed meeting was to, in effect, show that I-Prosperity had the support of Mr Tsirekas as the mayor. In the Commission's view, this is an abuse or use of Mr Tsirekas' official position as mayor. The Commission rejects Mr Chidiac's evidence that they did not necessarily speak about the I-Prosperity proposal as completely implausible, given the purpose of the meeting.

I-Prosperity's planning proposal

Mr Furlong is engaged by I-Prosperity as a town planner

On 16 March 2016, Ms Li sent an SMS message to Mr Furlong stating, "Good morning David. This is Belinda from I-Prosperity Group. I got your contact from Angelo. May I please book your time in your earlier [sic] convenience for rhodes project?".

Then, on 17 March 2016, Ms Li wrote an email to Mr Gu, Mr Huang and others from I-Prosperity. The relevant parts of the email are set out below:

New VPA [voluntary planning agreement] agreement with Canada Bay council

I had a breakfast meeting with Angelo yesterday [16 March 2016]. Angelo suggested us to propose 35 stories [sic] at this stage in case B1 [owners of 1 Marquet Street] comes to us by saying their land worth more money [emphasis added]. Stephen will propose further uplifting by providing reason of support affordable housing [sic] on the other side of Rhodes railway station. I believe further lifting would be achievable but needs to be quick as council amalgamation might come to be effective in September this year or even earlier. We need to [be] fully prepared to run fast to reach before the amalgamation. Also during the meeting, Angelo suggested David Furlong become our town planner [emphasis added]. I did research on this guy, but still haven't confirmed if there [is] any conflict of interest since he is the member of JRPP [Joint Regional Planning Panel] of the eastern region. Now I am pending for his fee proposal to start briefing. Council meeting in regards to new VPA had been booked on Tuesday morning (22/03/2016) with Tony. M and Canada Bay council town planner. Me, Stephen and David Furlong will participate [in] the meeting. We will follow Angelo [sic] instruction to prepare sketch base on 35 stories [sic] without mention anything of supporting other side of Rhodes station [sic].

The Commission is satisfied that the reference to "35 stories" is to the proposed height of the I-Prosperity tower development (at that stage).

On 18 March 2016, Mr Furlong was engaged as I-Prosperity's town planner.

Mr Chidiac told the Commission he introduced Mr Furlong to I-Prosperity.

Ms Li told the Commission she believed Mr Chidiac introduced Mr Furlong to I-Prosperity. Contrary to her 16 March 2016 SMS and 17 March 2016 emails, she denied having a conversation with Mr Tsirekas about Mr Furlong. However, when shown her email of 17 March 2016, she accepted that when she wrote that email she was telling the truth. Ms Li claimed not to remember the meeting with Mr Tsirekas or why he recommended Mr Furlong. However, later, during cross-examination by Mr Tsirekas' counsel, Ms Li said that Mr Tsirekas had recommended three planners, including Mr Furlong. Ms Li was unable to provide much explanation of her comments in the email about the height of the building, but believed I-Prosperity's original proposal was for a 46-storey development. She could not remember whether Mr Tsirekas indicated that he would support a 35-storey development.

Mr Tsirekas stated that he did not recall the breakfast meeting with Ms Li. While he could not recall discussing Mr Furlong with Ms Li, he claimed he generally mentioned three town planners to those who requested a recommendation, and Mr Furlong may have been mentioned. He said it would be "inappropriate" to refer Mr Furlong alone and "improper" to suggest proposing 35 storeys as he could never give a guarantee that height would be approved.

In the Commission's view, the SMS message from Ms Li to Mr Furlong of 16 March 2016 corroborates the date of the meeting with Mr Tsirekas (16 March 2016) and some of the matters discussed in the meeting, including the recommendation that I-Prosperity engage Mr Furlong as its town planner. Ms Li's email of 17 March 2016 is compelling, cogent and contemporaneous evidence and the Commission is satisfied that Mr Tsirekas recommended to I-Prosperity that Mr Furlong be engaged as its town planner. The Commission is also satisfied that there is no reliable evidence that Mr Tsirekas recommended three town planners. The Commission rejects the evidence of Mr Tsirekas and Ms Li in this regard.

Further, the Commission is satisfied that Ms Li's email of 17 March 2016 also demonstrates how important Mr Tsirekas' opinion was to Ms Li and I-Prosperity, and she did not hesitate to "follow Angelo [sic] instruction".

The Commission is satisfied that Mr Tsirekas advised Ms Li and I-Prosperity to propose a 35-storey development, although I-Prosperity originally proposed a 46-storey development. As set out later in this chapter, by January 2017 I-Prosperity was seeking approval for a 35-storey building at 1-9 Marquet Street.

I-Prosperity lodges its planning proposal

On 24 May 2016, I-Prosperity lodged its first planning proposal with the Council. I-Prosperity subsequently lodged three iterations of its planning proposal. Table 1 gives a summary of the important dates in the life of the planning proposal. Key events took place on 31 May 2016, 15 May 2018 and 19 February 2019, and are examined later in this chapter. On no occasion when the planning proposal came before the Council did Mr Tsirekas declare a conflict of interest.

Table 1: Timeline of I-Prosperity's planning proposal

Date	Key event
24 May 2016	Original submission
	<p>I-Prosperity submitted a planning proposal for land at 3–9 Marquet Street. At this time, 1 Marquet Street was not included in the proposal.</p> <p>According to later reports produced by Council staff and the Department, the key features of the proposal included:</p> <ul style="list-style-type: none"> • increases to the permissible floor space ratio (FSR) from 1.76:1 in the CBLEP 2013 to 13.78:1 • increases to the permissible height of buildings control in the CBLEP 2013 from a maximum of 23 metres to 127 metres (46-storey tower) • delivering approximately 399 residential apartments.
31 May 2016	Council resolution – the Kenzler motion
	<p>“The Kenzler motion” is examined in the next section of this chapter. A Council resolution on a Billbergia planning proposal included a decision to conduct further investigations into the merits of increasing floor space in connection with I-Prosperity’s planning proposal.</p>
30 January 2017	Planning proposal (revision 1)
	<p>I-Prosperity submitted a revised planning proposal to the Council that, in addition to amending the original proposal, included the land at 1 Marquet Street.</p> <p>According to later reports produced by Council staff and the Department, the key features of this revised proposal included:</p> <ul style="list-style-type: none"> • increases to the permissible FSR from 1.76:1 to 13.46:1, which represented a nominal reduction from the original submission • increases to the permissible height of building controls from 23 metres to 117.4 metres, which represented a reduction from the original submission • establishing an architectural conceptual design comprising a 35-storey tower, which included a three-storey podium, over 1–9 Marquet Street • identifying a two-storey development on 4 Mary Street adjacent to a proposed laneway • delivery of 350 residential apartments along with 1,404 square metres of retail floor space and 3,861 square metres of commercial floor space.
2 May 2017	The Council defers a decision to refuse the planning proposal
	<p>The Council met to consider a staff report assessing the I-Prosperity planning proposal that recommended its refusal. Reasons provided by Council staff for its refusal included that the proposal:</p> <ul style="list-style-type: none"> • was not the result of a strategic planning study and lacked site-specific merit warranting the planning changes and its resulting development would create adverse impacts with respect to overshadowing, amenity and the locality’s urban design.
Late-May 2017	Planning proposal (revision 2)
	<p>I-Prosperity submitted to the Council a second revision to its planning proposal for land at 1–9 Marquet and 4 Mary streets.</p> <p>According to later reports produced by Council staff and the Department, the key features of this revised proposal included:</p>

	<ul style="list-style-type: none"> increasing the FSR from 1.76:1 to 13.08:1, which represented a further reduction in the FSR from that proposed originally and in revision 1 increasing the permissible height of building control from a maximum of 23 metres to 119.9 metres which, although lower than originally proposed, was greater than revision 1 establishing the conceptual architectural design comprising a 37-storey tower on a podium over 1–9 Marquet Street identifying a 3-storey architectural design on 4 Mary Street, east of a proposed laneway.
September 2017	Rhodes Priority Precinct Plan (first version)
	<p>The Department prepared and publicly exhibited the draft Rhodes Priority Precinct Plan. The exhibition of the plan concluded late in 2017.</p> <p>This plan covered the area known as Rhodes East, which was generally east of the railway line. The plan, however, did not include the Rhodes West Station Precinct or I-Prosperity’s land.</p>
April 2018	Planning proposal (revision 3)
	<p>I-Prosperity submitted to the Council a third revision to its planning proposal for land at 1–9 Marquet and 4 Mary streets.</p> <p>According to later reports produced by Council staff and the Department, the key features of this revised proposal included:</p> <ul style="list-style-type: none"> increasing the FSR from 1.76:1 to 13.06:1, which represented a further reduction in the FSR from that originally proposed and earlier revisions increasing the permissible height of building controls to a maximum of 117 metres, which represented a further reduction in the FSR from that originally proposed and earlier revisions establishing an architectural concept design of a 36-storey tower that included a 3-storey podium including a heliostat that would ameliorate the loss of sunlight by using mirrors to redirect sunlight to the public domain adjacent to Rhodes Railway Station providing 343 square metres of open space to the Council at ground level.
15 May 2018	The Council’s resolution to submit a gateway determination
	<p>The Council met to consider a staff report recommending the submission of revision 3 of I-Prosperity’s planning proposal for a gateway determination (see chapter 1 for background on this process).</p> <p>The Council adopted the staff recommendation, which was structured in two parts:</p> <ol style="list-style-type: none"> The Council agreed in-principle to enter into a planning agreement with I-Prosperity for “uplift above” the controls in CBLEP 2013, subject to a probity protocol being established. The Council endorsed I-Prosperity’s proposal for a gateway determination, subject to an updated planning proposal and the completion of a number of studies.
25 July 2018	Advice from a design review panel
	<p>The Council submitted the I-Prosperity planning proposal to a design review panel, being an independent panel of experts.</p> <p>The independent experts on the panel identified key issues with the proposal being: overshadowing; scale, mass and siting of the built form; open space amenity; insufficient building setbacks; and infrastructure capacity.</p>

23 August 2018	Local planning panel (first review)
	<p>The Council sought the advice of its local planning panel in relation to the I-Prosperity planning proposal. The local planning panel endorsed the advice provided by the design review panel and raised concerns with:</p> <ul style="list-style-type: none"> • the proposal's departure from the built form outcomes in Council's Rhodes Station Precinct Master Plan • the proposal interrupting the principles of built form stepping down towards the foreshore • the quality and utility of the open space to be provided • transport network constraints. <p>The local planning panel also raised concerns with the heliostat on this site, as well as more generally, as a means of maintaining solar access to open space.</p>
6 December 2018	Finalisation of the planning proposal and draft planning agreement
	I-Prosperity completed documentation for the planning proposal, including finalising the draft planning agreement.
9 December 2018	Rhodes Priority Precinct Plan (second version)
	The Department publicly exhibited a second version of the draft Rhodes Priority Precinct Plan. The revised plan included land within the Station Precinct and, as such, included the I-Prosperity site.
7 January 2019	Lodgement with the Department
	The Council submitted the I-Prosperity planning proposal to the Department for a gateway determination.
Before or on 30 January 2019	Request for council to consider local planning panel advice
	The Department requested that new advice from the local planning panel be received before it made a decision with respect to I-Prosperity's planning proposal.
19 February 2019	Council meeting
	The Council considered a report prepared by staff to examine the recommendations of its local planning panel in respect of the I-Prosperity planning proposal.
1 March 2019	Department deferral
	After receiving the planning proposal, the Department deferred its consideration pending the development of the Rhodes Place Strategy.
31 August to 9 October 2020	Draft Rhodes Place Strategy
	The Department exhibited the draft Rhodes Place Strategy, which included proposed controls for I-Prosperity's lands.
March 2021	Gateway determination recommended for refusal
	<p>The Department recommended that the gateway determination be refused for the I-Prosperity planning proposal. The Department report identified that the reasons for recommending refusal were that the planning proposal:</p> <ul style="list-style-type: none"> • lacked strategic merit as it did not give effect to adopted plans under the <i>Greater Sydney Commission Act 2016</i> • was inconsistent with the draft Rhodes Place Strategy with respect to its floor space, built form, strategic controls, and mix between employment and residential uses • did not provide suitable open space and would adversely affect existing open space.

The Kenzler motion – 31 May 2016

On 24 May 2016, I-Prosperity submitted a planning proposal to the Council in respect of the five sites located at 2–9 Marquet Street and 4 Mary Street, Rhodes.

On or about 28 May 2016, Ms Li received notice from Anthony (Tony) McNamara (then the director of planning at the Council) that the Council would not support I-Prosperity's planning proposal if it did not cover the six sites, the "sixth" site being 1 Marquet Street. After receiving the notification, Ms Li raised it with Mr Furlong as an "urgent" issue and asked that he attend the Council meeting "next Tuesday night", being the Council meeting held on 31 May 2016, and the last meeting before Mr Tsirekas resigned from the Council.

Item 3 on the agenda for the meeting of 31 May 2016 was Billbergia's (further) planning proposal for the Station Precinct in Rhodes. Mr Sawyer, the then general manager, prepared a report in relation to Item 3. Mr Sawyer's evidence was that the report and its recommendations were directed to Billbergia's further planning proposal. Mr Sawyer did not recommend to the councillors that they consider the I-Prosperity planning proposal because it had been received only recently, on 24 May 2016. Mr McNamara's evidence was consistent with Mr Sawyer's evidence insofar as he said that the Council should not deal with I-Prosperity's planning proposal because "it was quite recent and had not been assessed in, in any detail".

On the evening of 30 May 2016, Neil Kenzler, a councillor, sent an email to Mr Tsirekas and other councillors with a draft motion attached. He copied his email to Mr Sawyer and Mr McNamara. The draft motion related entirely to the Billbergia planning proposal ("the Kenzler motion").

In his email, Mr Kenzler noted that he had drafted the proposed motion after discussing the matter with Mr Sawyer and Mr McNamara. Mr Kenzler also noted that he had prepared the proposed motion to provide some certainty and direction "in accordance with proper process and our obligations" so the Billbergia planning proposal could "progress".

There were nine paragraphs/points in Mr Kenzler's proposed motion, all of which related to Billbergia's planning proposal. Paragraphs 7 and 8 are relevant:

7. That based on an amended Planning Proposal (ie Planning Proposal 3) and offer being submitted to ensure that a potentially valuable "public benefit" opportunity is not lost, the City of Canada Bay resolves to:

- (a) Note that Billbergia Pty Ltd is seeking an uplift in floor space on their Station Precinct land via a new Planning Proposal and is offering to enter a Voluntary Planning Agreement to provide public benefits in the form of public domain upgrade works (eg public transport, commuter and pedestrian linkages) and the provision of affordable housing that will be dedicated to the City of Canada Bay
- (b) Council investigate the planning merits of the uplift in floor space in terms of:
 - (i) Population density
 - (ii) Urban design
 - (iii) Traffic congestion and capacity of traffic facilities to manage any increase
 - (iv) Capacity of public transport services to meet the future needs of the area
 - (v) Overshadowing of public and private lands
 - (vi) Capacity of utility services
 - (vii) Modifications required to the existing masterplan for the precinct
 - (viii) Likely impacts on surrounding residents
 - (ix) Generally
- (c) The value of the public benefits is fully assessed by independent valuation, Quantity Surveyor and probity experts to ensure true value is captured under the terms of the City of Canada Bay's policy.
- (d) A report on the outcome of items a) and b) above be reported to a future meeting of Council.
- (e) Subject to a satisfactory outcome from the assessment taken under items a) and b) above, the Planning Proposal be submitted to Gateway to obtain a certificate to publicly notify the proposal.
- (f) Council allocate funding of \$100,000 for the investigations referred to above.

8. That in accordance with the City of Canada Bay's resolution of 17 May 2016, the planning merits of the Planning Proposal be considered in terms of substantial compliance with the principles of the Rhodes Station Precinct Master Plan.

The events of 31 May 2016

The next day, on 31 May 2016, at 9:27 am, Mr Tsirekas forwarded Mr Kenzler's motion to Mr Furlong with a note "FYI". Mr Tsirekas accepted that he probably read Mr Kenzler's email and attachment. It was obvious to him that what Mr Kenzler had drafted related to Billbergia's planning proposal.

On 31 May 2016 at 2:44 pm, Mr Furlong sent Mr Tsirekas an email stating, "Hi Angelo, Draft Resolution [sic] as amended" (described as a resolution rather than a motion in error). The amended motion included two new paragraphs numbered 9 and 10, which related to the I-Prosperity planning proposal:

9. THAT Council notes the submission of the Planning Proposal on 24th May in respect of the five lots controlled by I-Prosperity on the corner of Marquet and Mary Streets. In consideration of the location of that land adjacent to the Billbergia [sic] land within the Rhodes Station precinct the investigation set out in point 7 b) above be extended to include that planning proposal so that the planning merits of it can be considered in terms of substantial compliance with the principles of the Rhodes Station Precinct Master Plan.

10. THAT in conjunction with the actions set out in points 7, 8 and 9 above Council write to the owner of 1 Marquet Street, Rhodes requesting formal advice as to what they intend for that land, so that a Precinct approach can be applied by Council.

On 31 May 2016, a meeting of the Council was held and Mr Tsirekas attended. Mr Tsirekas accepted that he probably gave Mr Furlong's "Draft Resolution" to the secretariat for debate at that meeting. The two paragraphs (slightly amended) of Mr Furlong's original amended resolution/motion, along with the other paragraphs from Mr Kenzler's proposed motion, were included in the Council's formal resolution that was voted on and passed at the meeting of 31 May 2016. The minutes of the meeting reflect that Mr Furlong represented I-Prosperity at the meeting. Six councillors voted in favour of the motion, including Mr Tsirekas, and two voted against the motion, including Mr Kenzler.

Mr Furlong's evidence

Mr Furlong said he had a conversation with Mr Tsirekas before he sent his email of 31 May to Mr Tsirekas. He called Mr Tsirekas because of information that he received from Ms Li that it was Council's initial position that it would reject the I-Prosperity planning proposal. He said he probably would have said, "I've got a proposition to go with the item with Billbergia. We're next door. Can we be considered in the same manner in terms of progressing

our planning proposal?". Mr Furlong said he also spoke with Mr Kenzler, who did not agree with his suggested amendments.

Mr Furlong accepted that this was an "unusual circumstance" and a "highly unusual process" and it had never happened to him before in his private practice. He said that he proposed the changes because I-Prosperity had lodged the planning proposal for its site and the Council was about to consider Billbergia's planning proposal, "So it would make good sense to me, both from a planning merit basis but also the technical consideration, to deal with both sites in the same manner. Not necessarily in the exact same timeline, because Billbergia was somewhat in front of us, but in the same manner."

Mr Furlong said he spoke to Ms Li about the proposed motion and she was "quite keen". He said that he also spoke to Billbergia, which was initially concerned but eventually happy with the proposal. Mr Furlong said that it had taken Billbergia two or three years to get to this stage and it had approval for around 35 to 40 storeys. He asserted that he could not recall why he decided to send paragraphs 9 and 10 to Mr Tsirekas and not to other councillors. He said he could not remember whether he had a conversation with Mr Tsirekas about whether he would support the motion but he was hoping that he would.

Mr Furlong initially disagreed that the additional paragraphs in the proposed motion were a "benefit" to I-Prosperity, stating it was a "request to be treated the same way [as Billbergia]". He said, "What they [the amendments] were designed to provide was, if you like a level playing field for our site in relation to the other sites that the council was considering in the immediate area". Despite Mr Furlong's initial reluctance, he eventually accepted that the additional paragraphs resulted in I-Prosperity's planning proposal being afforded the same treatment as Billbergia. He also accepted that there was a potential timesaving benefit for I-Prosperity. Further, Mr Furlong's evidence was that the effect of paragraphs 9 and 10 of the resolution passed on 31 May 2016 was that I-Prosperity's planning proposal would now be assessed *as if* it included all six sites and not just the five sites. The resolution would "usurp" a previous Council resolution, that sat "on the books of the council", and precluded I-Prosperity's land from assessment in accordance with the applicable LEP because (in effect) it did not also own 1 Marquet Street.

The evidence of Council's planning staff

Mr McNamara gave evidence that he had not been aware of the inclusion of the two additional paragraphs (paragraphs 9 and 10) by Mr Furlong. Mr McNamara was taken to documents relating to the proposed Kenzler

motion. Mr McNamara's evidence was that the effect of the resolutions that were passed on 31 May 2016 was to advance I-Prosperity's planning proposal by weeks or months and that this effectively implied that the Council was, in broad principle, supportive of the planning proposal even though it had not received any assessment by Council staff or Council's independent consultants, in effect circumventing the recommendations of the Council's staff.

Mr McNamara's evidence was that much consideration had gone into the Station Precinct and that associated planning issues affecting the I-Prosperity site were quite complex:

... And so to, to imply by that resolution that council was accepting of that proposal was, I think, without a, without a supporting recommendation from staff or its, or its advisors, was quite, quite unusual.

When asked whether the inclusion of I-Prosperity in paragraphs 9 and 10 (within a motion that concerned the Billbergia proposal) conferred a "benefit" on I-Prosperity, Mr McNamara observed:

Well, I believe what it, what it does, it advances the planning proposal submitted by I-Prosperity, it, it, shortens the time of consideration by weeks or months number one. And number two, it effectively, it implies the council is, in broad principle, supportive of the concept, even though it hasn't really received any, any assessments at all by the staff or its independent consultants.

In cross-examination, Mr McNamara was questioned about the Rhodes Station Precinct Master Plan including the objective of the EP&A Act (s 1.3(c)) "to promote the orderly and economic use and development of land" which senior counsel for Mr Tsirekas referred to as a "whole-of-precinct approach" and the process ultimately for a gateway determination. Mr McNamara was then asked by senior counsel for Mr Tsirekas:

[Senior counsel for Mr Tsirekas]: Consequently, any time, benefit or advantage that I-Prosperity made and obtained in relation to having its Gateway Determination dealt with sooner rather than later was simply an inevitable consequence of the co-ordinated whole-of-precinct approach. Do you agree with that?

[Mr McNamara]: Well, if you're referring to the resolution, I disagree. The Council had to consider the planning merits of that proposal. It would have been accompanied by an offer to go into as a VPA and these are matters that the Council needs time to consider. And also whether the proposal does or does not fit within the master plan, which was a council creation, these are matters that had not been undertaken and that, that was the reason, in the original recommendation, for proposing that the matter be deferred until that sort of investigation could be undertaken.

Narelle Butler, the then Council manager of statutory compliance, gave evidence that the resolution expedited I-Prosperity's planning proposal, which had "piggybacked" on the Billbergia planning proposal and had not been subjected to the same assessment by Council's strategic planning staff as had Billbergia's planning proposal. Ms Butler noted that the I-Prosperity planning proposal was recommended for refusal by the strategic planning staff, and the effect of this motion was to overturn that recommendation despite the fact that I-Prosperity's planning proposal had been lodged for only four days. She said she could not recall this happening on another occasion during her time at the Council. The proximity of the I-Prosperity land to the Billbergia land would not, in her view, be a reason to allow this to happen.

The Commission accepts the evidence of Mr McNamara and Ms Butler, who were both credible witnesses. As witnesses, they presented as professionals who were merely advocating for an established practice. In the Commission's view, I-Prosperity did benefit from the addition of paragraphs 9 and 10 to the resolution passed on 31 May 2016. A clear benefit was that I-Prosperity's planning proposal would now be assessed by Council in the same manner as Billbergia's (further) planning proposal, notwithstanding it had only recently been lodged and the initial indications from Council staff were that it would not be supported because it did not include I Marquet Street. However described, I-Prosperity received the benefit of the substantial amount of work that had been put into Billbergia's planning proposals over the course of two or three years.

Was Mr Tsirekas required to disclose a conflict of interest on 31 May 2016?

At the Council meeting on 31 May 2016, Mr Tsirekas did not disclose any pecuniary or non-pecuniary interest. During the public inquiry, he sought to change evidence previously given on oath that he should have declared conflicts of interest because of his relationships with Mr Chidiac, Ms Li and Mr Furlong as at 31 May 2016.

When interviewed by Commission officers on 9 September 2020, Mr Tsirekas said that he had forwarded Mr Kenzler's draft motion to Mr Furlong "To give him an idea of what we're proposing, so he could think about, think, could think of doing similar to give us affordable housing". During the interview, he admitted that "in hindsight" he had made a "mistake" and that he should have declared a conflict of interest with I-Prosperity.

Mr Tsirekas gave evidence at compulsory examinations on 24 March and 7 April 2022. He said of his failure to declare a non-pecuniary interest in relation to I-Prosperity, "Look, in hindsight [it] would have been probably the best to disclose a non-pecuniary interest. In hindsight I should have been more aware of my disclosures". He said that as at 31 May 2016, he should have disclosed a conflict with Mr Furlong, Mr Chidiac and Ms Li. Ultimately, he accepted that he should have disclosed a conflict with Mr Huang as well.

Mr Tsirekas said that he and Mr Furlong had a friendship of over 20 years, which should have been disclosed. In relation to Mr Chidiac, he said he was aware that, as of 31 May 2016, Mr Chidiac had an association with I-Prosperity "[i]n some form". He understood from his discussions with Mr Chidiac that he was acting on behalf of I-Prosperity. He claimed that he did not know that Mr Chidiac was being paid by I-Prosperity. He said he had a friendship with Mr Chidiac of between 10 and 11 years, which should have been disclosed. He accepted that he should have disclosed a non-pecuniary interest. As Mr Chidiac had held discussions with I-Prosperity representatives and himself about the (I-Prosperity) application (or proposal), he should have declared a non-pecuniary interest involving Mr Chidiac.

Mr Tsirekas' evidence was that he knew Ms Li was connected with I-Prosperity. He confirmed in the public inquiry that, in the compulsory examination on 24 March 2022, he had accepted that as of 31 May 2016 he should have disclosed a conflict of interest because of his relationship with Ms Li. He understood Ms Li was acting for I-Prosperity and, because he had caught up with her in China on one occasion, and for coffee and dinner, he should have disclosed their relationship as at 31 May 2016.

During his compulsory examination on 24 March 2022, Mr Tsirekas denied that he should have disclosed a conflict with Mr Huang. However, in the compulsory examination on 7 April 2022, he said that once he had developed a relationship with Mr Huang, "I should have been disclosing an interest that I knew him". Mr Tsirekas said that he knew Mr Huang held a "high position" in I-Prosperity and was on the "management side" of I-Prosperity. Mr Tsirekas accepted that, "in hindsight", from the date he provided the draft reference in April 2017 (details of which are provided later in this chapter) he should have declared a non-pecuniary interest in relation to Mr Huang when he was required to consider anything in relation to I-Prosperity's planning proposal before the Council.

Mr Tsirekas told the Commission there was "no reason" for failing to disclose the conflict of interest. He denied that he failed to do so because he understood that, if he disclosed a conflict, he would have to manage it in accordance with the Council's code of conduct and refrain from voting on I-Prosperity matters when they came before the Council.

During the public inquiry, Mr Tsirekas sought to change this evidence by, in effect, withdrawing admissions he had made during compulsory examinations, without explaining why. Among other things, Mr Tsirekas sought to withdraw acknowledgements of the existence of conflicts of interest he had as at 31 May 2016 arising out of his relationships with Mr Furlong, Mr Chidiac and Ms Li. He categorically denied that he should have declared such conflicts of interest. He also sought to withdraw admissions regarding conflicts of interest due to his relationships with Mr Kinsella and Mr Bruzzano (see chapters 5 and 6). He said, "I don't think I was doing anything wrong as the Mayor".

At the public inquiry, Mr Tsirekas asserted that the version he gave at the public inquiry was the correct version, stating, "The one I'm giving today is right". However, he also said that, "Well, they can't be both right so I, I agree that in hindsight I should have declared an interest of my friendship with Joseph Chidiac". In a further reversal, on the next day, 1 June 2022, Mr Tsirekas claimed that he had been "very confused" when giving evidence and there had been no need to disclose a conflict with Mr Chidiac.

At the public inquiry, Mr Tsirekas maintained that there was no conflict arising out of his relationship with Mr Furlong. He agreed that he knew Mr Furlong and that he knew Mr Furlong was acting on behalf of I-Prosperity in relation to its planning proposal. He said that he did not consider he had a friendship with Mr Furlong.

Mr Tsirekas also said that he did not have a relationship with Mr Huang and that he therefore had nothing to declare in that regard. He said he may have met him once or twice – “Once I met him in the city and reviewing what’s been said [in the public inquiry], I was invited to his wedding”.

On the first day of his evidence in the public inquiry, 31 May 2022, Mr Tsirekas said he was unaware of Ms Li’s position with I-Prosperity as at 31 May 2016 and therefore he had no conflict to disclose, although he agreed that she was “running the project for them [I-Prosperity]”. Ultimately, he stated that “on reflection” he should have disclosed a non-pecuniary interest because he knew her. However, on 1 June 2022, he said he was “confused” when giving that evidence and he now did not accept that he should have disclosed a conflict due to his relationship with Ms Li. He stated, “I, I didn’t have a relationship and I didn’t know what her position was on I-Prosperity... She had something to do with it but I didn’t know at that stage what that was, whether it was consultancy or what it was”. He claimed that, as far as he was aware as at 31 May 2016, Ms Li “may have been assisting I-Prosperity with this application”.

He denied seeking to change previous answers because he realised they were against his interests, or to protect himself from an adverse finding by the Commission.

The Commission rejects Mr Tsirekas’ attempts to withdraw or change his evidence. Mr Tsirekas was not able to credibly or plausibly explain why the evidence he gave in his compulsory examinations was wrong. Despite being given multiple opportunities to explain what evidence there was to justify the change, Mr Tsirekas was unable to identify any such evidence. In the circumstances, the Commission is satisfied that the reason Mr Tsirekas sought to change or correct his evidence, or withdraw his admissions/concessions, was because he realised that they were against his interest and he was simply trying to protect himself by changing them.

Mr Tsirekas’ unexplained and unjustified reversal of his previous sworn evidence represents a dishonest attempt to mislead the Commission in its investigation and gives rise to serious credibility issues relating to him.

The Commission is satisfied that as at 31 May 2016, Mr Tsirekas had, and should have declared, (at least) non-pecuniary interests arising out of his relationships with I-Prosperity (through Ms Li, Mr Huang and Mr Gu), Mr Chidiac and Mr Furlong. A reasonable and informed person would at the very least *perceive* that, as at 31 May 2016, Mr Tsirekas *could be* influenced by those relationships. Mr Tsirekas’ travel to Shanghai in January 2016 and the associated benefits gave rise (at the very least) to a non-pecuniary interest.

The circumstances pertaining to his involvement with Mr Furlong on the Kenzler motion also gave rise (at the very least) to a non-pecuniary interest.

The Commission is satisfied that by 31 May 2016, Mr Tsirekas and Mr Chidiac had developed a personal relationship with I-Prosperity personnel including Mr Huang, Mr Zhou and Ms Li (who had a commercial relationship with I-Prosperity) concerning the proposed high-rise development in Rhodes. Further, Mr Chidiac, apart from being a close friend of Mr Tsirekas, was a person who was also under contract with I-Prosperity specifically concerning aspects associated with I-Prosperity’s proposed Rhodes development. Accordingly, Mr Chidiac was, at all relevant times, the contracted agent for I-Prosperity as well as being a “good friend” of Mr Tsirekas.

The Commission is satisfied that by 31 May 2016, Mr Tsirekas did know that Mr Chidiac was acting for I-Prosperity. It is inconceivable that Mr Tsirekas did not enquire of Mr Chidiac about his relationship with I-Prosperity. They were close friends and, on their evidence, Mr Chidiac was funding some of Mr Tsirekas’ travel expenses. Mr Tsirekas and Mr Chidiac had met Mr Gu in Shanghai in November 2015; they had attended celebrations for Mr Huang’s wedding in January 2016; they travelled outside Shanghai to Nanjing with other I-Prosperity employees or associates on 4 January 2016; they fraternised with Mr Zhou and Mr Gu in Shanghai in January 2016; they had dinner at the Golden Century in March 2016 with an I-Prosperity investor; Mr Tsirekas met with Ms Li in March 2016 for breakfast; and Mr Tsirekas recommended Mr Furlong as a town planner.

The Commission also rejects Mr Tsirekas’ assertion that he did not deliberately refrain from disclosing or declaring those interests. With the exception of the evidence he gave to the Commission’s officers on 9 September 2020 that he “made a mistake”, Mr Tsirekas did not explain why he did not declare or disclose those interests. The Commission is satisfied that Mr Tsirekas’ actions were deliberate and that he knew that if he did declare or disclose such interests, he would have to manage the interests in accordance with the Council’s code of conduct, by removing the source of the conflict or having no involvement in the matter. Either means of management would have impacted the arrangements Mr Chidiac had with I-Prosperity and the benefits that Mr Tsirekas received as a consequence of that arrangement.

What motivated Mr Tsirekas?

The Commission examined why Mr Tsirekas took steps that were “highly unusual”. Mr Tsirekas said that he forwarded Mr Kenzler’s proposed motion to Mr Furlong because I-Prosperity was an “affected party” and for

“proper transparency”; he believed if the proposed motion was going to be debated then I-Prosperity should be aware and able to prepare.

The Commission rejects Mr Tsirekas’ evidence that he forwarded the Kenzler motion to Mr Furlong for “transparency” for the following reasons. First, I-Prosperity was not an “affected party” in relation to Item 3 to be debated at the meeting on 31 May 2016. Item 3 was about Billbergia’s planning proposal. Mr Tsirekas’ evidence that Item 3 to be debated at the meeting was also about I-Prosperity’s planning proposal is rejected. It is incorrect considering the objective documents and the surrounding circumstances. Secondly, Mr Tsirekas did not send the proposed motion to Billbergia, which was clearly an affected party. Thirdly, Mr Tsirekas did not send the amended motion from Mr Furlong to Mr Kenzler or other councillors. He could not explain why he did not do so, at least as a matter of courtesy. Fourthly, it is contrary to common sense that Mr Tsirekas did what he did for “transparency” reasons. In fact, the effect of Mr Tsirekas’ actions ensured that the amended motion was passed by Council in an entirely closed and unaccountable manner. Mr Tsirekas admitted that he had never before asked a developer’s planner for their comments on a draft motion which was to go before the Council.

Mr Tsirekas did not provide or give any other explanation for engaging in the conduct. However, the Commission is satisfied that Mr Tsirekas’ motive was to provide a benefit to I-Prosperity. The Commission is satisfied that Mr Tsirekas was motivated to act in I-Prosperity’s interests because of his relationship with Mr Chidiac and I-Prosperity, and because he was receiving benefits from them. This is the most plausible explanation.

In short, the Commission is satisfied that the amendment to the Kenzler motion worked to the inappropriate advantage or benefit of I-Prosperity, with the result that a considered assessment of the public interest considerations concerning the merits of the I-Prosperity proposal was circumvented. That outcome, as Mr McNamara’s evidence makes plain, would have been evident to and expected by an experienced councillor such as Mr Tsirekas.

The Commission is satisfied that, but for the intervention of Mr Tsirekas on 30 and 31 May 2016, the Council resolution of 31 May 2016 would not have included the additional paragraphs 9 and 10.

On 1 June 2016, at about the same time that Mr Chidiac’s retainer from I-Prosperity was increased (from \$20,833.33 to \$35,000 per month), I-Prosperity paid Mr Chidiac the sum of \$165,000 (plus GST). Mr Chidiac gave inconsistent evidence as to why that sum was paid.

In a compulsory examination on 5 April 2022, he said it was payment in advance of fees under his agreement with I-Prosperity. At the public inquiry, he said it was part-payment paid under a “verbal” agreement with Mr Gu that arose because Mr Chidiac had saved I-Prosperity the price it paid for the property at 1 Marquet Street, Rhodes. Mr Chidiac denied that the payment related to the passage of the Kenzler motion on 31 May 2016. When Mr Chidiac was confronted in the public inquiry regarding the differences between the evidence he gave on 5 April 2022 and in the public inquiry, he dissembled. Mr Chidiac initially asked, “can you remind me what my story was”, referring to the explanation he had given on 5 April 2022.

The Commission rejects Mr Chidiac’s evidence with respect to the payment relating to money he had saved I-Prosperity in the purchase of 1 Marquet Street. There is no documentary evidence that Mr Chidiac had any involvement in I-Prosperity’s purchase of that property. The documentary evidence before the Commission demonstrates that I-Prosperity had reached an agreement with the owner of 1 Marquet Street by October 2015, many months before the payment. Mr Chidiac’s evidence was inconsistent and improbable about the reasons for the \$165,000 payment. Mr Chidiac was being paid a significant retainer by I-Prosperity and it is reasonable to infer that that compensation would have been remuneration for any role that Mr Chidiac had in assisting I-Prosperity with acquiring other property. Mr Chidiac was a witness who lacked credit. There is no independent or objective evidence before the Commission that corroborates Mr Chidiac on this point. However, there is insufficient evidence to establish why Mr Chidiac received the \$165,000 payment.

Mr Tsirekas resigns from the Council and continues interacting with I-Prosperity

Mr Tsirekas resigned as mayor effective on 3 June 2016. He resigned to run for the seat of Reid in the 2016 federal election, held on 2 July 2016. He was unsuccessful in his bid for the seat and was re-elected as mayor of the Council on 16 September 2017. Several relevant events occurred when he was not mayor.

Trip to China for Kevin Ji’s wedding – August 2016

On 23 July 2016, Kevin Ji, an I-Prosperity employee, sent an email from an address associated with I-Prosperity to Mr Chidiac, which was copied to Mr Gu, in which he stated:

Dear Angelo and Joseph

Hope you are well.

Further to our previous conversation, may we request the honour of both Mr. Tsirekas' and your presence to our wedding on 6th August 2016 at 22 Bund, Shanghai.

Please find the attached invitations for your kind perusal.

Kindly RSVP to Lavender by 28th of July 2016.

Looking forward to your gracious presence.

Thank you

Regards

Kevin Ji

On 26 July 2016, Mr Chidiac sent Ms Li an email attaching pictures of his passport and that of Mr Tsirekas. Ms Li forwarded the email to Mr Zhou. I-Prosperity organised Mr Chidiac and Mr Tsirekas' visas for this trip.

Mr Tsirekas and Mr Chidiac were in Shanghai between 1 and 8 August 2016. They attended Mr Ji's wedding. They were photographed socialising in Shanghai with members of I-Prosperity on 3, 4 and 5 August 2016. Of particular note is a photograph of Ms Li, Mr Chidiac and Mr Tsirekas taken at 12:42 am on 3 August 2016 in a club, and a photograph of Mr Tsirekas and Mr Gu dining together in a restaurant on 4 August 2016.

Figure 10: Photograph of Ms Li, Mr Tsirekas and Mr Chidiac at a club in Shanghai on 3 August 2016



Figure 11: Photograph of Mr Tsirekas and Mr Gu dining at a restaurant in Shanghai on 4 August 2016



Ms Li's redacted diary entry included the following:

I can only recall a few things from the first half of 2016 ... In August [1]² took the mayor to China.

The financial analysis undertaken by the Commission found no record that any costs associated with this trip were paid by Mr Chidiac or Mr Tsirekas (Figure 6, trip 9).

Ms Li told the Commission she could not remember whether she travelled to Shanghai in August 2016, or whether she met up with Mr Chidiac and Mr Tsirekas. However, she accepted that she must have done so when she was shown photographs of the three socialising together. She then disputed the official translation of her diary and claimed that it stated, "In August the Mayor went to China". She denied paying for Mr Tsirekas' travel expenses and said that she did not know who paid for his travel.

Mr Tsirekas' evidence was that he was invited to the wedding by Mr Chidiac as his guest. Mr Tsirekas was questioned about why he socialised with Mr Gu and Ms Li on this trip and he responded, "There's no real

² Addition added by translator.

reason. And again, this trip, it is the August [2016] trip, I was invited to attend by Mr Joseph Chidiac.” He was shown pictures of himself taken by Ms Li in clubs and at a restaurant with Mr Gu. Mr Tsirekas said he did not know Mr Ji, and nor did he know he was associated with I-Prosperity. He denied that it was strange to be invited to a stranger’s wedding, stating that at the time he was “willing to go to an opening of an envelope”. He claimed that he did not ask Mr Chidiac anything about the people holding the wedding.

Mr Tsirekas’ evidence was that he did not know who paid the expenses for the trip and thought Mr Chidiac organised and paid for everything. He did not know who paid for his visa. Mr Tsirekas gave evidence he had given Mr Chidiac \$3,000 cash at the end of 2016 and he said it was for the airfares for this trip. He had previously stated that the \$3,000 payment related to airfares or accommodation for the January 2016 trip (the Commission dealt with this evidence and rejected it earlier in this chapter).

Mr Chidiac told the Commission he could recall travelling to Shanghai in August 2016 for Mr Ji’s wedding. He said he was not a friend of Mr Ji’s but met him at I-Prosperity events, although he could not recall which ones. He understood Mr Ji was associated with I-Prosperity. Mr Chidiac could not recall if he paid for his airfares or accommodation for this trip. Mr Chidiac could not assist the Commission as to why there were no electronic records of any payment for expenses associated with this trip. He produced no records showing that he paid for airfares or any expenses associated with this trip. When it was put to Mr Chidiac that one explanation for there being no record was because that payment was borne by somebody else, he accepted that as “a possibility”. He also accepted the possibility that I-Prosperity (or someone on its behalf) paid the airfares and Mr Chidiac had not reimbursed them. When asked whether he paid his airfare or that of Mr Tsirekas, he could not recall. Similarly, he could not recall whether he paid for their accommodation and had not searched for any records of payment.

If the Commission were to accept Mr Chidiac’s evidence that he never paid for airfares with cash, it follows that there must be some electronic record Mr Chidiac could produce if he did pay for those airfares. The Commission is satisfied that an inference is available on the evidence that someone else paid for the airfares.

The Commission is satisfied that the airfares and accommodation were paid for by someone other than Mr Chidiac and infers that it was I-Prosperity, via either Ms Li or someone else associated with I-Prosperity.

While Ms Li contested the official translation of her diary entry, “I took the mayor to China”, that translation is

consistent with the inference that the Commission has drawn.

The Commission rejects Mr Tsirekas’ evidence that he paid Mr Chidiac \$3,000 cash towards the end of 2016 to cover the airfares for this trip. There is no record of Mr Chidiac paying for the airfares. Mr Tsirekas was not able to produce a receipt or record of repayment. Given Mr Tsirekas’ unreliability as a witness and the lack of corroborating documents, the Commission does not accept this evidence. For the same reasons, the Commission also rejects Mr Tsirekas’ evidence that he understood his travel expenses were met by Mr Chidiac.

A claim form submitted by Mr Fan on 10 August 2016 sought reimbursement for “Lunch with Angelo, Joseph, Liu (Shan Hua), Belinda, Jinan, Harry, Chun”. Ms Li agreed it appeared that a lunch had occurred with the people listed in the claim form and that I-Prosperity had paid for it. Mr Zhou said he could not remember the lunch but he understood Mr Fan was seeking reimbursement for money expended on the lunch. The Commission is satisfied that I-Prosperity paid for the lunch.

The Commission is satisfied that I-Prosperity paid for all of Mr Tsirekas and Mr Chidiac’s expenses on this trip. There are no records that either Mr Tsirekas or Mr Chidiac paid for any expense associated with the trip. Not all the expenses can be quantified, however, there are records showing that Mr Tsirekas stayed at The Langham hotel for seven nights. The cost of staying at the hotel was approximately \$2,770 AUD (based on January 2016 accommodation costs). The airfare was approximately \$3,300 AUD (based on January 2016 airfares). There was also the lunch for which Mr Fan claimed reimbursement. The Commission is satisfied that Mr Tsirekas received quantifiable benefits of about \$6,160 AUD while on this trip, plus other hospitality extended to Mr Tsirekas and Mr Chidiac by I-Prosperity.

The I-Prosperity Christmas party – 7 December 2016

On 5 December 2016, Ms Li forwarded an email to Mr Chidiac with an invitation to the 2016 I-Prosperity Christmas party, which was due to take place on 7 December 2016, on a yacht in Sydney Harbour. She wrote, “Joseph, Please see the boat invitation. I meet you there 11:45 [sic] Belinda”.

In evidence is a record of a trip taken by Mr Chidiac by the Uber car riding service, which indicates that an Uber attended Mr Tsirekas’ home address at 11:24 am on 7 December 2016, shortly before the yacht was due to depart and travelled to the boat’s point of departure. Photographs extracted from Mr Chidiac’s mobile telephone depict Mr Chidiac and/or Mr Tsirekas on a

boat on Sydney Harbour, with the Sydney Opera House and the Sydney Harbour Bridge in the background. In the background of some of the photographs are people apparently of Chinese descent. The photographs were taken on 7 December 2016. Mr Chidiac sent these photographs to a family member on the evening of 7 December 2016.

Mr Tsirekas could not recall attending the I-Prosperity Christmas party on 7 December 2016, notwithstanding that he was also shown a photograph from that day. When asked whether he denied attending the party, he responded that he “can’t recall”. He could not remember anything about this event and said that, as mayor, he was invited to a lot of Christmas parties. He had ceased being mayor as of 3 June 2016.

Mr Chidiac said he attended an I-Prosperity Christmas party on a yacht or a boat on Sydney Harbour. He went to “quite a few” I-Prosperity Christmas parties but could not recall how many were held on a boat on Sydney Harbour, although it was perhaps more than one. He then stated that he could not recall attending the I-Prosperity Christmas party in 2016. Mr Chidiac could not recall if he took Mr Tsirekas to the Christmas party. Later in his evidence, Mr Chidiac claimed there was “no evidence” that showed he attended.

Mr Chidiac’s evidence and that of Mr Tsirekas is rejected as implausible and improbable.

The Commission is satisfied that Mr Chidiac and Mr Tsirekas attended the I-Prosperity Christmas party on 7 December 2016. The photographic evidence of Mr Tsirekas and Mr Chidiac on a boat in Sydney Harbour on 7 December 2016 is compelling and contemporaneous. Additionally, the Uber records indicate that an Uber account associated with Mr Chidiac travelled from Mr Tsirekas’ residence to the boat’s point of departure. The Commission is satisfied that Mr Chidiac was feigning a lack of recollection about the Christmas party in order to protect Mr Tsirekas.

Trip to Lebanon – October 2016

In October 2016, Mr Chidiac and Mr Tsirekas travelled to Lebanon. Mr Chidiac paid Mr Tsirekas’ travel expenses, namely, his airfares and accommodation (Figure 6, trip 11). Mr Tsirekas’ recorded expenses for this trip were \$94,000.

Mr Tsirekas’ evidence was that he reimbursed Mr Chidiac for the costs (\$8,000) associated with this trip in 2020 after his divorce settlement. There is a record of an electronic payment made by Mr Tsirekas to Mr Chidiac in the amount of \$9,000 on 22 July 2020.

Mr Tsirekas had the benefit of what could loosely be described as “a loan” from Mr Chidiac from about

October 2016 to July 2020. The “loan” was paid back only after Mr Tsirekas and Mr Chidiac became aware of the Commission’s investigation in June 2019. Mr Tsirekas did not disclose the debt to the Council when he returned to his role as mayor in September 2017, or when he repaid the debt in 2020, despite knowing that Mr Chidiac was engaged by I-Prosperity in some capacity.

Mr Tsirekas drafts a reference to benefit Harry Huang and his wife – April 2017

On 19 April 2017, at 10:38 am, Mr Tsirekas sent Mr Chidiac an email stating, “Pls send to harry to see if this OK before I print”. Mr Tsirekas was referring to a draft reference letter prepared to enable Mr Huang’s son to seek entrance to a private school on Sydney’s upper north shore. Mr Chidiac had previously sought information from Ms Li for the reference letter, including Mr Huang’s full name, his job title, his wife’s name and profession, their address and the school name. The proposed draft reference letter is set out below:

TO WHOM IT MAY CONCERN

Mr Zhouxiang (Harry) Hunag [sic] and wife Mrs Fanhua Bo of [REDACTED] Mosman have been close associates and friends of mine for over five years. It is with great pleasure that I provide this character reference in support of gaining entry to [REDACTED] for their infant son, [REDACTED] Huang who was born on [REDACTED].

As Mayor of the City of Canada Bay from 2004 to 2016, I have met Harry and Fanhua at business and community events over many years and was always appreciative of their support in making stronger local linkages particularly with our ever growing Chinese community. I have always been impressed by Harry and Fanhua’s core values: family, community, education, tradition and inclusiveness. These values are strongly evident in their relationship and also in Harry’s profession as a financial controller where he is held in high esteem by his peers and clients.

The welcomed arrival of [REDACTED] has seen Harry and Fanhua set their sights on providing him with an education in a modern context anchored in religious tradition. [REDACTED] motto of [REDACTED] is a very comfortable fit for this family and I am confident Harry and Fanhua will make a valuable and enthusiastic contribution to the [REDACTED] community over many years.

Yours sincerely

Angelo Tsirekas

On 19 April 2017, at 1:20 pm, Mr Chidiac provided the draft reference to Ms Li, who forwarded it to Mr Huang at 1:24 pm. At 4:00 pm on the same date, Mr Huang responded, stating that the proposed reference was “fine” and requested that another be prepared for general use, not specifically for the school in question. There is no evidence the reference was signed or used by Mr Huang.

At the public inquiry, Mr Tsirekas gave evidence that, as he had only met Mr Huang on one or two occasions, the relationship was not such as to require the disclosure of a conflict of interest (this evidence itself is rejected as set out in this chapter). When asked about the draft reference, particularly the description of Mr Huang and his wife as “close associates and friends”, Mr Tsirekas said it was a “draft” reference that included exaggerations and was “incorrect” in many significant respects, including the claim that Mr Huang was a friend whom he had known for years. He balked at the suggestion that the reference contained lies. He said the reference was never sent or signed but did not explain why.

Mr Tsirekas accepted that the reference was drafted to be sent by him and it was for the benefit of Mr Huang and his wife. When asked why he agreed to assist Mr Huang, Mr Tsirekas stated, “The Mayor has many requests for references and I, and I assist where I can”. However, during a compulsory examination, Mr Tsirekas accepted that by preparing the draft reference he was doing a favour for both Mr Chidiac (as an I-Prosperity consultant) and Mr Huang because of the relationship he had with both.

Mr Chidiac told the Commission he could not recall the circumstances surrounding the reference but presumed it was Ms Li who sought it from Mr Tsirekas.

Ms Li was not asked about the reference.

The Commission is satisfied that, by drafting the reference, Mr Tsirekas was seeking to assist both Mr Chidiac in his relationship with I-Prosperity, Mr Huang and, by extension, I-Prosperity. Although the reference letter was not signed, it was drafted to be sent in Mr Tsirekas’ name and included exaggerations and errors of which he was aware. When he sent it to Mr Chidiac, he did so with the knowledge and expectation that the reference would be disseminated to third parties to assist Mr Huang.

Mr Tsirekas’ continued involvement in meetings with I-Prosperity

Even when Mr Tsirekas was not a councillor, there were many occasions when Ms Li sought to involve him, through Mr Chidiac, in matters related to I-Prosperity’s planning proposal.

Mr Chidiac said Mr Tsirekas was involved in meetings with I-Prosperity because he was a “good listener”.

Ms Li wrote to Mr Gu and Mr Huang in a WeChat message on 27 February 2017, “Rhodes DA might have to be mid next year. Have caught up with angelo today. It appears that things are not looking too positive. His informant appears to be not so supportive”. Mr Gu responded, “Holy shit. Why has it taken so long?”.

On 13 April 2017, Ms Li wrote to Mr Gu and Mr Huang, “Election in September ... Angelo has to go back again”. The Commission infers that Ms Li was referring to Mr Tsirekas running for the position of mayor again in the September 2017 local government elections.

The Commission is satisfied that Ms Li and/or Mr Chidiac believed that even though Mr Tsirekas was no longer a councillor, he retained relationships with the Council’s staff that he could use to assist I-Prosperity. Ms Li, in her message to Mr Huang on 27 February 2017, referred to Mr Tsirekas’ “informant” in the context of the Rhodes development. The Commission infers that she was referring to Mr Tsirekas’ contacts within the Council. The Commission, however, does not suggest there is evidence to indicate the employees of the Council knew or understood this, or that any of those employees engaged in any misconduct if they did speak with Mr Tsirekas.

Further, the Commission is satisfied that both Mr Chidiac and Mr Tsirekas were seeking to demonstrate to I-Prosperity the ongoing benefit of Mr Chidiac’s engagement through his relationship with Mr Tsirekas. Also, Ms Li’s message of 13 April 2017 reflects that she was aware, at least as of that date, either through Mr Tsirekas or Mr Chidiac, of Mr Tsirekas’ intention to run again for mayor in the September 2017 local government elections, and this is another reason for Mr Tsirekas’ continued involvement in meetings with I-Prosperity during this period.

Mr Tsirekas is re-elected mayor – September 2017

In September 2017, Mr Tsirekas was re-elected as mayor.

The news was received warmly by Ms Li, Mr Gu and Mr Huang. Mr Huang sent a message to the group that they should “Target 400 units”. Mr Gu suggested that they should “catch up” for a meal to congratulate Mr Tsirekas. Ms Li suggested a meeting with Mr Tsirekas and urged Mr Gu and Mr Huang to “Fix a date soon. [The Council] Workshop is on 24th [of October]” and stated, “We should go higher ... Fuck, why we should be lower than bill bergia [sic]?”. She wrote, “When agreed, angelo also needs time to do the councilor’s [sic] work too”. At the public inquiry, Ms Li could not remember what she meant

when she wrote that message but thought she meant that Mr Tsirekas was busy as he was mayor again.

The exchanges between Ms Li, Mr Gu and Mr Huang establish that they viewed the re-election of Mr Tsirekas as mayor as something positive for I-Prosperity's planning proposal.

Ms Li and Mr Huang arranged to meet Mr Tsirekas for dinner at a restaurant in Rhodes on 12 October 2017. On the evening they were supposed to meet, Mr Huang cancelled at the last minute, claiming that his eyelid twitched. Ms Li did not take the news well, telling Mr Huang, "That person is a mayor afterall [sic]. You make him look like your housekeeper. At your call always." Mr Huang's response to Ms Li could be translated in two ways, "Nobody told him to take money from us" or "Only because he took money from us". The dinner took place a few days later, on or around 15 October 2017.

On 17 October 2017, shortly after the dinner, the following exchange took place between Ms Li and Mr Huang, and the messages were also sent to Mr Gu:

Li: Council agrees to fill the hole. Expect to be 40 units

Huang: Nice. Let's get PP [planning proposal] asap

Li: I'm so happy! Council meeting at 5:00 o'clock in the afternoon tomorrow.

Huang: OK well done. Looks like I need to have meals with them more often.

Li: Therefore it's helpful for you to come to the meals afterall. My meals and babbling each day do not compare to your talking to them directly.

Huang: Going forward I will live in Rhodes and have meals with him every day.

Li: That's right.

On 18 October 2017, Ms Li sent messages to Mr Gu and Mr Huang stating that she had had a meeting with Mr Tsirekas and the general manager of the Council, and the general manager supported a heliostat for I-Prosperity's proposed development. At 5:06 pm, she sent a voicemail to Mr Gu and Mr Huang, "I'm super, super, super happy. Comrades! We don't have the hole anymore."

This exchange was not explored at the public inquiry but the Commission understands that the "hole" to which Ms Li referred was a solar window that was proposed for the I-Prosperity development during the middle of 2017 as an alternative to a heliostat, which would compensate for overshadowing the Town Square, a public space adjacent to and south west of the Rhodes Railway Station. Architectural concept designs provided to the Council show a solar window mid-way up the building, the effect being that it looked like there was a "hole" in the building. Ms Li referred to the solar window as a "hole". Publicly available reports prepared by Council staff in early-to-mid-2017 suggest that consideration was being given to refusing I-Prosperity's rezoning in part because of the overshadowing impact on the Town Square.

During its meeting with Ms Li on 18 October 2017, the Council had indicated that it would support I-Prosperity's use of a heliostat rather than a solar window to prevent overshadowing. By using a heliostat rather than a solar window, the proposed development would regain floor space (Ms Li estimated approximately 40 units), which would result in further profits for I-Prosperity.

On 18 October 2017, Ms Li sent a message to Mr Gu that they should "plan well for them [Mr Chidiac and Mr Tsirekas] in Shanghai next month" (November 2017). Ms Li intended to accompany Mr Chidiac and Mr Tsirekas on their November 2017 trip to Shanghai (Figure 6, trip 15) and she indicated that she would "pay when they return to China this time". She hoped for "more levels". In the same exchange, she told Mr Gu and Mr Huang that Mr Tsirekas had called "just now to ask if all was satisfactory today. I said it would be good if it was even taller". Mr Huang responded, "Aren't you greedy?"

Consistent with Ms Li's message of 18 October 2017 to Mr Gu that they should "plan well" for Mr Tsirekas and Mr Chidiac, on 21 October 2017, the following exchange took place between Ms Li and Mr Chidiac:

Li: Joseph, what's your plan in shanghai?

Chidiac: No plans so far

Li: Ok, we have a celebration during your trip

...

Chidiac: Let me know what date and I lock in with Angelo

Mr Tsirekas and Mr Chidiac returned to China in November 2017, March 2018 and in January/February 2019. In the period between September 2017 and May 2018, there was a significant amount of contact between

Ms Li and Mr Chidiac, which included arranging meetings between Mr Tsirekas, Mr Gu and Mr Huang about I-Prosperity's planning proposal.

Mr Tsirekas takes several trips to China with I-Prosperity associates

Trip to China – November 2017

On 1 November 2017, the Shanghai Construction Group Co Ltd, a company that was not associated with I-Prosperity, sent an invitation letter to the Council:

*On behalf of Shanghai Construction Group (SCG),
I would like to invite you and your under listed
delegation to visit Shanghai in late November 2017
for cooperation on city development projects.*

The list of delegates included Mr Tsirekas as mayor of the Council, and Mr Chidiac, who was erroneously described as the Council's deputy mayor.

Mr Tsirekas visited Shanghai between 22 and 28 November 2017, while Mr Chidiac visited between 22 and 29 November 2017. Mr Sawyer, the then general manager of the Council, and Mr Colacicco also travelled to China as part of the delegation (Figure 6, trip 15).

Messages between the parties demonstrate that Ms Li arranged for Mr Zhou to collect Mr Tsirekas and Mr Chidiac from the airport and arranged accommodation at The Langham hotel for Mr Tsirekas and Mr Chidiac. Ms Li, Mr Huang, Mr Gu or Mr Zhou arranged entertainment at the Linx nightclub, karaoke, lunches and entry to a soccer game for Mr Tsirekas and Mr Chidiac during the trip. Mr Zhou's evidence was that I-Prosperity's China staff would arrange these things and if he paid for anything then he would be reimbursed by I-Prosperity.

When Ms Li arrived in Shanghai on 24 November 2017, she arranged to meet Mr Chidiac, according to text messages between them. That evening, before she arrived at the Linx nightclub, Mr Huang sent Ms Li a message, "Joseph said u better not come coz Gary [Sawyer] there ... So u can stay at hotel tonight and rest". Mr Chidiac said, "Mate, I don't think it's a good idea ... She is staying in the hotel I need her 2 avoid the group please". Mr Huang suggested Ms Li contact Mr Chidiac to "talk privately". Ms Li did not attend the nightclub that evening. Mr Huang sent her several messages that evening which indicated that he was having discussions with people present at the nightclub about the I-Prosperity planning proposal.

The next day, 25 November 2017, Ms Li sent a message to Mr Huang that she had spoken with Mr Tsirekas, who had told her they wanted to arrange a day trip. She was

looking for a car that did not carry the I-Prosperity logo. She sent a message to Mr Chidiac that she would arrange a day trip to Zhouzhang, a town in China, for Mr Chidiac, Mr Tsirekas and their fellow travellers. The arrangements included a bus and an English-speaking tour guide. After the trip, Mr Chidiac sent Ms Li a message saying, "Thank u Belinda. We finished boys have a good time [sic]."

On 28 November 2017, Mr Chidiac sent a message to Ms Li: "Belinda, Thank you for everything. C u back in Sydney. Please thank everyone." Ms Li responded, "Have a safe trip ... See you later in Sydney". Also on 28 November 2017, Mr Chidiac sent Mr Zhou the following message: "Chun, Thank u mate we had a great time thank u 4 your generosity". Mr Zhou responded with "joyful" emojis.

There is no record that Mr Tsirekas paid for flights, accommodation or any other expense associated with the trip. There are records that show a friend and travelling companion, not associated with I-Prosperity, paid for Mr Tsirekas' flights.

Mr Tsirekas told the Commission he remembered the trip to Shanghai in November 2017. He could not recall Mr Zhou collecting him and his fellow travellers from the airport. Initially, Mr Tsirekas said that he was "sure" he paid for his flights, but later said that he could not remember whether he paid for his flights. Mr Tsirekas said, to the best of his recollection, he paid for his accommodation using cash that he had in his home, taken from what he described as his "travelling money" and the accommodation cost around \$1,000.

Ms Li said that she could not remember travelling to Shanghai in November 2017 or arranging events for Mr Chidiac or Mr Tsirekas during the November 2017 trip.

Mr Zhou said he could not remember if he paid for Mr Tsirekas and Mr Chidiac's drinks at the Linx nightclub because he became so inebriated that he had to be carried upstairs. He said if he did pay for the drinks, his custom was to seek reimbursement from I-Prosperity. He later gave evidence that Mr Tsirekas and Mr Chidiac would sometimes pay for their own drinks when at the Linx nightclub. However, there was no evidence that they did so on this occasion.

Mr Chidiac said that he could not recall whether he paid Mr Tsirekas' travel expenses for this trip.

The Commission is satisfied that Mr Tsirekas did not pay for his flights or accommodation for the November 2017 trip to China. Rather, a friend who was not associated with I-Prosperity paid for his flights. The Commission is satisfied that either Mr Chidiac or I-Prosperity paid for Mr Tsirekas' accommodation at The Langham hotel. The Commission estimates the cost of Mr Tsirekas'

hotel accommodation was \$2,770 (based on the January 2016 booking confirmation from The Langham hotel). I-Prosperity also paid for Mr Tsirekas' visa, which equates to \$62 AUD. Further, I-Prosperity paid for entertainment for Mr Tsirekas and Mr Chidiac (the visit to the Linx nightclub, karaoke, lunches, a soccer game and the day trip to Zhouzhang). This is consistent with Ms Li's statement that she would "plan well" for Mr Tsirekas and Mr Chidiac's November 2017 trip to China, and the gratitude later expressed by Mr Chidiac to Ms Li for organising the day trip to Zhouzhang and to Mr Zhou for his "generosity". These expenses cannot be quantified.

Trip to China – March 2018

Mr Tsirekas, Mr Chidiac and others, including Mr Colacicco, travelled to China in March 2018. Mr Tsirekas travelled between 15 and 20 March 2018, and Mr Chidiac between 15 and 22 March 2018.

There are messages that evidence Mr Zhou organised entertainment for Mr Chidiac and Mr Tsirekas (and others) during this trip, including karaoke and a visit to the Linx nightclub, and Ms Li arranged for I-Prosperity to collect Mr Chidiac and Mr Tsirekas from the airport and booked their accommodation at The Langham hotel.

Mr Chidiac asked to be collected from the airport in a car without the I-Prosperity logo on it.

Ms Li accepted that the messages between her and Mr Chidiac on 9 March 2018 indicated that they would see each other in China. Ms Li said she had "no idea" why Mr Chidiac made a request to be collected in an unmarked car.

On 16 March 2018, the following WeChat conversation took place between Mr Tsirekas and Mr Zhou:

<i>Tsirekas:</i>	<i>Chun how are u feeling? Good night last night.</i>
<i>Zhou:</i>	[Joyful emoji]
<i>Zhou:</i>	<i>830 Langham lobby</i>

On 17 March 2018, Mr Chidiac sent Mr Zhou a message, "Thanks 4 last night mate" and then, on 19 March 2018, "U r a legend Chun". On 18 March 2018, the following exchange took place between Mr Tsirekas and Mr Zhou:

<i>Tsirekas:</i>	<i>Chun if not doing anything come over for a drink to the Langham.</i>
<i>Zhou:</i>	<i>Sick like a dog, too much drinks.</i>
<i>Tsirekas:</i>	<i>OK brother you rest & get better. We had a great time with you thank you Chun.</i>
<i>Zhou:</i>	[Two joyful emojis]

During the public inquiry, Mr Tsirekas admitted that Mr Zhou arranged entertainment for him and others, including Mr Chidiac, when they were in Shanghai. However, he then denied knowledge of Mr Zhou's role in arranging entertainment but acknowledged that the entertainment did not "spontaneously happen". He claimed that he understood Mr Zhou had "some role" in arranging entertainment but he did not know what it was. He claimed he did not understand Mr Zhou was related to I-Prosperity until he listened to the evidence in the public inquiry.

Records demonstrate that Mr Tsirekas and Mr Chidiac paid for their flights and accommodation on this occasion. Mr Tsirekas' airfares totalled \$1,736.78 and his accommodation at the Langham totalled \$2,124.47.

There is no evidence that Mr Tsirekas or Mr Chidiac paid for any other expenses on this trip. The Commission is satisfied that I-Prosperity collected them from the airport and booked their accommodation (although I-Prosperity did not pay for it). The Commission is satisfied that I-Prosperity paid the expenses related to the entertainment organised by I-Prosperity (karaoke and the Linx nightclub).

Council meeting on gateway determination and uplift in development controls – 15 May 2018

On 15 May 2018, a meeting took place at the Council. I-Prosperity's planning proposal was Item 2 on the agenda. Mr Tsirekas attended the meeting.

On 15 May 2018, Mr Furlong sent a message to Mr Tsirekas, "Hi Ang, Tried to ring & left a message. Would you mind giving me a ring please regarding tonight. Thanks David F". Mr Tsirekas told the Commission he did not recall discussing the I-Prosperity planning proposal with Mr Furlong, but his practice was to try and call people back. There is no evidence that he returned the call.

The Council resolved that evening to agree in principle to a VPA associated with the planning proposal for an uplift (in terms of height and floor space ratio) above the controls in the applicable local environmental plan. The Council also resolved to submit an updated planning proposal to the Department for gateway determination of the I-Prosperity planning proposal. Mr Tsirekas voted in favour of the resolution. Later that evening, at 7:22 pm, Mr Furlong sent Mr Tsirekas a short message, "Thank you".

Mr Tsirekas made no disclosure or declaration of any interest at this meeting. His evidence in the public inquiry

was that he was not required do so. He rejected the proposition that he knew at that stage that he should have declared or disclosed a conflict of interest and he deliberately decided that he would not do so.

The Commission is satisfied that Mr Tsirekas was required to declare or disclose a conflict of interest arising out of his relationships with persons associated with I-Prosperity. The Commission is satisfied that Mr Tsirekas deliberately refrained from declaring a conflict of interest because he knew or understood that if he did declare or disclose an interest, he would have to manage the interest in accordance with the Council's code of conduct, by removing the source of the conflict or having no involvement in the matter. Either outcome would impact the arrangement Mr Chidiac had with I-Prosperity and the benefits that Mr Tsirekas was receiving as a consequence of that arrangement.

The result of the Council meeting that evening was warmly received by Ms Li. Her response to Mr Chidiac was "Let's cerebrate [sic]".

To this end, Mr Furlong recalled a dinner at a restaurant in May 2018, after the Council had resolved to pursue the rezoning, at which Mr Chidiac, Mr Tsirekas, Ms Li, Mr Huang, another person involved with I-Prosperity and himself were present. He assumed that I-Prosperity arranged the dinner as it was a celebratory occasion. He said the Council had agreed to provide development uplift in terms of height and floor space ratio. He said this meant that I-Prosperity could pursue a 35- or 36-storey building. He said at the dinner the people there were all "quite friendly". Later he stated, "They [Mr Tsirekas and I-Prosperity] were obviously more aware of one another than I first realised ... They all knew one another".

Events between June 2018 and May 2019

Significant events took place between June 2018 and May 2019, when Mr Tsirekas was mayor of the Council.

Mr Tsirekas provides a reference for Mr Zhou – June 2018

On 1 June 2018, Mr Zhou sent the following WeChat message to Mr Tsirekas:

Zhou: *I need a reference letter for my son [redacted] to enrol [redacted] School 2019 pre-kindergarten [Joyful emoji] [Joyful emoji] [Joyful emoji]*

Tsirekas: *Ok I will ring you to get some info – when do u need it by?*

Zhou: *Appointment on the 14th June, need before that [Drool emoji]*

Tsirekas: *Ok pls ring me on Monday*

On 7 June 2018, a Council employee in the office of the mayor sent Mr Tsirekas an email stating, "For your reference". The attachment to the email was a letter addressed to a Sydney private school and related to Mr Zhou's infant son. The reference was on Council letterhead and signed by Mr Tsirekas as the mayor of the Council. It read:

Dear [redacted],

I am writing to recommend [redacted] for inclusion to 2019 Pre-kindergarten at [redacted].

I have known [redacted]'s father, Chun Zhou for several years, and in that time I have watched [redacted] grow from a toddler to an intelligent pre-schooler, receptive to learning new things.

[redacted] is incredibly talkative, especially for someone of his age. He comes from a family that encourages him to ask questions, and to not be satisfied until he is sure that he has all the information he requires. I always find that curiosity in a child is an ideal character trait, and [redacted] has that in spades.

I know you are always looking for passionate, talented, energetic children, and I can tell you that [redacted] is the embodiment of those characteristics.

I unequivocally recommend [redacted] for admission into [redacted]'s preparatory school, and I am happy to answer any further questions about [redacted] at any time.

Yours sincerely

Mayor Angelo Tsirekas

City of Canada Bay

On 7 June 2018, at 4:33 pm, Mr Tsirekas sent Mr Zhou the reference through the WeChat messenger application, after which the following conversation took place:

Zhou: thx [thanks]
Tsirekas: Any time brother you are a good person
Zhou: [Joyful emoji][Joyful emoji]
Tsirekas: Linx
Zhou: anytime
Tsirekas: Excellent

Mr Tsirekas gave evidence that he did not know Mr Zhou “that well” and he did not know how many times he had met him, but it may have been fewer than five occasions. He knew Mr Zhou lived in Sydney but did not know whether he had family or children, and he had never been to his house or met his children. When asked about the reference, Mr Tsirekas could not explain why he was prepared to assist Mr Zhou in this way. His evidence was that there was “no real reason” except that Mr Zhou had approached him for support or assistance. He did not know if Mr Zhou lived in the Canada Bay area. He denied assisting Mr Zhou because of Mr Zhou’s association with I-Prosperity

Mr Tsirekas agreed that the reference contained statements that were not true, including the assertion that he had known Mr Zhou for “several years” (although the evidence shows Mr Tsirekas had known Mr Zhou since at least November 2015), and that he had observed Mr Zhou’s son develop into an intelligent pre-schooler. He ultimately agreed that he was not in a position to make an unequivocal recommendation about Mr Zhou’s son as he did in the reference. However, he did not agree that by doing so he was acting dishonestly, stating, “To me, it wasn’t dishonest. I was taking the reliable information from the parent talking about his child and I was assisting him with a reference to get him into a school.” He denied he was doing so as a way of ingratiating himself with people associated with I-Prosperity. He denied that he was describing Mr Zhou as a “good person” (in his message to Mr Zhou) because of all the times he had met him and the things he had done for Mr Tsirekas in Shanghai. He said his description of Mr Zhou as a “good person” was a “throwaway line” that he used as a “gesture of, you know, goodwill”. When asked why he responded to Mr Zhou’s emoji message with one word, “Linx”, he agreed he was referring to the Linx nightclub in Shanghai. At this point in his evidence, he said that Mr Zhou was always at the Linx nightclub but he did not know whether he had been involved in organising the trips to the nightclub.

Mr Zhou told the Commission that Mr Tsirekas provided the reference. He could not remember the circumstances surrounding the creation of the reference, except that it was perhaps his wife’s idea. He said that neither his son nor his wife had ever met Mr Tsirekas and he believed he provided Mr Tsirekas with the information to include in the reference. He could not remember whether he had done this over the telephone or face-to-face, but agreed when shown the text message exchange of 1 June 2018 that the conversation likely took place on the telephone. He agreed he sought a reference from Mr Tsirekas as it would assist with his son’s application for entry to the private school. He denied asking this favour of Mr Tsirekas because he had done favours for Mr Tsirekas when he was in China. He said he asked Mr Tsirekas to prepare this reference as a friend, and Mr Tsirekas agreed to provide the reference immediately after he requested it. Mr Zhou said he received a signed version of the reference and provided it to the school.

The Commission rejects Mr Tsirekas’ denials that he did not know Mr Zhou’s role with I-Prosperity required him to assist in connection with Mr Tsirekas’ travel to China. It is implausible and improbable that Mr Tsirekas did not come to have this understanding. The Commission is satisfied that, in writing the reference, Mr Tsirekas was doing a favour for Mr Zhou, because he knew that Mr Zhou was associated with I-Prosperity, which had provided him with benefits.

Trip to China – January to February 2019

During a lawfully intercepted telephone conversation on 7 December 2018, Mr Chidiac and Mr Tsirekas discussed a potential trip to Shanghai. Referring to Mr Zhou, Mr Tsirekas said to Mr Chidiac, “yeah, make sure he’s there”. Mr Tsirekas was not able to explain why he said that, telling the Commission he said it for “[n]o real reason”. When it was suggested to Mr Tsirekas that it was because Mr Zhou would be able to organise entertainment for him and Mr Chidiac, Mr Tsirekas said “I, I can’t answer that. I can’t recall why I would have said that there.” Mr Tsirekas agreed that the telephone conversation demonstrated that both he and Mr Chidiac wanted Mr Zhou to be in Shanghai when they were present. After further questioning, Mr Tsirekas appeared to accept that Mr Zhou would “make it easier [for him and others] to get into nightclubs”.

In a lawfully intercepted telephone conversation on 12 December 2018, Mr Tsirekas asked Mr Chidiac, “Yeah and has Chun got back to you?”, and Mr Chidiac indicated that “he said he [Mr Zhou] should be [in China]”.

Ultimately, Mr Tsirekas accepted that he knew, when Mr Chidiac was organising things associated with travel to Shanghai, that Mr Chidiac would be speaking with Mr

Zhou. Mr Tsirekas agreed that, when he benefitted from things such as entry to the Linx nightclub or the payment for drinks at the Linx nightclub, the benefits were arranged by Mr Zhou. However, Mr Tsirekas gave evidence that he believed that Mr Chidiac was arranging and paying for it all, but also said, "I didn't know who was paying". Mr Tsirekas conceded that, in effect, he "was being invited on trips to Shanghai" that Mr Chidiac was arranging, and he did not want to, or did not, involve himself in organising those trips. He agreed that when he said, "Has Chun got back to you?" he was enquiring whether a projected trip to Shanghai was being organised. He denied knowing as at December 2018 of Mr Zhou's association with I-Prosperity.

In the same conversation of 12 December 2018, Mr Chidiac said he had asked Ms Li if the "boys" would be in Shanghai, and expressed to Mr Tsirekas that if "Harry and Michael" were in Shanghai "that'd be a bonus". However, Mr Chidiac also stated, "I think we should go regardless whether they're there or not ... fuck do something, let's do our own thing". Mr Tsirekas responded, "Yeah alright, we'll just go".

Mr Tsirekas agreed that by December 2018 he knew that Mr Gu, Mr Huang and Ms Li were associated with I-Prosperity. Mr Tsirekas said that he did not know why Mr Chidiac thought it would be a "bonus" if the "boys" (Mr Gu and Mr Huang) were in Shanghai. He claimed that he did not know what roles Mr Gu and/or Mr Huang held in I-Prosperity. He denied that the presence of Mr Gu, Mr Huang or Mr Zhou in Shanghai would impact the costs that would be incurred on the trip.

Travel records show that Mr Tsirekas and Mr Chidiac again visited Shanghai between 30 January and 5 February 2019 (Figure 6, trip 22). Again, Mr Tsirekas, Mr Chidiac and others, including Mr Colacicco, booked into The Langham hotel.

Ms Li sent a message to Mr Chidiac indicating that she would be in Shanghai between 1 and 3 February 2019. She appears to have met Mr Chidiac on one occasion during this trip. On 29 January 2019, Ms Li sent a message to Mr Chidiac and offered to organise a day trip for Mr Chidiac, Mr Tsirekas and four others. Later, she confirmed the arrangement. There is no evidence that she was repaid for organising this day trip.

There is no evidence that Mr Gu, Mr Huang or Mr Zhou provided entertainment for or met with Mr Chidiac or Mr Tsirekas on this occasion. Mr Chidiac had stopped receiving payments from I-Prosperity in October 2018.

Mr Tsirekas and Mr Chidiac paid for their respective flights and accommodation on this occasion. There is no record of other expenditure associated with this trip by

Mr Tsirekas or Mr Chidiac. Mr Colacicco, their travelling companion, recorded expenditure for entertainment on the trip, including restaurant meals.

The Commission is satisfied that Ms Li arranged a day trip for Mr Tsirekas, Mr Chidiac and their travelling companions and paid for it. It is not possible to estimate the value.

Council meeting on gateway determination for I-Prosperity planning proposal – 19 February 2019

On 18 February 2019, Mr Tsirekas telephoned Mr Furlong and suggested he should attend the Council meeting scheduled for 19 February 2019 and "tell Belinda" about the meeting. Their conversation was recorded in a lawfully intercepted telephone call.

The I-Prosperity planning proposal was Item 2 on the agenda for discussion at that meeting. I-Prosperity's planning proposal had been returned to the Council due to a new ministerial direction, which required the Council to consider the advice of the local planning panel before determining whether to forward it for gateway determination. The local planning panel's report had expressed concerns about I-Prosperity's planning proposal, including overshadowing, the use of a heliostat, the building height, the departure from the Rhodes Station Precinct Master Plan and the capacity of the transport network. The Council officer who prepared the report for the Council meeting recommended the Council consider the matter in light of the issues raised by the local planning panel in its report. The officer's report recommended that the Council confirm how it wished to proceed with the I-Prosperity planning proposal.

Mr Tsirekas and Mr Furlong spoke to each other on the day of the meeting, 19 February 2019. This conversation was captured in a lawfully intercepted telephone call. The conversation concerned the wording of the draft resolution that needed to be passed by the Council to ensure there was no further hold-up with I-Prosperity's planning proposal. After speaking with Mr Furlong, Mr Tsirekas spoke with Scott Pedder, the director of planning at the Council, to discuss the proposed wording of the resolution for that evening's meeting.

At the 19 February 2019 Council meeting, the Council passed a resolution in the terms discussed by Mr Tsirekas and Mr Furlong. Mr Tsirekas voted in favour of the resolution. He made no disclosure or declaration of any interest at this meeting.

Mr Tsirekas' evidence in the public inquiry was that he was not required to declare or disclose a conflict of interest. He accepted that by this stage (February 2019)

he knew that Ms Li was associated with I-Prosperity. He rejected the proposition that the telephone calls to Mr Furlong reflected a close relationship between him and I-Prosperity, or a keenness on his part to have its planning proposal proceed to gateway determination. When asked what it was that compelled him to call Mr Furlong, Mr Tsirekas stated, “To, to the best of my recollection, I think there was some hold-up somewhere. I was very keen to see large projects like this, that gave council great outcomes in regards to community benefits, that we, council officers were working together that, were, were provided.” Mr Tsirekas also accepted that it was standard practice for Council staff, and not a mayor, to inform a developer that its matter was before Council (contrary to what happened in this situation).

Mr Tsirekas said there was no other reason for him speaking to Mr Pedder except that he wanted to understand what Mr Pedder was drafting. Mr Tsirekas said he could not recall the content of his in-person meeting with Mr Pedder, although they may well have discussed the draft resolution. He rejected the proposition that he wanted to check with Mr Pedder that the draft resolution put before the Council was consistent with the suggestions of Mr Furlong. He denied that he intervened in the process to ensure the planning proposal proceeded to gateway determination and claimed that the draft resolution was based on the advice of Mr Pedder. He denied that he was motivated to intervene because of his relationship with I-Prosperity and those associated with the company, and because of the benefits they provided to him. He again denied that the reason he did not disclose a conflict was because he knew that by doing so, he would be excluded from any involvement in the matter.

Mr Furlong told the Commission he could not remember whether he had any involvement with Mr Tsirekas in relation to the 19 February 2019 resolution. He said he “probably” would have spoken to him about the delay. When Mr Furlong listened to the relevant telephone intercepts, he said he was trying to make sure there were no further delays.

The Commission is satisfied that Mr Tsirekas was required to declare or disclose a conflict of interest arising out of his relationships with those associated with I-Prosperity. Since 31 May 2016, the extent of the conflict had grown because of Mr Tsirekas’ ongoing relationship with Mr Chidiac and those associated with I-Prosperity.

The Commission rejects Mr Tsirekas’ denial that he deliberately refrained from disclosing or declaring those interests. Rather, he knew or understood that if he did declare or disclose such interests, he would have to manage the interests in accordance with the Council’s code of conduct, by removing the source of the conflict or having no involvement in the matter. The conversations

with Mr Furlong on 18 and 19 February 2019 reflect a close relationship between Mr Tsirekas and I-Prosperity, and that Mr Tsirekas was motivated to progress I-Prosperity’s planning proposal to gateway determination. The Commission rejects his evidence that he was keen to have the matter proceed because it was in the community’s best interests.

“They’ve dropped us”

On 27 March 2019, at 11:38 am, the following conversation between Mr Tsirekas and Mr Chidiac was captured in a lawfully intercepted telephone conversation:

<i>Tsirekas:</i>	<i>Um when – when are we going to China have you seen Belinda or Harry?</i>
<i>Chidiac:</i>	<i>Mate I haven’t fuckin spoken to any of them.</i>
<i>Tsirekas:</i>	<i>They’ve dropped us</i> [emphasis added]
<i>Chidiac:</i>	<i>No it’s not that they dropped us –</i>
<i>Tsirekas:</i>	<i>(Laughs)</i>
<i>Chidiac:</i>	<i>-I think they – they’re just too busy trying to stay –</i>
<i>Tsirekas:</i>	<i>Busy</i>
<i>Chidiac:</i>	<i>-staying – stay afloat.</i>

Mr Tsirekas spoke with great regret that I-Prosperity had “dropped” them. He accepted that the reference to “us” was a reference to himself and Mr Chidiac.

At the public inquiry, Mr Tsirekas denied that by use of the phrase “they’ve dropped us”, he meant that Ms Li and Mr Huang had ceased any ongoing relationship with him and/or Mr Chidiac. He said he was referring to I-Prosperity’s VPA before Council. He suggested that the reference was to do with I-Prosperity’s planning proposal and whether I-Prosperity was interested in proceeding with it at all.

The Commission rejects this evidence as implausible and illogical. On 19 February 2019 (just under four weeks prior), the Council had voted in favour of referring the I-Prosperity planning proposal for gateway determination. Mr Tsirekas voted in favour of that resolution and did not declare an interest. Mr Tsirekas’ attempt to explain the reference to “dropping us” as a reference to the VPA and/or “dropping” the proposal generally is rejected. I-Prosperity had not “dropped” its proposal.

Mr Tsirekas denied that this conversation reflected his concern that I-Prosperity was no longer willing to provide benefits to him and Mr Chidiac in relation to travel to China.

Mr Tsirekas denied that one of the reasons that he and Mr Chidiac travelled to Shanghai between 2015 and 2019 had been to meet with Mr Huang or Ms Li. He did not agree there was a connection between travel to China on the one hand, and his relationship with Ms Li and Mr Huang on the other. During his evidence, Mr Tsirekas appeared to doubt that the reference to “Belinda” and “Harry” was a reference to Ms Li and Mr Huang.

Mr Chidiac said he could not recall the conversation and said Mr Tsirekas “very often” uses the phrase “dropped us”. He denied that Mr Tsirekas was referring to I-Prosperity no longer funding their travel expenses in relation to their trips to Shanghai, describing the proposition as “sophistry”.

This telephone conversation is revealing. It shows that Mr Tsirekas associated travel to China with Ms Li and Mr Huang (Mr Huang being someone whom he initially said in the public inquiry he had met only twice). The Commission rejects Mr Tsirekas’ evidence that he was not referring to Ms Li or Mr Huang.

The Commission is satisfied that Mr Tsirekas was concerned that I-Prosperity had “dropped” them in the sense that it was no longer willing to provide them with benefits associated with travel to China. The conversation between Mr Tsirekas and Mr Chidiac on 27 March 2019 demonstrates that Mr Tsirekas and Mr Chidiac considered themselves to be a team in relation to the I-Prosperity planning proposal. They had come to an arrangement, agreement or understanding that they would work as a team. Mr Tsirekas would make himself available to Mr Chidiac to meet with I-Prosperity and speak with them. Mr Tsirekas would do what he could to progress I-Prosperity’s planning proposal through the Council. In return, Mr Tsirekas received the benefits associated with free and subsidised travel to Shanghai and elsewhere, and the benefit of hospitality and entertainment in China and Sydney.

On 16 April 2019, Ms Li sent a message to Mr Chidiac, stating, “Rhodes is under pressure and the site is currently under lender receivership. I am trying to figure out solution.” Ms Li tried to refinance and sought Mr Chidiac’s assistance to do so.

On 15 and 29 May 2019, Mr Tsirekas and Ms Li dined together in the city, and on 20 May 2019, they had coffee together. They did not invite Mr Chidiac as “3 people is a crowd”, according to Mr Tsirekas. This was shortly before June 2019, when Mr Tsirekas and Mr Chidiac learned of the Commission’s investigation.

Conclusion – Mr Tsirekas’ disclosures and benefits

The first issue for determination is whether Mr Tsirekas was required to disclose a conflict of interest in accordance with the Council’s code of conduct in relation to his close personal relationships with key I-Prosperity representatives (Mr Gu, Mr Huang, Ms Li, Mr Zhou, Mr Furlong) and/or Mr Chidiac (as a consultant for I-Prosperity) and failed to do so.

Close personal relationships are central to the concerns addressed in the Bowen Report.³ The first term of reference for the committee was “[t]o recommend whether a statement of principles can be drawn up on the nature of private interests, pecuniary or otherwise, which could conflict with the public duty of any or all persons holding positions of public trust in relation to the Commonwealth”. The Bowen Report juxtaposed “private interests” against the “obligations of public duty”. It recognised that “[b]oth pecuniary and non-pecuniary private interests may conflict with public duty”.

The Bowen Report addressed non-pecuniary interests as follows :

*[2.21] This Committee believes that a wide range of non-pecuniary interests **could** conflict with the public duty of officeholders. At least they might raise a presumption or a reasonable suspicion that they were doing so. **Indeed, any private interest could in some circumstances cause conflict.** Therefore, some device is necessary to decide which private interests should be regulated because of the probability that they will, in some circumstances, cause conflicts. The problem of identifying interests which should be regulated is made more difficult because often it is the context which determines whether an interest is likely to cause conflict. Absolute rules may not be possible.*

[...]

[2.23] Attempts to lay down rules in relation to non-pecuniary interests have floundered because of the problem of defining adequately an interest which may be regarded as creating an actual or potential conflict with duty. This problem of definition creates difficulties for both the officeholder bound by such rules and the authority responsible for his conduct. In the absence of any clear guidance, an officeholder may well be uncertain about his obligation to his public

³ *Public Duty and Private Interest: Report of the Committee of Inquiry* established by Prime Minister Malcolm Fraser, on 15 February 1978 and prepared by a committee comprising the Hon Sir Nigel Bowen KBE (Chair), Sir Cecil Looker and Sir Edward Cain CBE and published in July 1979 (“the Bowen Report”).

duty in respect of an interest. Those responsible for enforcing proper conduct in respect of that obligation may equally be uncertain as to what is proper in the circumstances.

[2.24] However, there is a test which the Committee believes is likely to be applied in practice by such officeholders, or those responsible for their conduct, in judging what is proper in particular circumstances: the test of appearance. Does that interest look to the reasonable person the sort of interest that may influence?

[2.25] It may well be that inherent difficulties of definition will make any rules in respect of non-pecuniary interests less satisfactory than those in respect of pecuniary interests. Those responsible for making or enforcing rules may have to be prepared to counsel or caution rather than reprimand or punish, at least until precedent and familiarity have built up some consensus on how such rules should operate in a “grey” area. The precedents initially may draw quite arbitrary lines through the original uncertainty. Eventually its area is likely to be reduced.

[2.26] The Committee believes that, in judging whether a particular non-pecuniary interest could create conflict in certain situations, or whether rules should be laid down in relation to a certain type of non-pecuniary interest, the test is the likelihood that the person possessing the interest could be influenced in the independent judgment which his public duty requires be applied to the matter in hand, or that a reasonable person would believe that he could be so influenced.
(Non-italics in original; emphasis added)

In the Commission’s view, the significant point to be taken from the Bowen Report for the purposes of the allegations of conflict of interest on Mr Tsirekas’ part, is that the definition of conflict of interest in the Council’s code of conduct is drawn from the “appearance test” set out in the Bowen Report (at [2.24] and [2.26]). The Council’s code of conduct defines a conflict of interest as “where a reasonable and informed person would perceive that you could be influenced by a private interest when carrying out your public duty”. For example, the Council’s code of conduct adopts the aspects of the “appearance test” in the following provisions:

- a) When councillors are considering whether or not they have a conflict of interest, they have to think about how others would view the councillor’s position (clause 4.3 in the 2013 and 2017 codes of conduct)

- b) Councillors are required to avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from the councillor (clause 5.1 in the 2013 and 2017 codes of conduct).

During the public inquiry, Mr Tsirekas gave evidence that there was no occasion, between October 2015 and 1 January 2020, on which he should have disclosed a conflict of interest in relation to the I-Prosperity planning proposal before the Council. This was different from the evidence he had given on previous occasions.

Council records indicate that Mr Tsirekas did not, at any relevant times, declare his relationship with I-Prosperity and/or Mr Chidiac. Peter Gainsford, the former general manager of the Council, gave evidence that Mr Tsirekas never informed him that he had met previously with anyone associated with I-Prosperity. Mr Gainsford said he recalled a conversation with Mr Chidiac in which he was advised by Mr Chidiac that he facilitated conversations with Mr Tsirekas about issues raised by community members.

The onus is on the councillor to identify a conflict of interest and take the appropriate action to manage the conflict in favour of his or her public duty. The code sets out that non-pecuniary interests are private or personal interests the council official has that do not amount to a pecuniary interest as defined by the LGA. These commonly arise out of family, or personal relationships, or involvement in sporting, social or other cultural groups and associations and may include an interest of a financial nature. Councillors are required to disclose non-pecuniary interests that conflict with their public duties fully and in writing as soon as practicable. Significant non-pecuniary conflicts of interest are required to be managed by councillors in one of two ways: removing the source of the conflict; or having no involvement in the matter by absenting themselves from and not taking part in any debate or vote on the matter. The Council’s code of conduct states that closeness is defined “by the nature of the friendship or business relationship, the frequency of contact and the duration of the friendship or relationship” (clauses 4.10 and 4.12 in the 2013 and 2017 codes). If a councillor determines that a non-pecuniary conflict of interest is less than significant and does not require further action, an explanation of why that is so must be provided (clauses 4.16 and 4.17 in the 2013 and 2017 codes).

Mr Tsirekas enjoyed close personal relationships with Mr Gu, Mr Huang, Ms Li and Mr Zhou of I-Prosperity. In particular, Mr Tsirekas enjoyed the hospitality provided by I-Prosperity on six occasions when in China in November 2015, January 2016, August 2016, November 2017, March 2018 and February 2019. On two different

occasions, he attended two weddings of I-Prosperity representatives (Mr Huang's wedding in January 2016 and Mr Ji's wedding in August 2016). He provided a reference (in draft form) for Mr Huang in April 2017 and another for Mr Zhou (finalised) in June 2018. He also socialised with them in Sydney, including attending the I-Prosperity Christmas party in December 2016. The contemporaneous records of the conversations between Ms Li and Mr Chidiac illuminate the nature of the relationship between Mr Tsirekas, Mr Chidiac and I-Prosperity, revealing that, between November 2015 and February 2019, it was an ongoing and close relationship rather than an occasional relationship. There were many instances of Ms Li and Mr Chidiac arranging meetings with Mr Tsirekas through Mr Chidiac. Ms Li frequently referred to Mr Tsirekas as "our friend" and sought his assistance in relation to I-Prosperity's planning proposal.

The Commission is satisfied that in accordance with the Council's code of conduct, a "reasonable and informed person" would perceive that Mr Tsirekas could be influenced by a private interest (his close personal relationships with Mr Gu, Mr Huang, Ms Li and Mr Zhou) when carrying out his duties. The Commission is satisfied that Mr Tsirekas was obliged to disclose a non-pecuniary conflict of interest in relation to his relationships with Mr Gu, Mr Huang, Ms Li and Mr Zhou. The relationships spanned over three years, the contact between Mr Tsirekas and the I-Prosperity representatives was frequent (often facilitated by Mr Chidiac) and often social in nature, including socialising while on trips to China. Therefore, in the circumstances, the Commission is satisfied that Mr Tsirekas' close personal relationships with Mr Gu, Mr Huang, Ms Li and Mr Zhou gave rise to a significant non-pecuniary conflict of interest.

As detailed in this chapter, Mr Furlong and Mr Tsirekas' conduct in relation to the Kenzler motion benefitted I-Prosperity's planning proposal. During a compulsory examination, Mr Tsirekas admitted that he failed to declare a non-pecuniary interest in relation to I-Prosperity and, as at 31 May 2016 (the date of the Kenzler motion), he should have disclosed a conflict with Mr Furlong and others. Mr Tsirekas said that he and Mr Furlong had a friendship of over 20 years. During the public inquiry, he sought to change evidence previously given on oath and maintained that there was no conflict arising out of his relationship with Mr Furlong. He agreed that he knew Mr Furlong and that he knew he was acting on behalf of I-Prosperity in relation to its planning proposal. He said that he did not consider he had a friendship with Mr Furlong. The Commission rejected Mr Tsirekas' attempts to withdraw or change his evidence.

Mr Furlong described Mr Tsirekas as a friend, having met him in 1997 when Mr Furlong worked at the Council. He assisted Mr Tsirekas' partner, Ms Crichton, with issues in relation to a development application, free of charge. Mr Furlong took part in a number of meetings between Mr Tsirekas and I-Prosperity representatives (often arranged by Mr Chidiac). Ms Li obtained Mr Furlong's contact details from Mr Tsirekas and Mr Furlong was engaged by I-Prosperity because of Mr Tsirekas' recommendation.

The Commission is satisfied that Mr Tsirekas and Mr Furlong had a close personal relationship that spanned decades. Mr Furlong described Mr Tsirekas as a friend. Mr Tsirekas' evidence changed on the issue of whether he had a friendship with Mr Furlong. However, the Commission rejected his change of evidence. The intensity and closeness of the relationship is reflected in Mr Furlong's assistance of Mr Tsirekas' partner with planning matters for free, Mr Tsirekas' recommendation of Mr Furlong as a town planner to I-Prosperity and Mr Tsirekas' willingness to involve Mr Furlong in I-Prosperity's planning matters generally (for example, the Kenzler motion on 31 May 2016 and the gateway determination at the Council meeting on 19 February 2019). The Commission is satisfied that, in accordance with the Council's code of conduct, a "reasonable and informed person" would perceive that Mr Tsirekas could be influenced by a private interest, namely, his close personal relationship with Mr Furlong when carrying out his duties. The Commission is satisfied that Mr Tsirekas was obliged to disclose a significant non-pecuniary conflict of interest regarding his relationship with Mr Furlong.

With regard to the relationship between Mr Tsirekas and Mr Chidiac (as a consultant for I-Prosperity), it was clear that Mr Tsirekas and Mr Chidiac enjoyed a close personal friendship. In effect, Mr Tsirekas denied knowledge of the extent of Mr Chidiac's relationship with I-Prosperity and the conflict of interest to which it gave rise. He agreed that, as time went on, he understood "to a degree" that Mr Chidiac was rendering some services to I-Prosperity, such as organising meetings. However, the Commission is satisfied that Mr Tsirekas was well aware of Mr Chidiac's role with I-Prosperity. The relationship between Mr Tsirekas and Mr Chidiac was central to the "intermediary services" that Mr Chidiac provided to I-Prosperity. The Commission is satisfied that Mr Tsirekas denied that he knew Mr Chidiac worked for I-Prosperity because he understood that, by failing to disclose his relationship with Mr Chidiac, he breached the Council's code of conduct when matters concerning I-Prosperity came before the Council. The Commission is satisfied that this decision by Mr Tsirekas was a deliberate ploy to avoid the requirement to manage the conflict, in accordance with the code of conduct, by removing the source of the conflict or having no involvement in the matter.

The Commission is satisfied that Mr Tsirekas had a significant non-pecuniary conflict of interest, which was a significant conflict of interest that required disclosure pursuant to the Council's code of conduct.

The Commission is satisfied that Mr Tsirekas deliberately failed to disclose his relationships with those associated with I-Prosperity, including Mr Chidiac, Mr Gu, Mr Huang, Ms Li, Mr Zhou and Mr Furlong because he knew he would then be required to manage the conflict in accordance with the Council's code of conduct. It was not a case of ambiguity or uncertainty in relation to his obligations under the code of conduct. In accordance with the Council's code of conduct, Mr Tsirekas was required to avoid or manage the conflict in favour of his public duty. The Commission is satisfied that Mr Tsirekas had non-pecuniary conflicts of interest which should have been disclosed fully in writing as soon as practicable. If a significant non-pecuniary interest has been disclosed then it must be managed by removing the source of the conflict, either by divesting the interest or reallocating the conflicting duties to another Council official, or by having no involvement in the matter, including taking no part in a debate or vote on the matter. The Commission is satisfied that Mr Tsirekas took no steps to disclose and then manage his significant non-pecuniary conflict of interest in relation to those associated with I-Prosperity (Mr Chidiac, Mr Gu, Mr Huang, Ms Li, Mr Zhou and Mr Furlong).

The second issue for determination is whether Mr Tsirekas sought and/or accepted benefits from representatives of I-Prosperity and/or Mr Chidiac. The Commission is satisfied that Mr Tsirekas sought and accepted benefits from I-Prosperity and/or Mr Chidiac. Whether the benefits were received directly from I-Prosperity, or via Mr Chidiac, makes no material difference as the benefits were provided in the context that Mr Chidiac was a well-remunerated representative of I-Prosperity.

The Commission cannot quantify the total value of benefits that Mr Tsirekas received because there are no records, for example, of the cost of entertainment provided in China, including the many visits to the Linx nightclub, karaoke, and the day trips organised by those associated with I-Prosperity.

However, based on the records that are available, the Commission is satisfied that:

- In relation to the January 2016 trip, the cost to stay at The Langham hotel was 1,840 RMB per night at that time. Mr Tsirekas stayed four nights at a cost of approximately \$1,582 AUD. The benefit of the Nanjing trip is estimated to be \$352 AUD based on the spreadsheet submitted by Mr Fan. The Commission is satisfied that

Mr Tsirekas received benefits totalling at least \$1,934 in connection with the January 2016 trip to China.

- In relation to the August 2016 trip, Mr Tsirekas stayed at The Langham hotel for seven nights. The Commission estimates that the cost of the hotel stay was approximately \$2,770 AUD and the airfare was approximately \$3,300 AUD (based on January 2016 airfare rates). The records also indicate there was a lunch for which Mr Fan claimed money. The Commission is satisfied that Mr Tsirekas received benefits to the value of at least \$6,160 AUD.
- In relation to the November 2017 trip, the cost of Mr Tsirekas' accommodation was approximately \$2,770 and was borne by Mr Chidiac and/or I-Prosperity. I-Prosperity also paid for Mr Tsirekas' visa, at a cost of about \$62 AUD. The Commission is satisfied that Mr Tsirekas received benefits of at least \$2,832 in connection with this trip.
- Mr Chidiac loaned \$8,000 to Mr Tsirekas for the Lebanon trip in October 2016.

It is conservatively estimated that Mr Tsirekas received quantifiable benefits totalling more than \$18,800 AUD, and other benefits, the cost of which cannot be estimated.

The Commission is satisfied that, in return for these benefits, Mr Tsirekas exercised his public official functions partially and in favour of I-Prosperity, including when its matters came before Council. Mr Tsirekas' conduct included meeting an I-Prosperity investor in March 2016, acting in I-Prosperity's interests in relation to the Kenzler motion in May 2016, providing reference letters for Mr Huang (in draft form but written in his capacity as mayor) in April 2017 and Mr Zhou (in final form on Council letterhead and written in his capacity as mayor) in June 2018, and ensuring I-Prosperity's planning proposal proceeded to gateway determination in February 2019.

In relation to the Council's code of conduct, the Commission is satisfied that Mr Tsirekas breached the following provisions in relation to his relationships with I-Prosperity and Mr Chidiac (who was acting as a consultant for I-Prosperity):

- clause 3.1(d) and (e), prohibiting acting in a way which is "improper" or "unethical" or is an abuse of power or otherwise amounts to misconduct
- clause 3.7, requiring councillors to avoid any occasion for suspicion of improper conduct in the development assessment process

- clause 4.2, requiring councillors to avoid or appropriately manage conflicts of interest. The onus being on councillors to identify a conflict of interest and take appropriate action to manage the conflict in favour of their public duty
- clause 4.12, requiring councillors to disclose non-pecuniary interests that conflict with their public duties fully and in writing as soon as practicable
- clause 4.16, requiring significant non-pecuniary conflicts of interest to be managed by councillors in one of two ways: removing the source of the conflict; or having no involvement in the matter by absenting themselves from and not taking part in any debate or vote on the matter
- clause 5.1, requiring councillors to avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from the councillor
- clause 5.5(b), (c), (d) and clause 5.4, providing councillors must not seek gifts or benefits of any kind; accept any gift or benefit that may create a sense of obligation on their part or may be perceived to be intended or likely to influence them in carrying out their public duty; and accept any gift or benefit of more than a token value. Free or discounted travel is a gift or benefit of more than a token value.

For the purposes of s 9 of the ICAC Act, a “substantial” breach of the code of conduct is a reference to a breach that is not insubstantial or trivial. The Commission’s assessment of what constitutes a “substantial” breach of a code will depend on the facts and circumstances of each particular case. The word “substantial” is given its natural and ordinary meaning. The Butterworths *Concise Australian Legal Dictionary* defines “substantial” as being “real or of substance, as distinct from ephemeral or nominal; in a relative sense, considerable”. The Commission is satisfied that Mr Tsirekas “knowingly” breached the Council’s code of conduct and his conduct amounts to substantial breaches of that code.

In the Commission’s view, when conflicts of interest are not declared and properly managed by public officials, it undermines public confidence in local government and may impact the ability of councils to act in the best interests of the communities they represent.

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 fact 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.

Mr Tsirekas

Between November 2015 and February 2019, Mr Tsirekas sought and/or accepted benefits from the I-Prosperity Group and/or Mr Chidiac, including overseas flights and accommodation, to the value of at least \$18,800, as an inducement or reward for exercising his official functions to favour the interests of I-Prosperity in relation to planning matters affecting 1–9 Marquet Street and 4 Mary Street, Rhodes, that came before the Council during the periods he was mayor.

This conduct on the part of Mr Tsirekas was corrupt conduct for the purpose of s 8 of the ICAC Act as it is conduct that could adversely affect, either directly or indirectly, the honest or impartial exercise of his official functions and therefore comes within s 8(1)(a) of the ICAC Act. The conduct was also corrupt conduct within the meaning of s 8(1)(b) of the ICAC Act. It involved the dishonest and partial exercise of his official functions. Further, it was corrupt conduct within the meaning of s 8(1)(c) of the ICAC Act, as Mr Tsirekas exercised his official functions in breach of public trust.

In considering s 9(1)(a) of the ICAC Act it is relevant to have regard to the common law offence of misconduct in public office. The elements of this offence have been addressed in *R v Quach* (2010) 201 A Crim R 522 at 535 which decision was approved by the NSW Court of Criminal Appeal in *Obeid v R* [2015] NSW CCA 309 at 133. The Court confirmed that the elements of the offence are:

A public official;

1) in the course of or connected to his public office;

2) wilfully misconducts himself, by act or omission, for example, by wilfully neglecting or failing to perform his duty;

3) without reasonable excuse or justification, and;

4) 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.

The offence is made out if the public official is reckless as to whether the conduct was a breach of his or her duties as a public official or whether the public official knows the conduct was such a breach (see *R v Obeid* (No. 11) [2016] NSWSC 974). In *Macdonald v R* [2019] NSW CCA 32 at 72, the Court of Criminal Appeal stated that for the mental element of the offence of misconduct in public office to be made out, the prosecution must also prove beyond reasonable doubt that the transaction in question would not have been undertaken but for the improper purpose.

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has 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 Tsirekas committed the common law offence of misconduct in public office. His conduct therefore comes within s 9(1)(a).

The Commission is also satisfied, for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act, that, if the facts as found were to be proved on admissible evidence to the requisite standard of the balance of probabilities and accepted by an appropriate tribunal, there would be reasonable grounds on which such a tribunal could reasonably conclude that Mr Tsirekas had committed disciplinary offences giving rise to dismissal, being a substantial breach of the requirements of the code of conduct in relation to the requirements of the 2013, 2017 and 2019 iterations of the code of conduct. A substantial breach of the Council's code of conduct is a reference to a breach that is not insubstantial or trivial. Specifically, it could involve a substantial breach of the following clauses:

- clause 3.1(d) and (e), prohibiting acting in a way which is "improper" or "unethical" or is an abuse of power or otherwise amounts to misconduct
- clause 3.7, requiring councillors to avoid any occasion for suspicion of improper conduct in the development assessment process
- clause 4.2, requiring councillors to avoid or appropriately manage conflicts of interest – the onus being on councillors to identify a conflict of interest and take appropriate action to manage the conflict in favour of their public duty

- clause 4.3, requiring councillors, when they are considering whether or not they have a conflict of interest, to think about how others would view the councillors' position
- clause 4.12, requiring councillors to disclose non-pecuniary interests that conflict with their public duties fully and in writing as soon as practicable
- clause 4.16, requiring significant non-pecuniary conflicts of interest to be managed by councillors in one of two ways: removing the source of the conflict; or having no involvement in the matter by absenting themselves from and not taking part in any debate or vote on the matter
- clause 5.1, requiring councillors to avoid situations giving rise to the appearance that a person or body, through the provision of gifts, benefits or hospitality of any kind, is attempting to secure favourable treatment from the councillor
- clauses 5.5(b), (c), (d) and clause 5.4, providing councillors must not seek gifts or benefits of any kind; accept any gift or benefit that may create a sense of obligation on their part or may be perceived to be intended or likely to influence them in carrying out their public duty; and accept any gift or benefit of more than a token value. Free or discounted travel is a gift or benefit of more than a token value.

His conduct therefore comes within s 9(1)(b) of the ICAC Act.

Further, 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 Tsirekas committed 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 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 Tsirekas had committed disciplinary offences giving rise to dismissal, being substantial breaches of the requirements of the code of conduct as set out above. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

For the purposes of s 74BA of the ICAC Act, the Commission is satisfied that Mr Tsirekas' conduct is serious corrupt conduct. The conduct took place over a significant period of time from October 2015 to February

2019. Mr Tsirekas held a position of trust as mayor of the Council and his conduct involved a significant breach of trust. His conduct could impair public confidence in public administration. Mr Tsirekas' obvious motivation was personal gain. The conduct was deliberate and motivated by self-interest. The conduct could constitute or involve criminal offences, namely, the common law offence of misconduct in public office. The penalty for this offence is at large.

The Commission is further satisfied that, between November 2015 and February 2019, Mr Tsirekas deliberately failed to disclose a conflict of interest arising from his relationships with representatives of I-Prosperity and Mr Chidiac, when he knew he was required to do so. This conduct constitutes or involves a breach of public trust within the meaning of s 8(1)(c) of the ICAC Act, as Mr Tsirekas exercised his official functions in breach of public trust.

The Commission is also satisfied, for the purposes of s 9(1)(b) and s 9(1)(c) of the ICAC Act, that, if the facts as found were to be proved on admissible evidence to the requisite standard of the balance of probabilities and accepted by an appropriate tribunal, there would be reasonable grounds on which such a tribunal could find that Mr Tsirekas had committed disciplinary offences giving rise to dismissal, being a substantial breach of the requirements of the code of conduct in relation to the requirements of the 2013, 2017 and 2019 iterations of the code of conduct as set out above. It is a substantial breach of the code of conduct because Mr Tsirekas knowingly failed to disclose the conflict of interest.

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 Tsirekas had committed disciplinary offences giving rise to dismissal, being substantial breaches of the requirements of the code of conduct as set out above. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

For the purposes of s 74BA of the ICAC Act, the Commission is satisfied that Mr Tsirekas' conduct is serious corrupt conduct. The conduct took place over a significant period of time. Mr Tsirekas held a position of trust as mayor of the Council and his conduct involved a significant breach of trust. His conduct could impair public confidence in public administration. Mr Tsirekas' obvious motivation was personal gain. The conduct was deliberate and motivated by self-interest. The conduct could constitute or involve criminal offences, namely, the common law offence of misconduct in public office. The penalty for this offence is at large.

Mr Chidiac

Between December 2015 and February 2019, Mr Chidiac provided benefits to Mr Tsirekas as a reward or inducement to favour his or I-Prosperity's interests in relation to Council decisions regarding planning matters affecting 1–9 Marquet Street and 4 Mary Street, Rhodes. This conduct on the part of Mr Chidiac was corrupt conduct for the purposes of s 8(1)(a) of the ICAC Act because it was conduct that could adversely affect, either directly or indirectly, the honest or impartial exercise of Mr Tsirekas' official functions and therefore comes within s 8(1)(a) of the ICAC Act.

In considering s 9(1)(a) of the ICAC Act, it is relevant to consider s 249B(2) of the *Crimes Act 1900* (NSW) ("the Crimes Act"). Section 249B(2) provides:

- (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.
 - (3) *For the purposes of subsection (1), where a benefit is received or solicited by anyone with the consent or at the request of an agent, the agent shall be deemed to have received or solicited the benefit.*

The Commission is satisfied for the purpose of s 9(1)(a) of the ICAC Act that, if the facts it has 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 Chidiac committed offences contrary to s 249B(2) of the Crimes Act. 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 criminal standard of beyond reasonable doubt and accepted by an appropriated tribunal, there would be grounds on which such a tribunal would find that Mr Chidiac committed offences contrary to s 249B(2) of the Crimes Act. Accordingly, the jurisdictional requirement of s 13(3A) of the ICAC Act is satisfied.

For the purposes of s 74BA of the ICAC Act, the Commission is satisfied that Mr Chidiac's conduct is serious corrupt conduct because it involves conduct that could impair public confidence in public administration, it occurred over a significant period of time, the obvious motivation was personal gain and the conduct could constitute or involve criminal offences, including the offence pursuant to s 249B of the Crimes Act, the maximum penalty for which is seven years.

Section 74C(2) recommendation

Section 74C(2) of the ICAC Act provides that the Commission is authorised to include in a report under s 74 a recommendation that consideration be given to the suspension of a councillor from civic office under the LGA with a view to his or her dismissal for serious corrupt conduct. Section 440B of the LGA gives the governor of NSW the power to dismiss a councillor from civic office. The section states:

- (1) *The Governor may dismiss a person from civic office and disqualify the person from holding civic office for a period not exceeding 5 years if:*
- (a) *the Independent Commission Against Corruption, in a report referred to in section 74C of the Independent Commission Against Corruption Act 1988, recommends that consideration be given to the suspension of the person from office with a view to his or her dismissal for serious corrupt conduct, and*
 - (b) *the person is suspended from the civic office by the Minister under this Division, and*
 - (c) *the Minister advises the Governor that the dismissal of the person is necessary in order to protect the public standing of the council concerned and the proper exercise of its functions.*
- (2) *Before advising the Governor on a dismissal, the Minister is to give the person a reasonable opportunity to show cause why he or she should not be dismissed from civic office.*

Section 440A of the LGA defines serious corrupt conduct as conduct that may constitute a serious indictable offence, and must be conduct in connection with the exercise or purported exercise of the functions of a civic office. The Crimes Act defines a serious indictable offence as an indictable offence punishable by imprisonment for life or for a term of five years or more.

The Commission is of the opinion that consideration should be given to the suspension of Mr Tsirekas from civic office with a view to his dismissal in relation to the serious corrupt conduct that is the subject of the corrupt conduct finding against Mr Tsirekas in this chapter. This recommendation under s 74C(2) of the ICAC Act is necessary because the Commission is of the opinion that prompt action is required in the public interest.

Section 74A(2) statements

Mr Tsirekas and Mr Chidiac are "affected" persons for the purposes of s 74A(2) of the ICAC Act.

Angelo Tsirekas

The evidence Mr Tsirekas gave was subject of a direction under s 38 of the ICAC Act and therefore it cannot be used against him in criminal proceedings, except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including mobile telephone extraction reports, lawfully intercepted telephone conversations, Council records, financial records and the evidence of other witnesses.

The Commission is of the opinion that the advice of the DPP should be sought with respect to the prosecution of Mr Tsirekas for an offence of misconduct in public office and offences pursuant to s 249B of the Crimes Act.

The Commission is also of the opinion that the advice of the DPP should be sought with respect to the prosecution of Mr Tsirekas for offences of providing false or misleading evidence to the Commission contrary to s 87 of the ICAC Act, when:

- during Mr Tsirekas' compulsory examination on 7 April 2022, he said he did not recall going to Mr Huang's wedding in January 2016
- during Mr Tsirekas' compulsory examination on 7 April 2022, he said he could not recall travelling out of Shanghai to Nanjing in January 2016
- during the public inquiry, on 31 May 2022, Mr Tsirekas gave evidence that he did not know what Mr Chidiac did for a job or what sort of work he had performed over recent years

- during the public inquiry, on 2 June 2022, Mr Tsirekas denied that he knew that Mr Gu had a role in I-Prosperity and did not know his position or role as at August 2016.

Joseph Chidiac

The evidence Mr Chidiac gave was subject of a direction under s 38 of the ICAC Act and therefore cannot be used against him in criminal proceedings, except for offences under the ICAC Act. There is, however, other admissible evidence that would be available, including mobile telephone extraction reports, lawfully intercepted telephone conversations, Council records, financial records and the evidence of other witnesses.

The Commission is of the opinion that the advice of the DPP should be sought with respect to the prosecution of Mr Chidiac for offences pursuant to s 249B of the Crimes Act and an offence of aid and abet misconduct in public office.

The Commission is also of the opinion that the advice of the DPP should be sought with respect to the prosecution of Mr Chidiac for offences of providing false or misleading evidence to the Commission contrary to s 87 of the ICAC Act, when:

- on 20 June 2022, he was asked questions as to why Mr Tsirekas would be joining him and Ms Li in a catch up in January 2016 because he enjoyed Mr Tsirekas' company
- on 20 June 2022, he gave evidence that the reason that he wanted Mr Tsirekas at a meeting with Ms Li and Mr Gu was to ask Mr Gu to sponsor the Wests Tigers
- on 20 June 2022, he gave evidence that he could not recall attending the I-Prosperity Christmas party in 2016 after being shown evidence that demonstrated that he and Mr Tsirekas attended
- on 20 June 2022, he gave evidence that he could not recall who paid for his travel expenses to Shanghai in August 2016
- on 20 June 2022, he gave evidence that it was not obvious from text messages between he and Ms Li that he was arranging meetings involving Mr Tsirekas about the I-Prosperity planning proposal
- on 21 June 2022, he said that I-Prosperity had not provided hospitality in Shanghai
- on 21 June 2022, he gave evidence that it would be a bonus if Mr Gu and Mr Huang were in China because he could discuss Wests Tigers sponsorship.

Chapter 5: Billbergia and Prolet

This chapter examines an allegation that, since 2012, Mr Tsirekas partially exercised his official functions to favour the interests of Billbergia, Prolet and Mr Chidiac in relation to planning matters affecting them, and deliberately failed to declare or properly manage any conflict of interest arising from his relationships with representatives of Billbergia, Prolet and Mr Chidiac.

Billbergia and Prolet's interests in Rhodes

The Billbergia Group ("Billbergia") can be broadly described as a property development company. John Kinsella is the managing director of the group of companies under the Billbergia umbrella. The principal company is Billbergia Pty Ltd, which was first registered with ASIC on 26 October 1988. Billbergia bought its first property in about 1988 or 1989. Mr Kinsella is a self-taught carpenter with no tertiary qualifications. The other directors of Billbergia are Mr Kinsella's brother and son.

Prolet Constructions Pty Ltd ("Prolet") is a construction company that was first registered with ASIC on 15 April 2008. Prolet is predominately involved with residential developments under nine storeys and of between 40 and 60 units. It has also undertaken small commercial developments. Joseph Jacob and Pierre Jacob are brothers who run Prolet.

Pierre Jacob is the sole director and a licensed builder, who oversees Prolet's construction work.

Joseph Jacob is a property developer who has been employed by Prolet for 12 to 15 years. He has no direct or indirect ownership interest in Prolet but is responsible for all matters that are not related to construction. His role as "project manager" includes overseeing a project, arranging finance (including via presales), marketing and arranging sales agents. He reports to Pierre Jacob. Joseph Jacob is

the director of other companies associated with the Jacob brothers and/or Prolet: New Sphere Pty Ltd, Zonder Pty Ltd, Zellig Pty Ltd, Jomie Holdings Pty Ltd, Not Juste Pty Ltd, and Rhodes Design and Construct Pty Ltd. He was also the director of Centrum Properties Pty Ltd but it has since been sold to a company related to Billbergia.

The Commission accepts assessments of credit made by the presiding Chief Commissioner, the Hon Peter Hall KC, in relation to Joseph Jacob. The former Chief Commissioner had regard to a number of factors in determining the credibility of a witness and the evidence they gave. Overall, Joseph Jacob was a poor witness, who lacked credibility. His evidence was not accepted unless corroborated by independent and objective evidence or given against his interest. He was a witness who regularly gave non-responsive answers to a question and/or dissembled when answering questions. The answers given to many questions were implausible in light of the probabilities pertaining to such events and the objective and contemporaneous documents that exist.

Pierre Jacob did not give evidence at the public inquiry.

Billbergia and Prolet's interests in Rhodes

There was no dispute that, since 2012, Billbergia (and associated companies) put planning proposals to the Council, including a proposal or proposals in respect of the development of the land it owned in an area known as Rhodes West or the Station Precinct ("the Rhodes West Station Precinct"). Further, in December 2018, another matter came before the Council that affected Billbergia, namely, a recreation centre proposed by Billbergia to be built pursuant to a VPA (discussed in more detail later in this chapter). In February 2019, further matters came before the Council relating to land owned by Billbergia and/or Prolet (or their related companies).

On each occasion when matters affecting Billbergia and/or Prolet came before the Council, Mr Tsirekas attended the Council meeting and voted but made no declaration or disclosure of any relationship he had with persons connected with Billbergia (for example, Mr Kinsella), Prolet (for example, Joseph and Pierre Jacob) or Mr Chidiac, who had been engaged by Billbergia and by companies related to Prolet in respect of the land situated in Rhodes East.

The relevant interests of Billbergia and Prolet are described below.

Billbergia's interests in Rhodes

Billbergia owned a significant area of land in the Rhodes West Station Precinct. From 2012, Billbergia negotiated with the Council in relation to its planning proposal connected with this land and the terms of its planning agreement with the Council.

Mr Kinsella said that Billbergia commenced purchasing land in Rhodes in about 2002, in an area west of the railway station, referred to above as the Rhodes West Station Precinct. He said Billbergia last purchased land in the Rhodes West Station Precinct in around 2015 or 2016. Mr Kinsella gave evidence that "quite a lot" of the land was chemically contaminated and required remediation. He elaborated that, after a lengthy planning process, construction for redevelopment began in around 2016 or 2017, including two years of excavation. Billbergia's first two buildings for this development were completed in 2021: Building A and Building B. This site was contiguous to the proposed I-Prosperity site in the Rhodes West Station Precinct. Mr Kinsella said that Building A was 36 or 37 storeys tall, and included a heliostat, while Building B was about 25 or 26 storeys. Mr Kinsella gave evidence that Building A consisted of about 300 residential units with a shopping centre on ground level, and Building B consisted of about 250 to 260 units. Mr Kinsella stated

that Billbergia is currently constructing Buildings D and E, which will include a recreation centre for the Council as part of the planning agreement for its Rhodes West Station Precinct developments. Billbergia intends to construct Building C between Buildings D and E.

Mr Kinsella gave evidence that Billbergia also acquired properties east of Rhodes Railway Station on Blaxland, Concord, Denham, Leeds and Llewellyn Streets ("Rhodes East"). He estimated that Billbergia acquired approximately seven hectares of land (an area which was larger than the two hectares acquired by Billbergia in the Rhodes West Station Precinct). Billbergia has not yet redeveloped any of its Rhodes East holdings and, at the time of the public inquiry, was considering whether it was "worth redeveloping".

Prolet's interests in Rhodes

From about mid-to-late-2014, companies associated with Prolet purchased properties in Rhodes East. The properties comprised about 4 per cent of Rhodes East. The companies sold some of these properties in 2018 and 2019, and the others were sold in late-2021. At the time of the public inquiry, Prolet and associated companies owned about seven properties in the Rhodes East area.

Joseph Jacob said he was responsible for identifying and purchasing the Rhodes East properties with the assistance of real estate agents. Joseph Jacob gave evidence that the properties were purchased as a "land bank" with "future potential", partly because of the possibility that they could be amalgamated and sold to a larger development company for capital gain. Although the properties were not developed prior to sale, another potential use of the properties was development or redevelopment by Prolet. Joseph Jacob said that Prolet has not developed any properties in the Council area since 2014.

Potential joint venture between Billbergia and Prolet in Rhodes East

Mr Kinsella gave evidence that the idea to discuss a Billbergia/Prolet joint venture “probably” arose from him and Joseph Jacob mentioning in passing different possibilities for “making the (Rhodes East) area work”. When asked whether the joint venture was Mr Chidiac’s idea, Mr Kinsella said that “He [Joseph Chidiac] didn’t say a lot to me [him] about it” but early in Billbergia and Prolet’s relationship, when Billbergia and Prolet’s land in Rhodes was still intermingled, Mr Chidiac had suggested that a joint venture would be the best way to manage that. During the public inquiry, Mr Kinsella was shown calendar entries extracted from his mobile telephone, which showed meetings scheduled for June and July 2018 to discuss the Billbergia/Prolet joint venture. He said he could not recall actual discussions about the joint venture but they “obviously” took place. He agreed that, based on the calendar entry, a meeting was intended for June 2018 but said that he would have spoken to the Jacob brothers “a long time before that”.

Mr Kinsella gave evidence that, in about June 2018, he was having “more involvement and discussions” with Joseph Jacob about how each of their companies’ contributions to and returns from the potential joint venture would be apportioned based on the percentage of land held by their respective companies.

He said they discussed at the time the infrastructure to be developed as part of the joint venture. He said plans for this infrastructure were negotiated with the NSW Government and, to a lesser extent, with the Council and Billbergia, who were initially “looking at [building] ferry wharves and schools”, but the plans were a constantly moving target.

Mr Kinsella said that, by July 2018, discussions between the companies were on the basis that the subject land would be rezoned in a way that would allow Billbergia and Prolet to collaborate productively. He added that there were other factors at play and the possibility of the joint venture proceeding was “subject to it working for both parties”.

Joseph Jacob also said there were discussions between Billbergia and Prolet about a joint venture. He obtained accounting advice from Frank Bruzzano, a friend and associate, who reviewed the terms of a draft joint venture agreement produced by Billbergia. Mr Bruzzano advised against the agreement, as it contained clauses not in Prolet’s best interests, but did not attend any meetings with Billbergia. Joseph Jacob was definite that Mr Tsirekas had no involvement. Ultimately, according to Joseph Jacob, no joint venture eventuated between Prolet and Billbergia.

Mr Chidiac’s relationship with Billbergia and Prolet

Mr Chidiac’s relationship with Billbergia

Despite the absence of a written agreement, between September 2015 and July 2018, Billbergia paid \$550,000 to Mr Chidiac.

Mr Chidiac gave evidence that he was engaged to help Billbergia solve problems or disputes. One dispute that he helped resolve for Billbergia related to negotiating with I-Prosperty to install rock anchors that would extend to their property. Mr Chidiac said he was paid \$220,000 for helping Billbergia resolve this dispute. Mr Chidiac’s evidence was that he also “helped [Billbergia] pick up or purchase multiple properties”. He helped by arranging for real estate agents to knock on the doors of houses and purchase properties for Billbergia. If Billbergia purchased a property in this way, it paid Mr Chidiac, and he also received a small commission from the real estate agent. He said Billbergia paid him \$330,000 for these services.

Mr Kinsella’s evidence was broadly consistent with Mr Chidiac’s evidence as to the services Mr Chidiac provided to Billbergia. Mr Kinsella could not recall when he met Mr Chidiac, only that it was “years ago”. He described Mr Chidiac as “a real networker” who introduced people to others who would find their skills valuable. He said Billbergia used Mr Chidiac’s skills for property acquisition, which Mr Kinsella described as a field with an abundance of both opportunity and competition. Mr Kinsella gave evidence that Mr Chidiac also referred tradespersons and suppliers to Billbergia, saying, “generally one-to-one introductions probably does give the person that’s introducing the other side maybe a little bit more of a leg in”. When asked how Mr Chidiac was to help Billbergia, Mr Kinsella said that “he would be able to help pick up land”; Billbergia’s business strategy tended to be long-term and it could be difficult to acquire the wanted development sites. He had expected Mr Chidiac to assist Billbergia with acquiring properties in Rhodes East, as did other Billbergia agents, including licensed real estate agents, who would go “knocking on doors, trying to get properties”. When asked why Billbergia needed Mr Chidiac’s assistance to acquire properties in Rhodes East, when it had already acquired property in the Rhodes West Station Precinct as early as 2002, Mr Kinsella said that, in the Rhodes West Station Precinct, Billbergia dealt with “about six or seven landowners” while in Rhodes East there were “hundreds of people”. Further, “because Billbergia had been in Rhodes for a long time” and was “seen as a big player”, vendors who knew of Billbergia’s interest would want to charge Billbergia a premium for property.

Mr Kinsella said that he was the Billbergia representative with whom Mr Chidiac had conversations regarding what services Mr Chidiac would provide Billbergia. He agreed that he would have had a conversation with Mr Chidiac in which Mr Chidiac told him about skills and experience that he (Mr Chidiac) had in acquiring properties. Mr Kinsella said that Mr Chidiac “probably said he could assist ... in negotiating property”. Mr Kinsella’s recollection was that, at the time of these conversations, no fee structure was negotiated and there was no discussion as to what Mr Chidiac would charge or Billbergia would pay. Mr Kinsella said that Mr Chidiac was not on retainer and the relationship was a “do-and-charge” in which Mr Chidiac would do a job then send Billbergia his bill. In effect, Mr Chidiac determined his own fee and “if I [Mr Kinsella] thought it was a good deal, I wouldn’t argue it”. In terms of what made a “good deal”, Mr Kinsella said location and price were equal factors.

When asked what Mr Chidiac actually did, Mr Kinsella described a typical exchange:

[Chief Commissioner]: And when you said he would provide services in respect of acquiring properties, what sort of services specifically?

[Mr Kinsella]: How he acquired the properties, I don’t, he obviously knocks on doors or gets other people to knock on doors from his sphere of influence and, “Come on, listen, you, you can buy [a particular property] for, I’ll be able to get you that site for \$3 million and I, I happen to have the one next door.” I say, “Sure, that’s a pretty good deal. I’m happy with that. Let’s do it,” that kind of thing.

Despite initially stating that he did not believe that Mr Chidiac provided any other services to Billbergia, later in the public inquiry, when Mr Kinsella was asked what other services Mr Chidiac provided as time went by, he said that Billbergia had “a real sticky issue” in relation to properties adjacent to Billbergia’s Building A and Building B sites on Mary Street in the Rhodes West Station Precinct. Mr Kinsella said there was a dispute with I-Prosperity, the owners of the neighbouring land, regarding rock anchors, that was causing Billbergia significant delays in construction. Mr Kinsella said that Mr Chidiac was involved in trying to negotiate the dispute. Later in the public inquiry, Mr Kinsella said that Mr Chidiac’s role in the anchor dispute was to talk to I-Prosperity. Mr Kinsella understood Mr Chidiac to have a relationship with I-Prosperity, although he did not know the nature of the relationship.

Mr Kinsella said Mr Chidiac introduced Billbergia to Pierre and Joseph Jacob. When asked the purpose of the introduction, Mr Kinsella said that the Jacob brothers had been acquiring property in Rhodes East before Billbergia and emphasised the importance of knowing other parties in the area, as their position could affect the ease with which land could be consolidated for redevelopment. Mr Kinsella said that, after the introduction, Mr Chidiac may have casually advised that Billbergia should work together with the Jacob brothers and may have tried to “push” them to do a joint venture. He said that steps were, in fact, taken to work with the Jacob brothers but Mr Chidiac was not involved with those negotiations and it was “fair to say” that Mr Chidiac did not provide any services beyond the introduction. He said that, to his knowledge, Mr Chidiac did not provide any strategy services.

Mr Kinsella said that, to the best of his knowledge, this was the extent of services Mr Chidiac provided to Billbergia and he could not recall any other services.

Mr Chidiac’s relationship with Prolet

Joseph Jacob could not recall exactly when he met Mr Chidiac but did recall that he met him prior to 2014 at a local function in the Rhodes/Drummoyne area. Prior to mid-to-late-2014, he had no dealings with Mr Chidiac on either a personal or business level. Joseph Jacob gave evidence that, in late-2014 or early-2015, Mr Chidiac introduced Prolet to Billbergia. He understood that Mr Chidiac was acting on behalf of Billbergia. He said that, at the time, Prolet saw Billbergia as a prominent developer with greater capabilities than Prolet. By mid-2016, Prolet considered that it had no prospect of redeveloping its Rhodes East property holdings without contributing to local infrastructure, including a new primary school. At that point, following Mr Chidiac’s introduction, Prolet started to discuss a possible joint venture with Billbergia. The discussions were between Joseph Jacob, Mr Kinsella and other Billbergia staff, with Mr Chidiac participating in meetings from time to time between 2016 and late-2018. Joseph Jacob agreed he had spoken to Mr Chidiac on “many, many occasions” between 2016 and 2019.

Joseph Jacob stated that Mr Chidiac asked him and Pierre Jacob for an agreement with Prolet and its associated companies to pay Mr Chidiac’s company, Online Security Services, an introduction fee should Prolet and Billbergia successfully enter into a joint venture. Joseph Jacob said Mr Chidiac had suggested that he would, on retainer, negotiate the joint venture with Billbergia on behalf of Joseph Jacob and his associated companies. He understood that Mr Chidiac also had a relationship with Billbergia, although he did not know the extent of the relationship or whether there was a contract between

Mr Chidiac and Billbergia. Mr Chidiac provided Prolet with a draft agreement that provided for Mr Chidiac to be given an apartment and for Prolet to pay Mr Chidiac a yearly fee if and when a joint venture eventuated. He considered that what Mr Chidiac was seeking was “very minimal” compared to the potentially lucrative “final outcome” of the proposed joint venture. Joseph Jacob said Mr Chidiac was seeking “some yearly retainer fee and then, if the joint venture ended up happening, some property as well”. The fee was in the range of \$120,000. Joseph Jacob agreed that Mr Chidiac had no planning experience: he did not profess to have any skills other than to put people in touch with each other and help them to come to agreement on price. In other words, he was a “person to introduce, negotiate, just nothing else”. Joseph Jacob said Prolet ultimately did not pay Mr Chidiac:

[Chief Commissioner]: It'd be outrageous, wouldn't it, to be suggesting he'll be paid over \$100,000 a year just introducing people and negotiating?

[Mr Jacob]: No, no, Chief, the reason why we didn't pay it is because I was expecting him to negotiate it with Billbergia, which he didn't do.

[Q]: Anyway, in short, did you see it as absolutely ridiculous that this man was trying to muscle in and get a share of the action when he really wasn't, didn't profess to have any qualifications in town planning, joint venture matters, commercial matters?

[A]: Yes, Chief Commissioner.

The Commission seized two draft agreements during a search warrant executed at Mr Chidiac's premises. When shown them during the public inquiry, Joseph Jacob recognised them as draft agreements between his associated companies and Mr Chidiac's company, but could not recall whether he had read the draft agreements. He said that he did not take much notice of the draft agreements as “there needed to be a lot of mountains to climb” before a joint venture with Billbergia and any associated agreement with Mr Chidiac eventuated. During a compulsory examination on 5 May 2022, he said that neither he nor his brother signed any agreement with Mr Chidiac on behalf of any company associated with Prolet.

Late in the public inquiry, after Joseph Jacob had given evidence, Mr Chidiac produced two written agreements between Online Security Services and companies related to Prolet. The agreements were executed by Mr Chidiac,

Joseph Jacob and Pierre Jacob, and witnessed by Mr Bruzzano. Joseph Jacob was not questioned about the inconsistency between this evidence and the documents produced by Mr Chidiac as they were produced after he had given evidence.

The agreements between Mr Chidiac and the Prolet-related companies are in similar terms and form to Mr Chidiac's agreement with I-Prosperity. Each of the agreements with Prolet companies was to commence on 23 June 2014 and expire on 23 June 2019. Each agreement provides for the engagement of Mr Chidiac as an independent contractor and payment of an annual retainer of \$120,000 exclusive of GST for Mr Chidiac's services (broadly and vaguely defined, as in the I-Prosperity agreement) and an amount based on the profit obtained from sale of the property the subject of the agreement. In addition, one of the Prolet agreements provided that Mr Chidiac was entitled to receive two apartments (or the equivalent market value of those apartments if not provided within a defined period) in a development constructed on the land the subject of the agreement.

Mr Chidiac's evidence was that, when he met Joseph Jacob in 2014, Joseph Jacob explained that Prolet was a property developer and was looking to acquire properties around train stations because the state planning minister had foreshadowed greater development in those areas. Mr Chidiac said that he advised Joseph Jacob that Billbergia was the “main player” in Rhodes and that competition for properties would become expensive, so Prolet should engage with Billbergia first. Mr Chidiac said he relayed Mr Kinsella's message to Joseph Jacob and thereafter helped Joseph Jacob to acquire properties in Rhodes East.

Mr Chidiac accepted that the signed agreements provided for companies associated with the Jacob brothers to pay him a retainer commencing on 23 June 2014 and that the signed agreements suggested a commercial relationship between him and companies associated with Prolet began on that date. He said, however, that his relationship with Prolet had begun earlier, although he could not say when. Mr Chidiac said he was not paid the retainer fee stipulated in the agreement. In 2022, he made a demand but did not ask for a specific amount. Rather, according to Mr Chidiac, his accountant was an associate or employee of Mr Bruzzano and, while they were meeting, Mr Chidiac chanced upon Mr Bruzzano:

[Mr Chidiac]: ... I happened to run into Frank Bruzzano in his office. I walked in. Hadn't seen him for a while. I said, "I hear that Prolet have sold their landholding in Rhodes." Can't remember his response, he tried to brush me off and I said,

“Look, I’ve got a contract, I’m entitled to something out of that sale.” He said, “I don’t know what you’re talking about” and he walked out.

Mr Chidiac recognised his own signature on the final page of the document and said it was signed by Pierre and Joseph Jacob and witnessed by Mr Bruzzano. Mr Chidiac believed that he was present when the Jacob brothers signed the document but could not recall whether Mr Bruzzano was present.

The Commission rejects Joseph Jacob’s evidence that he did not sign the agreements between Prolet-related entities and Mr Chidiac’s company. He was not a credible witness and the Commission accepts the signed contracts as genuine. There was no evidence to suggest they were not genuine.

There is no evidence that any of the Prolet companies paid Mr Chidiac any amount under the agreements. The evidence is that there is a dispute between Mr Chidiac and Prolet about his entitlement under the agreements.

Mr Tsirekas’ knowledge of Mr Chidiac’s involvement with Prolet and Billbergia

Mr Tsirekas accepted that, between 2015 and 2019, Mr Chidiac was present at a number of events involving Mr Tsirekas and developers wanting to do work in the Council area, but said he had no knowledge of Mr Chidiac’s role with any developer interests. He disputed the suggestion that he must have known of Mr Chidiac’s role given that he had met, dined with, and travelled to Shanghai with Mr Chidiac and such developers.

Mr Tsirekas said he had not known of Mr Chidiac’s involvement with Billbergia, his role, or that Mr Chidiac was paid in excess of \$500,000 by companies associated with Billbergia. He denied that he knew that Mr Chidiac had a commercial arrangement with Billbergia and said Mr Chidiac never told him of one. He said that he learned that Mr Chidiac had a commercial arrangement with Billbergia when he heard that evidence during the public inquiry. Mr Tsirekas accepted that “it appeared” Mr Chidiac was assisting Billbergia with matters before the Council.

Initially, Mr Tsirekas agreed that it was apparent to him at the time that Mr Chidiac was attending meetings and events because he had an interest in certain planning matters. He said there was “clearly” a friendship between Mr Chidiac and Joseph Jacob but also said he “did not know the depth of their relationship”. Later, when it was put to Mr Tsirekas that Mr Chidiac’s actions alone would make clear his interest, Mr Tsirekas equivocated:

[Chief Commissioner]: But it was clear just from his actions he’s present at meetings that were discussing planning issues, that he indicated by his presence on those occasions an interest in what was going on relating to certain planning matters from time to time?

[Mr Tsirekas]: Yeah, and again, Commissioner, I agree, you’d have to ask him what his role was.

[Q]: Is that a fair statement as I’ve put it to you?

[A]: Well, not, not really, Commissioner.

[Q]: Is that a fair, a fair summation?

[A]: Not, not really, Commissioner.

Mr Tsirekas said he never attended Council meetings with Mr Chidiac, but he seemed to accept that, in interactions outside Council meetings, including through electronic communications, Mr Chidiac showed an interest in the Council’s planning matters.

When Mr Tsirekas was asked why he did not disclose his friendship with Mr Chidiac when he knew that Mr Chidiac had some involvement in projects, including with Billbergia and Prolet, Mr Tsirekas reverted to saying that he did not know of his involvement, only that he had “friendships”, including with Joseph Jacob. However, when asked why Mr Tsirekas did not disclose his relationship with Mr Chidiac in light of Mr Chidiac’s relationship with Joseph Jacob and Mr Bruzzano, Mr Tsirekas denied awareness of the relationships:

[Counsel Assisting]: My question is why didn’t you disclose or declare the fact that you had a relationship with this individual who had a relationship or friendship with these other persons, why didn’t you disclose that?

[Mr Tsirekas]: Again, those relationships that he had with those people that you’ve mentioned I wasn’t aware of, and the involvement, and so I didn’t need to disclose that.

Mr Tsirekas said it was not unusual for Mr Chidiac to send messages to him on behalf of others. He said that receiving such messages was part of his role as mayor and his practice was to direct them to his personal assistant,

the general manager, or the relevant director. However, he said Mr Chidiac did not act for or make representations on behalf of corporate developers.

The Commission rejects Mr Tsirekas' evidence that he had no knowledge of Mr Chidiac's commercial arrangements with Billbergia and Prolet. The Commission is satisfied that Mr Tsirekas was fully aware of Mr Chidiac's role with Billbergia and Prolet. Mr Tsirekas was a witness of no credit and his evidence on this issue was implausible.

Mr Tsirekas' interactions with Billbergia

Mr Kinsella gave evidence that, as at February 2019, he did not believe he had a "friendship relationship" with Mr Tsirekas. He said Mr Tsirekas was the mayor and Billbergia treated him in a "courteous, friendly manner". When asked to describe the relationship, he responded "Relationship, we didn't have a relationship, sir". Mr Kinsella said he never visited Mr Tsirekas' home or vice versa. Mr Kinsella initially could not recall with certainty if he had Mr Tsirekas' mobile telephone number but, after viewing messages between them, said he "obviously" had or received his number. He said he was "sure" he had Mr Chidiac's telephone number. He was familiar with the WhatsApp application but claimed he did not send a lot of messages with his telephone.

The Commission undertook an analysis of the evidence to determine the nature of the relationship between Mr Tsirekas and Mr Kinsella.

Mr Tsirekas is a "toothless tiger"

On 2 January 2018, the then general manager of the Council, Mr Sawyer, wrote to Murray Donaldson of Urbis Pty Ltd in relation to a revised planning proposal submitted to the Council by Billbergia. Mr Kinsella confirmed that Urbis provided advice to Billbergia. The Council's letter sought the modification of the planning proposal for the Rhodes West Station Precinct, including in relation to the building height and density, the timely delivery of the recreation centre under the VPA, and traffic generation. The letter stated that, subject to the satisfactory resolution of those issues, the amended planning proposal would be reported to the Council with a recommendation to progress the application to the Department for gateway determination.

On 9 January 2018, at 3:05 am, Mr Donaldson forwarded the letter to Bill McGarry of Billbergia. On 9 January 2018, at 6:16 pm, Mr McGarry wrote to Mr Kinsella:

John

*Lets [sic] read this a couple of times and devise a strategy. **Obviously the mayor has no influence on council officers, he is a toothless tiger** [emphasis added].*

The current politics I do not understand it seems to be counter intuitive. Please do not show this other parties [sic] as we need to develop a strategy with out [sic] everybody understanding our position.

On 9 January 2018, at 10:55 pm, Mr Kinsella forwarded the email to Mr Tsirekas with no message attached. Then, at 11:28 pm, he forwarded the email again to Mr Tsirekas with the following message:

Mr mayor this is bull shit excuse the French is the council serious about getting some reasonable development on marquet [Marquet Street, Rhodes] or is it best left industrial as a Builder's yard as this is more practical than the council is suggesting what the council staff is suggesting does not work and cannot work what a waste of time.

On 10 January 2018, at 10:59 am, Mr Kinsella called Mr Tsirekas' mobile telephone and left a voicemail message:

Oh Angelo ah this is ah John Kinsella, ah just ringing to wish you happy new year and all the best (UNINTELLIGIBLE) I hope you're enjoying your break. And ah we might have a chat sometime about a – a letter that came from ah Gary and I'm assuming Tony ah – on the, the voluntary planning agreement for Marquet Street. Anyway, we'll talk soon, thank you bye.

On 11 January 2018, Mr Tsirekas forwarded the email chain to Mr Chidiac with no message.

Mr Kinsella gave evidence that "we [Billbergia] have actually reached out to him [Mr Tsirekas] to explain that to him ... what we were doing" in relation to planning matters Billbergia had before the Council, such as the VPA. Mr Kinsella initially said letters like Mr Sawyer's letter of 2 January 2018 went to Billbergia's consultants and he "wouldn't even have seen this letter". However, when he was shown an email chain dated 9 January 2018, starting with an email from Mr Donaldson to Mr McGarry of Billbergia at 3:05 am attaching Mr Sawyer's letter of 2 January 2018, Mr Kinsella denied having any conversation at the time with Mr McGarry about Mr Tsirekas' influence or lack thereof on Council officers. He said he had "no idea" why Mr McGarry referred to Mr Tsirekas as a "toothless tiger" and said he had never heard

Mr McGarry refer to Mr Tsirekas as a “toothless tiger”. When asked whether he had wanted or hoped that Mr Tsirekas could influence Council officers in relation to the Rhodes West Station Precinct, Mr Kinsella said he “would like” Mr Tsirekas to have a positive influence, but he had not been depending on it. Mr Kinsella said Billbergia showed things to councillors but they had to be able to persuade Council staff. At the time, he was not trying to foster a relationship with Mr Tsirekas in order to have Mr Tsirekas assist Billbergia by persuading Council staff.

When Mr Kinsella was shown his “bull shit excuse the French” email of 9 January 2018 at 11:28 pm, he said he “vaguely remember[ed]” sending it. When asked why he sent this email to Mr Tsirekas, at first he elaborated on the planning issues Billbergia was facing at the time but then gave the following evidence:

[Counsel Assisting]: So you forward the message where you say. “Mr mayor, this is bullshit, excuse the French. Is the council serious?” Now, why are you doing that?

[Mr Kinsella]: Well, the mayor is the top person in council and we obviously thought what has come out of it was bullshit.

When asked why he did not express this view to Mr Sawyer directly, Mr Kinsella said that he was “sure we did that too”. He could not say why he forwarded what appeared to be an internal private email exchange between himself and Mr McGarry to Mr Tsirekas, only reiterating that it was sent from his mobile telephone as he did not use personal computers. He accepted that he ultimately wanted Mr Tsirekas to facilitate a different outcome from the Council.

After hearing the voicemail message of 10 January 2018, Mr Kinsella accepted that, at least as of that date, he did have Mr Tsirekas’ telephone number despite his earlier lapse in recollection during the public inquiry. Mr Kinsella accepted that the voice message he left for Mr Tsirekas on 10 January 2018 at 10:59 am concerned the letter from Mr Sawyer dated 2 January 2018. When asked what he had been planning to discuss with Mr Tsirekas regarding the planning agreement, Mr Kinsella said it could have been “several things” but it “possibly was about” the leisure centre, which Billbergia had agreed to construct for the Council as it was “a very big item” for residents in the area. Mr Kinsella said that initially Billbergia had marketed the leisure centre as having amenities like swimming pools but when the planned uses of the leisure centre changed, which he said was because of the Council rather than Billbergia, Billbergia started “getting a lot of flak over it”. Mr Kinsella could not recall whether he ever

had a conversation with Mr Tsirekas in which he had the opportunity to discuss the letter but said it was possible. When asked whether he was trying to use the relationship he and Billbergia had with Mr Tsirekas in order to assist Billbergia in relation to the response from Council staff, Mr Kinsella said he would have done the same with any mayor and, in addition, it is probable that he would have tried to get a meeting with council staff “and perhaps higher up” to manage the issues. He accepted that, after the letter from Mr Sawyer, he saw an opportunity to have “some constructive discussions” with Mr Tsirekas to see whether issues raised in the letter could be negotiated.

Mr Tsirekas was asked about the same January 2018 chain of correspondence. When asked why he forwarded the email chain to Mr Chidiac, Mr Tsirekas said that, at the time, Mr Chidiac had been contacting him to “organise something in regards to the planning proposal” and was telling him that Mr Kinsella and Mr McGarry were “not happy with Council’s position”, so he forwarded the email chain to keep Mr Chidiac informed. As outlined earlier in this chapter, Mr Tsirekas denied knowledge of Mr Chidiac’s relationship with Billbergia. When asked why Mr Chidiac would be contacting Mr Tsirekas to say that Mr Kinsella was unhappy, Mr Tsirekas gave evidence to the effect that Mr Chidiac was passing on messages on behalf of Billbergia. Mr Tsirekas accepted that “it appeared” Mr Chidiac was assisting Billbergia in certain matters before the Council but said he did not know to what level and what understanding Mr Chidiac and Billbergia had with each other.

Mr Tsirekas said he “may have” discussed the observation by Mr McGarry that Mr Tsirekas was a “toothless tiger” with Mr Chidiac, but he could not recall why he may have done so. He denied that he forwarded the “toothless tiger” email to Mr Chidiac to let Mr Chidiac know that his client (Billbergia) had concerns about Mr Tsirekas’ ability to influence the Council, or because Mr Chidiac would want to know if Billbergia had concerns about Mr Tsirekas’ ability to influence Council officers. He denied he was worried that, if Billbergia had concerns about Mr Tsirekas’ ability to influence Council officers, then this might affect Mr Chidiac’s commercial arrangements with Billbergia. When asked what he thought of Mr McGarry’s comments, Mr Tsirekas said Mr McGarry “was a very strong advocate and he spoke his mind. They had one direction they wanted to pursue and, for whatever reason, Council officers were not agreeing”. When asked whether he agreed he was a “toothless tiger” he said it was “not a pleasant comment but the Mayor has no role in determining planning outcomes or directing planning”. Mr Tsirekas said that, in effect, Mr McGarry advocated for a position that was not what the Council considered to be in the public interest. Mr Tsirekas could not recall whether he actively did anything to disabuse

Mr McGarry’s notion about whether Mr Tsirekas as mayor had influence over Council officers. He could not remember sending Mr Kinsella’s email to Mr McNamara or Mr Sawyer but said that his “general way” to “deal with things like this” would have been to just send them a message. When examined by his senior counsel, Mr Tsirekas said that his “general way” was to “bring the parties together to mediate”. When asked by the Chief Commissioner who the “parties” were, Mr Tsirekas said it was Billbergia and the Council and he was “there to try to mediate and get the parties together”. When the Chief Commissioner put to Mr Tsirekas that it was not the mayor’s role to treat the Council and developers as two parties and mediate, Mr Tsirekas denied he was mediating and said again he would “try to get the parties together”.

Text messages

Text message conversations between Mr Kinsella, Mr Tsirekas and/or Mr Chidiac were examined during the public inquiry.

There was evidence in these text messages of meetings arranged directly between Mr Kinsella and Mr Tsirekas for 29 January 2018 and 3 February 2018. Mr Kinsella could not recall either occasion. Regardless of whether the meetings occurred, the messages reflect Mr Kinsella’s willingness to approach Mr Tsirekas as mayor of the Council with concerns and requests in relation to planning matters.

On 2 April 2018, Mr Kinsella sent to Mr Tsirekas the following text:

Hi angello [sic] have you arranged with the labour [sic] and independent councillors for a get together to go through PP2 [planning proposal 2] before the workshop tomorrow probably with just Rick [Graf] and myself.

When shown an extract of this text message from his telephone, Mr Kinsella confirmed that “PP2” stood for “Planning Proposal 2”, which related to Billbergia’s development in the Rhodes West Station Precinct. He recollected that Billbergia was to construct 250 units of affordable housing for the Council and, in return, be allowed higher density on its site on the corner of Marquet, Gauthorpe and Walker streets. He identified “Rick” as Rick Graf, who worked for Billbergia at the time. Mr Kinsella said that they “obviously would have” asked Mr Tsirekas to bring councillors together so that Billbergia could put its proposal before all councillors but agreed that his text message to Mr Tsirekas only asked about Labor and independent councillors. He said he could not recall if Mr Tsirekas had arranged the meeting with Labor and independent councillors but he had no reason to believe that it did not happen. He was certain the workshop

took place. Mr Kinsella said he could not recall whether on other occasions he had reached out to Mr Tsirekas to ask him to arrange meetings with Labor and independent councillors before a particular event. He agreed that he used Mr Tsirekas to try to arrange meetings with the Labor and independent councillors and it was not his recollection that he used Mr Tsirekas to arrange meetings with other councillors. Mr Kinsella said that meetings with councillors would “very often” take place in Council offices. He did not think there would have been informal meetings at, for example, a coffee shop, as Billbergia had a practice of making presentations to councillors and needed a suitable location for them.

Further text messages reveal that, by February 2019, the relationship that Billbergia and Prolet had with Mr Tsirekas had become strained due to a difference of opinion in relation to the proposed development in Rhodes East. On 19 February 2019, the Council considered the Revised Draft Precinct Plan for Rhodes East at a Council meeting. Council staff reviewed the plan and prepared a report, which described the expansion of the precinct boundary as “unjustified” and identified areas of concern in relation to the contents of the plan and the proposed planning process. The Council resolved to finalise its submission to be forwarded to the Department, outlining the key points from the Council’s report. Mr Tsirekas voted in favour of the resolution and made no disclosure. On 22 February 2019, the *Daily Telegraph* reported that the Council had released a “damning report card on the plan to cram another 4200 apartments into the suburb without a clear plan on how to prevent further clogging up of local roads and train carriages”. Mr Tsirekas was quoted in the article as describing the proposed density as “unprecedented”.

On 22 February 2019, Mr Kinsella sent the following WhatsApp messages to Mr Chidiac:

5:25 PM: *It’s hard to contain this anger when someone is trying so hard to fuck you over*

5:43 PM: *Why did he declare war i don’t understand why what’s the reason*

Mr Kinsella could not recall the subject of the text messages, whether they were referring to Mr Tsirekas, or what they were about more broadly. He could not recall whether the WhatsApp messages were about Prolet.

Later, at 9:51 pm on 22 February 2019, after a WhatsApp call with Mr Chidiac, Mr Kinsella sent the following WhatsApp message to Mr Chidiac:

Angelo Rhodes east is just over 2 to 1 fsr when you average the whole area actually quite low density nothing like pots point [sic] or Burwood consider I P [I-Prosperity] site is around 14 to one fsr about 6 times the density of Rhodes east with no public infrastructure where are we going with all of this i am puzzled four years ago we had a resolution on Rhodes west which the council did not live up to four years council asked if we could work together and change the leisure centre and we responded immediately in a positive way to work with council even through [sic] we have a contract to build the approved centre it was very disappointing to read the council response on [sic] the paper today i got so many calls from the public this evening clearly aimed at prolet and billbergia have a good sleep and clear your head and i hope you wake up more positive

Mr Kinsella accepted that there were two possibilities regarding this WhatsApp message: either he had composed a message to send to Mr Chidiac to pass on to Mr Tsirekas, or he was providing Mr Chidiac with a copy of a message he had already sent or was proposing to send to Mr Tsirekas. Mr Kinsella could not say which of the scenarios was true or whether there was another explanation. Mr Kinsella gave evidence that, based on his observations of Mr Chidiac and Mr Tsirekas together, he had come to understand that the two men had a relationship. Mr Kinsella described that relationship as “perhaps social, perhaps political ... Perhaps one or the other or both, don’t know”. He said that he had explained the leisure centre to Mr Chidiac as a form of venting although he had “no idea” why he would be venting to Mr Chidiac in particular.

On 24 February 2019, at 8:03 am, Mr Kinsella sent Mr Tsirekas a message with a web link about a development for a five-tower, 49-storey development in Burwood, stating:

Amazing what can be done when people and authorities work together to achieve to achieve [sic] positive outcomes for the community infrastructure safe railway station at the moment it does not comply with many international safety measures the community is generally in support council should check the facts before they release submissions to the press that are full of errors just to get negative feelings in the community for what end and purpose i am at a loss

When shown these messages extracted from his telephone, Mr Kinsella said the Burwood development was not Billbergia’s development. Mr Kinsella said he

took from the contents that he was saying to Mr Tsirekas that “it’s difficult to get things done in Canada Bay”. In relation to “council should check the facts before they release submissions to the press that are full of errors just to get negative feelings in the community for what end and purpose i am at a loss”, Mr Kinsella said he could not recall to what it referred but it was “obviously” about something that came up in the media that he thought was incorrect. He accepted that it was in relation to Rhodes East but could not recall what it was that the Council had “released”.

After the 8.03 am message, at 8:14 am, Mr Tsirekas wrote to Mr Kinsella:

Thanks John, I may not agree with all your comments or your interpretation but you are entitled to them - the one thing we both agree open [sic] is that we need a great planning outcome for existing and new community residents of that area which along with good building form includes community and state infrastructure- it’s all about getting the right balance.

Mr Kinsella responded at 8:56 am:

Thank you for your reply I am quite concerned that all the initiatives in Rhodes east are west [sic] are about to fall over together with government community and council we are running out of energy and resources to continue with it as it has cost many millions and is taking a toll on everyone’s health i think we are all getting very tired thank you for your time i know you are trying to do the best you can for the council

When shown these messages extracted from his telephone and asked what disagreements he might have had with Mr Tsirekas at the time, Mr Kinsella said he believed Rhodes “could have been done much better” and “needed schools, parks, dog walking parks, football fields, the whole lot” that were not developed. Mr Kinsella said he had sent this message to Mr Tsirekas although it related to state planning issues because the Council should also make representations on behalf of the area. He denied that he had wanted the Council to make representations in support of Billbergia’s proposed planning developments but said that “football fields and parks” were Billbergia initiatives that he had thought would have been worthy of the Council’s support. He accepted that, at the time, it was his belief that the Council did not support those initiatives and, on behalf of Billbergia, he was disappointed with that position. However, he denied that this led to a breakdown in his relationship with Mr Tsirekas.

On 24 February 2019, at 11:11 am, Mr Kinsella sent the following text message to Mr Chidiac:

Sorry Angelo for giving you too much stress i know you are training for Kokoda which is not easy for a man of your age of course great to keep the tradition alive and remember our great heroes who gave their lives so we can all live in freedom have a wonderful day with family and friends god bless

In the public inquiry, Mr Kinsella could not remember sending this message but accepted that it was “probably” his. He could not recall how he could have been “giving [Mr Tsirekas] too much stress” but he must have been doing so somehow. Mr Kinsella volunteered that he “like[d] the message ... because it talks about our great heroes”. He could not say whether he had composed a message to send to Mr Chidiac to pass on to Mr Tsirekas, or he was providing Mr Chidiac with a copy of a message he had already sent or was proposing to send to Mr Tsirekas.

Later, at 2:04 pm on 24 February 2019, Mr Kinsella sent to Mr Chidiac the following WhatsApp message:

Angelo our vision for Rhodes is not to be a ordinary [sic] run of the mill suburb but to be a extraordinary [sic] place to live with jobs entertainment connected east and west ferry light rail heavy rail connection to metro via light rail or bus medical centre with surgery schools aged care hotel all the restaurants you could dream of Parks enhanced rowing ♀[sic] facilities child care facilities from the cradle to the grave and everything in between we don't just do a little and leave we are here for the long term un like [sic] some in the development business it should not be adversarial we should all want the best out come [sic] and work as partners for Rhodes in order to get the best outcome for everyone it must be viable i am sure the council will understand that as council is also running a business and have to make ends meet

In the public inquiry, Mr Kinsella confirmed that the contents of the message aligned with Billbergia’s vision for Rhodes. Mr Kinsella said that he did not know whether he was trying to send this message to Mr Tsirekas through Mr Chidiac or whether he was sending to Mr Chidiac a message he had already sent to or was proposing to send to Mr Tsirekas. However, he did not believe that, in February 2019, Billbergia would have been using Mr Chidiac to get messages to Mr Tsirekas. He did not know if someone else had originally written the message. However, he accepted that it was clear from the message that he was trying to get it to Mr Tsirekas. Mr Kinsella could not identify the objective of sending the message to Mr Tsirekas other than that he was the mayor. He did not believe that Mr Tsirekas could have assisted

Billbergia with any problem it had as Mr Kinsella believed that, by that stage, “all the planning controls were at the Department of Planning”.

On 27 February 2019, at 9:47 pm, Mr Kinsella forwarded a WhatsApp message written by Joseph Jacob to Mr Chidiac:

9:47 pm: *John , I see unfair treatment and not playing with a straight bat , [sic] very disappointing . The same night , one hand , IPG site that has close to 14:1 FSR local independent planning panel advise on issues and one of them transport capacity issues (station) [sic] totally ignored and council vote to gateway , the next item the major land owners bill bergia [sic] and Prolet with less than half the FSR than IPG and solve the transport capacity issues on the station , receive a scathing report and council vote to put the scathing submission to council.*

Then, at 9:58 pm, Mr Kinsella sent a message to Mr Chidiac:

9:58 PM: *Joe can you and the leader see Joseph to cool him down he is putting himself under a lot pressure [sic] i am only sending you these message [sic] for information only*

Mr Kinsella agreed that “Joseph” referred to Joseph Jacob. He said he wanted Mr Chidiac to “see Joseph to cool him down” because Joseph Jacob “gets very, very stressed and we were concerned for his health”. Mr Kinsella accepted that it was more probable that “the leader” referred to Mr Tsirekas.

Mr Tsirekas’ interactions with Prolet

Joseph Jacob could not recall when he was first introduced to Mr Tsirekas. However, he said he had known Mr Tsirekas since about 2012. At that time, Joseph Jacob had been a member of the Drummoyne Business Chamber, which advocated to the Council. He also knew of Mr Tsirekas as the mayor of the Council. Between 2016 and 2019, Joseph Jacob’s contact with Mr Tsirekas increased due to Prolet’s interests in infrastructure proposals in the Rhodes East area. Joseph Jacob said that, while his brother Pierre Jacob had some contact with Mr Tsirekas in that period, he had more

contact. He has known for some time where Mr Tsirekas lives, although neither has visited the other's residence.

Joseph Jacob gave evidence that he and Mr Tsirekas would have had a meal or a coffee together; these were opportunities to discuss infrastructure proposals and sometimes involved social conversations about things like sports. He also agreed that it was "not uncommon" for him to meet with Mr Tsirekas and Mr Chidiac over a dinner or a luncheon and that, when they did so, it was "common" for them to discuss "matters of business", including infrastructure proposals, before turning to social conversation. They had dined together maybe five to six times between 2016 and 2019. Pierre Jacob, Mr Chidiac and (rarely) Mr Kinsella would also attend. Joseph Jacob said that these gatherings were more often with Mr Tsirekas than Mr Chidiac, as Mr Tsirekas was "in the area" so he would see him more than Mr Chidiac. At each of the meals, the discussion would start with infrastructure proposals but eventually turn to social topics. Joseph Jacob agreed that, when Mr Chidiac was not there, they would still discuss "matters of business" as well as engage in social conversation.

Once or twice, Joseph Jacob had paid for the meals for everybody attending.

Joseph Jacob could not recall where these meals occurred or whether they were lunches or dinners. He did recognise a restaurant named "Machiavelli's" and recalled one of the meals being a lunch there; it involved discussing infrastructure proposals in Rhodes.

In a compulsory examination on 17 March 2022, when shown humorous photographs and internet memes that he had sent to Mr Tsirekas, Joseph Jacob accepted that Mr Tsirekas was a friend, even if not a close friend. During the public inquiry, he said that he did not regard Mr Tsirekas as a "close" or "good" friend. He maintained that the relationship was a "professional friendship" but accepted that he had sent humorous photographs and internet memes to his friends.

Later in the public inquiry, when asked to elaborate on what he meant by a "professional friendship" as distinct from other friendships, Joseph Jacob gave evidence that his "whole motive" for meeting with Mr Tsirekas was to discuss business, but then the discussion would turn to socialising because of Mr Tsirekas' personality. He said he sent Mr Tsirekas humorous internet memes because he "felt sometimes I was too full-on with him" and that Mr Tsirekas "had more of a light side to him" which Joseph Jacob wanted to balance. Joseph Jacob said he does send humorous internet memes to professional friends as well as non-professional friends. When asked to identify those professional friends, he said there were "plenty" but did not name any.

Joseph Jacob said that Billbergia had made multiple infrastructure proposals to the NSW Government. He noted proposals for a school and for train station entrances on Prolet land that had not eventuated. Because those proposals were state-led, Prolet had cause to speak with the Department. His contact with Mr Tsirekas increased at the time because the Council was pushing for affordable housing development on its end. Joseph Jacob said that his discussion of "infrastructure proposals" with Mr Tsirekas was about the infrastructure contemplated in the Department's "draft plans that were being exhibited by the state". He said the same was true of the lunch meet-ups that included Mr Kinsella. He spoke of a joint submission with Billbergia for an alternative site for a proposed school, which he said was made "to the Department and Council". Eventually, he and Mr Tsirekas had fallen out over the affordable housing issue.

Text messages

Numerous examples were in evidence of Joseph Jacob sending humorous internet memes, social messages or holiday pictures to Mr Tsirekas. Joseph Jacob recognised these WhatsApp messages as dating from before his relationship with Mr Tsirekas broke down. He characterised further WhatsApp messages he sent to Mr Tsirekas from August 2016 as "social". He said that he would send those sorts of messages to both "professional friends" and "non-professional friends", but would not send them to all of his "professional friends". Joseph Jacob gave the following explanation for sending such messages to Mr Tsirekas:

[Counsel Assisting]: Well, Mr Tsirekas is being treated here like one of your non-professional friends, right?

[Joseph Jacob]: Mr Darams, there's no doubt I had a motive with Mr Tsirekas. I had some interest in Rhodes and I was trying to advance them and I, I, I had an issue with the affordable housing and, yes, sometimes I used to lighten it up and that's, that's all I can bring it down to.

During the public inquiry, Mr Tsirekas denied the suggestion that he and Joseph Jacob had been friends and said that Joseph Jacob had engaged with him because of an issue with Rhodes East. When questioned about why Joseph Jacob would "engage" with him about Rhodes East at a time when he was not on the Council, Mr Tsirekas responded that Joseph Jacob knew that Mr Tsirekas "was still keen to understand what was happening in the area". He could not say, however,

whether he had had a conversation with Joseph Jacob in which he had said so, or even if it had been the gist of a conversation. However, he would “frequently see him [Joseph Jacob] walking up and down the street” and they would “engage”. He then reiterated that he “wouldn’t call him a close or a friend as, you know, someone that I, you know, go out with, families, or go to his place or he’d come to my place”.

On 9 July 2017, at 6:17 pm, Joseph Jacob sent Mr Tsirekas a WhatsApp message saying, “Tuesday evening with JK! Let me know a time. Thanks.” Joseph Jacob identified “JK” as Mr Kinsella and said that in this message he was arranging a dinner. He could not recall if the dinner was, in fact, arranged.

At 10:59 pm, Mr Tsirekas replied: “Jk 7 pm he can pick location”. On being shown this message, Joseph Jacob recalled he “most probably” attended the dinner but could not recall where. When Mr Tsirekas was shown this WhatsApp message and asked whether he understood “JK” to be John Kinsella, he would only go so far as recognising “JK” as Mr Kinsella’s initials. Mr Tsirekas said that the message was from 2017 and he could not recall all the conversations or messages. Mr Tsirekas could not name anyone else to whom he referred as “JK” in the context of conversations with Joseph Jacob. He could not say whether it was more than probable that “JK” was a reference to Mr Kinsella. However, on 11 July 2017, Mr Tsirekas messaged Joseph Jacob, “We had a great night lots of talking & plenty of laughter”. Joseph Jacob responded, “That’s great, I will talk to you in the morning”. Mr Tsirekas was not on the Council at this time. He was re-elected on 16 September 2017.

Table 2 shows a series of text messages sent over three days in October 2017, starting with one from Maria Atkinson, the Greater Sydney Commission’s eastern city district commissioner that Mr Tsirekas forwarded to Joseph Jacob.

Mr Tsirekas confirmed that the 21 October message was originally sent to him by Ms Atkinson. At one point, he said he sent it to Joseph Jacob because he knew Joseph Jacob “had a lot of interest in it” but at another point he said he could not recall why he sent Ms Atkinson’s message on to Joseph Jacob. He agreed that, based on the further messages, he was interested in meeting with Joseph Jacob and Billbergia. When examined by his senior counsel, Mr Tsirekas said his interest in the proposal was, in effect, because it was a matter of public interest. At the time of the messages he had been re-elected as mayor.

Meetings in Hawaii – January 2018

During the public inquiry, Joseph Jacob gave evidence that, during a trip with his family to Hawaii in January 2018, he saw Mr Tsirekas on the beach and they arranged, via text messages, to catch up over drinks. Joseph Jacob said that he “initially” randomly ran into Mr Tsirekas on the beach. He and Mr Tsirekas went to a sports bar where Mr Tsirekas was with a few people, one of whom Joseph Jacob recognised, but he could not recall specifics.

On 12 January 2018, while both men were in Hawaii, Mr Tsirekas sent to Joseph Jacob the following WhatsApp messages:

2:56 pm: *Going to Nabu [sic] tonight*

7:23 pm: *At the reef bar having a drink come and join us. Reef outrigger*

Table 2: Messages between Mr Tsirekas and Joseph Jacob, 21–24 October 2017

Date	Time	Parties	
		Joseph Jacob	Mr Tsirekas
21 October 2017	6:56 PM		<i>Angelo - sorry to text on the weekend, I'm told the Draft Greater Sydney Region Plan will launch tomorrow and will be on GSC website from 1pm. I understand that you've been invited to a briefing on Thursday. Call me if you have any questions. Maria Atkinson (Eastern City District Commissioner)</i>
23 October 2017	4:55 PM	<i>10am ok , we will go to Rhodes BBG office !</i>	
24 October 2017	7:27 AM		<i>Can we meet around 1 pm today instead of 10</i>

At 7:53 pm that same night, either Joseph Jacob attempted to call Mr Tsirekas or vice versa. Shortly after, Joseph Jacob sent a message to Mr Tsirekas on WhatsApp: "Coming now". Joseph Jacob did not deny he met with Mr Tsirekas and said he took the opportunity to talk about Rhodes East. It seemed to him that Mr Tsirekas just wanted to socialise, though Joseph Jacob kept pressing the point.

On 13 January 2018, at 3:06 pm, Mr Tsirekas sent Joseph Jacob a WhatsApp message saying, "What are u doing later after dinner?". About 20 minutes later, he made a call to Joseph Jacob, which Joseph Jacob missed. At 3:32 pm, Joseph Jacob responded saying, "Getting mother in law & kids dinner, [his wife] wants me to go shopping with her, shops close 10pm, most likely be home 10.30pm afterwards! Let me know what your [sic] doing afterwards!". Joseph Jacob reiterated that they caught up "about two to three times" in Hawaii but there were other people there with them when they did so. He denied absolutely that there had been any prior arrangement to meet in Hawaii. He said it came as a surprise to him to see Mr Tsirekas and his partner in Hawaii and added that he valued work-life balance and the trip was purely for his family.

During his evidence in the public inquiry, Mr Tsirekas agreed that Joseph Jacob was someone whom he would invite to have a drink and catch up with while he was on a holiday with his partner. Mr Tsirekas agreed he had invited Joseph Jacob for drinks while in Hawaii, but said Joseph Jacob was not a "close friend", that he was "just being friendly". Their partners were not involved when they were having drinks.

"Boys' trip" to Shanghai – March 2018

In March 2018, Pierre Jacob travelled with Mr Tsirekas, Mr Chidiac and others on a "boys' trip" to China. Mr Tsirekas said he could not remember who invited Pierre Jacob. He was not the one who arranged the trip. When asked whether he was happy for Pierre Jacob to come along on the trip with his close friends, Mr Colacicco and Mr Chidiac, he said that he "didn't mind who came along" and "there was a number of people who came along".

When asked about whether Mr Tsirekas would describe people with whom he travelled overseas as "friends", Mr Tsirekas would only say again that he called a lot of people "friends". When asked whether he regarded people with whom he took "boys' trips" to Shanghai as friends, he said he did for "some of them". When asked to be more specific, Mr Tsirekas said Mr Colacicco and Mr Chidiac were "close friend[s]" and others were "acquaintances". Pierre Jacob was "not a friend". However, he did not deny that his relationship with Pierre Jacob was a reason that Pierre Jacob had been invited on the trip.

Lunch at "Made in Italy" – 25 January 2019

Mr Tsirekas was shown surveillance photographs taken at a restaurant called Made in Italy on 25 January 2019. The pictures showed Mr Tsirekas at the restaurant with Mr Chidiac, Joseph Jacob and Mr Bruzzano. He said he had been to Made in Italy "once or twice" with Mr Bruzzano. Mr Tsirekas identified Mr Bruzzano and Joseph Jacob in the photographs

Figure 12: Mr Tsirekas, Mr Chidiac, Mr Bruzzano and Joseph Jacob at Made in Italy restaurant, 25 January 2019



Mr Tsirekas said he did not know why he was meeting with Mr Chidiac on 25 January 2019 along with Mr Bruzzano and Joseph Jacob. He initially could not recall if they lunched together that day, but accepted that, if they were at the restaurant for more than an hour (as suggested by the time stamps on the photographs), then it was likely they had lunch. He denied that it was a social gathering between friends and, when asked for the business purpose, gave a general explanation:

[Counsel Assisting]: Well, what's it to do with?

[Mr Tsirekas]: If I can try to explain. That around that period there was a lot of stress on the proposals that we were all putting into the government, and Mr Jacobs [sic] was very strong on his view of trying to get their side of the story about infrastructure, where council had a particularly different view. And I'm sure he was putting his case forward to me.

Mr Tsirekas said he did advise Joseph Jacob to put his case to the Council. He said that he did not know why Mr Chidiac was there or what he had to do with Prolet's proposal. In cross-examination by senior counsel for the Council, Mr Tsirekas said that he could not recall who arranged this "catch-up" but suggested that it could have been Mr Chidiac. He had not known that Mr Chidiac was assisting the Jacob brothers with business matters. At their "catch-ups" the Jacob brothers would raise their planning proposals and Mr Chidiac would be present "on occasions" but Mr Tsirekas never "put one and one together" and realised they were associated. Mr Tsirekas denied that he knew Mr Chidiac was being paid to lobby him or to act as a "door-opener" to him on behalf of Prolet. He also denied that he deliberately failed to disclose his relationship with Mr Chidiac to the Council so that he could continue to sit on matters that affected Prolet.

Mr Tsirekas agreed that, as at 25 January 2019, there was "fundamental incompatibility" between the Council's planning approach and the Jacobs' interests and Mr Chidiac was mediating between the two. He said Mr Chidiac was well known "to be a person locally that would know a lot of people" and as a mediator. He had "no idea" what Mr Chidiac's specialty was as a mediator. He also said that, despite seeing Mr Chidiac frequently and going on overseas trips with him, he did not know what Mr Chidiac actually did for a living. The Commission rejects this evidence.

On 22 February 2019, the *Daily Telegraph* published the article in which Mr Tsirekas was quoted as describing the proposed density as "unprecedented".

Mr Tsirekas' evidence of his relationship with Billbergia and Prolet

A crucial issue is the nature of Mr Tsirekas' relationships with Billbergia, Prolet and Mr Chidiac, and whether Mr Tsirekas was obligated or should have disclosed or declared interests because of his relationships. On this issue, Mr Tsirekas gave varying accounts.

Mr Tsirekas' interview

During an interview with Commission officers in September 2020, Mr Tsirekas said he knew Billbergia and Mr Kinsella and had discussions with them in his capacity as mayor about a number of different proposals for the Rhodes West Station Precinct and Rhodes East. He said he had socialised with Mr Kinsella and another Billbergia employee. He had dined with Mr Kinsella once or twice. During these dinners, they would raise Billbergia's interests in the Rhodes area, but he would tell them to discuss the issues with the appropriate Council officer. He did not

make a record of these meetings. Someone else paid for the dinners. When asked if he was aware of Mr Chidiac's relationship with Billbergia, he said he was aware they knew each other and had seen them at functions together.

Mr Tsirekas said he understood Prolet was a stakeholder in Rhodes East and was trying to work with Billbergia in Rhodes East. He had known Joseph and Pierre Jacob for over 10 years because they lived in the Drummoyne area. Mr Tsirekas stated, "They were very keen on pursuing their vision of Rhodes". He mentioned attending a dinner with Mr Kinsella and the Jacob brothers but could not remember meeting on other occasions. He said he had "no knowledge at all" about whether Mr Chidiac and Prolet were involved on a "business level".

Mr Tsirekas said he did not declare any conflict of interest in relation to the Rhodes West Station Precinct or Rhodes East because "I didn't think I needed to because I was carrying out duties of the Mayor at all stages and if I was to do that I'd do that with everybody that I bumped into in the, in the street ... At that stage I didn't think I needed to but looking back probably I, I should've done that [declared a conflict of interest]".

Mr Tsirekas declares a non-pecuniary conflict of interest – 20 October 2020

Item 3 on the agenda for a Council meeting on 20 October 2020 was titled "Rhodes Planned Precinct Place Strategy". The item included a report to inform the Council about submissions in response to the draft Rhodes Place Strategy, which had been publicly exhibited by the Department on 31 August 2020. When shown this agenda item, Mr Tsirekas confirmed that it related to Rhodes East. The Council's records also included a document addressed to the general manager, signed by Mr Tsirekas and hand-dated 20 October 2020:

To the General Manager

Re Item 3 Rhodes Planned [sic] Precinct Place Strategy

I write to declare a notification of a non-pecuniary interest in this matter pursuant to clause 5.4 of the Canada Bay Code of Conduct [sic].

*I have a personal relationship with a number of the proponents of some of the various proposals for this site and I think that I should take appropriate action to manage the conflict in accordance with this code. I think it is therefore appropriate that I not participate in consideration of, or decision making in relation to, the matter. **I realise I voted on this matter in 2018 and on reflection I think I should have declared a conflict of interest at that time.** (Emphasis added)*

The Commission is satisfied that, in saying that he “voted on this matter in 2018 and on reflection I should have declared a conflict of interest at that time”, Mr Tsirekas was referring to the “matter” of the Council’s strategy in relation to the land in Rhodes East and that the vote “in 2018” refers to the Council meeting on 4 December 2018, which directly impacted Billbergia.

Mr Tsirekas’ compulsory examinations

Mr Tsirekas gave evidence at compulsory examinations on 24 March 2022 and 7 April 2022. On 24 March 2022, he gave evidence that he knew Mr Kinsella of Billbergia to be a prominent property developer in the area. He could not recall if Mr Chidiac spoke to him in relation to Billbergia’s projects. He said he had met Mr Kinsella on occasions, but described him as “more as an acquaintance than a friend”. He said he had been to “a couple” of Mr Kinsella’s charity functions and had been out to dinner with him. He said he had never been to Mr Kinsella’s home, but he had known Mr Kinsella for a “long time” and Mr Kinsella had been active in the area for a “very long time” as a property developer.

Mr Tsirekas gave evidence that he understood the Jacob brothers were associated with Prolet. He said he would socialise with them on the “spur of the moment” and “have coffee or go to lunch, have a pizza or something”. It would be a “social lunch” but if there was an issue with the Council about Rhodes East, the Jacob brothers would raise it, describing it as “Normal stuff that people would get frustrated with”. He further stated, “You know, it’s not uncommon for the Mayor to get those complaints”. He said he did not make it known to fellow councillors that he met with developers who had business with the Council. He stated, “In, in hindsight, I agree that the appearance of me having these meetings was wrong”.

Regarding his relationship with Mr Kinsella, Mr Tsirekas’ sworn evidence during the second compulsory examination on 7 April 2022 was that, at least from 31 May 2016, he should have declared a non-pecuniary interest arising out of this relationship because he socialised with Mr Kinsella on occasion. However, he also gave sworn evidence, the effect of which was that he should have declared that relationship after the “master plan” for Rhodes West Station Precinct had been adopted by the Council, at the stage when the Council was dealing with Billbergia’s “planning proposals”. On the evidence before the Commission, that commenced about 30 April 2014, two years earlier than he said he should have declared the interest in his other evidence. When questioned about why an experienced councillor, with knowledge of the Council’s code of conduct, failed to disclose the conflict at the time, he stated, “I don’t have an answer and, again, it, it should have been

disclosed”. Mr Tsirekas denied knowing that Mr Chidiac received \$550,000 from Billbergia in the period between September 2015 and July 2018.

In relation to the Jacob brothers and Prolet, Mr Tsirekas said he was aware of their involvement in Rhodes East, but he did not address whether he should have disclosed a conflict of interest because of his relationship with Prolet.

Mr Tsirekas’ evidence at the public inquiry

During the public inquiry, Mr Tsirekas, in effect, sought to withdraw admissions he had made during compulsory examinations regarding conflicts of interest, arising out of his relationships with Mr Kinsella, and his failure to declare or disclose conflicts of interest, arising out of his relationships with Billbergia and Prolet, in the disclosure he made on 20 October 2020.

Mr Tsirekas denied that, by 31 May 2016, he had a personal relationship with Mr Kinsella in relation to which he should have declared or disclosed a conflict of interest. However, he agreed that he had known Mr Kinsella for a number of years before 2016. He agreed he had attended Mr Kinsella’s charity functions. He agreed that Mr Kinsella was invited, on Mr Tsirekas’ request, to mayoral Christmas parties. He agreed that he had dined with Mr Kinsella on a number of occasions but said that those were not organised by Mr Kinsella and others were in attendance, including Mr Chidiac, Joseph Jacob and Pierre Jacob.

Ultimately, Mr Tsirekas stated that at no stage in the period between 2012 and October 2020 was he required to declare or disclose a conflict of interest arising out of his relationship with Mr Kinsella and/or Billbergia. During the public inquiry, the following exchange occurred:

[Counsel Assisting]: *This is another example, isn’t it, Mr Tsirekas, where you now want to give different evidence under oath compared to previous evidence that you’ve given under oath, isn’t that right?*

[Mr Tsirekas]: *I answered the evidence given previously truthfully.*

[Q]: *Mr Tsirekas, my, no, my ---?*

[A]: *And I’m answering truthfully now.*

[Q]: *--- my question is slightly different. In fact, it’s fundamentally different. This is another example of you wishing*

to give different evidence now under oath compared to the evidence you previously gave under oath.

[A]: I'd like to correct that evidence.

[Q]: I'll ask you the question again. This is another example where you wish to give different evidence under oath compared to previous evidence you've given under oath.

[A]: Yes, I would like to correct that evidence.

[Q]: To give different evidence?

[A]: No, to clarify the evidence that I've given and heard over the last five weeks. It's, it's brought into clarity that there was no relationship with John Kinsella or Prolet. My definition of relationship is probably a bit different to, to others. I call people on my soccer team friends, but I don't go to their house or their weddings. And I, I call people I see on the street friends. But there is no relationship with Mr Kinsella or Prolet, and it was made very clear from the evidence that we've heard from other witnesses.

When Mr Tsirekas was asked to identify the evidence that had brought him "clarity", he eventually identified Mr Kinsella and Joseph Jacob's evidence, but could not specify how that evidence had brought "clarity" and caused him to change his sworn evidence.

When examined by his representatives, Mr Tsirekas said, "I don't have a relationship with him [Mr Kinsella]. I don't go to his place, he doesn't come to my place and I didn't declare." Mr Tsirekas reiterated that he wanted to "correct the evidence", saying that his earlier evidence was a "mistake". He said that he had no relationship with Mr Kinsella and he was not a friend. The following exchange occurred with the Chief Commissioner:

[Chief Commissioner]: Correct it. Well, just pause there for a moment. Yes. And what change to you, sorry, correction are you talking about?

[Mr Tsirekas]: That I didn't have that personal relationship with Mr Kinsella.

[Q]: Well, there's no, I can't see the phrase "personal relationship" there.

[A]: Relationship.

[Q]: Yeah, it just says "relationship".

[A]: Yeah.

[Q]: So just exactly how the relationship is described is another question but what do you – sorry. So what is it that you want to correct.

[A]: That there was no relationship with Mr Kinsella.

[Q]: No relationship at all?

[A]: Given the evidence that I've heard over the last five weeks, it's made it very clear that there was no relationship.

During the public inquiry, Mr Tsirekas described the Jacob brothers and Prolet as "acquaintances". He stated, though, that he would call a lot of people "friend" and "brother" even if they were not his friend or brother. Mr Tsirekas denied that, by March 2018, he had been friends with Joseph Jacob for a number of years. However, he agreed he had caught up with Joseph Jacob either alone or together with Pierre Jacob for coffee. He agreed that he had lunched with Joseph Jacob. He said he would run into the Jacob brothers in the local area. He would meet with the Jacob brothers and Mr Bruzzano "on occasion" for coffee or lunch when they saw each other on the street.

Mr Tsirekas said he did not declare or disclose a conflict of interest regarding Joseph Jacob because he did not have a relationship with him. He described Joseph Jacob as "a person that I would see out on the road ... and it's a chance visit. There's no real, or I don't have a relationship." In relation to Pierre Jacob, Mr Tsirekas stated that "he's a person that lives and works in the community but I don't have a relationship with him".

When shown the declaration he made on 20 October 2020, he said that his previous solicitors drafted and typed this note but confirmed he read it before he signed it and confirmed it related to Item 3 on the Council's meeting agenda for that day. Mr Tsirekas accepted that he received the meeting agenda, read the agenda item and considered his particular circumstances in relation

to whether he should be involved in that part of the Council meeting, but denied that he came to the view that he was required to disclose or declare a conflict of interest. Mr Tsirekas gave evidence that, after reading the meeting agenda, he informed his solicitors at the time of his circumstances and the agenda item and sought their advice, all by telephone. He said that, to the best of his recollection, he did not tell his solicitors he had read the Council report and did not go into detail, but told them, “there’s an item on the business paper referring to matters that are being investigated,” referring to his voluntary interview with Commission officers at which his legal representatives were also present.

Mr Tsirekas denied that the sentence in the note, “I have a personal relationship with a number of the proponents of some of the various proposals for this site...” was true on 20 October 2020 and during the public inquiry he wished to “correct” it. He maintained, though, that at the time he was truthfully signing the document, which was drafted by his solicitors, and that he only signed it after he read and understood the statement. Mr Tsirekas identified “a number of proponents” as referring to and limited to Mr Kinsella and Billbergia and the Jacob brothers and Prolet. He agreed that, in 2020, he was cognisant of the Council’s code of conduct and he had reflected and identified personal relationships with Mr Kinsella and Joseph Jacob. However, he also said that, while he would not sign something with which he did not agree, his understanding of the relationships to which the statement referred was based on the legal advice given to him by his solicitors at the time.

Four days after Mr Tsirekas gave this evidence, when the public inquiry returned to the topic of Mr Tsirekas’ 20 October 2020 disclosure, Mr Tsirekas disagreed that Prolet and the Jacob brothers were “proponents” to which his disclosure referred. He further contradicted his earlier evidence by denying that he had signed the note truthfully. He said that, rather than signing the note to certify that its contents were true and correct, he had signed it because his solicitor had advised that, given that the Commission’s investigation was underway, “this is the preferred way to deal with the item”. He recalled that he had sent her the agenda item and simply asked her, “What should I do in this circumstance?”. She had responded with the note. He could not recall if she asked him any questions about his relationship with Mr Kinsella and Billbergia or whether he told her anything. He accepted that it was probable that he had conversations with his solicitors about his interactions with Mr Kinsella or others on behalf of Billbergia. Mr Tsirekas could not recall whether he discussed all his dealings with the Jacob brothers and Prolet with his solicitors but could recall discussing Prolet’s dealings in Rhodes East.

The relevant file notes from Mr Tsirekas’ previous solicitors revealed that, on 19 October 2020, the solicitors had received a call from Mr Tsirekas querying whether he should declare an interest at a Council meeting on 20 October 2020, because the agenda included the “Rhodes Planned Precinct Place Strategy” (Item 3 on the agenda) and properties owned by people raised in his interview at the Commission. Mr Tsirekas was advised to declare a non-pecuniary interest.

The Commission rejects Mr Tsirekas’ attempts to withdraw the concessions or admissions he made under oath during his compulsory examinations and in the 20 October 2020 disclosure with regard to Mr Tsirekas’ relationships with Billbergia/Mr Kinsella and Prolet/Joseph Jacob. The Commission is satisfied that Mr Tsirekas sought to change his evidence in the public inquiry because he recognised that the concessions he had made previously were against his interest. Mr Tsirekas was not able to identify any reason why the evidence he gave under oath was wrong, other than what he had heard other people say about the relationships.

Conclusion – Mr Tsirekas’ declarations

John Kinsella/Joseph Chidiac/Billbergia

There is evidence of a commercial relationship between Mr Kinsella/Billbergia and Mr Chidiac between September 2015 and July 2018, and the Commission is satisfied that Mr Tsirekas was aware of this commercial relationship. Further, there is considerable, uncontroverted evidence of a close personal relationship between Mr Chidiac and Mr Tsirekas, and the Commission is satisfied that Mr Tsirekas therefore had a non-pecuniary conflict of interest in relation to Billbergia’s matters before Council (in the period in which Mr Chidiac was engaged by Billbergia, being September 2015 to July 2018), which required disclosure pursuant to the Council’s code of conduct as a non-pecuniary conflict of interest. The Commission is satisfied that the relationship between Mr Tsirekas and Mr Chidiac (as a consultant for Billbergia) was close and gave rise to a significant conflict of interest. The Commission is satisfied that Mr Tsirekas deliberately failed to disclose his relationship with Mr Chidiac when dealing with Billbergia’s matters before Council. He had been an elected official for many years and understood his obligations pursuant to the code of conduct.

With regard to Mr Tsirekas’ relationship with Mr Kinsella, there is evidence of direct contact between Mr Kinsella and Mr Tsirekas through text messages to one another, and occasional catch-ups for coffee and meals together. Mr Tsirekas also attended a “couple” of Mr Kinsella’s charity functions and Mr Kinsella attended mayoral

Christmas functions. The evidence discloses that there was direct contact between Mr Kinsella and Mr Tsirekas during the Council's consideration of Billbergia's planning proposals. That contact, albeit not frequent, was personal in nature and undisclosed to the Council. There is also Mr Tsirekas' declaration of 20 October 2020 in which he declared "a personal relationship with a number of the proponents of some of the various proposals for this site" (impacting Billbergia's site). The evidence also discloses that there was significant direct contact between Billbergia's (and therefore Mr Kinsella's) agent, Mr Chidiac, in the same time period. The Commission has found that Mr Tsirekas was aware that Mr Chidiac was acting as Billbergia's agent.

The Commission finds that, from at least September 2015 to July 2018, when matters concerning Billbergia's developments came before Council, Mr Tsirekas breached Council's code of conduct in that he failed to disclose a non-pecuniary conflict of interest arising from his relationships with persons associated with Billbergia.

First, from at least 30 April 2014, Mr Tsirekas had a relationship with Mr Kinsella, the principal of Billbergia. They exchanged text messages in familiar terms, occasionally had coffee or a meal together and both attended several more public functions.

Secondly, and of greater significance, from September 2015 until about July 2018, Mr Tsirekas knew that Billbergia engaged his close associate, Mr Chidiac, as a consultant in relation to Billbergia's proposed property developments that were before Council. Mr Tsirekas and Mr Chidiac had a close personal relationship and the Commission rejects Mr Tsirekas' evidence that he did not know of Mr Chidiac's work, including his work for Billbergia. As outlined in this chapter, Mr Kinsella contacted Mr Tsirekas through Mr Chidiac and Mr Tsirekas conceded that "it appeared" Mr Chidiac was assisting Billbergia.

The Commission is satisfied that Mr Tsirekas deliberately failed to disclose the non-pecuniary conflict of interest arising from his relationships with Mr Kinsella and Mr Chidiac and, through them, with Billbergia:

- As Mr Tsirekas had been an elected official for many years, he must have understood his obligations pursuant to the code of conduct.
- After seeking legal advice, on 20 October 2020 Mr Tsirekas finally did declare that he had "a personal relationship with a number of the proponents of some of the various proposals [impacting the Billbergia site]".

- Under oath, during a compulsory examination on 7 April 2022, Mr Tsirekas said he should have declared a non-pecuniary conflict of interest with Mr Kinsella, and the Commission has found that his attempt to resile from this position was disingenuous.

Mr Tsirekas breached the following provisions of the Council's code of conduct:

- requiring councillors to disclose non-pecuniary interests that conflict with their public duties fully and in writing as soon as practicable
- requiring any significant non-pecuniary conflict of interest to be managed by the councillor either removing the source of the conflict or refraining from participating in any debate or vote.

The Commission is satisfied that Mr Tsirekas' deliberate failure to declare or properly manage a conflict of interest arising from his relationships with representatives of Billbergia is conduct by Mr Tsirekas that constituted or involved a breach of public trust pursuant to s 8(1)(c) of the ICAC Act.

As it extended over a significant period of time, involved several Council meetings, and involved two relationships that connected Mr Tsirekas with Billbergia, the conduct was a substantial breach of the requirements of the code of conduct. It could constitute or involve a disciplinary offence pursuant to s 9 (1)(b) and s 9(6) of the ICAC Act.

However, the Commission is not satisfied that, in the manner that he voted or otherwise in the exercise of his public office, Mr Tsirekas demonstrated partiality towards Billbergia. In particular, he did not consistently vote in a manner that favoured Billbergia. Consequently, the Commission is not satisfied that his conduct amounts to serious corrupt conduct within the meaning of s 74BA of the ICAC Act.

Joseph Jacob/Prolet

Regarding Mr Tsirekas' relationship with Joseph Jacob, the Commission is satisfied that there is sufficient evidence of a direct and close personal relationship between Mr Tsirekas and Joseph Jacob, which required disclosure pursuant to the Council's code of conduct as a non-pecuniary conflict of interest. The closeness of the relationship between Mr Tsirekas and Joseph Jacob is borne out by the personal and friendly nature of text messages sent between them, and shared coffees, lunches and dinners, including those recorded in surveillance images, and socialising on the trip to Hawaii in January 2018.

The Commission is satisfied that this non-pecuniary conflict of interest was significant and that Mr Tsirekas

deliberately failed to disclose the conflict of interest. He had been an elected official for many years and understood his obligations pursuant to the code of conduct.

Mr Tsirekas breached the following provisions of the Council's code of conduct:

- requiring councillors to disclose non-pecuniary interest that conflict with their public duties fully and in writing as soon as practicable
- requiring significant non-pecuniary conflicts of interest to be managed by councillors in one of two ways: removing the source of the conflict; or having no involvement in the matter by absenting themselves from and not taking part in any debate or vote on the matter.

Further, the Commission is satisfied that, from 2016, Mr Tsirekas deliberately failed to declare or properly manage a conflict of interest arising from his relationships with Joseph Jacob and this conduct on the part of Mr Tsirekas comes within s 8(1)(c) of the ICAC Act as it constitutes or involves a breach of public trust by Mr Tsirekas.

As the relationship between Mr Tsirekas and Joseph Jacob extended over a significant period of time, particularly between 2016 and 2019, and the contact between them was often social in nature, including coffees, lunches, dinners and socialising while on a trip to Hawaii, Mr Tsirekas' conduct was a substantial breach of the requirements of the code of conduct. Further, the breach is substantial because Mr Tsirekas knowingly failed to disclose the non-pecuniary conflict of interest. It could constitute or involve a disciplinary offence pursuant to s 9(1)(b) and s 9(6) of the ICAC Act.

However, the Commission is not satisfied, for the purposes of s 74BA of the ICAC Act, that the conduct is serious corrupt conduct. This is because the Commission cannot demonstrate that Mr Tsirekas partially exercised his official functions in relation to Prolet's interests. On 19 February 2019, Council resolved to finalise its submission to be forwarded to the Department, outlining the key points from Council's report. Mr Tsirekas voted in favour of the resolution and made no disclosure. In effect, Mr Tsirekas' vote was against the interests of Prolet. Ultimately, the Commission cannot establish why Mr Tsirekas failed to declare or disclose the conflict of interest in relation to his relationship with Joseph Jacob of Prolet.

The meeting after the "raid"

The Harris Farm meeting

In June 2019, the Commission executed a search warrant at Mr Chidiac's premises.

During the public inquiry, on 4 May 2022, Joseph Jacob initially gave evidence that Mr Chidiac had "rocked up" (approached him) "unannounced" in his car in the "back streets" of Drummoyne and told him that the Commission had visited Mr Chidiac. He said Mr Chidiac said nothing else. Joseph Jacob then recalled that Mr Chidiac told him that the Commission had "raided" him, which Joseph Jacob understood to mean that the Commission had executed a search warrant on Mr Chidiac's premises. Joseph Jacob said that he understood at the time that one of the purposes of a search warrant was to find evidence for an investigation, although he was not thinking about that at the time. Joseph Jacob recalled that Mr Chidiac told him that he was allowed to disclose this information. Joseph Jacob stated that Mr Chidiac did not tell Joseph Jacob what the Commission may be investigating but implied that Joseph Jacob could be involved as well. Joseph Jacob recalled that Mr Chidiac looked concerned and he realised that this was about a serious matter.

Joseph Jacob said that Mr Chidiac did not tell him to do anything, but he deleted his WhatsApp messages with Mr Chidiac, soon after Mr Chidiac's approach on his own initiative, because he no longer wanted anything to do with Mr Chidiac and Mr Tsirekas. Joseph Jacob denied being concerned that he, too, might be the subject of a Commission search warrant. Joseph Jacob recalled that he told Mr Chidiac he did not want any more contact with him and that Mr Chidiac agreed. Joseph Jacob accepted he could have ceased contact with Mr Chidiac without deleting anything on his telephone, but also said that he did not want any connection with Mr Chidiac.

Joseph Jacob gave evidence that Mr Tsirekas' telephone number had been stored in his smartphone but he deleted it sometime in 2019. Joseph Jacob gave evidence that he deleted the number because they had a falling out over planning issues. At that time their friendship, professional or otherwise, ceased and their communications were limited to passing greetings when in public. During the public inquiry, Joseph Jacob could not recall whether he had deleted messages between himself and Mr Tsirekas. He said he "most probably" deleted WhatsApp messages between himself and Mr Tsirekas soon after Mr Chidiac told him about the Commission search warrant, as he did the ones between himself and Mr Chidiac.

Later in the public inquiry, on 20 May 2022, when questioned about whether Joseph Jacob's account that Mr Chidiac approached him "unannounced" was true, Joseph Jacob said he could no longer recall the details of the encounter, except that Mr Chidiac came that day. Joseph Jacob agreed the meeting was, in fact, in the back of Harris Farm in Drummoyne and that Mr Kinsella was also in attendance. Joseph Jacob denied that initially he had refrained from informing the Commission that Mr

Kinsella was there. Joseph Jacob then gave evidence that Mr Chidiac told him and Mr Kinsella that the Commission had taken some documents but did not specify which documents had been taken and did not say that the Commission had taken a draft of the agreement between Joseph Jacob, Pierre Jacob and Mr Chidiac. After further questioning, Joseph Jacob agreed that, based on what Mr Chidiac told him, he thought he may be involved in the Commission's investigation as a witness. He denied that he deleted his messages with Mr Chidiac and Mr Tsirekas because he thought they might implicate him in what the Commission was investigating.

According to Joseph Jacob, he and Mr Chidiac met again the following day. His account was that Mr Chidiac came by Prolet's office unannounced and they had a conversation in the corridor outside the office, during which Mr Chidiac asked to speak to him and Joseph Jacob refused. The conversation lasted only a few minutes. He could not recall whether Mr Chidiac told him that the Commission was in possession of an agreement between them, but agreed that in a compulsory examination of 5 May 2022, he had said as much.

Mr Chidiac gave evidence that, after the Commission executed a search warrant at his premises, he informed Mr Kinsella and Joseph Jacob. He had no "particular reason" for doing so; he told a lot of people. He advised Joseph Jacob that he might be involved in the Commission's investigation and showed him a copy of the search warrant. He told Joseph Jacob and Mr Kinsella which items had been seized. He denied advising them to delete messages between them and himself. He discussed it with them because it was a "hot topic" for him at the time.

Mr Kinsella gave evidence that he recalled the meeting, but said that Mr Chidiac had mentioned the "raid" involved the police. Mr Kinsella said he could not remember if or how the meeting was organised, although he did not dispute that the meeting could have been arranged in advance. Mr Kinsella could not recall Mr Chidiac telling him what was seized in the "raid", or Mr Chidiac saying that Mr Kinsella and Joseph Jacob could be implicated. Mr Kinsella did not think the "raid" concerned Billbergia, as Billbergia had conducted business in a "proper manner". He did not notice anything about Mr Chidiac's appearance at the meeting; Mr Chidiac did not exhibit particular concern and appeared to be "perfectly normal, calm and chatty". Mr Kinsella said Joseph Jacob appeared to be "normal for Joseph" and he "didn't think he was overly stressed". Mr Kinsella denied deleting Mr Chidiac's telephone number or messages between them from his own mobile telephone. However, he noted that not all the messages between him and Mr Tsirekas would still be on his telephone because whenever his telephone lacked

memory storage, he would "delete just about everything on it" to gain storage space.

The Commission is satisfied that a meeting took place between Mr Chidiac, Mr Kinsella and Joseph Jacob at the back of Harris Farm shortly after the Commission executed search warrants on Mr Chidiac's premises in June 2019. Joseph Jacob gave evidence during the public inquiry about the circumstances in which Mr Chidiac informed him the Commission had executed a search warrant at his house. Joseph Jacob said in his evidence that Mr Chidiac had "rocked up" (approached him) "unannounced" in his car in the "back streets" of Drummoyne and told him that the Commission had visited Mr Chidiac. The Commission rejects Joseph Jacob's evidence.

The Commission is satisfied that, as a result of the meeting, Joseph Jacob deleted messages from his telephone between him and Mr Chidiac and it is likely that he deleted messages between himself and Mr Tsirekas at the same time. The Commission is satisfied that Joseph Jacob did so because, in the context of the Commission's investigation, he was concerned about what might be found on his telephone.

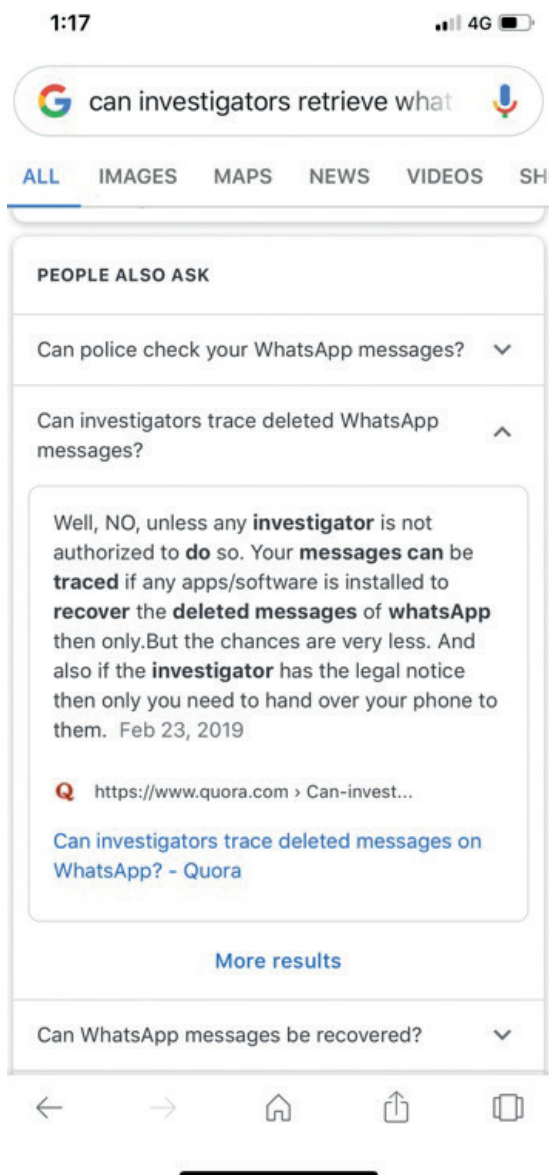
The Google search

There is a screenshot of an image stored on Joseph Jacob's mobile telephone of a Google search result carried out on 30 August 2019. The question searched via Google was whether investigators can retrieve deleted WhatsApp messages. Joseph Jacob could not recall a reason for wanting this information. He accepted that it was possible that, as at 30 August 2019, he was concerned about whether the Commission or someone investigating the matter could retrieve his deleted WhatsApp messages. He also accepted that he had no other explanation for the Google search screenshot.

Later in the public inquiry, Joseph Jacob offered a theory that he was sent the screenshot image via WhatsApp and it was automatically downloaded to his telephone's image storage. However, he did not deny that he was the one who did the search; his evidence was that he simply could not recall whether he had done so. Joseph Jacob accepted that, in the hypothetical scenario or that someone sent him the image, he must have had some conversation on the topic with another person that prompted that person to send him the image. Joseph Jacob accepted he either did the search or obtained the result of a search from another person, but he was uncertain of what issue the Google search related to. He offered the possibility that the Google search was regarding an investigation at the time into a missing person in Byron Bay. Joseph Jacob only considered this explanation a possibility but did not consider it fanciful. He accepted that, considering

that after Mr Chidiac told him about the Commission executing a search warrant on his premises he deleted the telephone numbers and WhatsApp messages of only Mr Tsirekas and Mr Chidiac – who were involved in the Commission’s investigation – it was likely he had a concern about whether deleted WhatsApp messages between him and Mr Tsirekas and Mr Chidiac could be recovered. Joseph Jacob later told the Commission that he had formulated the Byron Bay missing person explanation for the screenshot after conversations with his family. He agreed that the explanation did not come from his own mind and he had no independent recollection of it.

Figure 13: Screenshot image stored on Joseph Jacob’s mobile telephone of a Google search questioning whether investigators can retrieve WhatsApp messages



The Commission is satisfied that Joseph Jacob undertook the Google search because of concerns that the Commission may be able to recover deleted WhatsApp messages between himself and Mr Chidiac and/or Mr Tsirekas, which were relevant to the Commission’s investigation, and he did not want the Commission to do so.

Section 74A statement

Joseph Jacob

Joseph Jacob is an “affected” person for the purposes of s 74A(2) of the ICAC Act.

The evidence Joseph Jacob gave was subject of a direction under s 38 of the ICAC Act and, therefore, cannot be used against him in criminal proceedings, except for offences under the ICAC Act. However, other admissible evidence is available, including mobile telephone extraction reports and the evidence of other witnesses.

The Commission is of the opinion that the advice of the DPP should be sought with respect to the prosecution of Joseph Jacob for offences of providing false or misleading evidence to the Commission contrary to s 87 of the ICAC Act, when:

- on 4 May 2022, during the public inquiry, he gave evidence about the circumstances in which Mr Chidiac informed him the Commission had executed a search warrant at his house
- on 5 May 2022, at a compulsory examination, he said that he did not sign agreements with Mr Chidiac on behalf of Prolet-related companies.

The Commission is also of the opinion that the advice of the DPP should be sought with respect to the prosecution of Joseph Jacob for an offence of wilfully destroying a document or other thing knowing that the document or other thing is, or may be, required in connection with an investigation pursuant to s 88 of the ICAC Act, in that he deleted messages from his telephone between himself and Mr Tsirekas and Mr Chidiac.

Chapter 6: Proposed development at 168–172 Victoria Road, Drummoyne

The allegations investigated by the Commission included whether, since 2015, Mr Tsirekas partially exercised his official functions to favour the interests of Mr Bruzzano in relation to a development application for 168–172 Victoria Road, Drummoyne, and deliberately failed to declare or properly manage any conflict of interest arising from his relationship with Mr Bruzzano. This chapter examines the evidence in relation to those matters.

168–172 Victoria Road, Drummoyne

Mr Bruzzano is an accountant and, since approximately 2010, he has been a partner in the Drummoyne-based accounting firm of Bruzzano & Associates.

On 11 December 2001, 172 Victoria Road, Drummoyne, was sold to Mr Bruzzano and a family member for \$555,000. On 14 January 2012, 170 Victoria Road, Drummoyne, was sold to a company associated with Mr Bruzzano's family member for \$800,000.

On 17 February 2015, Mr Tsirekas received an email from a Council administrative officer indicating, among other things, that he had an appointment to meet Mr Bruzzano at 5:00 pm "to discuss future proposal for 170–172 Victoria Rd Drummoyne". There are no other records of this meeting. On 8 July 2015, Mr Tsirekas received an email from a Council administrative officer reminding him of a 4:30 pm meeting with "Frank Bruzzano [sic] - 170-172 Victoria Rd". There are no other records of this meeting.

On 8 October 2015, a development application was submitted to the Council for 170–172 Victoria Road on behalf of Mr Bruzzano and his family. The development application was to build residential apartments.

On 30 October 2015, Mr Tsirekas received an email from a Council administrative officer with a list of

appointments, including a 4:30 pm meeting with Mr Bruzzano and Mr Bruzzano's consultant for a "Pre DA [development application]" meeting concerning 170–172 Victoria Road, Drummoyne, "with Tony". There are no other records of this meeting and the identity of "Tony" is unknown.

The 170–172 Victoria Road development application was on the agenda to be discussed at a Council meeting on 24 May 2016. In a report to the Council, staff recommended that the Council, as the determining authority, grant "deferred commencement" consent to the development application to allow the construction of seven studio apartments and five one-bedroom apartments over four levels, but noted non-compliance issues such as height, setbacks, traffic and parking. The Council received six submissions objecting to the proposed development. At the 24 May meeting, the Council resolved to grant deferred commencement consent for the development application, acknowledging the areas of non-compliance arising from it. Mr Tsirekas voted in favour of the application. He did not make any declaration of interest.

On 3 June 2016, Mr Tsirekas resigned from the Council to contest the federal election and did not return to the Council until September 2017. Although he was no longer a councillor, Mr Tsirekas took a continuing interest in Mr Bruzzano's development proposals, as demonstrated by a number of emails he sent from his personal email account.

On 9 June 2016, a company associated with Mr Bruzzano's family member purchased 168 Victoria Road, Drummoyne, for \$1,485,000.

On 25 July 2016, a development application was submitted on behalf of Mr Bruzzano and his family members for 168–172 Victoria Road, Drummoyne. It sought approval to construct a block of residential flats over the three lots at 168–172 Victoria Road, retention of the heritage facade and the demolition of 168 Victoria Road, and involved constructing 18 studio apartments and

six one-bedroom apartments over four levels with a new ground-floor commercial space.

On 7 September 2016, at 4:11 pm, Mr Tsirekas sent an email from his private email address to Ms Butler, the manager, statutory planning at the Council, seeking an update from the Council in relation to seven development applications, including Mr Bruzzano's. Mr Tsirekas wrote, "168-172 Victoria Rd D/A applicant awaiting response from Peter Y".

Ms Butler could not recall if Mr Tsirekas told her why he sought this information, but she surmised he was asking on behalf of an applicant. She said she tried to keep her responses to Mr Tsirekas succinct and limited to the information that was publicly available.

On 9 September 2016, at 8:55 am, Mr McNamara, the director of planning at the Council, sent an email response to Mr Tsirekas' email. Mr McNamara wrote, "came off notification on 18 August 2016 and we have nineteen objections to it so it will need to go to a Council meeting – Peter G [Peter Giaprakas, a senior statutory town planner at Council] has not had an opportunity to review this in any great detail yet..."

Mr McNamara gave evidence that, although Mr Tsirekas was not mayor at the time, he decided to give him information that was publicly available because otherwise Mr Tsirekas would "be a bit of a pest and just keep asking for it".

On 16 January 2017, Mr Tsirekas emailed the then general manager, Mr Sawyer:

Hi Gary, any chance you can give me an update on this one. Frank the owner was wondering if this will get to the Fem meeting [sic – should read "Feb" for February]. Thanks. 168-172 Victoria road Drummoyne. DA 2016/0297...

On 20 January 2017, Joseph Jacob forwarded to Mr Chidiac and to Mr Tsirekas two emails from an email exchange with the Council:

- The first, dated 19 January 2017, was from Joseph Jacob to Mr Giaprakas, enquiring when a report for a development application for 168-172 Victoria Road, Drummoyne, would go before the Council for determination.
- The second, dated 20 January 2017, was a reply from Mr Giaprakas regarding issues that still needed to be resolved.

In his evidence, Joseph Jacob agreed that 168-172 Victoria Road was Mr Bruzzano's development and Prolet was the licensed builder. He said he forwarded the email from Mr Giaprakas so Mr Tsirekas and Mr Chidiac could assist with the issues regarding the development that had been raised by the Council. He agreed that this was an example of him reaching out to Mr Chidiac and Mr Tsirekas to seek assistance with resolving issues with a development. He said he forwarded the email to Mr Tsirekas, in response to Mr Tsirekas asking him about Mr Bruzzano's development.

On 21 February 2017, Mr Bruzzano sent an email to Mr Giaprakas, copied to Joseph Jacob, seeking an update in relation to the DA and enquiring whether the matter could be put before the Council meeting in March. On 22 February 2017, Mr Giaprakas wrote to Mr Bruzzano and indicated that revised plans were being considered by Council officers. Joseph Jacob forwarded the email to Mr Tsirekas, who responded, "Noted".

Between 9 and 17 March 2017, there was a series of emails between Mr Giaprakas, Joseph Jacob, Mr Bruzzano and Mr Bruzzano's consultant about the progress of the development application and the date on which the matter would be put before Council. Mr Giaprakas indicated that he aimed to put the matter before Council at its meeting on 18 April 2017. On 17

March 2017, at 9:45 am, Mr Bruzzano forwarded the series of emails to Mr Tsirekas, stating, “Angelo Can we see if it can go in the first Tuesday of April?”. Mr Tsirekas replied at 10:32 am, “Will do frank.” It will be recalled that, at this time, Mr Tsirekas was not a councillor.

On 24 May 2017, the Council considered the development application. The application now sought the retention of the existing heritage façade, a new ground-floor commercial space with a residential flat building comprising 11 studio apartments and 10 one-bedroom apartments over four levels, and the complete demolition of 168 Victoria Road. The issues raised by the 19 submissions objecting to the development included what was described as its excessive height, bulk and scale, insufficient parking and storage, heritage, overshadowing, and impacts on acoustics, visual privacy, traffic and noise. In a report prepared for the Council by “PG” (most likely Mr Giaprakas), it was recommended that the Council, as the determining authority, grant consent for the development application, subject to specific conditions. The Council resolved to grant consent to the development application subject to conditions.

Mr Tsirekas returned to the Council as mayor on 16 September 2017.

Thereafter, in 2017 and 2018, Mr Bruzzano sought modifications to the development consent on two occasions (modifications numbered 2017/0142 and 2018/0108). These were dealt with by Council staff, although Mr Tsirekas did meet with Ms Butler, Joseph Jacob and Mr Bruzzano on 8 May 2018 in relation to one of the modification applications.

Should Mr Tsirekas have declared a conflict of interest at the 24 May 2016 Council meeting?

On two occasions prior to the commencement of the public inquiry, Mr Tsirekas told the Commission that, at the Council meeting of 24 May 2016, he should have declared a non-pecuniary conflict of interest arising from his relationship with Mr Bruzzano.

In a voluntary interview with Commission officers on 23 September 2020, Mr Tsirekas said that during this Council meeting, he had “erred” and should have declared a non-pecuniary interest in relation to Mr Bruzzano.

In a compulsory examination before the Commission on 7 April 2022, Mr Tsirekas was asked why, when he was interviewed, he said he should have declared a conflict of interest at the 24 May 2016 Council meeting. He gave the following evidence:

[Counsel Assisting]: Can you explain what interest you should have disclosed or declared at that council meeting on 24 May, 2016?

[Mr Tsirekas]: The friendship that I had with Frank Bruzzano.

He said he had known of Mr Bruzzano prior to 2014 but came to know him better in that year because he moved into the area where Mr Bruzzano worked. They had coffee two or three times some weeks but did not see each other every week. He agreed they were friends.

Mr Tsirekas’ evidence as to whether he should have disclosed a conflict of interest changed at the public inquiry. He claimed he did not believe his relationship with Mr Bruzzano as at May 2016 was such that he needed to declare any conflict of interest at the Council meeting.

During the public inquiry, Mr Tsirekas said he had known Mr Bruzzano from about 2015 or 2016, when he moved into a residence that was close to Mr Bruzzano’s office. He could not recall how they first met but said that their proximity meant that he regularly saw Mr Bruzzano on the street. Mr Tsirekas said that other association with Mr Bruzzano was “infrequent”; they had “coffee, maybe a lunch next door or go out with him and others together”.

Mr Tsirekas did not agree that he should have declared or disclosed a conflict of interest arising out of his relationship with Mr Bruzzano. He said that, at the time, he considered Mr Bruzzano to be an acquaintance and not a friend because he had never visited Mr Bruzzano’s home or vice versa and “[he didn’t] go to any of his celebrations”. When the Chief Commissioner put to Mr Tsirekas that it would be “nonsense” to say that mutual home visits was an essential precondition to friendship, Mr Tsirekas disagreed, saying that a “close” friend was someone one invited to their home and vice versa.

At the public inquiry, Mr Tsirekas said that what he told Commission officers during his September 2020 interview was the truth but also accepted that he was giving different evidence during the public inquiry. He said that “it was a very stressful interview”, not because he was pressured by Commission officers, but because it was an unusual circumstance to be questioned by the Commission. He agreed that he had thought about his answers before he gave them.

When asked about his April 2022 compulsory examination evidence, Mr Tsirekas said that he took the compulsory examination seriously and gave truthful and honest answers. He agreed that he had volunteered that he had a friendship with Mr Bruzzano during the compulsory examination. He accepted that he had given that evidence under oath. He provided the following explanation:

[Mr Tsirekas]: *Well, it is wrong because the interpretation that I have of friendship is a bit different to the interpretation under the code of friendship. To me, the mayor of a small city being popularly elected, I call everybody friends, brothers, and dare I say megale.⁴ I should really only call them mates because that would keep me out of trouble, but the interpretation act is a bit different when disclosing. I would not call Frank Bruzzano a friend. He's an acquaintance. I got it wrong. I want to correct it.*

Mr Tsirekas disagreed with the suggestion that he had come into no new information about his relationship with Mr Bruzzano since his interview or compulsory examination. He denied the suggestion he gave different evidence during the public inquiry out of self-interest.

Mr Tsirekas accepted that, during the public inquiry, he changed evidence that he had given on previous occasions regarding all relationships at issue in the allegations. He said that the general evidence given during the public inquiry helped him “put things into context” and reiterated that he called a lot of people friends although he might not have that relationship with them. Mr Tsirekas agreed that, at the time of his compulsory examination, he understood the meaning of a non-pecuniary interest in the Council's code of conduct and also understood the concept of friendship. He understood his ethical obligations and that, as mayor, he should have modelled the highest standard of behaviour. Mr Tsirekas agreed that in both his interview and compulsory examination, he had answered questions truthfully based on his understanding of his obligations under the code of conduct. He disagreed that, at the public inquiry, he had answered as he did because he had reflected on events and came to the view that the relationship was one required to be disclosed under the code of conduct.

When his senior counsel asked why he made no disclosures relating to Mr Bruzzano, Mr Tsirekas said:

No disclosure because I don't have a relationship with Bruzzano. His accountancy is next door. I know that he is close friends with the Jacobs. Chance meetings again on the way to work or just at, at the coffee shop below my building or next door. They're

chance meetings. I didn't have a relationship with Mr Bruzzano.

The Commission rejects Mr Tsirekas' attempts to withdraw the admissions he made in his interview and compulsory examination regarding conflicts of interests arising out of his relationship with Mr Bruzzano. The Commission is satisfied that Mr Tsirekas sought to change his evidence in the public inquiry because he perceived, or recognised, that his earlier evidence was against his interest.

Mr Bruzzano told the Commission he was introduced to Mr Tsirekas in about 2014 by Joseph Jacob, who was one of his clients. Initially he described his relationship with Mr Tsirekas as a “business friendship”, although they did not conduct business together. He said Mr Tsirekas was not his client, although one of his firm's employees assisted Mr Tsirekas with his 2017 local government electoral returns. He said he had never been to Mr Tsirekas' home and Mr Tsirekas had never been to his home.

Mr Bruzzano told the Commission that, on “rare” occasions, he attended social lunches with Mr Tsirekas, Mr Chidiac, Joseph and Pierre Jacob and others, that he lunched with Mr Tsirekas alone “once or twice” after May 2016 and that he had coffee with Mr Tsirekas alone “occasionally” (fewer than 20 times). Some of these occasions may have included eating a sandwich.

Mr Bruzzano said he asked Mr Tsirekas for assistance with the development application for 168–172 Victoria Road, Drummoyne, on multiple occasions. From at least 30 October 2015, he met with Mr Tsirekas regarding the application (the first diarised meeting took place in February 2015). The Commission notes that Mr Tsirekas was out of Council between June 2016 and September 2017.

There was evidence that Mr Bruzzano also met with Mr Tsirekas after 2016, including surveillance photographs taken on 23 and 25 January 2019 showing Mr Bruzzano, Mr Tsirekas and others at, respectively, a café in Drummoyne and a restaurant in Pyrmont. There was evidence of a telephone discussion between Mr Tsirekas and Mr Bruzzano on 5 April 2019, in which Mr Tsirekas told Mr Bruzzano, “I've got a VIP ticket for you and – and Jacobs to come in” to “lunch at Parliament House” at 12:30 pm that day. It appears that the “ticket” had become available after two other people “pulled out”. The conversation demonstrates that, by this time, Mr Tsirekas was comfortable with calling Mr Bruzzano at short notice and inviting him to a lunch at Parliament House.

Ultimately, Mr Bruzzano accepted that, at least by March 2019, his relationship with Mr Tsirekas had developed to the extent that they met for purely social and recreational reasons.

⁴ “Megale” is commonly used as a Greek word for “great” or “huge”. During the public inquiry, Mr Colacicco said he commonly used this word in conversations with Mr Tsirekas to mean “sir”.

In summary, Mr Tsirekas' account during his voluntary interview and compulsory examination was that he should have declared a non-pecuniary conflict of interest as a result of his friendship with Mr Bruzzano. During his compulsory examination, he said he had coffee two or three times a week with Mr Bruzzano and the friendship had developed that year (2016). Mr Tsirekas resiled from this evidence in the public inquiry and said he would meet Mr Bruzzano on the street and that other associations with him were "infrequent". The Commission, however, rejected his change of evidence.

Mr Bruzzano's evidence was that he was introduced to Mr Tsirekas in about 2014 and he initially described his relationship with Mr Tsirekas as a "business friendship", although they did not conduct business together. Mr Bruzzano said he asked Mr Tsirekas for assistance with the development applications for 168–172 Victoria Road on multiple occasions and from at least 30 October 2015 (the first meeting may have taken place in February 2015 although it was not documented). Mr Bruzzano accepted that, at least by March 2019, his relationship with Mr Tsirekas had developed to the extent that they met for purely social and recreational reasons.

The Commission is satisfied that Mr Tsirekas' previous admission against interest of an undeclared, non-pecuniary conflict of interest as a result of his friendship with Mr Bruzzano establishes that Mr Tsirekas and Mr Bruzzano had a relationship as at 24 May 2016, which should have been disclosed pursuant to the Council's code of conduct. The Commission is satisfied that a "reasonable and informed person" would perceive that Mr Tsirekas could be influenced by a private interest (his friendship with Mr Bruzzano) when carrying out his public duty (voting on Mr Bruzzano's development application). Any conflict between a non-pecuniary interest and Mr Tsirekas' public duty should have been disclosed fully in writing and as soon as practicable. Once disclosed, the conflict of interest was required to have been managed by

removing the source of the conflict, either by divesting the interest or reallocating the conflicting duties, or by having no involvement in the matter, including taking part in a debate or vote on the matter. If the non-pecuniary conflict of interest was less than significant and did not require further action, an explanation as to why the conflict did not require further action was required. The Commission is satisfied that Mr Tsirekas breached the Council's code of conduct, which required councillors to disclose non-pecuniary interests that conflicted with their public duties fully and in writing as soon as practicable (clause 4.12). The Commission is satisfied that Mr Tsirekas' failure to declare or disclose his relationship with Mr Bruzzano was deliberate. He had been an elected official for many years and understood his obligations pursuant to the code of conduct.

The Commission notes Mr Tsirekas' continued involvement with Mr Bruzzano's development applications, when he was not on Council between June 2016 and September 2017, and is satisfied that an inference can be drawn that his continued involvement is consistent with him having a relationship with Mr Bruzzano. However, the Commission is not able to determine the exact nature of the relationship between Mr Tsirekas and Mr Bruzzano and whether Mr Tsirekas had a significant, or less than significant, non-pecuniary conflict of interest as at 24 May 2016. Consequently, there is insufficient evidence to support a finding that Mr Tsirekas' failure to disclose his relationship with Mr Bruzzano on 24 May 2016 was a substantial breach of the Council's code of conduct or serious corrupt conduct.

Chapter 7: 227–231 Victoria Road, Drummoyne

This chapter examines allegations relating to the sale of the Council's land at 231 Victoria Road, Drummoyne. The issues are whether:

- between May 2015 and January 2018, Mr Sawyer partially and/or dishonestly exercised his official functions and failed to disclose the nature of his relationship with Mr Colacicco in relation to the sale of 231 Victoria Road
- Mr Tsirekas partially and/or dishonestly exercised his official functions and failed to disclose the nature of his relationship with Mr Colacicco in relation to the sale of 231 Victoria Road or development applications associated with Mr Colacicco, in return for a financial benefit.

The evidence does not establish that Mr Tsirekas or Mr Sawyer were aware of Mr Colacicco's involvement; the evidence does not support findings of corrupt conduct.

The sale of 231 Victoria Road, Drummoyne

The three people involved in the purchase and proposed redevelopment of 227 and the Council land at 231 Victoria Road, Drummoyne, were Mr Colacicco, John Bartolotta and a third person to whom the Commission will refer as "Mr A". Mr Colacicco was Mr Tsirekas' long-term close friend. Mr A was an associate of Mr Tsirekas, although not a close friend. Mr Bartolotta is a businessman, who did not know Mr Tsirekas before he became involved with this project.

On 20 June 2016, the following three companies were registered with ASIC: Drummoyne 888 Pty Ltd, Victoria RM Pty Ltd and Sydney City 227 Pty Ltd (known as the "Drummoyne 888 Partnership"). Mr Bartolotta was the director of all the companies upon registration. In reality, Drummoyne 888 represented Mr A's interests, Victoria RM represented Mr Bartolotta's interests and Sydney

City 227 represented the interests of Mr Colacicco and his then business partner, Mia Fredrix.

The relevant properties were located at 227 and 231 Victoria Road, Drummoyne. The property at 227 Victoria Road was a small, two-storey mixed-zone commercial premises. The property located at 231 Victoria Road was used by the Council as a carpark. The Council-owned property was surrounded on three sides by 227 Victoria Road, which was not owned by the Council. There were rights of way over both properties, which meant that, without the other, the value of either property was significantly diminished

Figure 14: Picture of 227–231 Victoria Road



On 21 June 2016, 227 Victoria Road was sold by its original owners to the Drummoyne 888 Partnership for \$2.3 million. The transfer of title occurred on 26 July 2016.

On 8 November 2016, the Council entered into a contract to sell 231 Victoria Road to the Drummoyne 888 Partnership for \$2.1 million. For reasons outlined later

in the chapter, the settlement did not take place until 27 November 2018.

On 18 March 2020, the Drummoyne 888 Partnership sold the properties to a developer: 227 Victoria Road sold for \$3.5 million and 231 Victoria Road for \$2.3 million. Prior to the sales, the partnership had secured development consent to develop both sites.

The negotiations with the Council

Kent Walton was the Council officer primarily involved in negotiating on behalf of the Council on this matter. Between July 2009 and December 2019, Mr Walton was the manager of buildings and property at the Council. His role included property management, leasing, licensing, disposals, acquisitions, small or minor construction works, security and venue hire. He reported to John Osland.

Between 2008 and 2018, Mr Osland was the director of technical services and operations. Mr Osland's role was to lead the Council's infrastructure branch, which looked after roads, buildings, parks and the Council's vehicle fleet. Mr Osland reported directly to the general manager, Mr Sawyer.

As previously noted, between May 2006 and his retirement in January 2018, Mr Sawyer was the general manager of the Council. He came to the Council with extensive experience in local government. After Mr Sawyer's retirement, Mr Gainsford was appointed as the general manager of the Council.

Mr Sawyer gave evidence that, by no later than 2015, he considered Mr Tsirekas to be a friend. Mr Sawyer said he first met Mr Colacicco at a Council function. He and Mr Colacicco shared a common interest in horse racing and became part-owners in a horse called Northern Glory in 2012. He agreed, that by no later than 2015, he and Mr Colacicco had become friends. Mr Sawyer could not recall whether he knew Mr A as at May 2016.

On 24 June 2015, Mr Walton wrote to Mr Bartolotta in relation to a meeting that took place on 26 May 2015 concerning Mr Bartolotta's proposal to redevelop 227 and 231 Victoria Road, Drummoyne. This was the Council's first known dealings with Mr Bartolotta in relation to 231 Victoria Road.

Further discussions took place between Mr Walton, Mr Bartolotta and Mr A's son in early February 2016. On 1 March 2016, after considering a report prepared by Mr Osland, the Council resolved to authorise the general manager (Mr Sawyer) to continue discussions with the adjoining owner of 231 Victoria Road (Mr Bartolotta, who had an option to purchase 227 Victoria Road) in relation to the proposed development. Mr Tsirekas was present at the Council meeting when this resolution was passed and

made no declaration of interest.

On 22 March 2016, Mr Bartolotta wrote to Mr Sawyer with the first offer to purchase 231 Victoria Road. In broad terms, he offered \$1.8 million for the property. At this stage, he proposed to build a mixed-use development on the site, including 25 residential apartments on 227–231 Victoria Road.

At Mr Walton's request, a valuation report dated 8 April 2016 was prepared by a certified practising valuer, who valued 231 Victoria Road at between \$2.4 million and \$2.6 million. However, on 9 May 2016, the valuer provided an amended valuation range of between \$2.175 million and \$2.4 million, based on a lower gross-floor area.

On 4 May 2016, Mr Walton wrote to Mr Sawyer indicating that he had met with Mr Bartolotta and Mr A's son, who wanted to know if the Council was interested in selling the 231 Victoria Road site. Mr Walton recommended the Council directly negotiate with Mr Bartolotta. Mr Sawyer responded, "That's fine if you are comfortable in getting a good outcome".

On 16 May 2016, Mr Bartolotta signed the "Disposal of Property – Direct Dealing Process Protocol". This document was prepared for this transaction alone and was signed by the Council's probity auditor. It allowed the Council to deal directly with Mr Bartolotta rather than sell the property through a competitive process.

The document stated that:

Development of the Council owned site (231 Victoria Road) in isolation, is constrained due to the unusual shaped site at 227 Victoria Road, which wraps Councils [sic] to the South, West, and North. Additionally its size and small frontage to Victoria Road restrict the development potential of the Council owned site in isolation. The sites [sic] highest value is realised when it is combined with the adjoining site at 227 Victoria Road.

The document further stated that the Council's best option was to dispose of the land parcel by dealing with the adjoining landowner (being Mr Bartolotta, who had an option to purchase 227 Victoria Road) and that as the Council was obliged to get the best value for its land, it would appoint an independent probity advisor.

Mr Sawyer and Mr Walton signed the document on behalf of the Council on 18 May 2016 and 31 May 2016, respectively. The Council's decision to directly sell the property to the owners of 227 Victoria Road (the Drummoyne 888 Partnership) is not contentious given the unique relationship between the sites.

On 17 May 2016, Mr Walton wrote to Mr Bartolotta with the Council's counteroffer, being \$2.25 million and a six-month settlement period upon exchange of contract. The offer was subject to a resolution by the Council and confirmation of the purchase of 227 Victoria Road.

On 19 May 2016, Mr Walton wrote to Mr Osland in response to a query Mr Osland had about the progress of the sale of 231 Victoria Road. He stated:

Re Victoria Rd – we have provided a written counter offer to their \$1.8mil this week, advising we believe that it is worth \$2.25 mil (based on our valuation). I discussed this with you last week. I believe from here we will meet face to face and as we discussed anything greater than \$2mil would be a good outcome for us. (Emphasis added)

On 20 May 2016, Mr Bartolotta wrote to Mr Walton, "Received your counter offer – thank you. Do you have time today to discuss & finalise?" Mr Bartolotta received an out-of-office reply from Mr Walton because, on 20 May 2016, Mr Walton went on a period of unexpected leave. It was not known for how long Mr Walton would be away but in an email to other Council staff, Mr Osland anticipated Mr Walton would be on leave for a "few days".

On 24 May 2016, Mr Bartolotta wrote to Mr Osland with a revised offer to purchase 231 Victoria Road. In summary, Mr Bartolotta offered \$2.1 million, an 18-month settlement period, a 5 per cent deposit and continued use of the Council carpark until settlement.

On 27 May 2016, Mr Osland prepared a report for the Council in relation to 231 Victoria Road in which he recommended the Council endorse the sale of 231 Victoria Road for \$2.1 million with an 18-month settlement (in accordance with Mr Bartolotta's offer of 24 May 2016). Mr Osland considered the offer to be "fair and reasonable" and advised the Council that the standalone value for the site was \$1.8 million.

The minutes of the Council meeting held on 31 May 2016 indicate the Council endorsed the sale of the property at 231 Victoria Road and gave Mr Sawyer the delegated authority to finalise the terms of the contract and execute the sale documents. Mr Tsirekas was present at the meeting and made no declaration of interest. Mr Walton returned to work on 31 May 2016.

On 1 June 2016, Mr Walton wrote an email to Mr Osland and requested that he make a file note of the meeting held with Mr Bartolotta, including the date, location and discussion that took place, stating "I believe that this is important for our records to understand how agreement was reached on the matter". He also suggested that the Council would need to get advice about adding Mr Osland as a signatory to the direct dealing document, as

Mr Osland was the Council officer who had reached the agreement with the purchaser (Mr Bartolotta) to dispose of the land (when Mr Walton was on leave). Mr Walton made the same request of Mr Osland on 14 November 2016. There is no Council record of a response by Mr Osland.

On 3 June 2016, Mr Tsirekas resigned from the Council to contest the federal election.

On 30 June 2016, Mr Walton sent an email to Mr Bartolotta annexing the contract for sale in relation to 231 Victoria Road. On 8 November 2016, contracts for the sale were exchanged, on the payment of a 5 per cent deposit, with settlement to take place 18 months from exchange.

Mr Walton's evidence

Mr Walton gave evidence that, in around May 2015, he commenced negotiations with Mr Bartolotta in relation to the sale of 231 Victoria Road, Drummoyne. As far as he understood, he was negotiating with Mr Bartolotta alone; he believed that Mr Bartolotta was the owner of 227 Victoria Road. Mr Walton stated that Mr Bartolotta did not tell him that he was negotiating on behalf of Mr Colacicco or Mr A. Mr Walton recalled that Mr A's son was present at some meetings; he understood he was assisting Mr Bartolotta with the development of the sites.

Mr Walton said he prepared a document, entitled, "Disposal of Property – Direct Dealing Process" for consideration by the Council's executive in accordance with the ICAC guidelines.⁵ He said that because 231 Victoria Road was landlocked, the Council negotiated directly with the owner of 227 Victoria Road (Mr Bartolotta) rather than attempting to sell the property on the open market. In effect, the Council deviated from the usual process when disposing of the land.

Mr Walton said the Council received its first offer from Mr Bartolotta in March 2016 for around \$1.8 million, which Mr Walton considered to be a "low-ball" offer. Mr Walton sought a valuation report from the certified practising valuer. Mr Walton said the amended valuation for 231 Victoria Road was between \$2.175 million and \$2.4 million.

On 17 May 2016, Mr Walton wrote to Mr Bartolotta with a counteroffer of \$2.25 million and proposed a settlement date six months from exchange. Mr Walton said he viewed this as a reasonable offer to advance on behalf of the Council and did not consider a six-month settlement period to be unreasonable. He said it would not be in the

⁵ These are most likely the Commission's 2006 guidelines, *Direct Negotiations: guidelines for managing risks in direct negotiations*.

Council's interests to consider a longer settlement period as the market was "hot" and property values were increasing between 15 and 20 per cent annually. Mr Walton's view was that anything greater than six months would require a revaluation of the price. Mr Walton said from his recollection, the basis for the \$2.25-million counteroffer was that it was the exact midpoint of the valuation range (between \$2.175 million and \$2.4 million). He said this figure represented what he considered to be a proper offer in a rising market.

Mr Walton said he started a period of unexpected leave on or about 20 May 2016. He set up an out-of-office reply, which directed any queries to Brad Roberts, his second-in-charge. There was no urgency about finalising the sale of 231 Victoria Road while he was away. Mr Walton could not be sure when he returned from leave but believed it was about one or two weeks later (he returned on or around 31 May 2016). When he went on leave, he did not know the date he would be returning to work. He denied that he expected the matter to progress in his absence.

When Mr Walton returned from leave, he signed the direct dealing document, on 31 May 2016, as one of the Council's signatories. Mr Walton said that, one or two days later, he learned that Mr Osland had prepared a report to the Council in relation to the sale of 231 Victoria Road in Mr Walton's absence. He said he was not told directly about Mr Osland's report but had either found the report itself or seen the resolution of Council of 31 May 2016. He said he was "very surprised" to find a report had been prepared by Mr Osland as Mr Osland had not been involved in any of the negotiations, and had no real reason to prepare a Council report on the matter. He had not asked Mr Osland to progress the negotiations with Mr Bartolotta in his absence or to take over conduct of the negotiations. Mr Walton said he did not know who made the decision to progress the matter in his absence. He could not recall any conversation with Mr Osland but believed he would have asked him why this was done. Mr Walton explained, "So I was very surprised to return to find a counter report had been drafted, put on the agenda, considered by Council, resolved by Council and determined in the space of time while I'd been away".

Mr Walton said there were a number of matters in the report with which he took issue:

- He did not agree with Mr Osland's assessment that the standalone value of the property was \$1.8 million. He said this was "far from fact" and not based on the valuation reports the Council had received.
- There was no need to entertain a settlement period of 18 months to enable lodgement of a

development application and this settlement period was three times as long as he considered reasonable (having proposed six months). He would have been hesitant to agree to an 18-month settlement as it "complicates" matters.

- There was no reference to indexation in Mr Bartolotta's counteroffer of \$2.1 million.
- He did not consider the offer of \$2.1 million to be "fair and reasonable" (given Mr Walton's previous counteroffer of \$2.25 million). This concern was not as "glaringly incorrect" as the other matters, but it was "certainly a concern". He felt that the Council could have achieved a higher price for that site.

Mr Walton said he would not have recommended that the Council accept Mr Bartolotta's counteroffer of \$2.1 million with an 18-month settlement period. He could not see any basis for justifying an 18-month settlement period. However, in cross-examination, Mr Walton agreed that \$2.1 million was above the amount that he stated would be a "good outcome"; his email to Mr Osland of 19 May 2016 stated, "anything greater than \$2mil would be a good outcome for us".

Mr Walton recalled sending the email to Mr Osland on 1 June 2016 in which he requested that Mr Osland draft a file note of his meeting with Mr Bartolotta and seek advice about signing the direct dealing document. He believed it was important to "fill the gap" because there was "no correspondence" or justification as to why the decision had been made to sell the property. He said this email was a reflection of his concerns about what had taken place, and this was his way of recording his concerns in writing.

Mr Walton said he again wrote to Mr Osland on 14 November 2016 and requested that he sign the direct dealing document on behalf of the Council, and noted that he had previously requested that Mr Osland prepare a file note. Mr Walton's evidence was that Mr Osland never provided him with any explanation or any reasonable explanation as to how the sale had come about as it did. Mr Walton believed that no file note was prepared by Mr Osland.

Mr Osland's evidence

Mr Osland was not called to give evidence at the public inquiry due to health concerns. A transcript of his compulsory examination, conducted on 11 April 2022, was tendered. During the compulsory examination, Mr Osland gave evidence that he did not know that either Mr Colacicco or Mr A were interested parties in the transaction to purchase 231 Victoria Road, Drummoyne.

In general terms, Mr Osland's evidence was that he could not recall the transaction in any detail, nor could he

recall the records which were shown to him in relation to the transaction. He could not recall why the sale was progressed in Mr Walton's absence and could not recall if there was any sense of urgency to proceed with the sale. He said it was possible that someone asked him to progress the sale while Mr Walton was on leave, although he could not recall who it was, but said it was most likely to be Mr Sawyer. Mr Osland stated that, to his knowledge, Mr Tsirekas did not instruct him to do anything in relation to this transaction, although he said Mr Tsirekas may have instructed someone else to provide instructions to him. In the Commission's view, there is no reason to doubt the veracity of Mr Osland's evidence.

The Commission is satisfied that neither Mr Walton nor Mr Osland knew of the involvement of Mr A or Mr Colacicco in relation to the sale of 231 Victoria Road. Therefore, neither could have disclosed to Mr Sawyer or Mr Tsirekas that Mr Colacicco was interested in the transaction.

The evidence of the members of the Drummoyne 888 Partnership

Given Mr Colacicco's close relationship with Mr Tsirekas and Mr Sawyer, the Commission examined why his involvement in the sale of 231 Victoria Road, Drummoyne, was hidden from the Council, and whether anybody from the Drummoyne 888 Partnership (Mr Bartolotta, Mr A, Mr Colacicco or Ms Fredrix) informed Mr Tsirekas and/or Mr Sawyer of Mr Colacicco's involvement. It is noted that Mr A's involvement was also unknown, but the evidence suggests his relationship with Mr Tsirekas and Mr Sawyer may not have given rise to any conflict of interest.

The Commission examined the circumstances surrounding how the terms of the sale were negotiated in Mr Walton's absence, given the lack of Council records in relation to the decision.

Mr Bartolotta's evidence

Mr Bartolotta gave evidence that, in late-2014 or early-2015, Mr A came to him with a "potential development opportunity" in relation to 227 and 231 Victoria Road, Drummoyne. He understood the proposal was to purchase 227 and 231 Victoria Road and develop the properties. From discussions with Mr A, he understood that Mr Colacicco would also be involved.

Mr Bartolotta said he, Mr A and Mr Colacicco formed a partnership to purchase and develop 227 and 231 Victoria Road. Three companies were used to purchase 227 and 231 Victoria Road: Drummoyne 888, Victoria RM and Sydney City 227. He was the sole director of each of the companies. At the time of registration, each of the three companies represented one of the three separate interests

of himself, Mr A and Mr Colacicco (and his business partner, Ms Fredrix). He explained that he received an accounting firm's advice in relation to the structure of the companies. The 227 Victoria Road property was purchased under an option which was to expire in July 2016.

In answer to questions about why he was the sole director of each of the companies, Mr Bartolotta claimed that Mr Walton expected that Mr Bartolotta would be the sole person dealing with the Council and responsible for the transaction. Mr Bartolotta stated that he did not tell the Council at any stage that he was also negotiating on behalf of Mr Colacicco and Mr A. Mr Bartolotta's evidence was that Mr Colacicco wanted to keep his involvement in the matter "private" because he owned a real estate agency in the local area. He could not remember when this conversation occurred. Mr Bartolotta said there was never a conversation or decision to keep Mr A's involvement a secret and Mr A's son did attend meetings with the Council.

Mr Bartolotta said he did not know Mr Tsirekas prior to his involvement in this transaction and met him for the first time at the Council one day in passing, during negotiations in relation to 231 Victoria Road. At a much later date, in July 2019, he ran into Mr Tsirekas and his partner by chance on a beach in Lipari, Italy. Mr Bartolotta knew Mr Colacicco and Mr Tsirekas were friends; he came to know this after a conversation with Mr Colacicco sometime between late-2014 and May 2016. Mr Bartolotta said that Mr Colacicco never mentioned a friendship with Mr Sawyer.

Mr Bartolotta gave evidence that most of his negotiations with the Council were with Mr Walton and he had limited dealings with Mr Sawyer. He said that, in May 2016, he unexpectedly received an out-of-office reply from Mr Walton (it was 20 May 2016). To the best of his recollection, Mr Colacicco had told him to contact Mr Osland.

Mr Bartolotta said there was some urgency about finalising negotiations with the Council in relation to 231 Victoria Road, because the option to purchase 227 Victoria Road was due to expire in July 2016, and there were complicated probate and tax issues in relation to the purchase of 227 Victoria Road.

Mr Bartolotta said that the terms of the offer of 22 March 2016 (\$1.8 million) were agreed between Mr Colacicco, Mr A and himself. In relation to the Council's counteroffer of 17 May 2016 (\$2.25 million and a six-month settlement period), Mr Bartolotta thought they would need more than six months and, from his point of view, the purchase price was "way too expensive".

Mr Bartolotta was questioned about negotiation of the ultimate sale price and conditions. During his evidence at the public inquiry, he said he had gone through his notes and found that a meeting had taken place at the Council on 23 May 2016 at 3:00 pm. Mr Bartolotta was required to produce the relevant records to the Commission. A digital diary entry produced by Mr Bartolotta corroborated his account that a meeting had taken place at the Council on Monday, 23 May 2016 at 3:00 pm (there were no Council records in relation to this meeting). The metadata for the diary entry indicates the appointment was created on 20 May 2016.

Mr Bartolotta gave evidence that he believed that the appointment had been previously arranged with Mr Walton. However, he accepted it was possible that he may have arranged a meeting with Mr Sawyer, rather than Mr Walton, given the metadata for the appointment was created on 20 May 2016, the day on which Mr Walton had started his period of leave.

Mr Bartolotta also produced a typed file note of the 23 May 2016 meeting, which occurred at the Council. The metadata indicated that the document was created on 23 May 2016. The file note erroneously indicated that Mr Walton was present during the meeting (he was on leave). The file note recorded the history of negotiations and set out the offer Mr Bartolotta put to the Council at the meeting:

Offer for Council consideration:

\$2,000,000 plus \$1000 per m² payable to council over allowable GFA within the

CCB LEP 2013

Settlement : 18 months from exchange.

Continued use of Carpark to Council at no charge until settlement

(original emphasis)

Mr Bartolotta's file note is the only record of the meeting of 23 May 2016. He said that Mr Osland and Mr Sawyer were present at the meeting. He said Mr Sawyer and Mr Osland rejected the \$2-million offer and suggested that he revise his offer, which he did after discussing it with Mr A and Mr Colacicco because there was a "sense of extreme urgency". He said Mr Osland had indicated that "something around \$2.1 [million] might be palatable". He agreed that, to the best of his recollection, at the meeting Mr Osland and/or Mr Sawyer put forward or suggested \$2.1 million as a possible figure to get the "deal done". Mr Bartolotta said the offer he left with Council included an 18-month settlement period.

Mr Bartolotta gave evidence that, after this meeting, during discussions with Mr A and/or Mr Colacicco, they advised him that he needed to offer \$2.1 million or the transaction would not proceed. He understood that Mr A and/or Mr Colacicco must have independently discovered this information, although he did not know how.

Mr Bartolotta wrote the counteroffer dated 24 May 2016 and sent it to Mr Osland on that day. He offered \$2.1 million, an extended settlement of 18 months, payment of a 5 per cent deposit and the Council's continued use of the carpark.

Mr A's evidence

Mr A gave evidence that he has known Mr Tsirekas socially since 2008. He said he and Mr Tsirekas would have coffee with others on Friday mornings if Mr Tsirekas "turned up" at the café. He said that "of course" they were friends. They would go to dinner and the football together but only as part of a group.

Mr A said he has known Mr Colacicco since about 2007/2008. Mr Colacicco came to him with a proposal to purchase 227 Victoria Road, Drummoyne and, after some investigation, Mr A formed the view that it might be possible to carry out a development on the site if 231 Victoria Road were also purchased. Mr A said he approached Mr Bartolotta to become involved in the potential project. He stated that, after Mr Bartolotta became involved, negotiations commenced with the Council.

Mr A said that Mr Bartolotta was nominated as the person to lead the negotiations with Council, based on a recommendation from their accountants that it would help with securing finance because of negative connotations associated with Mr A's name. Mr Bartolotta was also nominated because he was a "good negotiator". Mr A's involvement was not discussed: it was implied by Mr A to not reveal Mr A's involvement because Mr Bartolotta knew his "history". Despite Mr A's concern about associating his name with the transaction, he agreed that his son attended some meetings at the Council with Mr Bartolotta.

Mr A denied he was aware of a conversation about concealing Mr Colacicco's involvement in the partnership. Mr A agreed that Mr Bartolotta met with the Council in relation to negotiations and then reported back to him and Mr Colacicco. He said any offer to the Council was discussed first with Mr Colacicco and Mr Bartolotta and, if all three agreed, the offer would be put to the Council. He said that Mr Bartolotta discussed the terms of the counteroffer of 22 March 2016 (\$1.8 million) with him and Mr Colacicco before putting it to the Council. Mr A said, after the Council rejected their \$2-million offer during the meeting of 23 May 2016, he said they should offer

\$2.1 million with an 18-month settlement but denied having a conversation with anyone from the Council who told him they should offer \$2.1 million. He remembered that a man called Mr Osland was involved in this negotiation on behalf of the Council and Mr Walton was not there. He said there was some pressure to finalise negotiations with the Council in relation to 231 Victoria Road, as the option to purchase 227 Victoria Road was about to expire, and also because there were tax implications in relation to probate issues if the sale did not proceed.

Mr Colacicco's evidence

Mr Colacicco stated that he has been a real estate agent since 1993. During the period relevant to this investigation, he was a partner in an agency in Drummoyne. He said, since 2020, he has been running a small property management business. Mr Colacicco said he has known Mr Tsirekas for about 20 years and described him as one of his closest personal friends.

Mr Colacicco gave evidence that Mr Sawyer was also a friend. He said he and Mr Sawyer had a shared interest in horse racing and were part of the same syndicate which owned the racehorse called Northern Glory in 2012. Mr Colacicco said he considered Mr Sawyer a close friend by 2015. He said Mr Sawyer was part of a group of people, including Mr Tsirekas, who would meet for coffee on Fridays at a local café.

Mr Colacicco's evidence was that he became aware of the opportunity to purchase 227 Victoria Road, Drummoyne, through an agent who worked in his real estate agency. He took that opportunity to his friend, Mr A, who was involved in property development. Mr Colacicco's evidence was that he and Mr A could not undertake the redevelopment on their own – which the Commission infers means from a financing perspective – and so Mr A introduced Mr Bartolotta to Mr Colacicco as someone who might also be involved in the transaction. The initial discussion between them was about purchasing 227 Victoria Road under an option and then approaching the Council to gauge its interest in selling 231 Victoria Road. The Council had previously made public its intention to dispose of some of its carparks. He did not consider it necessary to disclose to the vendor of 227 Victoria Road that he was one of the interested purchasers because another agent represented the vendor in the sale of 227 Victoria Road.

Mr Colacicco agreed that three separate companies were established to purchase the properties and Mr Bartolotta was the sole director of each of those companies. One of the companies represented Mr Colacicco's interests. Mr Colacicco agreed that his involvement and that of his business partner was kept private. He stated that he wanted to keep his involvement private because they were

local real estate agents and because of past experiences of jealousy from family and friends. It had been his position since a "long while ago now" that he would not tell people too much about "personal things". When it was pointed out to him that people would not necessarily find out he owned a block of land unless they conducted a title search, Mr Colacicco maintained it was "a choice I made". He also said that he had two other business partners who were not involved in this project and he wanted to "keep it quiet". He had experienced "other situations in the past", which took him to a "dark place". He and his wife made this choice and "that's the path I went on".

Mr Colacicco gave evidence that his business partner, Mr Bartolotta and Mr A were all aware that he wanted to keep his involvement in this transaction private from the Council. He said that it was agreed that Mr Bartolotta would negotiate on their behalf with the Council and report back to him and Mr A. The three would then decide what would happen next. Mr Colacicco said he would always relay everything back to his business partner as well.

Mr Colacicco gave evidence that he did not tell either Mr Tsirekas or Mr Sawyer about his involvement in the purchase of 231 Victoria Road. He agreed his relationship with Mr Tsirekas was built on mutual trust, as shown by his involvement in the Machonic account and payments to that account (see chapter 3). He denied it was highly improbable that he did not mention to either Mr Tsirekas or Mr Sawyer his involvement in 231 Victoria Road.

Mr Colacicco said the contents of all correspondence to the Council were always discussed between himself, Mr A and Mr Bartolotta before being sent. Mr Bartolotta viewed the Council's counteroffer of 17 May 2016 (\$2.25 million) as being too high. In Mr Colacicco's view, it "came down to numbers" and it was collectively agreed they should offer \$2 million for the property. He recalled that the purchase of 231 Victoria Road became time-sensitive because of the option period expiry date, and because of probate issues for the vendors of 227 Victoria Road.

In relation to their \$2.1-million offer of 24 May 2016, Mr Colacicco said he, Mr A and Mr Bartolotta discussed the terms of the offer at a meeting or in a telephone call. He denied having a conversation with anyone from the Council, including Mr Sawyer or Mr Tsirekas, in which they told him that the Council would accept \$2.1 million for 231 Victoria Road. He said that information came as a result of Mr Bartolotta's involvement in the 23 May 2016 meeting at the Council with Mr Sawyer and Mr Osland. He agreed that he told Mr Bartolotta that if they did not agree to pay what the Council wanted (\$2.1 million) then the sale would not happen but said he had spoken those words because of what Mr Bartolotta had told him of what had transpired at the Council meeting.

Ms Fredrix's evidence

Ms Fredrix gave evidence that between 2015 and 2020, she operated a real estate business with Mr Colacicco and others. Ms Fredrix said that, in 2020, upon the dissolution of her partnership with Mr Colacicco, she became aware through her accountant of her involvement in a company which had purchased 227 and 231 Victoria Road, Drummoyne. She said that, before 2020, she believed that Mr Bartolotta was the purchaser of 227 and 231 Victoria Road (with the sale of 227 Victoria Road managed through their agency). She said she definitely did not have any conversation with Mr Colacicco about her involvement in a company which purchased 227 or 231 Victoria Road. Had she been aware, she would have disclosed her interest to the vendors of 227 Victoria Road, for whom the agency acted on the sale to Mr Bartolotta.

However, Ms Fredrix said that she did have a conversation with Mr Colacicco in which they discussed investing in the proposed development of 227–231 Victoria Road. She said that the discussion occurred after Mr Bartolotta had exchanged contracts or purchased 227 Victoria Road. She said she was under the impression that Mr Bartolotta needed investors. Mr Colacicco did not relay to her the negotiations as they were taking place in relation to 231 Victoria Road.

The extension on settlement of 231 Victoria Road

In about March 2018, Mr Bartolotta sought an extension of the settlement date from the Council for the purchase of 231 Victoria Road, Drummoyne.

By this time, Mr Sawyer had retired from the Council. His involvement with this extension was not examined, as it was limited to the Council's decision to sell 231 Victoria Road and the terms of the sale.

Mr Tsirekas' involvement was examined.

Between December 2016 and November 2018, Mr Bartolotta sought development approval for the development of 227–231 Victoria Road. The Sydney Central Planning Panel ("the Panel") was the consent authority for the development application.

On 16 September 2017, Mr Tsirekas was re-elected as mayor of the Council.

On 5 December 2017, after much negotiation, the final development application plans were submitted to the Council. The application was to build a six-storey building with 18 dwellings, a ground floor with commercial tenancy and a basement carpark for 27 vehicles. On 16 January 2018, the Panel met and approved the revised plans for the development subject to conditions. Mr Tsirekas was

a member of the Panel and declared a conflict of interest due to the "Council connection to the site of the proposed development".

After the development was approved, Mr Bartolotta sought an extension of the settlement date from the Council. On 28 February 2018, Mr Colacicco sent a text message to Mr Tsirekas which said, in part:

Could you also organise a meeting for either next Tuesday or Wednesday afternoon for John Bartolotta to meet with the new GM and John Onslow [sic] regarding 231 Victoria Road Drummoyne (carpark)

In relation to his message of 28 February 2018, Mr Colacicco could not recall if Mr Tsirekas did organise a meeting for Mr Bartolotta to meet the new general manager of the Council (Mr Gainsford) or Mr Osland (erroneously described as "John Onslow"). He said he did not disclose to Mr Tsirekas that 231 Victoria Road was a property with which he was involved. He agreed that this meeting related to the request for an extension of the settlement period.

Mr Tsirekas was unable to explain why Mr Colacicco asked him to arrange a meeting for Mr Bartolotta. He denied that the request came "out of the blue" but could not recall a conversation with Mr Colacicco in which they discussed Mr Bartolotta and Mr Bartolotta's involvement in 231 Victoria Road, although he said there may have been a telephone conversation. He said this was an example of Mr Colacicco using their friendship to organise meetings on behalf of himself or persons he knew.

On 6 March 2018, Mr Bartolotta wrote an email to Mr Walton seeking a four-month extension to settle 231 Victoria Road, citing "many delays" in the development approval process. On 15 March 2018, Mr Bartolotta wrote a more detailed email addressed to Mr Walton and copied in the Council's general manager (Mr Gainsford) and Mr Tsirekas. He requested a six-month extension, citing delays in the development approval process and stating that the extension would allow him to finalise the development approval conditions and arrange financing arrangements.

Mr Bartolotta said he copied Mr Tsirekas into the email as he was "annoyed" by the Council's conduct because Mr Walton had not informed him of contamination issues impacting 231 Victoria Road. He said that, during the development application process, they discovered that the site would require remediation because of contamination caused by a laundromat near 227 Victoria Road. He agreed that he referred to the contamination issue very briefly in his email to Mr Walton (copied to Mr Tsirekas) and he did not express any disappointment with Mr Walton or the Council more generally. Mr Bartolotta said that by copying in Mr Tsirekas, he gave the email a sense

of urgency. It was probably Mr Colacicco and/or Mr A who had told him to copy Mr Tsirekas into the email correspondence. He said he never copied in Mr A or his son or Mr Colacicco into correspondence with the Council but would forward it to them.

In relation to the request for an extension, dated 15 March 2018, Mr Colacicco said he did not see Mr Bartolotta's correspondence with the Council requesting an extension, although he would have had a conversation with Mr Bartolotta about its contents. He may have told Mr Bartolotta to send the email to Mr Tsirekas because they were "very annoyed" with the Council at the time. He later said it was likely that he did advise Mr Bartolotta to copy Mr Tsirekas into his email to the Council, because Mr Bartolotta was a client, but he then agreed that any extension granted to Mr Bartolotta was also to his own benefit. His evidence about how Mr Bartolotta had acquired the status of a client remained unclear (given Mr A and Mr Colacicco had approached him about the 227 Victoria Road development opportunity).

Mr Colacicco said that if there were an issue, he would contact Mr Tsirekas and ask him to find out what the problem was, stating, "We were friends and I felt comfortable asking him". He agreed that Mr Tsirekas would look into matters for him because he was aware of what was going on in the Council, but agreed this situation was slightly different as he had a personal interest in the matter. He agreed he was utilising the friendship to benefit himself, but said he did not think to disclose to Mr Tsirekas that he had a personal interest in the matter.

Mr A recalled the period when an extension of time for the settlement was sought. He denied telling Mr Bartolotta to copy Mr Tsirekas into the email and said that he was not aware of Mr Colacicco advising Mr Bartolotta to do so.

On 21 March 2018, Mr Walton responded to Mr Bartolotta's email:

Hi John,

Thanks for the information provided below in relation to your request to extend the completion date of the contract for sale of Council land, being 231 Victoria Road, Drummoyne.

While I understand the development approval process was drawn out, which is unfortunate, that process is outside of my control in representing Council as land owner.

My role is quite separate from Councils [sic] responsibilities as consent authority regarding the Environmental Planning and Assessment Act.

The terms of the contract as negotiated by yourself and John Osland were, in my opinion, quite

favourable to you in that you were provided up to 18 months to complete the contract with no escalation in purchase price during that time. Further the agreed purchase price was at the lower end of advice received by Council in relation to the development potential of the land and its value at the time.

Your request to extend the contract completion date was originally four months and as per your e-mail below you are now requesting an extension of 6 months.

If Council were to agree to your requested extension it would mean that the total timeframe to complete the contract would be potentially 24 months.

Since you reached agreement with John Osland in June 2016 property values have increased.

Rp data/Core Logic reports that the median price of units in Drummoyne increased from Nov '15 to Nov '16 by 13.38%, and then Nov '16 to Nov '17 by 14.28%.

At this stage without a commercial offer to support your request to extend the completion date of your contract, your request is not agreed.

Happy to discuss this with you if required, hopefully you appreciate my position.

Regards,

*Kent Walton
Manager, Buildings & Property
City of Canada Bay*

On 21 March 2018, Mr Colacicco forwarded this email to Mr Tsirekas, who then forwarded it to Mr Gainsford.

On 9 April 2018, a meeting was diarised between Mr Bartolotta, Mr Walton and Mr Gainsford. On 12 April 2018, Mr Bartolotta emailed Mr Walton and Mr Gainsford to thank them for their time on 9 April 2018 and propose "commercial terms" or financial compensation to the Council for the extension (\$5,000 per month for the first three months and \$7,500 per month for four-to-six months). He copied Mr Tsirekas into his correspondence.

Mr Walton prepared a report for the Council in relation to the request for an extension of time. He recommended that the Council agree to extend the contract completion date for the sale of 231 Victoria Road in accordance with the report (\$25,000 for up to three months' extension, and \$50,000 for up to six months' extension), and that the general manager be delegated authority to finalise and execute any legal documents required in relation to the matter. On 15 May 2018, the Council passed a resolution to that effect.

Mr Colacicco denied seeing Mr Bartolotta's response dated 12 April 2018, but said the position outlined in the letter was something that he, Mr A and Mr Colacicco decided upon collectively. He denied advising Mr Bartolotta to copy in Mr Tsirekas. He denied wanting to involve Mr Tsirekas. He was shown a document in which he forwarded Mr Walton's response of 21 March 2018 to Mr Tsirekas' personal email account with the message "fyi" and Mr Tsirekas forwarded it to his Council email address. Mr Colacicco then said this was an example of telling Mr Tsirekas that Mr Bartolotta was having issues with the Council. Later in his evidence, he agreed he forwarded Mr Walton's response to seek the intervention of Mr Tsirekas on behalf of Mr Bartolotta and himself; he expected that Mr Tsirekas would intervene because of their relationship and he did not appreciate there were any probity issues in having Mr Tsirekas do so.

On 16 May 2018, Mr Walton sent an email to Mr Bartolotta with revised terms for the settlement, namely, that the financial compensation be \$25,000 for an extension of up to three months, and \$50,000 for an extension of up to six months. Mr Bartolotta responded, "That is fine – please proceed". A deed of variation was prepared and executed by Mr Bartolotta on behalf of the companies in the Drummoyne 888 Partnership and Mr Gainsford on behalf of the Council. Mr Walton said he believed the Council resolved to extend the contract for sale based on his recommendations.

Mr Bartolotta said that in October 2018, he disposed of his interests in 227 and 231 Victoria Road for around \$500,000, with Mr A taking over the Drummoyne 888 Partnership.

Mr Colacicco said that the companies with which he was associated sold the properties and did not undertake the development of the properties. He believed that occurred sometime in 2019 (it was 2020). Mr Colacicco maintained he did not tell Mr Tsirekas about his involvement in the purchase of 231 Victoria Road.

What did Mr Sawyer or Mr Tsirekas know about Mr Colacicco's involvement in the sale of 231 Victoria Road?

Mr Sawyer gave evidence that 231 Victoria Road, Drummoyne, was used by the Council as a carpark until the property was sold in November 2018. The responsibility for the sale of 231 Victoria Road was delegated by Mr Osland to Mr Walton. Mr Sawyer agreed he signed the relevant direct dealing document on 18 May 2016. He said he had never before signed a direct dealing document and described this transaction as a "one off"

situation. He agreed a Council property would usually be sold on the competitive market in order to obtain value for money, unless unique circumstances justified it not going to market.

Mr Sawyer gave evidence that, on 20 May 2016, he became aware that Mr Walton had taken a period of leave and he became involved in the sale of 231 Victoria Road. He received a voicemail message from Mr Bartolotta in which he expressed an eagerness to meet to try to finalise the sale of 231 Victoria Road. Mr Sawyer said he telephoned Mr Bartolotta and left a message and then, on 20 May 2016, Mr Bartolotta sent him a text message confirming the meeting for 23 May 2016 at 3:00 pm. Mr Sawyer understood the meeting would be a continuation of the negotiations for the sale of 231 Victoria Road. The following text message was sent to Mr Sawyer by Mr Bartolotta on 20 May 2016:

*Thanks Gary – got your message – see you Monday
[23 May 2016] 3pm regards John*

In relation to the negotiations with the Council, Mr Sawyer saw "no reason to wait" for Mr Walton to return. He "supposed" it was correct that he determined negotiations should continue in Mr Walton's absence. He agreed that the transaction up until 20 May 2016 was in the hands of Mr Walton, whom he considered to be a very competent officer. He decided to continue negotiations as it was not known for how long Mr Walton would be on leave. He could not recall any circumstances that required the matter to be dealt with urgently. His intention was to continue negotiations rather than to complete them at the meeting on 23 May 2016. The purpose of the meeting was to hear what Mr Bartolotta had to say or the questions he had for the Council, more than anything else.

Mr Sawyer said his practice was to try to accommodate people who had legitimate business with the Council. He "apparently" met with Mr Bartolotta and Mr Osland on 23 May 2016. He could not recall the meeting but believed that it must have occurred. He could not recall how long the meeting went for or who spoke at the meeting. He could not recall seeing the counteroffer from Mr Bartolotta dated 24 May 2016 (\$2.1 million with an 18-month settlement period) but believed he would have seen it in accordance with normal practice in the context of Mr Osland preparing a report for the Council. He was unable to recall the content of any discussions during that meeting, for instance, about the settlement period or deposit amount.

Mr Sawyer said he was not aware of any pressing urgency to complete the transaction and agreed that Mr Walton would have been in a good position to assess whether the offer from Mr Bartolotta on 24 May 2016 represented good value for the Council. Mr Sawyer agreed that the

Council was being asked to endorse or agree to the terms of the sale as identified in Mr Osland's report, or the sale would not proceed. Mr Sawyer decided to involve Mr Osland in the negotiations but said he did not think of asking Mr Osland to sign the direct dealing document.

Mr Sawyer stated that he could not recall if there was a degree of haste in bringing this matter before the Council on 31 May 2016, and could not recall whether Mr Tsirekas asked him to ensure that it came before the Council on 31 May 2016 (Mr Tsirekas would resign from the Council on 3 June 2016). Nor could he recall if Mr Colacicco asked him to bring the matter before the Council on 31 May 2016.

Mr Sawyer said he had not seen Mr Walton's email of 19 May 2016 to Mr Osland in which he indicated "anything above \$2 million" would be a "good outcome", and he could not recall discussing it with Mr Osland. However, he agreed it was "centrally relevant" information. He thought it more than likely that Mr Osland would have mentioned Mr Walton's views to him at a briefing prior to the meeting with Mr Bartolotta. Mr Sawyer did not consider an 18-month settlement period to be unattractive, because the Council was able to continue using the carpark in this period.

Mr Sawyer said that he did not know that Mr Colacicco or companies associated with him were the intended purchasers of 231 Victoria Road. He denied that Mr Colacicco or anybody else told him that Mr Colacicco was interested in purchasing the property. He denied any knowledge of Mr Colacicco's involvement in the purchase of 227 Victoria Road. He denied that Mr Colacicco requested that he proceed with negotiations for the sale of 231 Victoria Road in Mr Walton's absence, and could not recall whether anybody other than Mr Bartolotta had asked him to progress the negotiations while Mr Walton was on leave.

Mr Tsirekas denied that he knew Mr Colacicco was involved, or interested, in the companies that purchased 231 Victoria Road. He denied informing Mr Colacicco of the price the Council might accept for 231 Victoria Road (\$2.1 million). He denied knowing that Mr A was associated with the purchase of 231 Victoria Road and denied having a conversation with Mr A in which he informed Mr A of the price the Council would accept for 231 Victoria Road (\$2.1 million).

Mr Sawyer gave evidence that there was "no reason to wait" for Mr Walton to return from leave to progress negotiations for the sale of 231 Victoria Road, particularly because they did not know for how long he would be on leave. Despite the general denials of Mr Sawyer and Mr Tsirekas, Mr Walton's evidence raised concerns about the negotiations leading to the sale of 231 Victoria Road.

The sale occurred quickly in Mr Walton's absence and on conditions arguably favourable to the Drummoyne 888 Partnership. The evidence of Mr Bartolotta, Mr Colacicco and Mr A was that the option to purchase 227 Victoria Road was to expire (in July 2016) and therefore there was time pressure to finalise negotiations in relation to 231 Victoria Road. The Commission accepts there was a commercial imperative for the partnership to proceed with the transaction as quickly as possible. However, from the Council's perspective, there was no need to rush negotiations; Mr Walton said there was no need to rush the negotiations and Mr Sawyer was not aware of any pressing urgency to complete the sale. It remains unclear why steps were taken to accelerate negotiations in the absence of Mr Walton, although the Commission notes Mr Sawyer's evidence that there was "no reason to wait" for Mr Walton to return from leave, particularly because they did not know for how long he would be on leave.

During his evidence, Mr Walton expressed concern about how the terms of the agreement were reached, namely, the sale price (\$2.1 million) and the 18-month settlement period. To some extent, Mr Bartolotta's file note of the 23 May 2016 meeting explained how the negotiations progressed in the absence of Council records (despite Mr Walton's requests to Mr Osland). Further, Mr Walton's email of 19 May 2016 that "anything greater than \$2mil" would represent a "good outcome" also partly explains how the figure of \$2.1 million was settled upon as the sale price by Mr Sawyer and Mr Osland.

In the Commission's view, the reason for the decision to allow an 18-month settlement period remains unclear. Mr Walton's view was that the 18-month settlement period was three times what he thought necessary (six months) and there was no basis for justifying an extended settlement period. While the Commission considers Mr Walton's evidence to be both credible and compelling, Mr Sawyer's evidence that he did not consider the 18-month settlement period to be unattractive because the Council could continue to use the property as a carpark is also credible.

Ultimately, while questions remain about how and why the terms of sale were negotiated in the absence of Mr Walton, there is insufficient evidence to support a finding that decisions were made for illegitimate reasons.

When the extension of the settlement date became an issue in March 2018, Mr Colacicco sought Mr Tsirekas' intervention to arrange a meeting (as demonstrated in the text message of 28 February 2018), advised Mr Bartolotta to copy Mr Tsirekas into correspondence intended for Mr Walton (15 March 2018) and forwarded correspondence from the Council to Mr Tsirekas' personal email address (21 March 2018, with the message "fyi"). However, he maintained that he did not tell Mr Tsirekas of his

involvement in the Drummoyne 888 Partnership. In the Commission's view, Mr Colacicco's evidence on this issue is improbable. However, there is insufficient evidence to support a finding that Mr Tsirekas knew of Mr Colacicco's involvement in the purchase of 231 Victoria Road.

The Commission is not satisfied that Mr Sawyer or Mr Tsirekas knew of Mr Colacicco's involvement in the purchase of 231 Victoria Road. First, Mr Colacicco denied that he told Mr Sawyer or Mr Tsirekas of his involvement. Mr Sawyer denied that he had any such knowledge. Mr Tsirekas also denied having any knowledge of Mr Colacicco's involvement before the Commission's inquiry commenced. While the Commission considers it improbable that Mr Colacicco would not have told Mr Sawyer or Mr Tsirekas – as both were very good friends with Mr Colacicco – the evidence is consistent with Mr Colacicco wishing to keep his involvement private. Further, although there are very good reasons to doubt the credibility of Mr Tsirekas, the same cannot be said of Mr Sawyer or Mr Colacicco, who were generally credible witnesses.

Secondly, and related to the preceding point, it is not implausible that Mr Colacicco did wish to keep his involvement private. Ms Fredrix, Mr Colacicco's former business partner, gave evidence that she did not become aware of Mr Colacicco's involvement in the sale of 231 Victoria Road until the dissolution of their business partnership in 2020 and, in effect, Mr Colacicco kept his involvement from her. Mr Colacicco's evidence was that Ms Fredrix did know. The Commission prefers Ms Fredrix's evidence on this issue. There is no reason to doubt her credibility and it is consistent with Mr Colacicco's efforts to keep his involvement hidden. While the Commission broadly accepts Mr Colacicco's evidence that he wished to keep his involvement private because of prior experiences, the Commission also considers Mr Colacicco was probably also motivated to do so because of his known relationship with Mr Tsirekas and Mr Sawyer.

Because the Commission is not satisfied that Mr Sawyer or Mr Tsirekas knew about Mr Colacicco's involvement in the purchase of 231 Victoria Road, the Commission cannot be satisfied that Mr Tsirekas or Mr Sawyer partially or dishonestly exercised their official functions and failed to disclose the nature of their relationship with Mr Colacicco in relation to the sale of 231 Victoria Road.

Chapter 8: Corruption prevention

Introduction

This investigation identified gaps in the local government integrity framework that were in place at the time of the investigation. Of these, the Commission has identified six areas in which the integrity and good repute of public administration in local government could be strengthened. These areas concern:

1. local government lobbying, in this case by proponents and their intermediaries on planning matters
2. overseas travel by councillors
3. disclosures of financial dealings in the written returns of councillors and designated persons
4. Commonwealth political donations and the disclosure by councillors of having received them
5. closed sessions of council meetings and how to balance confidential information while achieving principles of transparency and open government
6. “piggybacking” planning matters with existing council business at meetings without staff assessment reports.

This chapter includes four corruption prevention recommendations to address the above areas of concern.

Another example of local government lobbying

A recurring feature of this investigation was the direct lobbying of Mr Tsirekas by various proponents with planning proposals before the Council. These activities demonstrate that councillors involved in making and amending planning instruments remain targets for lobbying approaches.

The Commission made recommendations in its 2021 report, *Investigation into the conduct of councillors at the former Canterbury City Council and others* (Operation Dasha) and its 2022 report, *Investigation into the conduct of the local member for Drummoyne* (Operation Witney) to promote effective governance with respect to lobbying activities involving councillors. In response to the Commission’s recommendations in these investigations, the Office of Local Government NSW (“the OLG”) advised it would release guidelines and a model policy in June 2023 to enhance transparency around the lobbying of councillors under s 23A of the LGA. Leaving aside the delay, the OLG has committed to delivery of these guidelines and the Commission has decided not to make any further recommendation in this investigation of Council, concerning the lobbying of councillors.

As discussed in previous chapters, the investigation showed a close relationship existed between Mr Chidiac and Mr Tsirekas over many years. It also exposed that Mr Chidiac was being paid by property developers to represent their interests by approaching Mr Tsirekas to support their matters. The findings discussed elsewhere in this report indicate that Mr Tsirekas reasonably knew this but made no disclosures when voting on planning matters in which Mr Chidiac was involved.

The use of third-party lobbyists in local government was also discussed in Operation Dasha, where the Commission said:

The Commission is satisfied that its earlier views [in the 2012 Investigation into corruption risks involved in lobbying (Operation Halifax)] should be re-evaluated. Since the release of the Operation Halifax report, the risk profile of the local government sector in relation to lobbying has been altered. Since October 2012, the power to make local environmental plans (LEPs) has been handed to local councils in many cases, reducing the oversight role of

*the NSW Government. This change has the potential to increase lobbying activities in local government, and creates greater incentives for corrupt conduct to occur in that sphere.*⁶

In Operation Dasha, the Commission recommended that the provisions in the *Lobbying of Government Officials Act 2011* be extended to local government. This was also reiterated as a key finding in the Commission's 2021 *Investigation into the regulation of lobbying, access and influence in NSW* (Operation Eclipse).

The Commission has decided not to make a further recommendation on this issue in this report, especially given the NSW Government's response that it is currently considering the recommendation in Operation Dasha and the key finding in Operation Eclipse. This investigation, nonetheless, suggests a greater level of urgency is needed in progressing these changes to the *Lobbying of Government Officials Act 2011*.

Overseas travel by councillors

In this investigation, the Commission considered the multiple occasions that Mr Tsirekas undertook overseas travel while he was mayor of the Council without any credible means that he could fund it.

As discussed in chapter 3, the investigation found that Mr Tsirekas met with and was provided hospitality by key I-Prosperty personnel while overseas on multiple trips. The Commission has found that some of the overseas travel, accommodation and hospitality provided by I-Prosperty to Mr Tsirekas was a corrupt reward.

The Commission's August 2023 report, *Investigation into councillors and others at the Georges River Council and former Hurstville Council* (Operation Galley), also examined the issue of overseas travel by councillors. The corruption prevention chapter in Operation Galley discusses and recommends overseas travel by councillors be better managed to prevent corruption and reduce opportunities for inappropriate lobbying by property developers.

This investigation and Operation Galley were contemporaneous. Consequently, the Commission has decided not to make a further corruption prevention recommendation with respect to overseas travel by councillors.

Disclosures of financial dealings

Councillors and designated persons must complete a written return disclosing the following pecuniary interests and other matters:

- gifts
- contributions to travel
- interests and positions in corporations
- positions in trade unions, professional or business associations
- real property interests and any disposition of real property
- sources of income
- debts
- more recently, interests as a property developer or a close associate of a property developer.

The written return must be completed within three months after:

- becoming a councillor or designated person
- 30 June of each year, and
- the councillor or designated person becoming aware of an interest they are required to disclose that has not been previously disclosed.

The written return also allows councillors and designated persons to make a voluntary disclosure, which is known as a discretionary disclosure, concerning "any interest, benefit, advantage or liability, whether pecuniary or not".

The disclosure system now forms part of the Model Code of Conduct for Local Councils in NSW ("the Model Code of Conduct"), having previously been contained in the LGA before December 2018. Every council is required to adopt a code of conduct that incorporates, at minimum, all of the provisions of the Model Code of Conduct.

Written returns by councillors are subject to the provisions of the *Government Information (Public Access) Act 2009* ("the GIPA Act"). This Act provides that there is a presumption in favour of disclosing government information unless there is an overriding public interest against disclosure. Additionally, clause 1(2)(a) of Schedule 1 of the Government Information (Public Access) Regulation 2018 prescribes the written returns of councillors and designated persons as open access information. In September 2019, the NSW Information and Privacy Commission published guidelines concerning the application of the public interest test to the written returns of councillors and designated persons.

⁶ NSW ICAC, *Investigation into the conduct of councillors at the former Canterbury City Council and others*, Sydney, March 2021, p.184.

The guidelines identified that, subject to suitable redactions, written returns should be proactively released by councils on their websites.

The mandatory disclosure items provided for in the written return are not comprehensive. In certain situations, a councillor or designated person does not have to disclose in their written return any dealings that might include legal or financial arrangements, such as partnerships and trusts, if the arrangement does not constitute a debt or source of income that the councillor or designated person reasonably expects to receive.

As discussed in chapter 7, Mr Sawyer, while he was general manager at the Council, co-owned shares in a racehorse with Mr Colacicco and others. This arrangement bears some similarity to a business partnership in that any income or losses would be distributed among the co-owners.

Under the Model Code of Conduct and the Council's code of conduct, public officials must also disclose personal interests that conflict with public duties as conflicts of interest. The categories of personal interests that can conflict with public duties extend *beyond* the items required to be disclosed in the written return. Disclosing these types of conflict of interest, however, requires they be made in writing as and when they arise. For councillors, the written disclosure requirement is met if a verbal disclosure is made at a council meeting for inclusion in the minutes of that meeting.

In its submissions as part of this investigation, the Commission's Corruption Prevention Division proposed a recommendation that the Department of Planning and Environment ("the Department") amend the Model Code of Conduct to expand the stand-alone categories of interests that require disclosure in written returns to include business dealings.

The Council has reviewed and supported this proposed recommendation, but submitted that some clarity was required on what "business dealing" meant.

The Commission accepts that greater clarity is needed and has amended the recommendation to refer to "financial dealings", in particular, trusts and partnerships. This approach reflects the Commission's recommendation in Operation Witney to expand the categories of financial interests that members of the NSW Parliament should disclose. This is appropriate given that the interests members of the NSW Parliament must disclose are similar to those that councillors and designated persons must disclose in their written returns. The Council, in its response to the submission, also suggested that the OLG should ensure guidance material for councillors is updated to include any new disclosure obligations required under the Model Code of Conduct.

The Department submitted that it had no objection in principle to the proposed recommendation. It also requested that it be consulted in the event that the Commission makes any additional recommendations.

The Commission considers that the changes submitted on behalf of the Council are appropriate for adoption in the final recommendation below. Further consultation with the Department is unnecessary as the changes are not substantive and reflect actions the Department ought to perform when implementing the recommendation.

RECOMMENDATION 1

That the Department of Planning and Environment:

- amends the Model Code of Conduct for Local Councils in NSW to expand the stand-alone categories of interests that require disclosure in written returns to include financial dealings conducted via trusts and partnerships
- produces a fact sheet and updates guidance material for councillors to provide details about their disclosure obligations to include financial dealings conducted via trusts and partnerships.

In responding to the proposed recommendation, the Council also submitted that the Commission should consider a recommendation to establish a local government ethics adviser for councillors. The Council submitted that the advisor's role would include providing advice to councillors in respect of potential conflicts of interest, among other things.

The Commission is satisfied that Mr Tsirekas was aware of his obligations with respect to disclosing conflicts of interest. Councillors and other council officials may currently seek advice from council staff through the general manager or seek advice from external agencies, such as the OLG, the NSW Ombudsman and the Commission. Further change to these settings is likely, as the NSW Government considers the recommendations made following a review of councillor misconduct in NSW, including changes to both the training and ongoing education of councillors.

Commonwealth political donations

Since 2012, the Model Code of Conduct has:

- required councillors who have received or knowingly benefitted from a “reportable political donation” made by a “major political donor” in the previous four years to:
 - declare a non-pecuniary interest
 - disclose the nature of the interest
 - manage the conflict as if it were a pecuniary conflict of interest where the major political donor has a matter before the relevant council⁷
- informed councillors that a political donation that is not a “reportable political donation” may still give rise to a non-pecuniary conflict of interest. The Model Code of Conduct also provides that councillors should determine whether or not such conflicts are significant and take the appropriate action to manage them.

As discussed in previous chapters, Mr Tsirekas was the Australian Labor Party (ALP) candidate for the seat of Reid at the 2016 federal election. He was selected as the ALP candidate on 30 April 2016 and resigned as mayor of the Council on 4 June 2016. He was unsuccessful in his campaign and returned to the Council in the local government elections held in September 2017.

The *Commonwealth Electoral Act 1918* provides for the disclosure of political donations received by a political party and a candidate associated with a federal election or by-election to the Australian Electoral Commission (AEC). Mr Tsirekas’ federal election campaign bank statements for the period 9 June to 5 July 2016 show that his campaign received Commonwealth political donations from:

- individuals who had business before the Council prior to and after this period
- individuals who were either employed, or individuals or companies either contracted or likely to be engaged by, companies who had business before the Council to and after this period.

The individuals and entities involved in making Commonwealth political donations that are relevant to this investigation included:

- an engineering and excavation company that had provided services to Billbergia for over 15 years, which made a donation of \$20,000
- two companies that each donated \$15,000; both companies had the same financial controller who was also an employee of Billbergia
- three individuals associated with I-Prosperity, who each donated \$10,000
- Mr A and his family, who made two donations totalling \$11,200.

While political campaigning can be busy and hectic, Mr Tsirekas was nonetheless in a position to access information about his federal election campaign donors. Mr Tsirekas was provided with the username and password to access online the 2016 ALP Reid Federal Campaign bank account. Moreover, he was involved in disclosing Commonwealth political donations to the AEC at the conclusion of his federal election campaign and had access to the database of donors. The investigation also found that he was asked by officers within the ALP to verify donor details of one of the companies whose financial controller was an employee of Billbergia. Finally, in the absence of his own independent recall, Mr Tsirekas knew others who had access to the relevant information. This included the officers within the ALP, but also his partner, Ms Crichton, and Mr Chidiac, both of whom were extensively involved in the federal election campaign. The evidence of both Mr Tsirekas and Mr Chidiac was that this involvement included fundraising and disclosing donations.

The Commonwealth political donations made to Mr Tsirekas’ federal election campaign raise the question as to whether he ought to have made a non-pecuniary conflict of interest declaration at meetings dealing with Billbergia and I-Prosperity development matters. As noted in previous chapters, there were many conflicts of interest Mr Tsirekas failed to disclose at council meetings.

Many factors can contribute to failures by public officials to manage conflicts of interest. These factors include a lack of clarity around rules, workplace culture and the expectations of peers.

The Commission believes conflict of interest disclosure requirements for political donations made in jurisdictions outside of the local government sphere could be made clearer. There is currently an absence of:

- specific provisions in the Model Code of Conduct relating to the disclosure of Commonwealth political donations

⁷ The phrases “reportable political donations” and “major political donor” have the same definitions as exist under NSW electoral funding laws.

- specific guidance by the OLG regarding the disclosure of political donations where a councillor has been a candidate in another jurisdiction.

There is some imperative for establishing clearer guidance. The High Court of Australia in *Re Lambie* [2018] HCA 6 has clarified that section 44(iv) of the Australian Constitution does not prohibit a local government councillor from seeking or being elected to the Australian Parliament. It is also not uncommon for serving NSW councillors to seek election, or be elected, to the Australian Parliament. Publicly available information from recent federal elections, including from the AEC and the media, demonstrates this.

The disclosure of Commonwealth political donations to the AEC does not serve as a substitute for disclosing non-pecuniary conflicts of interest at a local-government level. Along with differences in the monetary thresholds for disclosing reportable political donations between NSW and Commonwealth electoral laws, the AEC returns required to be submitted by the two companies whose financial controller was also an employee of Billbergia only identified the beneficiary of their donations as the ALP NSW Branch. Without access to the private banking information of the ALP NSW Branch, someone reviewing the AEC returns would not be able to identify which of the many ALP candidates for federal electoral divisions in NSW at the 2016 federal election benefitted from these donations.

Many of the Commission's past investigations have examined the adverse impact on public administration that can arise from hidden or undisclosed political donations. For instance, several historic investigations involving council development decisions have found political donations were used as a convenient cloak to hide corrupt payments to elected officials or used to corruptly influence decision-making.

Recently, the Commission's 2022 report, *Investigation into political donations facilitated by Chinese Friends of Labor in 2015* (Operation Aero), observed that:

- notwithstanding the serious impact arising from unlawful donations, it is important to recognise that "Obtaining access to, or influence over, a public official on the basis of a lawful political donation is at odds with good public administration"
- differing political donation laws in Australia mean "all prohibited donors in NSW still have a vehicle to exert political influence by making donations elsewhere"

- "channelling donations through different jurisdictions is a way of circumventing the intent of the rules in NSW" and tracking these donations can be exceedingly complex.

Additionally, the Commission's 2021 report, *Investigation into the regulation of lobbying, access and influence* (Operation Eclipse), observed that, "It is now widely acknowledged that political donations have the potential to exert improper influence or to facilitate improper access".

As part of this current investigation (Operation Tolosa), the Commission's Corruption Prevention Division submitted a proposed recommendation that the Model Code of Conduct be amended to require councillors to disclose political donations received under electoral laws of the Commonwealth, or another state or territory, as non-pecuniary conflicts of interest, and for the Department to issue a circular to assist councillors in the disclosure of political donations as non-pecuniary conflicts of interest.

The Council supported the recommendation. The Council also submitted that the circular should form part of the updated guidance material it suggested the Department issue in relation to recommendation 1.

The Department submitted it had no objection in principle to the proposed recommendation. It also noted that any amendments to the Model Code of Conduct will be made after the NSW Government has had an opportunity to consider and respond to the outcomes of the OLG's current independent review into councillor conduct accountability.

RECOMMENDATION 2

That the Department of Planning and Environment:

- amends the Model Code of Conduct for Local Councils in NSW to specifically require councillors to disclose political donations received under electoral laws of the Commonwealth, or another state or territory, as non-pecuniary conflicts of interest
- issues a circular to assist councillors in the disclosure of political donations, including those received in other jurisdictions, as non-pecuniary conflicts of interest.

Closed sessions of council meetings

The LGA requires that a council must give public notice of a council meeting and provide copies of its agenda and business papers for the meeting. Meeting minutes are required to be publicly available.

A council meeting (including a meeting of a committee of council) that is conducted in closed session under the LGA is an exception to this requirement. Business papers, correspondence and reports associated with a closed session of council (“confidential reports”) are not required to be publicly available either before the meeting or in situations where they are tabled at a meeting of the council. Where a matter is considered in a closed session, only the resolutions and recommendations are open access information.

The provisions for closed sessions of council meetings were introduced in the *Local Government Amendment (Open Meetings) Act 1997*. In the relevant second reading speech, the then local government minister provided examples of councils misusing the closed session provisions in the LGA. In summary, there were:

- councils justifying moving into closed sessions on spurious or unlawful grounds
- councils using closed sessions to debate controversial, rather than confidential, matters
- some councils habitually closing meetings when considering matters of public interest
- some councils routinely having “special confidential sessions of their business paper prepared for every meeting”
- councils, by closing meetings, improperly denying the public the right to hear debates on matters of public interest (according to the NSW Ombudsman).

The OLG has issued *The Closure of Council Meetings to the Public* (“the Closed Meeting Guidelines”) to assist councils in the proper use of closed sessions. The Closed Meeting Guidelines identify that the public may use the GIPA Act to access reports and business papers dealt with in a closed meeting unless the overriding public interest against disclosure outweighs the public interest in favour of disclosure. While this gives some discretion in providing access to confidential reports, the Closed Meeting Guidelines advise councils that they “may be obliged to provide access to the report” where the reasons for confidentiality no longer exist or the reasons against disclosure under the GIPA Act no longer exist.

At different times during the relevant period, the Council moved into closed sessions to discuss:

- the establishment of planning principles associated with the negotiation and execution of planning agreements with Billbergia and I-Prosperity
- the basis for continuing negotiations on planning agreements with developers in the Rhodes West Station Precinct
- the sale of land owned by the Council at 231–233 Victoria Road, Drummoyne.

The statutory reasons provided to justify conducting these meetings in closed session were that the information was commercial-in-confidence (s 10A(2)(c) of the LGA) and/or conferred a commercial advantage on a person negotiating with council (s 10A(2)(d) of the LGA).

While the resolutions and recommendations in relation to the matters above are publicly available, they contain limited information. For instance, they do not indicate what advice the mayor and councillors were asked to consider at the meeting. They also do not record the name of any confidential reports provided for or tabled at the meeting.

The Commission had access to the confidential reports associated with the Council’s consideration of negotiations with Billbergia and I-Prosperity, the planning agreements in the Rhodes West Station Precinct, and 231–233 Victoria Road but only after using its statutory powers to compel the Council to provide them. Access to the confidential reports was not available to the public except by way of an application under the GIPA Act. This was despite the reasons for closing the meeting provided at the time the meeting was conducted being no longer valid. In fact, information about the Council’s planning agreements with I-Prosperity and Billbergia had been made publicly available as a result of subsequent reports and other legislative requirements. With respect to 231–233 Victoria Road, confidentiality continued to exist even though the Council no longer owned the land.

In the absence of a GIPA application being made and approved, there is a concern that information may be concealed from the public in situations where the reasons for confidentiality used to conduct a closed session of a council meeting no longer exist.

The Commission has previously observed that “transparency ensures the public has meaningful information about decision-making processes as well as the basis for decisions”.⁸

⁸ NSW ICAC, *Anti-corruption safeguards in the NSW planning system*, Sydney, February 2012, p.6.

Transparency helps address suspicions that a decision has been made with reference to improper considerations, including from corrupt approaches.

As part of this investigation, the Commission's Corruption Prevention Division submitted a proposed recommendation requiring the proactive release of relevant business papers, correspondence and reports where confidentiality under the LGA no longer existed.

While the Council generally supported the proposed recommendation, it submitted, that in the absence of statutory immunity for breaches of confidentiality by a council for the release of information previously considered confidential, a framework should be established to minimise potential litigation against councils. The Council submitted that any framework provided by the Department to councils for the release of information that had been previously characterised as confidential should include:

- a determination by the relevant council that the information is no longer considered confidential, including the reasons why it is no longer considered to be confidential
- the granting of an opportunity to the party or person whose confidential information may be released to provide reasons as to why the information should remain confidential.

The Commission agrees that councils should have clear processes and procedures to avoid unnecessary litigation when removing confidentiality associated with documents.

The Department submitted that it had no objection in principle to the proposed recommendation.

RECOMMENDATION 3

That the Department of Planning and Environment:

- takes steps to require councils to proactively release relevant business papers, correspondence and reports where confidentiality under Part 1 of Chapter 4 of the *Local Government Act 1993* no longer exists, either via initiating an amendment to legislation or a regulation, and/or amending the Model Code of Meeting Practice for Local Councils in NSW and *The Closure of Council Meetings to the Public* guidelines
- advises councils of an appropriate framework for considering the release of information previously considered confidential.

“Piggybacking” planning matters with existing council business

As discussed in chapter 4, at its meeting on 31 May 2016, the Council advanced the I-Prosperity planning proposal by passing an amended notice of motion which incorporated two paragraphs (paragraphs 8 and 9) that were provided by Mr Furlong to Mr Tsirekas. Ms Butler, who was acting director of planning on the evening of the meeting, described in her evidence the arrangement of advancing matters in conjunction with existing council business as “piggybacking”. As a result of this arrangement, the requirement to give due notice of council business was avoided.

Both Ms Butler and the director of planning at the relevant time, Mr McNamara, explained that the “piggybacking” arrangement was an obvious advantage to I-Prosperity’s planning proposal. These former Council officers provided evidence that I-Prosperity’s planning proposal benefitted from not being subject to the same level of assessment as the original Billbergia planning proposal, which was reasonably expected to take some time to complete under the standard practices. Moreover, Mr McNamara pointed out that the amended resolution implied the Council “was supportive of the concept” even though it had not received a proper assessment.

Without explicit provisions to the contrary, advancing planning matters in the absence of a council officer’s assessment report and an associated recommendation might occur with respect to any planning application or other planning matter under the *Environmental Planning & Assessment Act 1979* (“the EP&A Act”). This is notwithstanding the Commission’s observation in Operation Witney regarding the significance of planning decisions by councils:

Planning decisions have significant impacts on peoples’ lives and may also involve considerable financial gains or losses for affected individuals. Planning matters are particularly challenging because of the need for councillors to assess what is in the best interests of the community when there may often be competing interests at play.⁹

“Piggybacking” arrangements, such as the one Mr Tsirekas facilitated with Mr Furlong, undermine merit-based planning decisions. Furthermore, putting forward a motion without a technical assessment by staff poses a corruption risk in relation to planning decisions.

⁹ NSW ICAC, *Investigation into the conduct of the local member for Drummoyne*, Sydney, July 2022, p.38.

During this investigation, the Commission's Corruption Prevention Division proposed a recommendation that the Department should limit the ability of a council to make decisions to advance planning matters at meetings in the absence of an assessment report.

The Council submitted that it supported the import of the proposed recommendation. However, it submitted that implementing the proposal by amending the Model Code of Meeting Practice for Local Councils in NSW ("the Model Code of Meeting Practice") may not necessarily limit the ability of a council to lawfully make decisions to advance planning matters in the absence of assessment reports. Instead, the Council suggested that consideration may need to be given to amending the LGA to specifically limit the power of a council to make such decisions.

The Commission is not convinced that an amendment to the LGA is necessary. The Model Code of Meeting Practice is prescribed under s 360 of the LGA and the Local Government (General) Regulation 2021. Councils must adopt a code of meeting practice that incorporates the mandatory provisions of the Model Code of Meeting Practice.

In terms of the consequences for councillors, were they to advance a planning matter in the absence of an assessment report, the Model Code of Conduct requires council officers not to act contrary to their council's administrative requirements or policies (clause 3.1).

The Department submitted that it did not object to the proposed recommendation.

Recommendation 4

That the Department of Planning and Environment limits the ability of a council to make decisions to advance planning matters at meetings in the absence of an assessment report considering relevant matters and an associated recommendation.

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 Department of Planning and Environment (including the Office of Local Government) and the responsible ministers.

As required by s 111E(2) of the ICAC Act, the Department 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 Department 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 Department'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.

Corruption in planning matters – concluding observations

This report is the latest by the Commission that centres on serious corrupt conduct involving the NSW planning system and, in particular, the intersection of environmental planning and councillor decision-making. In addition to this report, the following Commission investigations relate in some way to planning matters:

- Operation Dasha: *Investigation into the conduct of councillors of the former Canterbury City Council and others* (March 2021)
- Operation Aero: *Investigation into political donations facilitated by Chinese friends of Labor in 2015* (February 2022)¹⁰
- Operation Witney: *Investigation into the conduct of the local member for Drummoyne* (July 2022)
- Operation Keppel: *Investigation into the conduct of the then member of Parliament for Wagga Wagga and then premier and others* (June 2023)
- Operation Galley: *Investigation into the conduct of three former councillors of former Hurstville City Council, now part of Georges River Council, and others* (August 2023).

These investigation reports by the Commission account for nearly half of the total published since 2018. In addition to these investigations, the Commission has referred a number of other allegations involving local councillors and property developers to the OLG for its consideration.

Corrupt conduct involving the environmental planning system and its intersection with councillor decision-making is not isolated to NSW. It has been a focus for other anti-corruption commissions in other Australian states, notably the Queensland Crime and Corruption Commission's 2017 report,

¹⁰ Operation Aero did not involve a particular development. It did, however, identify unlawful political donations made by a person with property development interests.

Operation Belcarra – A blueprint for integrity and addressing corruption risk in local government, and the Victorian Independent Broad-based Anti-corruption Commission's 2023 report, *Operation Sandon – Special report* involving the City of Casey Council.

The Commission considers that its reports and those in other Australian jurisdictions emphasise the high-risk nature of environmental planning and property development in terms of corruption. In particular, recent investigations suggest that there are too many elected officials with close connections to development applicants, which may represent a systemic problem.

Implementing the corruption prevention recommendations made by the Commission in this and previous investigation reports involving planning matters will go some way in addressing opportunities for corrupt conduct. However, if necessary, the Commission may decide to take further action in this area.

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 *Rejfék 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: Summary of response to proposed 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 were open to the Commission to make against various parties. These were provided to the relevant legal representatives on 16 August 2022 and submissions in reply were received. Supplementary submissions were provided to particular parties on 17 May 2023. The final submissions in reply to the supplementary submissions were received on 19 June 2023.

Mr Tsirekas requested that a summary of his responses be included in the Commission's report. The Commission may determine that other summaries of submissions in reply ought to be reproduced and has done so in relation to submissions of Joseph Jacob.

Mr Tsirekas' submissions

Mr Tsirekas provided three sets of submissions to the Commission: submissions in reply to Counsel Assisting's submissions, on 26 September 2022; submissions in relation to medical evidence, on 6 March 2023; and submissions in reply to the supplementary submissions, on 19 June 2023. The Commission has carefully considered the submissions, and has provided a summary of their substance below. This appendix also includes relevant references to paragraph numbers in Mr Tsirekas' submissions, although it should be noted

that all submissions themselves are the subject of non-publication orders pursuant to s 112 of the ICAC Act. The Commission notes that many of the submissions have been addressed in the body of this report.

A summary of the substance of Mr Tsirekas' submissions is outlined as follows:

- Mr Tsirekas submitted that his conduct was not corrupt and he did not receive benefits as an inducement or reward for partially and dishonestly exercising his official functions.
- Mr Tsirekas submitted that his conduct was at all times innocent, "albeit it could be perceived, mistakenly", as corrupt.
- Mr Tsirekas submitted his conduct was consistent with his "cultural background" which included:
 - a) storing money at home
 - b) his father providing undocumented and unconditional financial support
 - c) receiving generous undocumented financial and emotional support from his "brother" Mr Chidiac (it is unclear why this submission relates to his cultural background)
 - d) Mr Tsirekas being unaware of what Mr Chidiac did for a job and not being aware of any retainer paid to Mr Chidiac (it is unclear why this submission relates to his cultural background)
 - e) as a councillor and mayor, Mr Tsirekas providing "a relaxed, communal, open door, style of access and support, lacking in formalities and protocols, and characterised by a somewhat indiscriminate albeit well-intentioned lack of boundaries ... without fear or favour, irrespective of whether the topic was a development application or a locked lavatory" (it is unclear why this submission relates to his cultural background) (paragraph [3]).

Relationship with Mr Chidiac

With regard to his relationship with Mr Chidiac, Mr Tsirekas submitted that:

- Mr Tsirekas was not told of Mr Chidiac's work-related issues. Mr Chidiac created an element of "furtive mystery" in relation to his "job" and, in such circumstances, it is not surprising that Mr Chidiac did not disclose work-related issues to Mr Tsirekas, and such non-disclosure was consistent with the type of "furtive and mysterious 'job'" performed by Mr Chidiac (paragraph [13])
- every display of financial generosity and kindness by Mr Chidiac to Mr Tsirekas from and after 2015 is "totally explicable as arising from and being attributable to, and only to, the depth of the close friendship" (paragraph [24])
- the Commission should not find that Mr Chidiac's role included lobbying Mr Tsirekas on behalf of I-Prosperity and, if the Commission were to find that Mr Chidiac lobbied Mr Tsirekas, such a finding says nothing about Mr Tsirekas being involved in corrupt conduct (paragraph [25])
- the Commission should not conclude that Mr Tsirekas received travel benefits directly from I-Prosperity and, from Mr Chidiac in return for "access to" Mr Tsirekas but as a result of "their close and long-standing friendship and generous financial and emotional support ... during Mr Tsirekas' dark days" (paragraph [30]).

For reasons outlined in the report, these submissions are rejected.

Submissions on credibility

Mr Tsirekas submitted that there was a proper basis for him seeking to withdraw admissions he had made about the existence of conflicts of interest as at May 2016. It

was submitted that "the self-evident truth" coined by the poet Alexander Pope "to err is human, to forgive divine" must be kept in mind. It was submitted that "the matter of the disclosure of conflicts of interest does not appear to him now at the public hearing, as it appeared to him then, at his earlier examinations". The substance of the evidence by Mr Tsirekas is to the effect that the earlier "incorrect" answers were given truthfully at the time. Mr Tsirekas repeats this submission in relation to other evidence he has given regarding I-Prosperity, Billbergia (Mr Kinsella), Prolet (Joseph Jacob) and Mr Bruzzano. For reasons outlined in the report, the Commission rejected Mr Tsirekas' attempts to withdraw and change his evidence.

Further, Mr Tsirekas submitted that:

- he did not give false evidence in relation to the source of the Machonic money (paragraphs [42]–[52])
- Counsel Assisting's submission that Mr Tsirekas demonstrated he was prepared to make false statements in actual and proposed references for others (Mr Huang and Mr Zhou) does not provide a reasonable basis for Counsel Assisting's submission in relation to his credibility (paragraphs [58]–[64])
- Counsel Assisting's submission that Mr Tsirekas was a witness who regularly gave non-responsive answers and/or dissembled is "probably true" but is not a basis for rejecting his evidence in its entirety as "there might well be a medical explanation, which is explained later in the submissions" (paragraph [65]). The medical evidence is dealt with below
- Counsel Assisting's submission that Mr Tsirekas gave many implausible responses should be rejected on the basis that the submission stated that Mr Tsirekas "did not recall attending the

I-Prosperity Christmas Party in 2016 (even though he was shown photographic evidence of the same)". Reference is made to the fact that, when the exhibit was tendered, it was done so in the absence of information as to the date of the photograph and whether it was actually at a Christmas party (paragraphs [66]–[70]). This submission is rejected and the exhibits tendered provide details of the dates and times the tendered photographs were taken.

I-Prosperity

A summary of the substance of Mr Tsirekas' submissions in relation to I-Prosperity is outlined below:

- The reference to "Joseph" in the "curious" email of 14 October 2015 more than likely related to Joseph Jacob "who was in collaboration with Billbergia at the time". For reasons outlined in the report, the Commission is satisfied that the "Joseph" referred to in the email was Mr Chidiac. There is no evidence of contact between Joseph Jacob and I-Prosperity (paragraph [77]).
- If Mr Tsirekas suggested to Ms Li "to propose 35 stories [sic]" that would be the provision of information that was not only self-evidently sound but was also information that was available publicly, readily and free of charge in numerous NSW Government publications that set out information about NSW Government policy for the density the NSW Government sought to achieve for land in that part of the local government area. Mr Tsirekas refers to an exhibit to support this. However, the Rhodes Station Precinct Master Plan clarified that these built form and heights were not intended to apply to the I-Prosperity site. The "numerous NSW Government publications" are not named by Mr Tsirekas. Lastly, the master plan is identified as having been "Prepared for: City of Canada Bay Council". This suggests the master plan was not prepared for the NSW Government and cannot be relied on as a NSW Government policy (paragraph [92]).
- In relation to the May 2016 Kenzler motion, Mr Tsirekas forwarded the Kenzler motion to Mr Furlong and the submission was that "events ... were ... in effect an inevitable consequence of the policy decision [of the NSW Government] ... in relation to the need for there to be a whole of precinct planning approach" (paragraph [104]). Mr Tsirekas' conduct "sought to advance a benefit to the community" (paragraph [105]). Mr Tsirekas' submission at paragraphs [104] and [106]–[108] refers to NSW Government policy for the whole-

of-precinct planning approach. However, the Commission notes that, in support of this claim, Mr Tsirekas has referred to the Commission's transcript of the proceedings and no specific NSW Government policy.

- Counsel Assisting submitted that, but for the intervention of Mr Tsirekas in relation to the Kenzler motion, the resolution passed at the Council meeting would not have included the additional paragraphs. Mr Tsirekas submitted that this should be rejected for the following reasons: that elected councillors were free to adopt or reject the resolutions; a reference to case law/ authority that a member of a collegiate body can appropriately seek to persuade other decision-makers to his or her conclusion; and that Mr Tsirekas' role was overstated ([paragraph 106]). In the Commission's view, none of these arguments contradict Counsel Assisting's submission.
- Counsel Assisting's submission that "Mr Tsirekas' motivation" for his involvement in the Kenzler motion was the receipt of benefits was an overreach.
- Counsel Assisting refers to the evidence of Council staff that the motion had the effect of "piggybacking" or "fast-tracking" the planning proposal – a contention described by Mr Tsirekas as being made in "a pejorative manner" (paragraph [108]). That contention should be rejected as Counsel Assisting merely recounted the descriptors used by the Council staff. Additionally, it is contended that, as no concern was expressed by anybody at the Council meeting in relation to the motions, the Commission's contention that the most plausible explanation for Mr Tsirekas' conduct was the receipt of benefits should be rejected (paragraph [114]).
- Counsel Assisting submitted (see paragraphs [78]– [82]) that Mr Tsirekas should have declared his non-pecuniary interests and that his denial that he deliberately refrained from doing so should be rejected. This submission is based on the argument that the issue did not appear to him at the public inquiry as it appeared to him at the compulsory examinations (paragraph [116]).

These submissions are rejected.

Counsel Assisting referred to a telephone conversation between Mr Tsirekas and Mr Chidiac on 23 March 2019 in which Mr Tsirekas stated, "They've dropped us" and submitted that Mr Tsirekas' evidence that the reference was to do with I-Prosperity's planning proposal and whether I-Prosperity was interested in proceeding with it at all "would defy all logic". Mr Tsirekas contended

that Ms Li had given evidence that I-Prosperity sold the whole of the site and I-Prosperity was no longer trading. This submission is rejected and ignores the date of the conversation. As at 23 March, I-Prosperity's planning proposal had proceeded to gateway determination and remained on foot. Further, it was submitted that Counsel Assisting's submission that the use of the word "us" as evidence that Mr Tsirekas and Mr Chidiac "had come to an arrangement, agreement or understanding that they would work, in effect as a 'team'" is asking the word "us" to carry "a far greater meaning than its usual meaning" (paragraphs [146]–[147]). The Commission rejects this submission.

In terms of benefits, Mr Tsirekas submitted that it was difficult on the evidence before the Commission to come to any firm finding as to whether he received any benefits from any developers at any time (paragraph [150]). The Commission rejects this submission.

Sources of money

Mr Tsirekas submitted that his explanation for receiving money from his father was entirely plausible, especially as it was "during his only son's dark days", and is supported by Mr Chidiac. Mr Tsirekas contended that, given his evidence that his father always kept cash at home, did car detailing work over the years for cash payments, and he had proceeds of gambling as well as a reverse mortgage facility, his father did have adequate resources to give him money. Mr Tsirekas submitted that the Commission did not call his mother to give evidence (despite Mr Tsirekas' own evidence that no one else could corroborate the source of the money given to Mr Colacicco). As to the lump sum argument, Mr Tsirekas asserted that bank obligations to report all transactions involving more than \$10,000 in cash and the proposition that Centrelink "frowned upon" gifting by pensioners to reduce assessable assets explained the father's wish to pay in a manner that he did (paragraphs [173]–[177]). None of these arguments are convincing and are consequently rejected.

As to Counsel Assisting's submission that others were the source of the funds and that Mr Tsirekas received them as a reward or benefit for a corrupt purpose, Mr Tsirekas submits that the submission should be rejected on the basis that it involves a misapplication of the law in relation to circumstantial evidence – reference is made to the judgment of McCallum JA in *Livers v Legal Services Commission* [sic, should be "Commissioner"] [2020] NSWCA 317 at [80] in which her Honour eschewed the "reductionist approach" to circumstantial evidence, excluding a consideration of the circumstances that did not point to guilt. Mr Tsirekas contends that Counsel Assisting's failure to accept the possibility that Mr Tsirekas' father was the source of the cash was

employing the reductionist approach and hence the submission should fail. In the Commission's view, the argument misunderstands the judgment – in that case, the Tribunal had ignored accepted evidence favouring innocence, whereas here, it was open to the Commission to justifiably reject the veracity of Mr Tsirekas' evidence about his father's means and his contribution (paragraphs [178]–[183]), which it has done. The submission treats the evidence that the Commission could reject as being "part of the whole body of evidence" (paragraph [179]).

Counsel Assisting contended that the evidence of Mr Panuccio to the effect that he gave Mr Tsirekas money for safe-keeping should be rejected. Mr Tsirekas' submissions at paragraphs [186]–[190], seeking to explain the plausibility of the reasons outlined, have no real cogency. For instance, Counsel Assisting submitted that Mr Panuccio's evidence should be rejected because his evidence dissembled when he was questioned about why he purportedly gave money to Mr Tsirekas for safe-keeping (on 3 or 4 June 2019), when he knew that Mr Tsirekas was going overseas in June 2019. Mr Tsirekas' representatives submitted that Counsel Assisting was in error and Mr Tsirekas left for Italy in July 2019 and therefore it was not surprising that Mr Panuccio did not remember the sequence of events because it did not happen. However, this submission is inaccurate. The evidence demonstrates that Mr Tsirekas, in fact, left for Italy in June 2019 and returned in July 2019 (Figure 6, trip 24). It appears that Mr Tsirekas' representatives may have been referring to an earlier trip to Italy taken by Mr Tsirekas in July 2016 (Figure 6, trip 8). The Commission considers that Counsel Assisting's submission was accurate and it is accepted.

It was also submitted that Mr Tsirekas' evidence on the issue was "logical and believable". It was submitted that there were many reasonable explanations as to why Mr Panuccio would make a generous offer to pay for the upgrade of Mr Tsirekas' aeroplane tickets, including that he was a "close friend" and Mr Panuccio wanted to send business to his daughter who handled the booking. None of the reasons are convincing and are rejected.

Billbergia (Mr Kinsella)/Prolet (Joseph Jacob)

Mr Tsirekas submitted that the identity of the relevant decision-maker in relation to the planning proposals was “a critical matter” on the basis that dealing with Mr Tsirekas, and for that matter the local Council, was in effect dealing with a “toothless tiger”, so far as influencing the result of the planning decisions (paragraph [193]) and following. The submission misunderstands the point of Counsel Assisting’s argument, namely, that Mr Tsirekas failed to disclose his relationship with Mr Kinsella in light of Mr Tsirekas’ obligations under the code of conduct.

As to Counsel Assisting’s submission that the Commission should conclude that, from no later than 30 April 2014, Mr Tsirekas had a relationship with Mr Kinsella/Billbergia that should have been declared or disclosed and Mr Tsirekas failed to do that, Mr Tsirekas draws attention to his oral evidence (which, by the way, under-emphasises a reasonable inference that they had gone out to dinner, for example, on multiple occasions). However, the text messages in evidence demonstrate a closer relationship that justifies the Commission’s argument (paragraphs [198]–[215]) and following. Mr Tsirekas’ arguments rely upon selective quoting. There is ample evidence from that a reasonable inference of the close relationship can be drawn – the fact that the meetings were not solely between Mr Kinsella and Mr Tsirekas does not detract from the context that those meetings provide.

Mr Tsirekas repeats his submission that he had no relationship with Mr Kinsella of Billbergia or Joseph Jacob of Prolet that required declaration (paragraphs [196], [197] and [218]).

Mr Bruzzano

In relation to the Bruzzano development at 168–172 Victoria Road, Mr Tsirekas submits in relation to Counsel Assisting’s submission that he was not obliged to declare any relationship, given that the council staff had approved the development and he was merely voting in favour of that approval. The submission misunderstands the requirement of disclosures of conflict of interest, that is, that Council decisions are to be made free of any influences of partiality. Merely because Council staff have suggested approval of the development does not necessarily dictate that Council should or would necessarily approve it.

Corrupt conduct findings/Section 74A statement

In relation to Counsel Assisting’s submissions regarding potential corrupt conduct findings, Mr Tsirekas submits that the submission should be rejected because of the following:

- there is no evidence demonstrating that benefits were sought or accepted
- there is no evidence that Mr Tsirekas sought any benefits from I-Prosperity or from Mr Chidiac
- there is no explanation as to what is meant by “planning matters” – this repeats the submission about the Council not being the decision-maker
- Mr Chidiac’s support (emotional and financial) to Mr Tsirekas during his “dark days” was referable entirely to a close personal relationship
- there is evidence from Mr Chidiac and Mr Tsirekas that Mr Chidiac did not tell Mr Tsirekas about his job with I-Prosperity and Mr Tsirekas did not know about the job (paragraphs [232]–[237]).

At paragraphs [234]–[235], Mr Tsirekas submitted that Council had no evaluative or determinative power in respect of planning proposals. Again, this submission is a distraction and ignores that Counsel Assisting’s submissions relate to Mr Tsirekas’ obligations pursuant to the code of conduct. The focus on whether the Council had the determinative power in respect of these planning proposals is too narrow a view. It was Mr Tsirekas’ obligation as a public official to contribute to a process of putting before the determining body a meritorious planning proposal supported by Council, following the applicable procedures. The Commission concluded that he did not do so.

At paragraphs [35] and [244], Mr Tsirekas submitted that “as a matter of law, a breach ‘falling short of a substantial breach’ of an applicable code of conduct cannot constitute corrupt conduct” in reliance upon s 9(6), which provides that a reference to a disciplinary offence (being a requirement to allow a finding of corrupt conduct) in section 74A and 74B “includes a reference to a substantial breach of an applicable requirement of a code of conduct...”. Mr Tsirekas argues that Counsel Assisting’s submission that he “simply ignored his obligations under the Code”, does not necessarily constitute a substantial breach and that the failure of Counsel Assisting’s submissions to so specify is fatal to the submission (paragraph [244]). The Commission rejects this submission as an overly simplistic view of Counsel Assisting’s submissions.

In relation to the Commission's submission that the advice of the DPP should be obtained in relation to eight instances of Mr Tsirekas giving false or misleading evidence, in summary, Mr Tsirekas submitted that no such referral should be made because his denials relate to having recollections of past matters and are plausible, and due to the effects of the medication he took prior to giving evidence (paragraphs [247] – [262]). These submissions are rejected.

Mr Tsirekas' medical evidence

Counsel Assisting submitted that there were numerous matters that demonstrated Mr Tsirekas' lack of credit, including that he was a witness who regularly gave non-responsive answers to questions and/or dissembled when answering questions.

Mr Tsirekas was invited by the Commission to obtain medical evidence. He did so and provided a report by a psychiatrist to the Commission on 31 January 2023. The Commission has carefully considered the medical evidence.

The Commission invited submissions from Mr Tsirekas in respect of the medical evidence. The Commission has considered those submissions. Mr Tsirekas submitted that, to the extent that Mr Tsirekas' evidence was characterised by Counsel Assisting as "non-responsive" and/or "dissembled", the expert evidence supports Mr Tsirekas' submission "that it is very likely that Mr Tsirekas experienced impairment in mental performance, in particular memory function, when providing such evidence as a consequence of the prescribed medication he was taking. Accordingly, to the extent that any evidence given by Mr Tsirekas is considered to be 'non-responsive' and/or 'dissembled', the medication is very likely the cause."

The Commission does not accept the submission. The evidence disclosed that Mr Tsirekas first consulted a medical practitioner about stress- and anxiety-related problems prior to the compulsory examinations in late March 2022. The underlying stressors, as reported to the psychiatrist, related to events that commenced in 2014 and 2017 respectively. The psychiatrist's opinion in relation to the side-effects was based substantially on the evidence of Mr Tsirekas, as to whose credibility the Commission has made adverse findings. Furthermore, the psychiatrist did not claim to have observed Mr Tsirekas give evidence.

None of the suggested side-effects explain Mr Tsirekas' robust retraction of statements against his interest previously made in the compulsory examinations and interviews (including those that took place prior to his commencement of medication). At no time did Mr Tsirekas claim to have impaired memory function or

the other listed side-effects. Certainly, a reading of the transcript does not disclose any inability or deficit in his functions in defending his position. For these reasons, the weight to be attached to the psychiatrist's opinion is limited and the Commission considers that the medical evidence does not advance Mr Tsirekas' position.

Mr Tsirekas' response to the supplementary submissions

Mr Tsirekas submitted in his reply to the supplementary submissions that the documents referred to in those submissions, which were used to quantify the benefit received by Mr Tsirekas, were insufficient. The Commission rejects this submission and is satisfied that the documents cited provide a proper basis for the benefit amount.

Mr Tsirekas submitted that the submission in relation to the recommendation pursuant to s 74C of the ICAC Act was procedurally unfair and lacked particularity. The Commission rejects this submission.

Joseph Jacob's submissions

Joseph Jacob submitted that Prolet is a construction company, and it is engaged by developers to undertake construction works. It has not been involved in the development of any properties in the City of Canada Bay Council area, including Rhodes, since 2012. It was submitted that, in about mid-to-late-2014, seven companies (other than Prolet), of which Joseph Jacob was a director, purchased properties in the Rhodes East area. It was submitted that no development application has ever been lodged by any of the seven companies or Prolet with respect to any of the properties the seven companies purchased in Rhodes East. The properties have not been developed. Joseph Jacob submitted that Counsel Assisting quite properly contended that the evidence before the Commission does not permit it to be satisfied that Mr Tsirekas partially exercised his official functions to favour the interests of Prolet. It was submitted that this was correct because Prolet did not own any interest in Rhodes East and because the Council was never the consent authority for any development application could have been (but was not) lodged by Prolet.

In effect, Joseph Jacob's submission was a technical one: that Mr Tsirekas could not have a conflict of interest with Prolet because Prolet did not have any development applications before the Council in the relevant period. However, Joseph Jacob also submitted that the decision of the Council on 19 February 2019 was contrary to the interests of Prolet and the seven companies, and was a catalyst for the falling out between the Jacob brothers and Mr Tsirekas. As outlined in chapter 5, on 19 February

2019, the Council considered the Revised Draft Precinct Plan for Rhodes East at a Council meeting. Council staff reviewed the plan and prepared a report, which described the expansion of the precinct boundary as “unjustified” and identified areas of concern in relation to the contents of the plan and the proposed planning process. The Council resolved to finalise its submission to be forwarded to the Department of Planning and Environment, outlining the key points from the Council’s report. Mr Tsirekas voted in favour of the resolution and made no disclosure. While Council was not the consent authority, the position it took was not favourable to the interests of the Jacob brothers. As outlined in chapter 5, this submission is accepted.

However, this submission avoids the main issue. That issue is analysed in chapter 5, namely, whether the nature of Mr Tsirekas’ relationship with Joseph Jacob required him to disclose a conflict before voting on the matter, regardless of how he voted. At the time of voting, Mr Tsirekas was well aware that the matter before the Council on 19 February 2019 affected the interests of the Jacob brothers. Whether the properties were owned by Prolet or another company is not something Mr Tsirekas necessarily would have known at the time. He did know that the decision impacted the interests of the Jacob brothers.

In relation to Counsel Assisting’s submission that the advice of the DPP should be sought for an offence of providing false or misleading evidence contrary to s 87 of the ICAC Act in relation to Joseph Jacob’s evidence about how he was informed by Mr Chidiac that a search warrant had been executed at his house, Joseph Jacob submitted that there is no arguable evidentiary foundation for the proposition that the evidence was false or misleading, much less knowingly so. As outlined in chapter 5, Joseph Jacob gave two accounts of how he was informed by Mr Chidiac that a search warrant had been executed at his house. The main point of the submission was that the two conversations occurred at different times and at different locations. This submission is rejected. The Commission is satisfied that Joseph Jacob was speaking about the one event and that his evidence was inherently inconsistent.

In relation to Counsel Assisting’s submission that the advice of the DPP should be sought for an offence of providing false or misleading evidence contrary to s 87 of the ICAC Act, when Joseph Jacob said he did not sign agreements with Mr Chidiac on behalf of his company, Joseph Jacob submitted that the answer was complicated by the use of double negatives and, in any event, the agreements shown to him, being the subject of the questions, were not signed. Therefore, the answer was not false. For the reasons outlined in chapter 5, this submission is rejected.

In relation to Counsel Assisting’s submission that the advice of the DPP should be sought for the intentional destruction of documents or things contrary to s 88 of the ICAC Act, Joseph Jacob submitted that the deletion of messages was not made with the knowledge they might be required in connection with the investigation or with intent to delay or obstruct the Commission. Joseph Jacob submitted that most of the messages were deleted prior to him being aware of the existence of the investigation and it was part of his normal routine to do so and, in any event, he had no reason to interfere with the investigation. For the reasons outlined in chapter 5, this submission is rejected.







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