

**Report on investigation
into the relationship
between certain Strathfield
Councillors & developers**

ICAC REPORT

JUNE 2005

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Madam President
Mr Speaker

In accordance with section 74 of the *Independent Commission Against Corruption Act 1988*, I am pleased to present the report of the Independent Commission Against Corruption of an investigation into the relationship between certain Strathfield Councillors and developers.

I presided at the public hearing held in this investigation. The Commission's findings and recommendations are contained in the report.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jerrold Cripps'.

The Hon Jerrold Cripps QC
Commissioner

Contents

Executive summary	6	Chapter 8: Findings and section 74A(2) statements	42
Chapter 1: Introduction	8	Findings of fact	42
How this investigation originated	8	Findings of corrupt conduct	43
The Commission's investigation	8	Statements pursuant to section 74A(2)	44
About this report	9	Alfred Tsang	44
Section 78(2) recommendation	9	Melhem (Michael) Saklaoui	45
Chapter 2: Planning in Strathfield Municipality	10	John Abi-Saab	45
Zoning under the deemed LEP	11	Scott Allman	45
Proposed zoning changes	12	Geoffrey Howe	46
Chapter 3: A new regime	16	Anne Bechara	46
Elections	16	Noeline Abi-Saab	46
Mayoral election	17	Elizabeth Gewandt	46
Mayoral minutes of 8 June and 6 July 2004	17	Section 74C of the ICAC Act	46
The effect of the Mayoral Minutes	18	Appendix 1: The Commission's role	47
Chapter 4: Luncheon on 23 July 2004	20	Appendix 2: Corrupt conduct defined and the relevant standard of proof	48
The first meeting	20		
Preparation	20		
Meeting at the car park	21		
Lunch – money changes hands	21		
Saklaoui rings Abi-Saab	23		
The return of the money	26		
Chapter 5: Attempted blackmail	27		
Mr Abi-Saab's conversations with Mr Tsang	27		
Mr Abi-Saab confides in Mr Howe	28		
Mr Abi-Saab speaks to Mr Howe again	29		
Chapter 6: Questions of motive	31		
Mr Tsang's conduct	31		
Mr Allman's explanation	31		
Mr Abi-Saab	32		
Mr Saklaoui	33		
Anne Bechara	34		
Chapter 7: Other matters	37		
Allegations of previous payments by Melhem Saklaoui to Alfred Tsang	37		
"Adjusting" the evidence	38		
Elias Bechara	41		

Executive summary

This report deals with an investigation by the Independent Commission Against Corruption (“the Commission”) into the circumstances surrounding the payment of money to the then Mayor of Strathfield Municipal Council, Mr Alfred Tze-Shung Tsang, by Mr Melhem (Michael) Saklaoui. The circumstances include the relationships between certain Councillors on Strathfield Municipal Council (“the Council”), certain developers and others in relation to property developments in the Strathfield Municipal Council area.

The investigation focused on whether any corrupt conduct, or conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or conduct connected with corrupt conduct, had occurred, was occurring or was about to occur.

The Commission commenced its investigation into these matters on 3 August 2004, the day that Mr Tsang attended the Commission to report possible corrupt conduct. Mr Tsang told Commission officers that a developer, whom he knew as Michael Saklaoui, had, during a lunch on 23 July 2004, given him \$2,500 in cash and had offered him \$200,000 if Mr Saklaoui’s application to develop a car park site and adjacent properties in South Strathfield was successful.

Some days after the lunch, on 1 August 2004, Strathfield Councillor John Abi-Saab asked to meet with Mr Tsang and told him that he, Mr Abi-Saab, had been told that Mr Tsang was corrupt and that certain people had a tape recording of Mr Tsang receiving a bribe.

Mr Tsang agreed to assist the Commission in its investigation and the Commission lawfully recorded a number of meetings between Mr Tsang and Mr Abi-Saab, during which Mr Abi-Saab pressured Mr Tsang to resign from his position as Mayor, telling him that if he did so the video recording would not be made public.

In the course of its investigation the Commission made use of a range of its investigative powers to gather evidence. The Commission held a number of private hearings and a public hearing which commenced on 31 January 2005 and concluded on 22 February 2005.

The Commission’s investigation established that the recording on 23 July 2004 was part of an elaborate plot, to which Mr Saklaoui and Mr Abi-Saab were parties, to wrest from Mr Tsang the office of Mayor (but for him to remain as a Councillor).

Chapters 2 and 3 of this report provide an outline of the context in which this conduct occurred. In 2003 Mr Abi-Saab, a member of the Labor Party faction, was the Mayor of Strathfield and Mr Tsang was his Deputy. In that year the Council developed a new draft Local Environmental Plan (“the Draft LEP”) which, if made, would have had the effect of changing the zoning and permissible floor space ratios for areas including land adjacent to Liverpool Road running through Strathfield South. The Draft LEP was submitted to the Department of Infrastructure, Planning and Natural Resources, adjoining Councils and other relevant agencies for comment and was placed on public exhibition in late 2003.

The Commission found that Mr Saklaoui and a number of other developers had, between April 2002 and December 2003, acquired interests in properties which would be affected by the making of the Local Environmental Plan. The changes in zoning, and the increased floor space ratios and maximum building height limits in the Draft LEP, if made, would have the effect of considerably increasing the value of these properties.

In March 2004 Mr Tsang became Mayor of Strathfield and in May 2004 he initiated an inquiry into various governance, process, compliance and contractual matters within the Council. In June and July, Mayor Tsang brought two Mayoral Minutes to Council which recommended the removal of some of the changes to zoning and floor space ratios set out in the Draft LEP. These Minutes were passed, with some Councillors voting against them. The Minutes would, if the recommendations in them were adopted by the Minister for planning, have had the effect of significantly reducing any actual or projected increase in property values in the areas affected, thus affecting the interests of a number of developers, including Mr Saklaoui and another developer, Mrs Anne Bechara.

The Commission’s investigation established that a number of individuals were involved in a plot to blackmail Mr Tsang and force his resignation as Mayor, in circumstances where Mr Abi-Saab would become Mayor and Mr Tsang would remain on Council in circumstances where he and his vote could be manipulated.

The Commission’s findings of fact are set out in Chapter 8 of this report, which makes findings of corrupt conduct against:

- Alfred Tsang and Melhem (Michael) Saklaoui in relation to the agreement that Mr Saklaoui would pay \$200,000 to Mr Tsang in connection with the proposed development of the car park;
- Alfred Tsang and Melhem (Michael) Saklaoui in relation to the acceptance and payment of a sum of money on 23 July 2004; and
- John Abi-Saab and Melhem (Michael) Saklaoui in relation to the attempted removal of Mr Tsang from office (blackmail).

A finding of corrupt conduct is also made against Scott Allman, who on 23 July 2004, while then a serving NSW Police officer, recorded private conversations contrary to the provisions of the *Listening Devices Act 1984*. The Commission's finding of corrupt conduct relates to Mr Allman's failure in his duty to report a criminal offence (the acceptance of a bribe) to NSW Police.

The Commission is of the opinion that, in all the circumstances, consideration should be given to the prosecution of:

- **Alfred Tsang**, for offences under section 249B(1) of the *Crimes Act 1900*;
- **Melhem (Michael) Saklaoui**, for offences under section 249B(2) of the *Crimes Act 1900*, offences under section 5(1) of the *Listening Devices Act 1984* and an offence under section 100A of the *Crimes Act 1900*;
- **John Abi-Saab**, for offences under section 100A of the *Crimes Act 1900* and offences under sections 87, 80(c) and 89 of the ICAC Act¹;
- **Scott Allman**, for offences under section 5(1) of the *Listening Devices Act 1984*;
- **Geoffrey Howe** (the former editor of the *Inner Western Suburbs Courier*) for offences under sections 80(c) and 87 of the ICAC Act²; and
- **Anne Bechara**, for offences under sections 87 and 89 of the ICAC Act.

¹ Proceedings commenced on 1 March 2005 against Mr Abi-Saab for two summary offences under section 112 of the ICAC Act. This was done on the advice of the Director of Public Prosecutions.

² Proceedings commenced on 1 March 2005 against Mr Howe for a summary offence under section 112 of the ICAC Act. This was done on the advice of the Director of Public Prosecutions.

Chapter 1: Introduction

This report deals with an investigation by the Independent Commission Against Corruption (“the Commission”) into the circumstances surrounding the payment of money to the then Mayor of Strathfield Municipal Council, Mr Alfred Tze-Shung Tsang, by Mr Melhem (Michael) Saklaoui. The circumstances include the relationships between certain Councillors on Strathfield Municipal Council (“the Council”), certain developers and others in relation to property developments in the Strathfield Municipal Council area.

The investigation focused on whether any corrupt conduct, or conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or conduct connected with corrupt conduct, had occurred, was occurring or was about to occur.

How this investigation originated

The Commission first became involved in this matter on 3 August 2004 when Mr Tsang attended the Commission to report possible corrupt conduct. At that time Mr Tsang was the Mayor of Strathfield Municipal Council.³ Mr Tsang was accompanied by his legal representative. He was interviewed by Commission officers and he told them that a developer, whom he knew as Michael Saklaoui, had, during a lunch on 23 July 2004, given him \$2,500 in cash and had offered him \$200,000 if Mr Saklaoui’s application to develop a car park site and adjacent properties in South Strathfield was successful.

An allegation by a Mayor of a municipal council that he had been offered a bribe in an amount of \$200,000 was self-evidently a serious allegation and one which should be investigated forthwith. Accordingly, the Commission commenced its investigation on the day the allegation was reported.

During that first interview Mr Tsang told the Commission that he met Mr Saklaoui on 23 July 2004 and both inspected a Council car park in Homebush Road, Strathfield South. Mr Tsang said he wanted to discuss the viability of the site being developed for the erection of a three-storey building containing a health centre and library as well as providing additional car parking spaces at no cost to the Council.

After inspecting the car park Mr Tsang and Mr Saklaoui went to a restaurant for lunch. Towards the end of the meal Mr Tsang said that Mr Saklaoui offered to pay him \$200,000, in Australia or overseas, if his application to develop the car park site and adjacent properties was successful. Mr Tsang said that Mr Saklaoui then gave him \$2,500 in \$100 notes. Mr Tsang said he was shocked and nervous and put the money in his pocket.

Mr Tsang claimed he did not count the money until he returned home. He said he showed the money to his wife, Gladys, and they decided that he should return it. He claimed that he returned the money to Mr Saklaoui on the following day and at the same time he left his car with Mr Saklaoui who was going to attempt to sell it.

Mr Tsang said that on 1 August 2004 Councillor John Abi-Saab⁴ asked to meet him. They met at a café and Mr Abi-Saab told Mr Tsang that he, Mr Abi-Saab, had been told that the Mayor of Strathfield was corrupt and that certain people had a tape recording of Mr Tsang receiving a bribe. Mr Tsang told the Commission that he decided that Mr Abi-Saab was referring to his lunch with Mr Saklaoui on 23 July as that was the only time he had received money from someone.

Mr Tsang then made an arrangement to see Mr Saklaoui on the afternoon of 2 August 2004. Mr Tsang said that Mr Saklaoui told him he had been shown a tape that morning, by persons he did not know, which showed both of them attending a building site and then the restaurant and that the offer of \$200,000 by way of a bribe had been recorded. Mr Tsang said he told Mr Saklaoui he was going to the ICAC and that Mr Saklaoui should come with him. At that stage Mr Tsang erroneously believed that Mr Saklaoui was unaware that the meeting had been recorded. Mr Tsang returned to Mr Saklaoui’s office on 3 August 2004 and told him that he had been to the Commission.

The Commission’s investigation

Mr Tsang agreed to assist the Commission to investigate the allegation that Mr Saklaoui had offered him a bribe of \$200,000. During the ensuing week Mr Tsang met with Mr Abi-Saab on a number of occasions and their conversations were lawfully recorded by the Commission by means of listening devices authorised by warrants issued pursuant to the *Listening Devices Act 1984*.

³ Mr Tsang resigned from his position as Mayor on 24 January 2005 and from his position as Councillor on 28 February 2005.

⁴ Mr Abi-Saab resigned from his position as Councillor on 28 February 2005.

During the recorded conversations Mr Abi-Saab placed increasing pressure on Mr Tsang to resign from the position of Mayor, telling him that if he did so the video recording would not be made public. It became evident that the recording on 23 July 2004 was part of an elaborate plot, to which Mr Saklaoui and Mr Abi-Saab were parties, to wrest from Mr Tsang the office of Mayor (but for him to remain as a Councillor).

In the course of its investigation the Commission made use of a range of its investigative powers. A number of listening device and telephone interception warrants (subject to the *Listening Devices Act 1984* and the *Telecommunications (Interception) Act 1979* respectively) were sought, obtained and executed; the Commission conducted a controlled operation (authorised under the *Law Enforcement (Controlled Operations) Act 1997*) and sought, obtained and executed a number of search warrants. The Commission also held a number of private hearings which heard evidence from nine persons and a public hearing which commenced on 31 January 2005 and concluded on 22 February 2005 and heard evidence from 13 persons.

The Commission's public hearing was confined to examination of the circumstances surrounding the payment of a sum of money to Mr Tsang by Mr Saklaoui on 23 July 2004. This included the events leading up to the payment of money and those that took place afterwards.

The Commission is not exercising a judicial function. It is exercising an administrative function. It is charged with the responsibility of determining the truth or otherwise of allegations made. The task of determining the truth is often, for self-evident reasons, difficult when parties making the allegations and the parties denying them are persons of no creditworthiness. There were significant areas of conflict in the evidence given by Mr Tsang, Mr Saklaoui and Mr Abi-Saab (among others).

The task of determining the truth of what took place at the restaurant and later in conversations between Mr Tsang and Mr Abi-Saab is made easier by the recordings of those events. The interception of telephone conversations between Mr Abi-Saab and others has also assisted the Commission to determine what happened.

The audio-visual recording (or at least a part of it) of the lunch on 23 July 2004 was publicised by the media prior to the public hearing. The Commission obtained a copy of the audio recording covering the three hours that Mr Tsang and Mr Saklaoui were together on 23

July 2004. Some parts of the recording made while they were travelling to and from the restaurant were almost inaudible but other relevant parts were of good quality and provided clear evidence of their conversations.

Neither Mr Tsang nor Mr Saklaoui denied the recordings on 23 July 2004 were accurate. However, both advanced interpretations intended to minimise if not to reject culpability. Mr Saklaoui claimed he was merely trying to expose a corrupt Mayor. Mr Tsang said he didn't intend to take a bribe.

About this report

The first part of the report sets out the background against which the events of 23 July 2004 and thereafter must be considered. These include the adoption by Council of a Local Environmental Plan (LEP) intended to regulate more intense development in areas of the municipality in the future and, as well, the local government election held in March 2004. Prior to the election Mr Abi-Saab was the Mayor and Mr Tsang was the Deputy Mayor.

Later chapters in the report set out not only the events of 23 July 2004 but also the following attempts to remove Mr Tsang from office. That will include an examination of the motives of Mr Abi-Saab and others involved.

Finally the report sets out findings of fact and the conclusions that follow from those findings. This includes statements recommending that consideration be given to the prosecution of specified persons for specified offences.

Section 78(2) recommendation

Pursuant to section 78(2) of the ICAC Act, the Commission recommends that this report be made public immediately. This recommendation allows either presiding officer of the Houses of Parliament to make the report public, whether or not Parliament is in session.

Chapter 2: Planning in Strathfield Municipality

The Municipality of Strathfield is mid-way between the Sydney CBD and Parramatta. About one-third of the area is residential. There are a number of schools in the area. The major commercial centre is the Strathfield Town Centre near the railway station. At the time of the last census in 2001 the population was 28,206, approximately half of whom were born overseas. The municipality is traversed from east to west by two major highways. Parramatta Road (the Great Western Highway) runs through the northern part of the municipality and roughly parallel to the major train route west from Sydney. Liverpool Road (the Hume Highway) runs through the southern part of the municipality. It is relatively less developed than areas to the north.

Under the *Environmental Planning and Assessment Act 1979* (“the Planning Act”) local councils are charged with a wide range of duties and discretions with respect to land use in local areas. Local councils have the function to prepare draft Local Environmental Plans (LEPs) for submission to the Minister and they are also charged with the responsibility of assessing applications for development consent.

In the exercise of their assessment functions, local councils are bound by law to observe the content of LEPs although dispensation from the standards within those plans may be granted pursuant to State Environmental Planning Policy No. 1. Councils may develop Development Control Plans (DCPs). DCPs do not have the force of law in the same way that the provisions of LEPs do but they are matters that must be taken into account by councils when assessing development applications to determine whether consent should be granted and if so subject to what conditions.

Development in the Strathfield Municipal Council area is controlled by the Strathfield Planning Scheme Ordinance which was made in 1969. This Ordinance became a deemed LEP with the commencement of the Planning Act in September 1980. The deemed LEP has been amended piecemeal from time to time since it was first made over 35 years ago.

During the investigation certain areas of land adjacent to Liverpool Road running through Strathfield South, or situated close to it, became the focus of investigation. Under the deemed LEP most of these areas were zoned 2(a) or 2(b). Both are Residential zones. Under the deemed LEP multi-unit residential development is permitted in Zone 2(b) but not in Zone 2(a).

A small number of properties near the main intersection with Homebush Road are zoned Business General Zone 3(a) under the deemed LEP. Under the deemed LEP a floor space ratio (“FSR”) of 3:1 is permitted for buildings erected on land zoned 3(a).

Generally speaking, FSRs represent the ratio of floor space to site area that is permitted in a particular zone. Absent the effect of other development standards in the LEP, an FSR of 3:1 would make permissible a building with a floor area of 1500 sq. metres on a site of 500 sq. metres. However, the other development standards contained in LEPs, such as those regarding “set-backs” and the definition of what constitutes “floor space”, can operate to permit the development of buildings much higher than three storeys on a site with an FSR of 3:1.

In early 2002, when Councillor Virginia Judge was Mayor and Councillor Tsang was Deputy Mayor, the Council resolved to update the existing controls by introducing a Draft LEP which conformed with the provisions of the Planning Act.

Throughout 2002 Community Summits were held and later in the year a Community Advisory Team was established and Community Charettes⁵ were held.

In March 2003 Councillor Judge was elected to the NSW Parliament as the Member for Strathfield. She resigned as Mayor on 15 April 2003 and Councillor Abi-Saab was elected to the position of Mayor. Mr Tsang remained in the position of Deputy Mayor.

On 2 May 2003 there was a meeting between the Council and the Department of Planning (as it then was) to discuss the Draft LEP. In July 2003 the relevant Department became the Department of Infrastructure, Planning and Natural Resources and is hereafter referred to as DIPNR. In May 2003 Council resolved to endorse the Draft LEP incorporating changes agreed to after discussion and to give notice to the Director-General of DIPNR of its intention to proceed with the Draft LEP with a view to obtaining a certificate under section 65 of the Planning Act. This certificate was required before the proposed LEP could be placed on public exhibition.

On 24 June 2003 Council wrote to DIPNR and formally gave notice under section 54 of the Planning Act of its intention to prepare the Draft LEP. On 11 July 2003 copies of the draft plan were forwarded to adjoining Councils and to other relevant agencies including

⁵ The term charette refers to a process used by design professionals to review and develop design ideas and plans.

Landcom, the Sydney Markets Authority and the regional office of DIPNR. The agencies were invited to comment on the Draft LEP.

Over the following months there were discussions between DIPNR and Council regarding the proposed changes. On 11 September 2003 the Regional Planning Coordinator from DIPNR wrote to Council setting out the final matters that needed to be resolved before a section 65 certificate would be issued. The Department noted that it supported proposals for mixed use redevelopment already identified during a meeting between DIPNR and Council on 30 July 2003 and said “the Department would also support the investigation of similar opportunities for mixed use development along the Liverpool Road corridor”.

On 16 September 2003 Council resolved to endorse the Draft LEP, incorporating changes arising from its discussions with DIPNR together with submissions from others and to request a certificate pursuant to section 65 of the Planning Act to permit public exhibition of the Draft LEP. As will be seen, the amendments proposed by Council to the Draft LEP in September 2003 are of some significance to the investigation.

On 13 October 2003 DIPNR issued the section 65 certificate and the Draft LEP was placed on public exhibition from 15 October to 14 November 2003. On 2 December 2003 Council resolved to adopt the Draft LEP with a minor deferral and to engage a consultant to develop a Development Control Plan (DCP) in respect of all proposed Business Zoned Land under the Draft LEP.

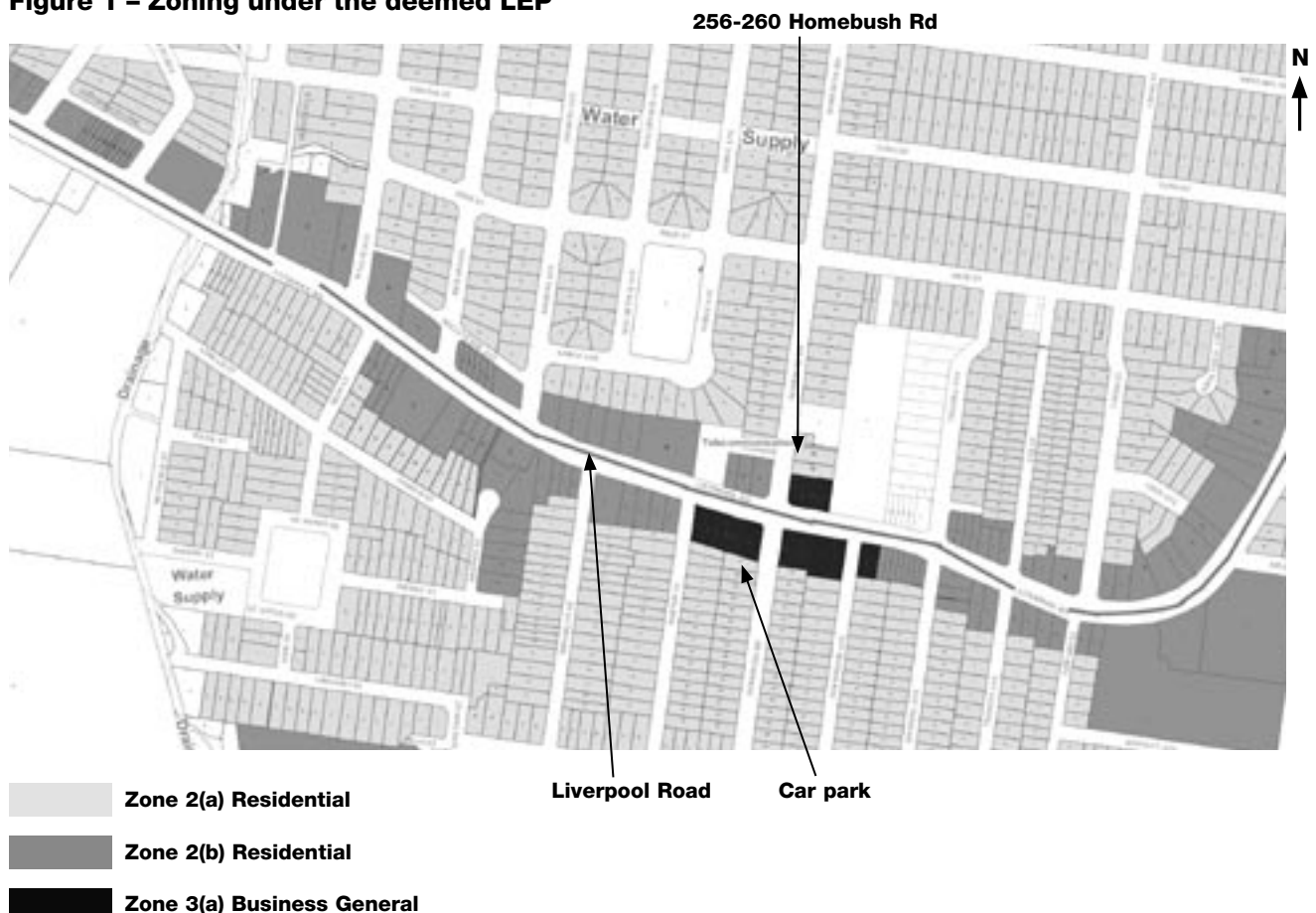
On 30 December 2003 a section 68 report was sent to DIPNR, requesting that the Department take appropriate action to secure the making, by the Minister, of the Draft LEP pursuant to section 70 of the Planning Act. The LEP would come into force if made by the Minister and gazetted.

Thus as things stood at the end of 2003 the Draft LEP had not been made, although there was a confident expectation that it would be.

Zoning under the deemed LEP

Figure 1 is a map of part of Strathfield South showing the zones that are currently applicable under the deemed LEP. For clarity the current zones 2(a), 2(b)

Figure 1 – Zoning under the deemed LEP



and 3(a) are shaded as shown on the key and other land uses are not shaded.

One property of significance and relevance to the investigation is a motel “The Spanish Inn” which is currently zoned 2(b). It is on the north-west corner of the intersection of Liverpool and Homebush Roads and is adjacent to land owned by Telstra.

The three other corners of the intersection are zoned Business General 3(a) and form a small shopping centre. Behind the hotel on the south-west corner is Council-owned land presently used as a car park with access from Homebush Road. There are houses on the land behind the car park that face onto Barton Street. The car park is zoned 2(a) as are the houses behind the car park and those adjacent to it and further away from Liverpool Road. This was the car park that was inspected by Mr Tsang and Mr Saklaoui before their lunch on 23 July 2004.

On the northern side of Liverpool Road there are three blocks of land in Homebush Road, 256–260 Homebush Road, zoned 2(a) under the deemed LEP.

The remaining areas of interest are on Liverpool Road. West of the intersection of Homebush Road and Liverpool Road is an old BP service station and, a little further west on the southern side, the Enfield Bowl and the AMF site. Allotments bounded by Bede Street and Anselm Street and Liverpool Road will be referred to as the Anselm St/ Bede St/Liverpool Rd block. The block is presently zoned 2(b) under the deemed LEP. Opposite the Anselm St/ Bede St/Liverpool Rd block and on the northern side of Liverpool Road is the 507–511 Liverpool Road block that backs onto Belleverde Avenue. The block will be referred to as the Belleverde Ave/Liverpool Rd block. Further west along Liverpool Road and also on the northern side is a third block, 549–559 Liverpool Road. This will be referred to as the Fitzgerald Cr/Liverpool Rd block. The two blocks are also zoned 2(b) under the deemed LEP.

Travelling east from Homebush Road, Liverpool Road eventually joins Parramatta Road at Ashfield. Just before Liverpool Road leaves the Strathfield Municipality there is a service station at the junction with Liverpool Road and Mintaro Avenue. The land is zoned 2(b). The house numbered 2 Mintaro Avenue adjacent to the service station, and houses numbered 4–8 Mintaro Avenue are zoned 2(a). The service station and the four houses referred to above will be referred to as the Mintaro Ave/Liverpool Rd block. (This block is not shown on the figures).

Proposed zoning changes

In March 2003 the Strathfield South Shopkeepers Association wrote to Council seeking rezoning of the Strathfield South commercial areas to permit a FSR of 5:1 rather than the existing 3:1. The Association also suggested that any rezoning should include the Council car park near the intersection of Liverpool and Homebush Roads.

In the Draft LEP the zones are referred to using a different nomenclature from that used in the deemed LEP. In the Draft LEP the residential zones were referred to as Residential 2A or Residential 2B. The area of shops at the intersection of Liverpool and Homebush Roads that is zoned Business General 3(a) in the deemed LEP is referred to in the Draft LEP as Local Business 3B. The Draft LEP also provided for higher floor space ratios for specific areas within the Local Business 3B zones in the Liverpool Road area.

In May 2003 the recommended zoning under the Draft LEP in respect of Strathfield South relevantly included a change for the Spanish Inn site at the corner of Liverpool and Homebush Roads from the existing zoning of residential 2(a) to Local Business 3B. It also included a recommended zoning change for 256–260 Homebush Road and part of the Council car park in Homebush Road from residential 2(a) to Local Business 3B. The available FSR for sites north of Liverpool Road, as these were, was 6:1 under clause 23 of the Draft LEP.

Figure 2 shows the zoning map as proposed in May 2003. It covers the same area as Figure 1. The two residential zones are shown (2A and 2B) as is the area to be zoned Local Business 3B. This zone was limited to properties at the intersection of Liverpool and Homebush Roads and some properties near the intersection of Mintaro Avenue and Liverpool Road (excluding the service station).

As noted above, DIPNR wrote to Council on 11 September 2003 concerning the Draft LEP. On 16 September 2003 a report by Mr Mark Pepping, Council’s Manager Strategic Planning, was tendered to the Council advising it of comments that had been received and specific actions that should be taken in response to comments by DIPNR. In relation to the support for mixed use development along Liverpool Road referred to by DIPNR the report said, amongst other things:

Figure 2 – Zoning proposed in May 2003

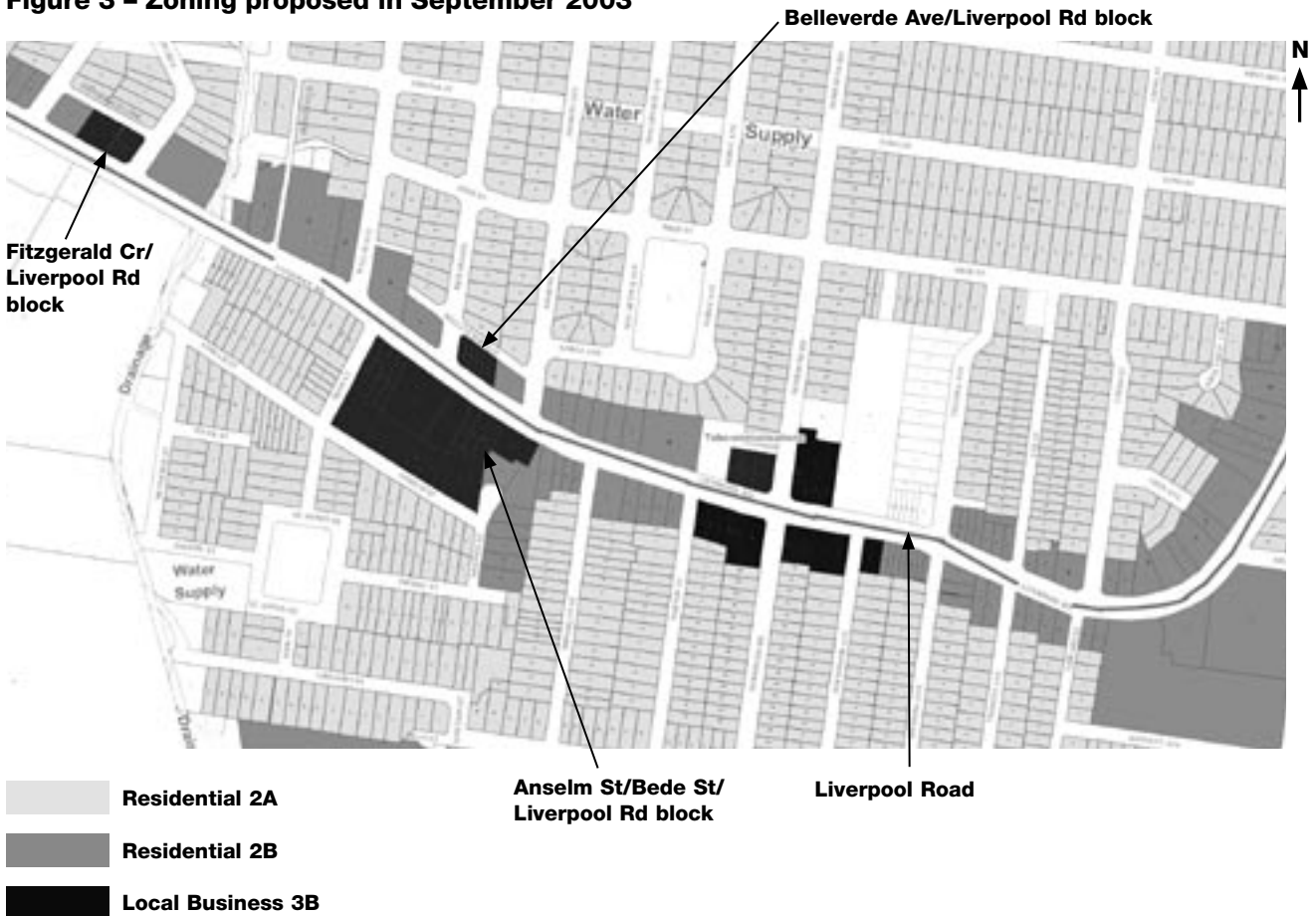
Generally speaking, Liverpool Road does not possess the same “mixed use” characteristics as Parramatta Road. Notwithstanding, there is potential for rezoning several sites which currently have commercial activities to the Commercial B zone. The sites include the following:

- service station on the corner of Liverpool Road and Mintaro Avenue and adjoining residential properties;
- car repair workshop on the corner of Liverpool Road and Rickard Road;
- AMF Bowling centre and adjoining vacant former petrol station on Liverpool Road; and
- Group of shops on the corner of Liverpool Road and Fitzgerald Crescent.

The report recommended that the Council consider rezoning the above sites as “Commercial 3B” (i.e. Local Business 3B). As it happened, the Draft LEP attached to the report included not only these specific areas but also properties adjoining them in the area to be zoned Local Business 3B. Those areas

are referred to as the Anselm St/Bede St/Liverpool Rd block, the Belleverde Ave/Liverpool Rd block, the Fitzgerald Cr/Liverpool Rd block and the Mintaro Ave/Liverpool Rd block.

Figure 3 shows the proposed zoning for the relevant area that was adopted by Council on 16 September 2003, went on public display in October and was subsequently formally adopted by Council in December 2003. As can be seen by comparing this figure with Figure 2, the number of properties zoned Local Business 3B is greatly increased in line with the recommendations in the report that was considered by Council on 16 September 2003. The three areas zoned 3B that are west of the junction of Liverpool Road and Homebush Road will be referred to later in this report.

Figure 3 – Zoning proposed in September 2003

In addition to the zoning changes, clause 23 of the Draft LEP adopted in December 2003 contained specific provisions with respect to FSRs in Business Zones. The effect of this clause had been settled in the September draft of the LEP. The provisions that applied to Local Business 3B zones in the Liverpool Road, Strathfield South area can be summarised as follows:

- A FSR of 3:1 applied generally, excluding any basement or space permanently set aside within the building for car parking;
- on the northern side of Liverpool Road there was an additional permissible bonus FSR of 3:1 if the site exceeded 1,500 sq. metres. This would have the effect of permitting development on the site at a ratio of floor space to area of 6:1; and
- on the southern side of Liverpool Road there was an additional bonus FSR of 1:1 on a site exceeding 1,500 sq. metres allowing FSR of 4:1. The maximum height of buildings permitted was five storeys.

Both Mr Saklaoui and another developer, Mrs Anne Bechara, stood to benefit greatly from the proposed changes put forward in September 2003 if they were to come to fruition. The changes added to the Draft LEP would, if made, have increased the permissible density of development on land in which certain developers, including Mrs Bechara and Mr Saklaoui, had a financial interest. As well as proposing a considerable increase in land zoned 3B the provision permitting a bonus FSR on the southern side of Liverpool Rd was added in September 2003.

For example, the Draft LEP, if made, would allow for the erection of a building with a FSR of 6:1 on the Spanish Inn site, which covered 1,821 sq. metres and was owned by Mrs Bechara's company. In addition to her interest in the Spanish Inn, Mrs Bechara had interests through another company in the AMF Bowling centre and three adjacent blocks of land. This land was part of the Anselm St/Bede St/Liverpool Rd block on the southern side of Liverpool Rd that was to be zoned 3B under the September 2003 proposal.

Mr Saklaoui acquired an interest in one block of land in the Fitzgerald Cr/Liverpool Rd block on the northern side of Liverpool Road shortly before the Draft LEP went on exhibition. His attempts to obtain an option over the rest of that block failed. Mr Saklaoui also had interests in five contiguous properties in the Anselm St/Bede St /Liverpool Rd block on the southern side of Liverpool Road.

The practical effect of the Council proposed amendments was that the Draft LEP, if made, meant that sites in excess of 1,500 sq. metres in area on the northern side of Liverpool Road could be developed (if planning permission were granted by the Council) to accommodate a very tall building. For example, if the footprint covered fifty percent of the site, that would allow a building in excess of 12 storeys or perhaps more, depending on the amount of floor space intended to be used for parking.

Evidence before the Commission has demonstrated that between April 2002 and December 2003 there was a great deal of activity from developers in respect of properties which would be affected by the making of the plan by the Minister.

Developers acquired options to purchase, and in fact actually purchased properties that might be advantageously affected by the adoption of the Draft LEP and those which might be consolidated into contiguous sites of more than 1,500 sq. metres.

It is unnecessary to detail all the evidence of developer activity. It was obvious that the proposed rezoning was known to members of the public and the knowledge of the proposed rezoning obviously had an effect on the value of affected properties.

Chapter 3: A new regime

Elections

An election of Councillors to the Strathfield Local Council was held in March 2004. Nine were elected. The Labor Party was not as successful as it had been previously, however four candidates from the Labor Party were elected. These were John Abi-Saab, Paul Barron, Brenda Gillard and Keith Kwon. Three Liberal Party candidates, Bill Carney, Scott Farlow and David Doust, were elected. The remaining councillors elected were Alfred Tsang from the Unity Party and Elizabeth Gewandt, an Independent.

Only three of the nine elected councillors had been on the previous Council – Councillors Abi-Saab, Gewandt and Tsang. As has been noted, Mr Abi-Saab was formerly the Mayor and Mr Tsang his Deputy. In Strathfield the Mayor is elected by Councillors from among their number.

Mr Tsang was and is a businessman in the Strathfield Municipal Council area. He is a member of the Unity Party and was first elected as a Councillor in mid 2000. Prior to the March 2004 election he had been Deputy Mayor to Ms Virginia Judge and later to Mr Abi-Saab, both of whom were members of the Labor Party. Ms Judge is now the Member for Strathfield in the NSW Legislative Assembly.

Mr Abi-Saab was first elected to the Strathfield Council in mid 2000. Previously he had been a member of Hastings Council based at Port Macquarie and for a period was the Mayor. Mrs Gewandt has been an Independent member of the Council since 1991.

After the March 2004 election Mr Tsang and Mrs Gewandt held the balance of power on Council. If the vote split along party lines then the Labor group would win if either Councillor Tsang or Councillor Gewandt voted with Labor. The Liberal group would win only if both voted with the Liberals. The position could become more complicated depending upon which Councillor was elected as Mayor in situations where the Mayor's casting vote may have decided the issue.

Some Councillors appeared to attach undue importance to the position of Mayor. In fact in a Council of nine, as in the case of Strathfield Municipal Council, a Mayor had no casting vote when all members of Council voted on a resolution. If one of the Councillors were absent, or did not vote because of a pecuniary interest in a matter, the casting vote would become significant if the

voting on a particular resolution were otherwise tied. Nonetheless, and without legal justification, it appeared to be accepted that the Mayor was empowered to make a number of decisions binding the Council when in fact the occasions when that power could be exercised were much more limited than appeared to be assumed by either Mr Abi-Saab or Mr Tsang.

Mr Tsang and Mr Abi-Saab have given versions of the negotiations that took place after the Council election and before the election of Mayor. It is reasonable to infer from the evidence that there was an arrangement between Mr Tsang and Mr Abi-Saab that, if implemented, would have permitted Mr Abi-Saab to continue as Mayor for six months on the understanding that thereafter Mr Tsang would become the Mayor. The changeover would occur when Mr Abi-Saab resigned after six months and Mr Abi-Saab's faction supported Mr Tsang to become Mayor thereafter. However, shortly before the election of Mayor Mr Tsang told Mr Abi-Saab that he in fact would run for the position himself. It appears that he had concluded that he would have had the support of the Liberals and Councillor Gewandt.

Mr Abi-Saab persisted with his attempts to become Mayor. Through an intermediary, Mr Geoff Howe, Mr Abi-Saab endeavoured to come to an agreement with Mr Doust from the Liberal Party to ensure that he retained the position of Mayor for a short period. Alternative proposals were put forward. The first was that Mr Doust would become an Independent and support Mr Abi-Saab for the position of Mayor for six months in return for which Mr Doust would be supported for the office of Mayor thereafter. The second was all members of the Liberal group would support Mr Abi-Saab rather than Mr Doust becoming an Independent but with the same result after six months. Mr Howe's participation in these events is far from clear. He said in evidence that he told Mr Doust that Mr Abi-Saab wanted to remain as Mayor for six months "only in the sense of continuity". As will be seen, the reasons for Mr Howe's interest in the municipal affairs of the Strathfield Municipal Council remain something of a mystery.

Mr Howe was the editor of a local newspaper, the *Inner Western Suburbs Courier*, which is circulated in the inner west of Sydney including the Strathfield Council area. He left that position in mid-February 2005 after the Commission's public hearing had concluded. Mr Howe had an interest in local politics and in fact had been an elected member of Burwood Council from about 1987 to 1992 and was the Mayor of Burwood for part of that period. He told the Commission that he knew most of

the Councillors at Strathfield and had attended some meetings. He directed journalists working for him to cover others. Councillor Abi-Saab did not hesitate to enlist the assistance of Mr Howe for his own purposes – although why Mr Howe allowed himself to be used for that purpose is less than clear.

Mr Doust was elected Councillor for the first time in March 2004. He previously had been both a Councillor and the Mayor on the Burwood Municipal Council.

Mr Doust gave evidence, which the Commission accepts, that after the Council election, and prior to the election of the Mayor by the Councillors, he was approached by Mr Howe in circumstances previously referred to. Mr Doust declined to have an arrangement with Mr Abi-Saab and thereafter there was no further approach.

The significance of these attempted arrangements is that they took place against a background that Mr Abi-Saab wanted to continue in the office of Mayor for a period of approximately six months. It is reasonable to infer that Mr Abi-Saab wished to remain there for a period long enough to ensure that the rezoning proposals would be accepted by the Minister and the Draft LEP would be made. He believed, as did others, that being the Mayor gave him more influence than merely being a Councillor.

Mayoral election

On 14 April 2004 Mr Tsang was elected by the Councillors as Mayor and Mrs Gewandt was elected as Deputy Mayor. Both were elected unopposed. Mr Tsang remained the Mayor of Strathfield until shortly before the commencement of the Commission's public hearing when he stood down. Thereafter Mrs Gewandt became the Acting Mayor. Both Mr Tsang and Mr Abi-Saab remained Councillors until their resignations at the conclusion of the public hearing.

In his position as Mayor, Mr Tsang presented a number of Mayoral Minutes to the first meetings of Council after the election. Apart from establishing committees and sub-committees for the Council, some minutes dealt with general issues relating to policy and procedures of Council with respect to planning matters and the development of a management plan. Most of the proposals were adopted unanimously.

On 18 May 2004, a Mayoral Minute was tabled entitled "Good Practices". Council was asked to authorise the Mayor's actions in seeking legal advice on various

governance, process, compliance and contractual matters and engaging an independent person to undertake an internal inquiry into, and further advise on, the same matters. The Mayor and Deputy Mayor were delegated to appoint the independent person and to prepare the Terms of Reference and report back to Council. Councillors Abi-Saab, Barron and Kwon voted against the resolution.

On 1 June 2004 Council was informed that Emeritus Mayor Peter Woods OAM had been appointed to conduct an internal inquiry into Council's operations. All Councillors, except Mr Kwon, voted to adopt a resolution to note that fact and to allocate funding of \$20,000 for the enquiry. Mr Woods is well known in local government circles. He was formerly a Mayor of Concord and a former President of the Local Government Association of NSW.

At the same meeting Council endorsed the Mayor's action in negotiating with the General Manager, Dr Keogh, for a mutually acceptable separation and gave the Mayor delegated authority to finalise the negotiations. Dr Keogh had been General Manager for a number of years and was in that position at the time the Draft LEP was adopted by Council. He subsequently resigned from the Strathfield Council and a short time later was engaged as a consultant by DIPNR. Mr David Backhouse became Acting General Manager on 1 June 2004 and was appointed General Manager on 10 August 2004.

Mayoral minutes of 8 June and 6 July 2004

By June 2004 the consultant engaged by Council had not yet prepared the Commercial Centres DCP and the Draft LEP had not been made and gazetted.

On an understanding that the DCP would provide a better and more comprehensive proposal for the development of each site rather than a blanket set of controls contained in clause 23 of the Draft LEP, Mayor Tsang brought to Council by Mayoral Minute a motion to remove clause 23 in its entirety. If accepted by the Minister the removal of clause 23 would remove provisions setting out base and bonus FSRs for the Business zones.

In addition, it was resolved to remove the proposed Local Business 3B zoning from Anselm St/Bede St/Liverpool Rd block, the Belleverde Ave/Liverpool Rd block and the Fitzgerald Cr/Liverpool Rd block so that

those blocks would revert to Residential 2B zoning (equivalent to 2(b) under the deemed LEP). These three blocks are those west of the intersection with Homebush Road that were referred to earlier in the report and it will be recalled that these are among those whose proposed zoning was altered in September 2003. The motion to adopt the Mayoral Minute was passed on 8 June 2004. All four Labor Councillors voted against the motion and all three Liberals, as well as the Mayor and Deputy Mayor, voted in favour.

On 6 July 2004 Mayor Tsang advanced a further Mayoral Minute which was passed by the Council. It dealt specifically with properties known as 256–260 Homebush Road. The minute mistakenly referred to the properties as being proposed to become “Local Business A” under the Draft LEP. They were in fact proposed as Local Business 3B. But however that may be, it was resolved to recommend removal of the proposed changes and to maintain the existing zoning Residential “A” (or 2(a) as it was in the deemed LEP).

On this occasion Liberal Councillor Farlow was absent but the motion passed as Labor Councillor Kwon voted with the majority while the remaining three Labor Councillors all voted against the motion.

The decision in relation to the Mayoral Minutes represented a significant change in the approach of Council to development. Mrs Gewandt gave evidence about her own change of heart. In December 2003 she had voted in favour of the adoption of the Draft LEP as had the majority of the other Councillors. On 8 June and 6 July 2004 she voted in favour of the adoption of the two Mayoral Minutes. She explained her change of opinion since the previous year.

[Counsel assisting] Q: I take it you had a change of opinion between voting in favour of the Draft LEP on 2 December 2003, and the time of the Mayoral Minute of at least 8 June 2004?

[Mrs Gewandt] A: That is correct, and with good reason. I think there was sufficient evidence to suggest that we had been poorly advised and poorly resolved upon the matter.

Q: In what way did you consider you had been poorly advised?

A: In respect of the way in which the reports had been presented to Council accumulatively in the lack of information which was available to us with

respect to the changes that had incrementally been made since May, the first draft that came to us and subsequently to the resolution of Council in December, certain site inspections that I attended with the consultants which made it patently obvious that certain things that I believed to have happened in that rezoning were quite different from the actuality.

Q: Were those site visits in the early part of 2004 or after the election in March of 2004?

A: Before the election.

...

Q: Were there any particular aspects that stood out in your mind as to why you should go along with the Mayoral Minutes?

A: The most obvious thing to me was the confusion over the extent of rezoning in the Anselm Street Bede Street precinct. It was certainly my impression leading up to the resolution of Council that only the bowling alley was affected and not the immediate block around it. I was disabused of that when DEM⁶ had their site inspections and it was then I think that I was alerted to possible other deficiencies and that that had crept into the resolution and what we had been advised at the time.

Councillor Doust gave evidence that he voted in favour of the Mayoral Minutes as he perceived the Draft LEP as adopted by Council in December 2003 was providing for overdevelopment in the local area and was not in the community interest.

The effect of the Mayoral Minutes

If the recommendations in the Mayoral Minutes were adopted by the Minister, property values in areas that were originally proposed to be zoned Business and to which clause 23 applied would be significantly reduced. Particularly affected were those properties in Strathfield South which were nominated in the Minutes and which no longer stood to gain from the proposed zoning change under the Draft LEP. If the Draft LEP were made and gazetted with the changes these properties would retain the zoning they had before the commencement of the process to make a new LEP.

⁶ DEM Australia Pty Ltd (DEM) was appointed by Council pursuant to the resolution passed on 2 December 2003 to develop a DCP for the areas of land that were proposed to be zoned Business under the Draft LEP.

Properties that were not specifically mentioned in the Minutes but remained in the proposed Local Business 3B zone lost the bonus FSR (of 3:1 or 1:1 depending on which side of Liverpool Road the property was situated). For example, the Mintaro Ave/Liverpool Rd block would have an available FSR of 3:1 under the Draft LEP rather than 6:1. This would significantly reduce the development potential of that block.

Mr Saklaoui and Mrs Bechara each gave evidence that they and their associated development partners understood that they would have been singularly significantly adversely affected by the passing of the Mayoral Minute of 8 June 2004 assuming (as they believed) it would be accepted by the Minister. Of course, other potential developers might also have been affected. However it is important to note that the interests of Mr Saklaoui and Mrs Bechara would have been significantly affected. As will be seen, Mr Saklaoui was part of the blackmail plot directed against Mr Tsang. Mrs Bechara, as will be seen, after telling a number of lies to the Commission ultimately admitted to them not, in the opinion of the Commission, because she had a genuine change of heart but because by the time she gave evidence she was confronted with the incontrovertible evidence that a great deal of what she had previously told the Commission was lies. The Commission is of the opinion that Mrs Bechara, had she believed she could not be caught out, would have persisted in maintaining the lies she told the Commission earlier.

Chapter 4: Luncheon on 23 July 2004

The first meeting

On 23 July 2004, prior to going to lunch, Mr Saklaoui and Mr Tsang visited the car park situated on Council-owned land near the intersection of Homebush and Liverpool Roads. During the public hearing they agreed that they had met on an earlier occasion to discuss a proposal to develop that car park.

At that first meeting Mr Tsang wrote some notes on a large yellow envelope recording what the Council wanted if the developers' proposal proceeded. The notes are in the following form:

- (1) *x 1.5 Carparks (no. of parkings)*
- (2) *Purchase the 2 or 3 houses at the back (Barton)*
- (3) *A child health centre*
- (4) *A library*
For Free

The envelope was in evidence and Mr Tsang confirmed that the notes had been made by him. He had recorded that there was to be the provision of additional car parking spaces, a child health centre and library which would be contributed free by the developer and that involved in it was the purchase of "two or three houses at the back" (Barton Street).

Mr Tsang initially said that the meeting took place approximately one month before the lunch. Subsequently he said that he could not recall when he had written the notes except to say that it was after the Council election and before his election as Mayor. Mr Saklaoui placed that meeting as about one week after the Mayoral Minute of 8 June 2004.

Because neither Mr Tsang nor Mr Saklaoui could be regarded as reliable and trustworthy witnesses, the word of each alone would not resolve the issue. However, it probably does not matter a great deal when the proposal was first advanced. What is clear is that if effect were given to the Mayoral Minutes in June and July 2004, the development proposal sought by Mr Saklaoui, if capable of implementation, would be much less valuable than would have been the case had the rezoning proposals in December 2003 been made by the Minister.

The notes written by Mr Tsang on the envelope indicate that the proposal was for the Council to provide the car park to the developer at no cost in return for which the developer would provide parking (with an additional 50% capacity) and certain community facilities to the Council free of cost. This was on the basis that the

developer would successfully acquire the additional land to enable the whole development to go ahead. The note on the envelope contained no reference to \$200,000.

However, as both Mr Saklaoui and Mr Tsang agree, the lunch was arranged for 23 July 2004 for the purpose, amongst other things, of discussing the development proposed by Mr Saklaoui.

It is reasonable to infer that, whenever the first meeting took place, the decision of Mr Abi-Saab and Mr Saklaoui to gather material with which to blackmail Mr Tsang took place after and as a result of the Mayoral Minute of 8 June 2004.

Preparation

After the 8 June Mayoral Minute Mr Saklaoui approached Mr Scott Allman and sought his assistance in obtaining evidence that could be used against Mr Tsang. Mr Allman agreed to obtain appropriate recording equipment to enable the meeting at the restaurant on 23 July 2004 to be covertly recorded. Mr Allman said he had been a longstanding friend of Mr Saklaoui and Mr Saklaoui was the godfather of Mr Allman's son. Mr Allman gave evidence that he anticipated that Mr Saklaoui would be investing in a security or private investigation business that Mr Allman was interested in establishing. As at 23 July 2004, Mr Allman was an officer of NSW Police and had been so for approximately 12 years. However, he intended to leave NSW Police and he did so on 21 August 2004.

As is apparent from his own evidence, Mr Allman was aware that the purpose of the recording was to provide a video and audio record of the payment of money by Mr Saklaoui to Mr Tsang. He has said that he agreed to participate because Mr Saklaoui assured him he wanted proof of Mr Tsang's dishonesty.

In furtherance of his role Mr Allman made a number of purchases of audio and video equipment. On 17 June 2004 Mr Allman picked up some equipment that he had ordered about a week earlier from OzSpy, a business specialising in surveillance equipment. The equipment included a mobile phone camera, a wireless button camera, and other accessories at a total cost of approximately \$2,996.

He also bought a Canon Mini DV camcorder and accessories from Bing Lee on 16 June 2004 and made a similar purchase on 6 July 2004. The total cost of the two camcorders and accessories was \$3,470. Mr Allman

believed that Mr Saklaoui paid for the equipment through his company, St Jude Investments Pty Limited. All of the invoices were made out to that company. The total cost of the equipment purchased by Mr Allman at the request of Mr Saklaoui was about \$6,500.

Prior to the lunch Mr Allman attended the restaurant with Mr Saklaoui and arranged seating to enable the recording to be carried out. He also arranged for another off-duty NSW Police officer to assist by operating one of the cameras to record the meeting.⁷ Mr Allman's wife and a female friend of the second officer accompanied them to the restaurant. The two couples dined at separate tables.

Meeting at the car park

On 23 July 2004 Mr Saklaoui was carrying an MP3 recording device, owned by Mr Allman, on his person throughout the time he was with Mr Tsang. Such recording devices are used to digitally record sound, such as music or lecture notes, in a high quality compressed format. The device carried by Mr Saklaoui was small enough to fit in his pocket yet able to make a continuous sound recording of at least four hours.

This device recorded the conversation that he had with Mr Tsang from the time that they went to the car park until Mr Tsang was taken back to Strathfield. The recorder continued to operate after Mr Tsang left the vehicle and, as will be seen, recorded Mr Saklaoui's subsequent conversation with Mr Abi-Saab. There was no dispute as to the authenticity of this recording that had been copied to a compact disc (CD) before it was obtained by the Commission.

During the conversation on 23 July 2004 Mr Saklaoui and Mr Tsang are recorded as talking about buying the three properties at the back of the car park, being numbers 2, 4 and 6 Barton Street. Mr Tsang said "We change it to commercial so we move the block to three houses down" – it being understood that the blocks would be consolidated with the car park.

Mr Tsang said at the time of the conversation he believed that the car park and the three properties at the rear were zoned under the Draft LEP as Local Business 3B. He denied that he was proposing to Mr Saklaoui that he, Mr Saklaoui, should buy them while they were still proposed to be zoned Residential 2A on the basis that he (Mr Tsang) would then arrange for

an extension of the Local Business 3B to include those three blocks and allow consolidation of them with the car park site.

As at 23 July 2004 the effect of the Mayoral Minute in respect of the car park site was only to remove the bonus FSR. Half of the car park would still be changed under the Draft LEP (if it were made by the Minister) from residential 2(a) to Local Business 3B. The properties at the rear of the car park with frontages to Barton Street and to the south in Homebush Road were all zoned residential 2(a) and the Draft LEP did not propose any change to that zoning.

When the Draft LEP was adopted by Council on 2 December 2003 Mr Tsang was present and voted in favour of adoption. The properties in Barton Street were subject to specific mention in the motion:

PART C

1. *That in relation to numbers 2, 4 and 6 Barton Street Strathfield South given the potential for expansion and development of Council's car park these properties be considered for a separate LEP at a future date.*

In these circumstances it is reasonable to infer that Mr Tsang must have been aware when discussing the car park project that the three Barton Street properties were not proposed to be rezoned from the existing 2(a) to Local Business 3B under the Draft LEP. He would have been aware that in all probability the land would be later rezoned 3B, particularly where a developer could consolidate those properties and the Council car park.

Lunch – money changes hands

On 23 July 2004, after visiting the car park site Mr Tsang and Mr Saklaoui went on to lunch at a restaurant where Mr Allman recorded the payment and discussion. The conversation was being recorded on the MP3 recording device carried by Mr Saklaoui as well as by the Mini DV Canon camcorder being operated by Mr Allman which recorded the video and audio signals transmitted from the camera disguised as a mobile telephone. The other off-duty police officer and his companion made a second video recording, without sound, using a camcorder concealed in a hand bag. This was a long distance recording of Mr Saklaoui and Mr Tsang seated at their table.

⁷ The second officer was not called to give evidence at the hearing.

When Mr Tsang first approached the Commission he said that he had been shocked when given the sum of money and when an offer of \$200,000 was made. He maintained that was the case in the public hearing. A portion of the recorded conversation is as follows:

TSANG: *You count the number of parking, you give me one point five times.*

SAKLAOUI: *Hm, hm.*

TSANG: *That's it.*

SAKLAOUI: *Alright.*

TSANG: *Know what I mean?*

SAKLAOUI: *Okay, I'll do that.*

TSANG: *Yeah.*

SAKLAOUI: *And then, what did we say, two hundred thousand for you —*

TSANG: *Hm, hm.*

SAKLAOUI: *— direct — money deposit now at the bank — when it works out.*

TSANG: *Yeah.*

SAKLAOUI: *I don't want anybody to know.*

TSANG: *Yeah. That's it.*

SAKLAOUI: *Hu-huh.*

TSANG: *Alright. We don't want that —*

SAKLAOUI: *No. no. no I just need it cut but I don't want anybody telling everybody.*

TSANG: *No, just the money. Just straight forward and simple, alright?*

SAKLAOUI: *Uh-huh.*

TSANG: *And no — no mucking around here and there and whatever and all this rubbish this complication.*

After an interruption by the waiter the “deposit” changes hands:

SAKLAOUI: *Where do want your money here or overseas?*

TSANG: *I'll let you know.*

SAKLAOUI: *Hey?*

TSANG: *I'll let you know. [whispers]*

SAKLAOUI: *Yeah —*

TSANG: *It's up to you. [whispers]*

SAKLAOUI: *Yeah, yeah I'll be here. Three — [inaudible]*

TSANG: *There are only two people, two people who are dealing here.*

SAKLAOUI: *Give me your hand. Okay, this is a deposit but you know I'm —*

TSANG: *Okay.*

SAKLAOUI: *I've done what I had to do. I don't know —*

TSANG: *Alright.*

It was at this time that \$2,500 (according to Mr Tsang) or \$3,000 (according to Mr Saklaoui) changed hands.

Mr Tsang has consistently denied that there was any intention on his part to discuss being paid \$200,000 at some time in the future. However, if the conversation as recorded is taken at face value the inference is open, and is one which is made, that he had discussed payment of \$200,000 with Mr Saklaoui previously. Mr Tsang's interpretation of what he meant is inconsistent with what he said. Whether on the earlier occasion Mr Tsang requested payment or Mr Saklaoui offered payment is not material. Mr Saklaoui's evidence – at least to the extent that the previous discussions included reference to a corrupt payment of \$200,000 to Mr Tsang – is to be accepted, bearing in mind the actual words used by Mr Tsang and Mr Saklaoui as recorded. It may be that on the earlier occasion there was no mention of a “deposit” and to that extent Mr Tsang may have been surprised when the money was handed to him. However, he had no hesitation in accepting it and putting it in his pocket – being careful as he did so to look around to see whether the payment had been observed by anyone else.

Mr Tsang suggested during his first interview that the offer had been made some way into the meal after the consumption of a quantity of wine. In fact the mention of \$200,000 occurred only 16 minutes after Mr Tsang and Mr Saklaoui entered the restaurant and shortly after the waiter brought the drinks that they had ordered to the table.

A suggestion was advanced, somewhat faintly, that Mr Tsang may have behaved as he did, not because he accepted the bribe but because he may have been embarrassed and wished to avoid a scene in a public place. (This, be it noted, is not suggested by Mr Tsang himself but put in submission on his behalf). But that hypothesis ignores the circumstance that he did not report the matter to the Police or the Commission or any other person in authority as soon as he and Mr Saklaoui parted company. In fact he did not report

the matter until he attended the Commission more than a week later and only then after he believed after he was being blackmailed or otherwise threatened. Mr Saklaoui was responsible for the expenditure of \$10,000 for equipment, the cash bribe and lunch. It is unlikely he would have done this, whether alone or in conjunction with others, if he did not believe that Mr Tsang would accept the money and that was why he was being recorded.

In reaching the conclusion that Mr Tsang accepted the bribe, the Commission makes it clear that it has not relied on the obvious belief of Mr Saklaoui that Mr Tsang would take the money. The Commission is of the opinion that its findings in relation to Mr Tsang's conduct should not be determined by what Mr Saklaoui thought Mr Tsang might do.

Furthermore, Mr Saklaoui's claims that there were previous corrupt payments by him to Mr Tsang will be dealt with in some detail later. Mr Saklaoui's evidence is vague and entirely dependent on him being accepted as a truthful witness. It is sufficient to note at this point in the report that the Commission makes no positive finding adverse to Mr Tsang concerning the allegations of previous payments made by Mr Saklaoui.

During the meeting of 23 July 2004 Mr Tsang and Mr Saklaoui were also recorded discussing the prospect of paying Mrs Gewandt for her support of the car park project. Although, initially Mr Tsang stated that he was not going to make payments and could not give her anything, he subsequently said "Put it this way, whatever she wants — I'll give it to her". This part of the conversation is incapable of supporting any inference that Mrs Gewandt was corrupt. It also should be mentioned at this point in the report that Mrs Gewandt gave evidence to the Commission and that the Commission accepts her evidence in its entirety.

Mr Saklaoui said later

Let me tell you something. Look at my eye, deep down, what I'm saying to you — you listen, Gewandt she's on the take — from something — and she's doing whatever she wants now — and then she doesn't like the — Yeah, she doesn't like that. She goes "mm mm" but after — she never like — never.

Mr Tsang at that point agreed with that statement.

During the course of the hearing a number of conversations were played during which the participants spoke less than highly of Mrs Gewandt. It was necessary for the purposes of the hearing to play this material because it was relevant to the Commission's investigation.

The Commission makes it clear that there was no suggestion whatsoever from any witness or any documentary evidence to suggest that Mrs Gewandt had at any time acted corruptly.

Saklaoui rings Abi-Saab

During the meal Mr Saklaoui rang his solicitor and discussed a matter that was pending in the Land and Environment Court. The conversation during that telephone call was recorded by the MP3 player. The Commission obtained the call charge records of Mr Saklaoui's mobile phone and was able to identify that particular call to the solicitor on those records. Call charge records of mobile phones include the telephone number being called, the time and the length of the call. This enabled the Commission to establish the time at which other events recorded on the MP3 device actually occurred.

Call charge records for Mr Saklaoui's mobile telephone show that he rang Mr Abi-Saab at 14:33 on 24 July 2004. This was within minutes of Mr Tsang leaving Mr Saklaoui's car. At that time the MP3 recorder was still recording and Mr Saklaoui's half of the conversation was recorded. Most of the call was in Arabic and a qualified interpreter has provided the following transcript:

SAKLAOUI : *Congratulations.*

(Pause)

SAKLAOUI: *You have to pay. We need something now.*

(Pause)

SAKLAOUI: *I am in Strathfield, don't see me now. Call me after six o'clock.*

(Pause)

SAKLAOUI: *Yeah.*

(Pause)

SAKLAOUI: *Okay we need...*

(Pause)

SAKLAOUI: *I swear on Jesus' blood. I have paid out of my own pocket. Myself.*

(Pause)

SAKLAOUI: *I have paid twelve thousand on top of what you have given me.*

(Pause)

SAKLAOUI: *I'm not understanding you, are you understanding me? I'm not saying anything. I'm telling you how much I have paid.*

(Pause)

SAKLAOUI: *What?*

(Pause)

SAKLAOUI: *I'm at your command, at your command. God keep you and keep your dick.*

(Pause)

SAKLAOUI: *But no talk for now, be patient...*

(Pause)

SAKLAOUI: *Yeah no talk now — be patient until we fix the situation.*

(Pause)

SAKLAOUI: *Okay.*

(Pause)

SAKLAOUI: *Everything. More than what you want.*

(Pause)

SAKLAOUI: *Bye.*

The statements by Mr Saklaoui indicate that Mr Saklaoui expected to be paid by Mr Abi-Saab for expenses incurred over and above what had already been paid by Mr Abi-Saab in advance of the restaurant meeting. This conversation is significant because both Mr Saklaoui and Mr Abi-Saab were at pains to try and persuade the Commission that they had not agreed between themselves to the recording of Mr Tsang taking a bribe.

The recording referred to above was initially played to each of Mr Abi-Saab and Mr Saklaoui in a private hearing in the absence of the other. Both agreed that what was recorded was Mr Saklaoui's half of the conversation. Neither disputed the translation.

Mr Saklaoui denied the obvious inference arising from the conversation by claiming that he had never received

any money from Mr Abi-Saab. His attempt to explain what he said in the conversation led him into the absurd position which is recorded on the hearing transcript:

[Counsel Assisting] Q: *So, Mr Saklaoui, just to take you back to the first part of the conversation which is in English, you say to him after saying "Congratulations, you have got to pay, we need something now". You're talking about needing money from him now, aren't you?*

[Mr Saklaoui] A: *No.*

Q: *When you say "I swear on Jesus's blood, I paid out of my own pocket myself" and then say "I have paid 12,000 on top of what you've given me", you're referring to an amount he'd paid you in respect of obtaining the tape of the 23rd of July 2004, aren't you?*

A: *No, it wasn't the case.*

[Commissioner] Q: *What are you referring to?*

A: *I was referring to — when we had a fight, an argument about this, I said "There, you see, I am not lying, you" and this is what "you pay" means — doesn't mean pay money to us in conversation.*

Q: *"I have paid 12,000"?*

A: *Thousand, yeah, I paid 12,000 dollars.*

Q: *Yes, you did pay 12,000 dollars?*

A: *I did — I — it nearly — nearly — nearly cost me all the —*

Q: *Listen to me, please. "On top of what you have given", what did you mean by those words?*

A: *When he — when he give you — I was sort of saying it's not — he gave me problem and it's not — it's not, yeah, he doesn't believe me in this. He doesn't give me, you know, he — he doesn't believe me when I told him he's a —*

Q: *So you really say that sentence should read "I have paid 12,000, in addition, I have suffered the problems that you have caused by denying that Tsang was corrupt"?*

A: *I could've, yes. That's what I did, yeah.*

Q: *Are you telling me seriously that's what you meant by that sentence?*

A: *That's what I meant. I am — hey.*

Mr Abi-Saab at first denied any payment to Mr Saklaoui before or after the restaurant meeting:

[Counsel Assisting] Q: *Mr Abi-Saab, did you or anyone on your behalf pay money to Mr Saklaoui prior to the 23rd of July 2004?*

[Mr Abi-Saab] A: I beg your pardon?

Q: Did you or anyone on your behalf pay any money to Mr Saklaoui prior to the 23rd of July 2004 which was the date of the restaurant meeting between Mr Tsang and Mr Saklaoui?

A: Not that — not — I didn't nor I authorise anybody to pay anything.

Q: Sorry?

A: I did not pay anything, sir.

After the recording referred to above was played to him he admitted that he had given money to Mr Saklaoui:

[Counsel Assisting] Q: You said a moment ago that before the 23rd of July 2004 he hinted to you that he would want some money for it?

[Mr Abi-Saab] A: Yes, plus the money.

Q: So before the 23rd of July he had at least had some conversation with you about wanting some money to get the video to give it to you?

A: Yes, to give me a copy.

Q: Right. Had he hinted as to how much he wanted?

A: No, not initially, no.

Q: Was this the first time you'd heard of a figure of 12,000 dollars?

A: — first time.

[Commissioner] Q: So what did you say to him? What did you say to him?

A: I took it for, you know, told him to sort of — your Honour, I didn't have money, I didn't have the money to give anybody. So there's —

Q: You say that's what you told Saklaoui?

A: I did. I don't have money.

[Counsel Assisting] Q: After the 23rd of July 2004 and after the conversation did you subsequently discuss how much Mr Saklaoui wanted for giving you the video?

A: Yes.

Q: How much did he want?

A: He said he want 10, 15,000 or something.

Q: Did he put a range on it or he just put a figure on it?

A: Well, he rang me a few times and then I said to him "I haven't got any money, I'll have to find out if I can get the money or not". I think it was 10, 15,000 or 10,000 or something.

Q: Did you arrange for him to be given any money so you could get the tape?

A: Yes.

Q: How much was he in fact given?

A: I beg your pardon?

Q: How much was he given?

A: 15,000 dollars.

Q: Who did the funds come from?

A: I borrowed it.

Q: From?

A: From my own son.

The admission by Mr Abi-Saab that he paid Mr Saklaoui money was adverse to Mr Abi-Saab's interest and was consistent with the recorded half of the telephone conversation between Mr Saklaoui and Mr Abi-Saab, which raises a strong inference that Mr Abi-Saab did make a payment or payments to Mr Saklaoui in the order of approximately \$15,000. The payment of such a substantial amount runs entirely contrary to his oft-expressed claim that he just wanted to bring the evidence of Mr Tsang's corruption to the Commission and had simply made a misjudgment in not doing so.

In the telephone call, Mr Saklaoui said to Mr Abi-Saab "I have paid twelve thousand on top of what you have given me". This suggests that Mr Abi-Saab had made a payment before the restaurant meeting on 23 July 2004 to assist and encourage Mr Saklaoui to carry through their joint plan.

However, after making the admission of payment Mr Abi-Saab gave the following evidence:

[Counsel Assisting] Q: Mr Abi-Saab, why is it that it is only now, during the course of this private hearing, that you finally told us about the 15,000 dollars that you paid to Mr Saklaoui?

[Mr Abi-Saab] A: I wasn't asked for this, specifically, sir, and it didn't occur to me to mention it. I'm not hiding the fact that it cost me money to get the video. He wanted 15,000 dollars to give me the video.

That answer when contrasted with his earlier denial of payment demonstrates Mr Abi-Saab's total lack of regard for the truth.

Shortly after Mr Abi-Saab gave this evidence, the solicitors representing Mr Abi-Saab wrote to the Commission stating that he had instructed them that he could not now recall making any payments to Mr Saklaoui. The letter was accompanied by a medical certificate. However, the medical certificate did not suggest to the Commission that Mr Abi-Saab was not capable of telling the truth. His admission that he made payments to Mr Saklaoui was against his own interests and the Commission accepts the admission as true.

The return of the money

Mr Tsang gave evidence that he had returned the money to Mr Saklaoui the day after the lunch. This was consistent with what he had told the Commission at the first interview on 3 August 2004. His wife, Mrs Tsang, said that they had driven to Mr Saklaoui's residence in separate cars on 24 July 2004 and that Mr Tsang had spoken to Mr Saklaoui. She understood her husband had returned the money to Mr Saklaoui. However, she did not see Mr Tsang give the money to Mr Saklaoui.

There is substantial conflict between Mr Tsang and Mr Saklaoui concerning a number of matters, including the date on which Mr Tsang returned or sought to return the cash received at the meeting. According to Mr Saklaoui, Mr Tsang did not attempt to return the money until after he had reported the matter to the ICAC and at the time he thought Mr Saklaoui was also liable to be blackmailed. Mr Tsang gave somewhat curious evidence that he had arranged to visit Mr Saklaoui the day after the lunch to give Mr Saklaoui a car owned by Mr Tsang and to sell on Mr Tsang's behalf. If Mr Tsang is to be believed, he had the previous day been embarrassed and compromised by Mr Saklaoui's wholly inappropriate behaviour, but this did not, apparently, cause Mr Tsang not to allow Mr Saklaoui to sell his car.

Chapter 5: Attempted blackmail

Shortly after Mr Tsang reported the matter, the Commission obtained the necessary warrants to authorise the interception of telecommunications and the use of listening devices to investigate the allegations. As a result, many relevant telephone calls between Mr Abi-Saab and others, including Mr Tsang, were successfully intercepted and meetings between Mr Abi-Saab and Mr Tsang were recorded.

The intercepted calls and recorded meetings demonstrate clearly the falsity of much of Mr Abi-Saab's evidence. They also indicate quite clearly what it was that he was trying to achieve from Mr Tsang, namely Mr Tsang's removal as Mayor and his replacement by Mr Abi-Saab, but for Mr Tsang to remain on the Council.

Mr Abi-Saab's conversations with Mr Tsang

There was a series of meetings and telephone calls between the two up to the Council meeting on 10 August 2004. The first meeting was on 4 August 2004 at Mr Abi-Saab's apartment. The second meeting was on 6 August 2004 at the Jumbo Café in Strathfield. Two further meetings took place at Mr Abi-Saab's apartment on 8 and 9 August 2004 respectively.

Mr Abi-Saab has said he was aware that his conversations with Mr Tsang were being recorded. The Commission does not accept that evidence. The recordings of the conversations provide direct evidence of an elaborate charade being played by Mr Abi-Saab in which he consistently lied to Mr Tsang. In the first instance he tried to paint himself as a sympathetic neutral who would endeavour to assist Mr Tsang in determining who was behind the recordings and as a person who could and would assist Mr Tsang to ensure that the recordings never became public. As part of this charade he pretended that he was in contact with those who possessed the recordings and hence able to deal with them on behalf of Mr Tsang.

For his part Mr Tsang kept asking Mr Abi-Saab who it was that had made the video recording and what they wanted from him in exchange for not making it public. Mr Tsang also wanted to see the video for himself and obtain the recording and any copies of it.

Mr Abi-Saab said that he did not know who was responsible for the video. He had been approached by intermediaries, one of whom was Chinese, and that what they wanted from Mr Tsang was his resignation as Mayor because "they" did not like a corrupt Mayor.

Mr Abi-Saab told Mr Tsang that he had been shown the video and offered to help Mr Tsang find out who it was who made the video and what that person wanted from Mr Tsang. He said he was concerned for Mr Tsang and that he would be able to perhaps solve the problem if he could establish who was behind the video. According to Mr Abi-Saab the unknown persons said they did not want a corrupt Mayor.

Further into the recorded conversations Mr Tsang was told that Mr Abi-Saab himself had been told by the intermediary that if Mr Tsang resigned as Mayor he could remain as a Councillor. Mr Abi-Saab could give no credible reason to Mr Tsang why a person wishing to get rid of a corrupt Mayor would at the same time happy to have that person remain as a corrupt Councillor. When pressed he tried to fob Mr Tsang off by suggesting that perhaps the person who wanted to remove Mr Tsang was a racist who disliked Chinese – momentarily forgetting that one of the intermediaries was, according to Mr Abi-Saab, a Chinese person.

But eventually, on 9 August 2004, it all became clear.

ABI-SAAB: *So if you step down — if say you step down as Mayor —*

TSANG: *Yeah.*

ABI-SAAB: *— and I'll push somehow I'll become the Mayor —*

TSANG: *Mm mm.*

ABI-SAAB: *— you haven't lost anything. You haven't lost anything. I'll get — once you make up your mind I'll get to my team, right, we won't tell them anything what's going on alright they will pledge their support. If you want it this way — you'll be the Deputy Mayor, and — you might be a Mayor down the track, I can tell you that. I swear let's work together and I can, I'm hoping that they lodge that thing, because [inaudible].*

TSANG: *How can I be the Mayor again if these people —*

ABI-SAAB: *We mould them, we know who they are. Once we know who they are we know who they are, we have some — Look I wouldn't worry about that, because we can't do it now we can do it gradually, but, but things change. I mean it's not going to be — and if they want to destroy you completely they can do it now. You have no redress even though —*

- TSANG: *So now what's the action plan?*
- ABI-SAAB: *Well actually it's up to you, if you want to step down just you have to plan it that you safeguarding yourself and I can show you with our people you can be Deputy Mayor —*
- TSANG: *Mm mm.*
- ABI-SAAB: *— you tell Gewandt to step down and contest the Mayorship, don't tell her anything — then when election voting comes we vote, secret ballot if you want to. It's up to you, we can vote secret ballot —*
- TSANG: *Hmm. And who becomes the Mayor?*
- ABI-SAAB: *I'll become the Mayor — I only can become if you vote for me, if you don't vote for me it's impossible —*
- TSANG: *Mm.*
- ABI-SAAB: *— all right. But I can assure you if I'm Mayor, you the Deputy Mayor you have nothing changed, and we can work together — you will work — you independent still — and then gradually once you find out within a few days what —who they are then we come on board presto.*

The proposal was that if Mr Tsang resigned as Mayor and supported Mr Abi-Saab to become Mayor, Mr Abi-Saab would then provide the support of his Labor colleagues to ensure that Mr Tsang would become the Deputy Mayor.

After Mr Tsang pointed out that the Deputy Mayor would be Councillor Gewandt once a Mayor was elected, Mr Abi-Saab suggested that Mr Tsang should tell Councillor Gewandt that she should resign as Deputy Mayor and stand for the position of Mayor. Once Councillor Gewandt had stood aside (in Mr Abi-Saab's proposed scenario), Mr Abi-Saab would be elected Mayor and the position of Deputy Mayor would become vacant. Mr Abi-Saab would then ensure Mr Tsang would become the Deputy Mayor having removed Councillor Gewandt from that position.

During that conversation on 9 August Mr Abi-Saab also undertook to persuade the “unknown persons” to give the video to his solicitor. It became apparent to Mr Abi-Saab that Mr Tsang was not amenable to his proposals and he finally conveyed an ultimatum to Mr Tsang that if he did not resign by noon the following day the unknown persons said they would call a press conference. Mr Tsang did not resign.

In a lawfully intercepted telephone call on 10 August 2004 at 11:29am Mr Abi-Saab falsely informed Mr Tsang that his solicitor was now holding the recording. He refused to give Mr Tsang the solicitor's contact details and wanted to talk to Mr Tsang in person.

In a further call on 10 August 2004 at 11:44am Mr Abi-Saab falsely told Mr Tsang that if he resisted any more and did not resign he would have to go to the ICAC himself because he would be exposed for sitting on the evidence. The ultimatum was that if Mr Tsang did not submit his resignation by 2:00pm that day he, Mr Abi-Saab would go to the ICAC.

Mr Tsang did not resign and Mr Abi-Saab did not go to the ICAC. At a Council meeting on 10 August 2004 Mr Abi-Saab made a public announcement that there was a “shadow of corruption” hanging over the Council although he made no direct accusation against any person.

Mr Tsang telephoned the Commission and officers of this Commission attended the Council. There were no further discussions about the video recording between Mr Tsang and Mr Abi-Saab.

Mr Abi-Saab confides in Mr Howe

Early in August 2004 Councillor Abi-Saab spoke to Mr Howe about the evidence that he had against Mr Tsang and enlisted him as a confidante. They met at 8:30am on 6 August at the Jumbo Café in Strathfield, not long before Mr Abi-Saab met with Mr Tsang in the same café.

Mr Howe went to Mr Abi-Saab's home on 12 August 2004 to view the recording however the DVD player was not working. He finally saw the recording on 22 August 2004 at a meeting at Mr Abi-Saab's residence. During the public hearing Mr Howe agreed he was shown the recording so that he could tell Mr Doust and Mr Wong that it existed and that he had seen it. Mr Howe said that he only approached Mr Doust and “wasn't specific, perhaps to make sure the video and the conversation, but it was more like passing on information”. He agreed that Mr Abi-Saab might have asked him to “spread the word” in a confidential manner as it might be accepted coming from him. He did not ask Mr Abi-Saab why he did not simply take the evidence to the ICAC, although he assumed it would go there.

Commission officers interviewed Mr Howe on 26 August 2004. He denied he knew anything about the video

evidence despite the fact he had seen it only four days earlier. He said that he could not remember when he had last seen John Abi-Saab. He was given the opportunity to correct this version when called to give evidence at a private hearing on 29 September 2004. However, apart from one minor correction he said that what he said earlier was the truth.

During the interview on 26 August 2004 Mr Howe told Commission officers that he received an anonymous telephone call from a male person claiming to have evidence of corruption. Mr Howe said that the person talked about “rolling over” and he had volunteered to “find out about it”. Mr Howe did in fact call the Commission and spoke to the media officer about the procedures for making a complaint. Mr Howe told the officers who interviewed him that the caller had refused to give him any contact details and had never rung him back. He said that he had mentioned the anonymous call to Councillors Abi-Saab and Doust.

In the private hearing Mr Howe said that Mr Abi-Saab never told him that he had evidence of corruption concerning the Council and he never provided him with evidence or showed him a film or video. He acknowledged he had followed Mr Abi-Saab back to his unit on one occasion but could not remember the details of the conversation. He agreed that if it was about corruption on Strathfield Council he would have remembered it.

By the time he gave evidence in the public hearing Mr Howe was aware that the Commission had been using listening devices and telephone intercepts during the investigation. He acknowledged that he told several lies during the private hearing. As well as admitting that he had lied about seeing the video recording, Mr Howe also admitted that the story about the anonymous caller was fabricated and that he had been told by Mr Abi-Saab about the evidence of corruption at the Council.

After hearing the intercepted telephone conversation between Mr Abi-Saab and himself on 9 August 2004 Mr Howe agreed that he had discussed the giving of an “ultimatum” to Mr Tsang with Mr Abi-Saab.

On 10 August 2004 Mr Howe telephoned the Commission to find out if an anonymous complaint could be made and whether a person could be given indemnity against prosecution. This was the day that Mr Abi-Saab made the claim that there was “a shadow of corruption hanging over the Strathfield Council”. Prior to the meeting Mr Howe informed Mr Abi-Saab

that it was possible to make an anonymous complaint to the Commission.

Before making his announcement on 10 August 2004 Mr Abi-Saab suggested to Mr Howe that they “might have to rattle him [Tsang] through the press”. Later that day, he asked Mr Howe if he could tell the Council that he received a phone call from the press – the implication being that Mr Howe would support him. Mr Howe was becoming more embroiled in the scheme to get Mr Tsang to resign as Mayor.

There was no evidence before the Commission that would support a finding that Mr Howe knew that Mr Abi-Saab wanted to persuade Mr Tsang to resign for any reason other than because there was evidence of corrupt conduct.

Mr Abi-Saab speaks to Mr Howe again

In mid-September Mr Abi-Saab again attempted to enlist Mr Howe’s assistance in his campaign against Mr Tsang. This time it was in relation to a letter that he had written to Mr Tsang in which he accused Mr Tsang of wearing a listening device to a meeting with other persons. In the first draft he had nominated the “ICAC” as the agency on behalf of whom Mr Tsang was acting, although this was crossed out before the letter was sent to Mr Tsang on 23 September 2004.

During the private hearing on 29 September 2004 Mr Howe said that Mr Abi-Saab had handed him the letter on the previous Thursday but did not ask him to do anything with it. He had sent a reporter, Ms Emily O’Keefe, to speak to Mr Abi-Saab. Mr Howe said that he did not understand what Mr Abi-Saab wanted to achieve, although it could have been the basis of a story. Mr Howe acknowledged that it would have put pressure on Mr Tsang. In the end the story was not published.

As noted earlier Mr Howe admitted that he had lied during the private hearing. He was asked:

[Counsel Assisting] Q: Why, Mr Howe, did you on oath lie to the Commission?

[Mr Howe] A: Three reasons, one, I’ve known Mr Abi-Saab for some years and I wanted to protect him as a source, secondly as a journalist, one needs public credibility of sources, and if they think that their names are revealed it makes my job very difficult, thirdly I guess embarrassment.

[Commissioner] Q: *Why embarrassment?*

A: *Well I suppose I didn't want to admit being involved.*

Q: *Admit?*

A: *Being involved in it.*

Although it is not uncommon for journalists to refuse to answer questions on the basis that their code of ethics imposes a duty on them to protect the confidentiality of their sources, Mr Howe is the first journalist, in the experience of the Commissioner, to assert that obligations of confidentiality extend to telling lies under oath.

Mr Howe found it difficult to explain why he had apparently sat on the story after he had seen the video recordings. After several questions, Counsel for Mr Tsang asked:

[Counsel for Mr Tsang] Q: *Mr Howe, it's hard to imagine a more dramatic story, isn't it, where a Mayor is apparently accepting a bribe and you've got the evidence on tape.*

[Mr Howe:] A: *I don't think it is — there are many stories and one has responsibilities to fill the paper. I probably had — I'd probably been tossing up 10 stories at that time. I — I'm not saying that that's not an important story, obviously it is, but one — one has to do the bread and butter. You know, it will take its turn.*

Q: *But in journalistic terms, you had the money shot, didn't you?*

A: *I had the money shot?*

Q: *No pun intended, but that's what journalists would refer to as the money shot. You had someone on tape apparently accepting a bribe.*

A: *Right.*

Q: *Well, how often has that happened in your career?*

A: *Well, not often. No. But I can't — I simply can't drop everything and —...*

It is clear that Mr Howe allowed himself to be manipulated by Mr Abi-Saab, as a participant in the latter's scheme to get Mr Tsang to accept the proposition that he should resign as Mayor. However, Mr Howe's motives are less than clear. The Commission does not consider that there is sufficient evidence to warrant making a finding that Mr Howe was part of the attempt to blackmail Mr Tsang.

Sometime after giving evidence in the private hearing on 29 September 2004 Mr Howe told Mr Abi-Saab that he had been to a private hearing. He acknowledged to the Commission in the public hearing that the information he had given to Mr Abi-Saab was in breach of the order made at the private hearing pursuant to section 112 of the ICAC Act.

Chapter 6: Questions of motive

Mr Tsang's conduct

As noted earlier the Commission rejects Mr Tsang's explanation for his conduct during the lunch, namely that he never intended to accept a bribe.

Mr Tsang did not immediately afterwards report what had taken place to the Commission or the Police. It was not until approximately ten days after the event and in circumstances where he thought he was going to be blackmailed or otherwise threatened that he decided to approach the Commission.

He was told by Mr Abi-Saab on 1 August 2004 of the alleged existence of the video and that information was confirmed by Mr Saklaoui the following day. Mr Tsang may not have believed that a video recording existed but he knew that he taken money and put it in his pocket. The Commission infers that Mr Tsang reported the matter to the Commission either because he was uncertain as to whether there was in fact a video in existence, or possibly because he thought there might be one. If there were a video and it became public the fact that he had previously reported the matter would allow him to be seen to have acted in a way that was the most advantageous to him.

Mr Allman's explanation

After the meeting Mr Allman used a computer to create copies of the recordings on CD disks and provided the disks to Mr Saklaoui. Two CD disks were recovered by officers of the Commission from the premises of John Abi-Saab on 25 August 2004 and three CD disks were produced to the Commission by Mr Saklaoui on 12 October 2004.

The disks have been examined using forensic software. This examination indicates that Mr Allman created the computer files on 1 August 2004. Mr Allman later gave the disks produced to Mr Saklaoui and retained the digital tapes.

At no time either before or after the recording of the meeting did Mr Allman inform the NSW Police or the Commission of the allegation that Mr Tsang was corrupt or that he had recorded the meeting evidencing the payment of a bribe. Commission officers contacted Mr Allman in mid-September 2004 and were told by him that he still had the digital tapes. These were provided to the Commission by Mr Allman on 23 September 2004.

Mr Allman's explanation of his role in recording the lunch conversation and his failure to inform NSW Police or the Commission prior to or after recording the meeting was that he had been informed by Mr Saklaoui that he, Mr Saklaoui, intended to take the evidence once obtained to the "proper authorities" – in Mr Allman's understanding the Police or the Council – and that he, Mr Allman trusted him to do this. He also suggested that he did not take the allegation to NSW Police prior to the meeting because it was only an allegation and that because politicians and councils are "fairly well connected" there might be a "cover up". He even advanced the absurd explanation that what he had seen happening was only "hearsay evidence". The Commission cannot accept Mr Allman's explanations.

Mr Allman was a police officer at the time of being told the Mayor was corrupt and was seeking a bribe, and thus he was obliged to take that allegation to NSW Police in circumstances where he had reasonable cause to believe the allegations were true or ought to be investigated.

As a police officer of 12 years' standing, Mr Allman must have appreciated that if the recording were made available to the Police or the Commission then his role in it would be exposed and he would be liable to prosecution under the *Listening Devices Act 1984*. The Commission can only infer that he believed that the recording would never be made public.

Although Mr Allman cooperated with the Commission in providing the recordings he made and in giving evidence, he cannot escape censure for the part he played in the recording of the lunch of 23 July 2004.

Moreover, it is reasonable to infer that he was aware that Mr Saklaoui intended to use the recording in a manner adverse to Mr Tsang's interests.

On Mr Allman's behalf it has been submitted that there is no evidence that the tapes would be used for a corrupt purpose. There is no evidence that he was told the recordings were to be used for the purposes of blackmail but he knew his participation in the recordings was in breach of the *Listening Devices Act 1984* and that the recordings were intended to be used in a manner adverse to Mr Tsang's interests.

Mr Saklaoui and Mr Abi-Saab stated they had intended to take the recordings to the NSW Police and/or to the Commission. Mr Allman said he believed that Mr Saklaoui would take the recordings to the proper authority. Mr Saklaoui and Mr Abi-Saab did not take

the recordings to the Police or the Commission and the Commission does not accept that Mr Allman thought they would. The Commission obtained possession of the recordings when they were seized from Mr Abi-Saab's residence on 25 August 2004.

Mr Abi-Saab

When Commission officers spoke to Mr Abi-Saab on 10 August 2004 after the meeting at Council he did not disclose either that the corruption allegation he referred to in the Council meeting involved Mr Tsang or that he was then in possession of a copy of the video recordings. Eventually, Mr Abi-Saab agreed that he first viewed the recordings on a computer in Mr Saklaoui's premises. Mr Saklaoui said that was the day that he received the recordings from Mr Allman i.e. about 1 August 2004. The disk could not have existed prior to the file being created and Mr Saklaoui could not have played the disk on his computer until at least 1 August 2004 or shortly thereafter.

The first evidence given by Mr Abi-Saab concerning the date on which he received the disks was false. On the evening the disks were seized at his premises on 25 August 2004 he claimed they had been left there by an unknown person and that he had not seen the recordings until after the delivery and shortly before the officers of the Commission attended to seize them. He repeated this version in the private hearing on 3 September 2004.

Later he said that he had first seen the recordings on 12 August 2004 when he bought the DVD player to view them. Mr Saklaoui said he had shown the recordings to Mr Abi-Saab on the day he received them from Mr Allman or the day after, i.e. on 1 or 2 August 2004. In the course of the investigation, Counsel for Abi-Saab suggested and Mr Saklaoui agreed that on that day all he had shown to Mr Abi-Saab was a still image. However, later Mr Saklaoui said that he showed him a segment of the video recordings that showed the money going across the table and into the pocket of the Mayor "looking around".

The exposure of the many lies told to the Commission by Mr Abi-Saab and those told to the Commission by Mr Saklaoui supports the inference, which the Commission accepts, that Mr Abi-Saab and Mr Saklaoui planned the recording of the events of the lunch on 23 July 2004 for the purpose of causing Mr Tsang to resign as Mayor and for Mr Abi-Saab to replace him. Mr Abi-Saab's explanation for the recorded conversations he had with

Mr Tsang was that he was merely trying to get Mr Tsang to admit to corruption so that he, Mr Abi-Saab could take the matter to the ICAC. This is palpably absurd bearing in mind the length of time Mr Abi-Saab had possession of the recordings and had he wished to, he could have taken them to the Commission himself. In the Commission's opinion, it is clear that he never intended to give them to the Commission but to use them to blackmail Mr Tsang. He probably assumed that Mr Tsang would never report the matter but that if he did the recordings need never surface.

By 10 August 2004 Mr Abi-Saab was aware that his attempts to manipulate Mr Tsang were unsuccessful and hence his ultimatum that he would go to the ICAC if Mr Tsang did not resign. As mentioned earlier he did not tell the Commission's investigators on 10 August 2004 that he had positive evidence that Mr Tsang had accepted a bribe.

It is true that Mr Abi-Saab showed the video recordings to Mr Howe on 22 August 2004 and had attempted to do so on 12 August 2004. However, disclosure to Mr Howe was not for the purpose of ultimate public disclosure but to enlist Mr Howe's assistance in his devious and deceitful manipulation of Mr Tsang. It is evident from the recorded conversation between Mr Howe and Mr Abi-Saab that Mr Abi-Saab's sole purpose was to have Mr Howe to approach Mr Ernest Wong (a member of the Unity Party) and Mr Doust (a Liberal) to convince them that there was in fact a recording which Mr Howe could say he had seen without revealing where or when he had seen it or who had shown it to him. This could have had no other purpose than to place further indirect pressure on Mr Tsang to resign as Mayor. If Mr Abi-Saab wanted him to resign entirely from Council he could have done so by providing the video recordings to the Commission or to the NSW Police. All he needed to do was give the recordings to the media anonymously. Indeed, when the recordings surfaced in the media in December 2004, Mr Tsang did stand aside as Mayor and resigned that position shortly before the commencement of the public hearing.

In fact, Mr Abi-Saab never deviated from his original plan. Had Mr Tsang capitulated at any stage the recordings need never become public. By reason of Mr Abi-Saab's conduct there would, no doubt, be rumours concerning possible corruption but in the absence of any evidence the rumours would remain as nothing more than speculation.

Call charge records for the period from 1 July 2004 and 10 August 2004 show that a large number of telephone calls were made between Mr Saklaoui and Mr Abi-Saab. The last call recorded took place on 3 August 2004, before any interception by the Commission had taken place. After that date there were no further recorded contacts between Mr Abi-Saab and Mr Saklaoui. A possible explanation for the sudden cessation of telephone contact between them is that Mr Tsang called on Mr Saklaoui on 3 August 2004 after visiting the Commission and told him that he been there.

In the opinion of the Commission Mr Abi-Saab at all times knew Mr Saklaoui was responsible for recordings of the lunch on 23 July 2004 for the reason that he and Mr Saklaoui had arranged it between them.

The Commission concludes that Mr Abi-Saab wished to become Mayor in circumstances where he would have control over the Council. The only way to ensure that control was for Mr Tsang to remain as a Councillor under the ever-present threat that his conduct of accepting money from Mr Saklaoui would be exposed.

Mr Saklaoui

Mr Saklaoui had and continues to have interests in property affected by the Mayoral Minute of 8 June 2004. He had a 14-month option to purchase 559 Liverpool Road for \$1.5 million through his company, Resplete Pty Ltd, together with another company, Hardhat Constructions Pty Ltd. Mr Saklaoui has no interest in that company. The land is on the northern side of Liverpool Road and is part of the Fitzgerald Cr/Liverpool Rd block. The option fee of \$75,000 was non-refundable. The option expired on 10 December 2004, with the result that Mr Saklaoui lost the \$25,000 that he had paid through his company St Jude Investments Pty Ltd. Hardhat Constructions Pty Limited lost \$50,000.

Mr Saklaoui also had interests in 530–532 Liverpool Road and numbers 3, 5 & 7 Anselm Street. These properties form part of the Anselm St/Bede St/Liverpool Rd block located on the southern side of Liverpool Road. The intention was to consolidate these properties and take advantage of the proposed Local Business 3B zoning and the bonus FSR of 1:1 (and the five-storey maximum height limit) that applied to this area under the Draft LEP. Other developers were involved and the circumstance that the evidence does not point to some of them does not, in the Commission's view, gainsay the strength of the inference concerning Mr Saklaoui's conduct. Mr Saklaoui had estimated his investment and

development at approximately \$150,000 which was to have been put at risk had the rezoning as proposed in December 2003 not gone ahead.

The Commission does not accept Mr Saklaoui's explanation for his actions in ensuring that there was a recording of Mr Tsang taking a bribe. According to Mr Saklaoui he was trying to get the evidence to expose Mr Tsang because he, Mr Saklaoui, knew Mr Tsang had taken bribes in the past. In the opinion of the Commission he did it as part of a plan formulated with Mr Abi-Saab to ensure that Mr Abi-Saab regained control of the Council and control of the way Mr Tsang would vote in the future.

Mr Saklaoui has said that he told Mr Allman that he would take the recording to ICAC (which he never did) if it revealed what he, and Mr Saklaoui, thought it would reveal. This demonstrates, at the very least, that he was aware of the existence of the Commission and its function in respect of allegations of public sector corruption.

Mr Saklaoui engaged Mr Allman, a NSW Police officer, to acquire the equipment and help carry out the clandestine recording. Mr Allman was not asked to do this in his capacity as a Police officer and the Commission concludes that Mr Allman knew that in carrying out the recording he would be committing a serious criminal offence.

Finally it should be noted that Mr Saklaoui knew on 23 July 2004 that Mr Tsang had taken the bribe. He had the recordings of it in early August. He didn't take them to the Police or to the Commission. Instead he arranged for copies to be made and gave copies to Mr Abi-Saab, actions that were wholly inconsistent with his stated intention when giving evidence before the Commission.

Whilst overseas Mr Saklaoui received a phone call from his wife who informed him that officers of the Commission were executing a search warrant on his premises for the recordings he held. He then spoke to one of the officers and informed him that he had sent the CD to the Commission but did not mention Mr Abi-Saab and refused to name the person to whom he had given the CD. When asked if he had any more copies he then said (but subsequently retracted) that he had copies with him overseas. He failed to tell the Commission officers of the three CD disks in the storeroom of the building in which his office was located.

It is Mr Saklaoui's participation in the clandestine operation organised by Mr Saklaoui and Mr Abi-Saab that persuades the Commission that Mr Saklaoui was endeavouring to protect his own financial interests by having a LEP made in accordance with the recommendation made in December 2003 and that Mr Abi-Saab would in effect, control Mr Tsang's participation in the assessment of subsequent Development Applications.

The Commission is satisfied that from the outset Mr Saklaoui intended the recordings to be used in the manner in which they were actually used, so it is highly unlikely that he thought that he was doing all this just so Mr Abi-Saab could enjoy an extended period as the Mayor. The Commission concludes that Mr Saklaoui participated in the scheme because he wished to reap the benefit of having Mr Abi-Saab as Mayor and of having Mr Tsang remain on the Council in circumstances where his vote could be controlled.

The ultimate objective of both Mr Abi-Saab and Mr Saklaoui was to put pressure on Mr Tsang to resign as Mayor but remain as a Councillor. By having Mr Tsang remain as a Councillor Mr Abi-Saab would be assured that Mr Tsang would do his bidding.

The Commission finds that Mr Abi-Saab and Mr Saklaoui behaved as they did not simply to restore Mr Abi-Saab to the mayoralty for six months but to ensure that the Draft LEP remained as it was in December 2003 and unaffected by the Mayoral Minutes of 8 June and 6 July 2004. The Mayoral Minutes, if accepted by the Minister, would have had the consequence of prohibiting development that previously would have been permissible under the Draft LEP if made. Had their plan succeeded they anticipated that the Mayoral Minutes would be rescinded and the Draft LEP would be made according to its terms as at December 2003. Moreover, the Council would be controlled by Mr Abi-Saab's faction and Mr Abi-Saab would be supported by Mr Tsang's shackled vote. Development applications from developers, including Mrs Anne Bechara and Mr Saklaoui, would be determined by the Council in circumstances where there would be no third party rights of appeal, including appeals by objectors.

In the Commission's opinion the above inferences are supported by, amongst other things, the conduct of Mr Abi-Saab and Mr Saklaoui so soon after the Mayoral Minutes referred to above had been accepted by the Council. As previously noted, the preparation for recording the lunch on 23 July 2004 took place shortly after the Mayoral Minute of 8 June 2004.

Anne Bechara

Mrs Anne Bechara, together with her husband Eddy Bechara, is a developer in the Strathfield Municipal Council area. They are close friends of Mr and Mrs Abi-Saab. Mrs Bechara had personally raised approximately \$90,000 to support Mr Abi-Saab and the other Labor Party candidates in the elections that were held in March 2004.

It is not proposed in this report to examine the implications of donations by developers to candidates for local government office. There are obvious risks of corruption inherent in relationships of this kind. In due course the Commission intends to make further public comment on this issue.

At the time of the Mayoral Minute of 8 June 2004 Mrs Bechara had an interest in several properties that would have been adversely affected had the Mayoral Minute been accepted by the Minister. The loss of potential profits if the Mayoral Minutes were accepted by the Minister was conceded by her to be at least several million dollars.

On 19 May 2003 Mrs Bechara acquired an interest in the Spanish Inn at the corner of Homebush Road on the northern side of Liverpool Road through her company, Prestige Constructions Pty Limited. She had a 9-month option for 5% of the purchase price at \$4.5 million. Settlement of that purchase took place on 24 February 2004 for approximately \$3.8 million.

On 18 March 2003, and before there was even a contract for sale or even an option to purchase, Mrs Bechara had engaged an architect to design a building for the site on the basis of a permitted FSR of 6:1. The architect designed a seven-storey building with an additional three levels underground. At that time the site was zoned 2(b) which had no floor space ratio provisions in respect of areas zoned residential and at that time there was still not a formal proposal to rezone the site from the existing zoning although the possibility may have been discussed.

On 5 November 2003 Mrs Bechara committed her company to architect's fees (\$110,000) and paid a deposit of \$40,000 for the design plans for a seven-storey building based on a 6:1 FSR – although at this time the property was still zoned residential 2(b). A Development Application for the site was lodged by the

architects on 23 January 2004 but withdrawn because the zoning at that time was still 2(b). The proposed new plan had not been made then hence what was proposed was prohibited. As mentioned above, Mrs Bechara's company settled the purchase of the Spanish Inn site on 24 February 2004.

The Commission has been asked to accept that Mrs Bechara showed remarkable foresight in March 2003 in being able to predict that a site then zoned Residential 2(b) with no FSR provision would later become a site permitting commercial premises with a FSR of 6:1. The Mayoral Minute of 8 June 2004, if accepted by the Minister, would have dashed her expectation for windfall profits from a major development.

Mrs Bechara was also interested in other properties. She was involved in a joint venture with other developers in relation to the AMF bowling site and nearby properties in the Anselm St/Bede St/Liverpool Rd block on the southern side of Liverpool Road. A company owned by Mr and Mrs Bechara, Baragrove Pty Ltd, entered into an arrangement with Management One Pty Ltd in which Baragrove agreed to provide 50% of the purchase and development costs for the project in exchange for 25% of the profits.

The properties purchased by Management One included 17 Anselm Street, purchased for \$1.25 million; 548 Liverpool Road, purchased for \$800,000 and 552 Liverpool Street, purchased for \$600,000. Management One entered into the contract to purchase the AMF site for \$4.5 million with a deposit of \$225,000 on 23 September 2003. The contract was rescinded on 17 August 2004 and an additional \$175,000 paid to the vendor for the rescission. Allowing for profits from the subsequent sale of 548 and 552 Liverpool Road, Mrs Bechara estimates her actual loss as approximately \$330,000.

The properties had been bought while zoned residential 2(b) in the expectation that they would be rezoned if the Draft LEP as it stood in December 2003 was made. She has estimated that her profit had the development gone ahead under the provisions of the Draft LEP would have been a "couple of million dollars".

It is difficult to avoid the conclusion that Mrs Bechara's 'foresight' was aided by a confident belief that the lands in which she had an interest would be re-zoned. Her willingness to lie on oath does little to allay the suspicion

that she had some sort of 'insider' knowledge. On 1 December 2004 Mrs Bechara gave evidence at a private hearing. In the course of the evidence she told a number of significant lies.

She told the Commission that she had first heard about the allegation of corruption involving Mr Tsang after it was reported in the newspaper. She said that she did not know about the allegation that Mr Tsang was corrupt until after Mr Abi-Saab made the "shadow of corruption" speech on 10 August 2004. She also denied that she knew of any attempt to remove Mr Tsang from the office of Mayor before that day.

When she was asked about the CDs Mrs Bechara was prepared to acknowledge that Mr Abi-Saab had asked her to keep them safe and that she had kept them for about a week before returning them at his request. Mrs Bechara said that Mr Abi-Saab had told her that they were "going to the ICAC". She denied making any arrangements for them to be copied. Mrs Bechara also denied that she had spoken to either John or Noeline Abi-Saab about the CDs or the Commission's investigation. She denied ever seeking legal advice about her role in holding the two CDs.

Mrs Bechara later told the truth with respect to a number of the above matters because she was aware at the time she was called that the Commission had independent, incontrovertible evidence that she had told lies. She admitted that she had given false evidence in respect of a number of matters in the private hearing and that she had done so at the request of Mr Abi-Saab.

It is beyond dispute that shortly after the recording was made she was aware that it had been made and she was aware of the way in which Mr Abi-Saab intended to use it. Mrs Bechara acknowledged that she had arranged for copies of the CDs to be made. She also knew that Mr Abi-Saab wanted to force Mr Tsang to resign as the Mayor but remain on Council as a Councillor. She did not recall Mr Abi-Saab saying that he would be able to control the balance of power on Council if he became Mayor.

She also admitted she had discussed with Mr Abi-Saab what story he would advance when he gave evidence on 3 September 2004 at a private hearing and that she had discussed with him immediately after the hearing what he had said in evidence.

It has been suggested that the Commission should conclude that Mrs Bechara was in fact a party to the scheme from the outset and it should infer this from her later attempts to hide evidence from the Commission and to lie on oath to support Mr Abi-Saab's false testimony. Moreover, it has been demonstrated that she had a motive for being party to the conduct of Mr Abi-Saab and Mrs Saklaoui because of her financial interest in the properties that were affected by the Mayoral Minutes of 8 June and 6 July 2004.

However, beyond a motive, which she had, and the fact that she told a number of lies to the Commission, the Commission is not satisfied that she was a party to the blackmail of Mr Tsang although, as previously mentioned, she knew of the existence of the tape well before she admitted to it in evidence. As has been stated, she knew, after the recording was made, the purpose to which Mr Abi-Saab intended to put it.

Chapter 7: Other matters

Allegations of previous payments by Melhem Saklaoui to Alfred Tsang

Mr Saklaoui has been a developer for about four years and some of his developments have been in the Strathfield Municipal Council area. The families of Mr Saklaoui and Mr Abi-Saab had known each other for 15 to 20 years, even before Mr Abi-Saab moved into the Strathfield area. Mr Abi-Saab introduced Mr Tsang to Mr Saklaoui after Mr Tsang was first elected to Strathfield Council.

Mr Saklaoui claimed that he had previously paid to Mr Tsang two amounts of \$5,000 cash in brown paper bags for assistance from Mr Tsang to speed up the approval of development applications. When asked how he knew Mr Tsang could do that, he replied “to check up what’s been happening inside, they usually do that”. At the time of each payment Mr Tsang was the Deputy Mayor. Mr Saklaoui said that he had no records of those payments.

He said the first of these payments was in relation to property at 11–13 Crane Street. Mr Saklaoui had an option on these properties and made a development application in respect of them. This was approved on delegated authority on 17 January 2002 and Mr Tsang was one of four signatories to the approval. Mr Saklaoui sold the properties prior to developing them.

Mr Saklaoui said that the second of the cash payments was in relation to a development containing 23 units associated with a company belonging to John Bechara, the brother of Eddy Bechara. He said that he had paid \$5,000 cash to Mr Tsang in a brown paper bag to get a “speedy DA approval”.

Mr Saklaoui said that after the approval was obtained he assisted John Bechara to arrange the sale of that property. Mr Tsang introduced Mr Saklaoui to a real estate agent from Hurstville who successfully arranged a purchaser. According to Mr Saklaoui, a commission was paid to Mr Tsang indirectly through the real estate agent. In the private hearing Mr Saklaoui said that about \$13,000 was paid to the estate agent and that Mr Tsang was to be paid by the agent in respect of the sale from this amount rather than directly from him. This payment was described by Mr Saklaoui as “the commission for the sale, not the — different from the other one”.

Mr Tsang denied ever having received cash payments from Mr Saklaoui prior to 23 July 2004. He acknowledged receiving donations in the course of fundraising for the Unity Party. At the time of the State election in March

2003 Mr Saklaoui had provided \$1,000 by cheque either from himself or his company. Mr Tsang also thought that Mr Saklaoui had paid \$60 for a campaign dinner just before the local government election in March 2004.

The allegations about the two cash payments for assistance with the Development Applications were extremely vague and incapable of being independently proved. This may be either because they never occurred or because Mr Saklaoui did not wish to lead the investigation to evidence that might be used against him. In circumstances where the evidence available to the Commission is so uncertain and vague, no inference adverse to Mr Tsang can be drawn from it.

It was possible to obtain documentary evidence concerning the sale of the property at Homebush West in which Mr John Bechara had an interest. Mr Tsang acknowledged that he had introduced Melhem Saklaoui to the owner of a real estate agency at Hurstville, Mr Andy Chui and to another friend, Le (Lily) Lam, who operates a real estate agency at Auburn. Mr Chui’s wife, Ms Annie Tang, is a councillor on Kogarah Council and Ms Lam is a Councillor and former Mayor of Auburn Council. All are members of the Unity Party. Mr Chui’s agency trades as Landcross Real Estate. Mr Chui produced his records to the Commission.

Through another real estate agency, Laing & Simmons Rockdale, Mr Chui found a purchaser for the development within a very short time. On the sale of the development Mr Chui received a commission of \$52,800 to be shared equally with the Laing & Simmons agency with which there was a conjunction agreement. Mr Chui paid \$13,200 of his commission to Ms Lam of Combined Real Estate Auburn as a “consultant fee”. Ms Lam apparently provided a schedule of unit areas to Mr Chui together with a schedule of estimated minimum and maximum sale prices.

Mr Chui told the Commission that he later received a telephone call from Mr Saklaoui who asked him to send an invoice for \$11,000 which he would then pay on the basis that Mr Chui was to divide the amount into three and retain one third for himself and pass on one third to each of two others who would send him invoices. On 12 November 2003, at about the time that the sale of the development was completed, Mr Chui sent the requested invoice to Mr Saklaoui’s company St Jude Property Investments Pty Limited in respect of a “marketing fee” of \$11,000. St Jude Property Investments then sent a cheque in the amount of \$11,000 to Mr Chui’s agency, Landcross Real Estate, on 18 November 2003.

According to Mr Chui he later received a call from Mrs Tsang who said that she would send him an invoice. He later received an invoice from A & G Australia Pty Limited, the company of Mr and Mrs Tsang, for a “Marketing fee” of \$3,663. He also received an invoice from LCL International Pty Limited for “Promotion & consultant fees for 43 Hampstead Road Homebush West” of \$3,666.66. Ms Lam told the Commission that LCL International Pty Limited is a firm with which she deals in respect of home loan packages and she had enlisted them to help her to get the purchaser of the development to use her agency after the development had been completed. Their fee was paid by Mr Chui directly from the \$11,000 he received from Mr Saklaoui’s company.

Mr Saklaoui gave evidence that he had no interest in the development but that he had an arrangement with Mr John Bechara of Durable Investments Pty Limited that if he was able to find a buyer any amount over a certain stipulated amount would be his to keep. That turned out to be \$132,000 and this sum was paid to St Jude Investments by Hardhat Constructions Pty Limited, another company operated by Mr John Bechara. Mr Saklaoui said that he paid the agent’s commission of \$52,800 from that (he referred to it as “something around \$58,000”). As to the \$11,000, he said that he paid what he was asked to pay and that he was not familiar with either LCL International or A & G Australia and “... what they did with it I don’t know”.

Mr Tsang said that he did not know about the invoice from A & G Australia to Landcross for marketing as his wife had not said anything about it until recently. He said that he had not expected to be paid for introducing Mr Saklaoui to Mr Chui.

Mrs Tsang said she received a call from Mr Chui asking her to send an invoice to Landcross for “referring customers” so she sent him one from A & G Australia for marketing. She said she had not told her husband about the invoice or payment until she became aware of the Commission being interested in it.

In the end no explanation these witnesses advanced was convincing and as there is a considerable amount of contradiction between them in circumstances where Mr Tsang and Mr Saklaoui have little credit it is not possible to make a positive finding as to the reason for the payment to Mr Tsang.

“Adjusting” the evidence

Mr Abi-Saab first gave evidence in private on 3 September 2004. On this occasion, and on subsequent occasions, he demonstrated that he has no regard for the truth and was prepared to lie on oath. The Commission does not intend to provide a detailed analysis of the whole of the transcript for each incident of prevarication, dissembling, righteous posturing, and wilful avoidance of the question or false testimony. However, it is necessary to examine one aspect of his evidence in more detail because his wife, Noeline, and their friend, Mrs Anne Bechara, became inextricably involved in that matter.

When Mr Abi-Saab first gave evidence he told the Commission that he had not seen the recordings of the lunch meeting on 23 July 2004 until shortly before Commission investigators arrived at his unit with a search warrant at about 8:30pm on 25 August 2004. He said that he had received the disks that afternoon in a brown envelope that had been left at the front door of his building and had shown them to David Weiley, the Mayor of Burwood. He had already bought a DVD player because he was expecting to get the disks.

He also gave an account of his conversations with Mr Tsang prior to the Council meeting on 10 August 2004 in which he had encouraged Mr Tsang to resign as Mayor. He had told Mr Tsang that he had seen the evidence of him taking money. Mr Abi-Saab told the Commission that he had been lying to Mr Tsang and was simply repeating the general thrust of what Mr Saklaoui had told him. He asserted that he would not lie to the Commission stating “I’m just telling you, sir, I’m on oath and that’s — I lied to him [Tsang], I will not lie here, simple as that.”

A few weeks later, and after Mr Saklaoui had given evidence on 12 October 2004, Mr Abi-Saab asked for an opportunity to “correct” his evidence. He returned to the Commission on 27 October 2004 to admit that he had given false evidence on 3 September 2004. He was led through his evidence by his solicitor and started off with an apology.

[Solicitor]: If you could just relate now for the Commission what that evidence was that you omitted on the last occasion.

[Mr Abi-Saab]: Thank you, thanks. I must apologise for my error of judgment and I should have known better and my sincere apology. That’s why I’m here today, to correct and convey to you, sir, that I didn’t tell you the true picture and the complete picture so my apology sincerely. ...

Mr Abi-Saab referred to his previous evidence of a telephone conversation with Mr Saklaoui a few days after he had spoken to Mr Tsang on 1 August 2004 in which Mr Saklaoui had told him about a visit from Mr Tsang and another person. Mr Saklaoui said that he omitted to tell the Commission that he had actually received the CDs that day, shortly before Mr Saklaoui went overseas.

He had kept the CDs until after he had viewed the video recordings on 12 August 2004, the day on which he had bought the DVD player. He also told the Commission that he had then asked a friend, Mrs Anne Bechara, to keep the CDs in her safe and she had returned them on the day the search warrant was executed.

This version was not completely accurate. Mr Abi-Saab subsequently adjusted his story further, in part to account for the evidence that he had shown the video recordings to Mr Howe on 22 August 2004 and to Councillor Gillard on another occasion.

Prior to contacting the Commission through his solicitor about the need to correct his evidence, Mr Abi-Saab had a series of telephone calls with his wife, Noeline Abi-Saab, who was then at Port Macquarie. During those calls he dictated a letter to her about the allegations and his possession of the recordings. Mrs Abi-Saab typed the statement and faxed it to him in Strathfield.

Mr Abi-Saab gave the following evidence about those communications.

I told my wife I want to correct the statement I made to the ICAC, and this is the correction, and that was — that was — I think she was on Port Macquarie — was back on the farm, and she send me fax, and to correct everything like that. My wife was in Port Macquarie and I rang her — she has a computer she takes away with her, and asked her to put it on the computer, correct that, and I think there was communication on the phone and the fax to adjust it for me.

Mrs Abi-Saab was also asked about this series of communications. Before being called in the public hearing she was present while her husband gave evidence and also heard some brief evidence from Mrs Bechara.

From the start Mrs Abi-Saab indicated that she would not answer questions unless given precise information or presented with irrefutable evidence. After the usual formalities she was asked:

[Counsel assisting] Q: Did you have any role to play in communications between your husband and Mrs Bechara in respect of what your husband either had said to the ICAC or was going to say to the ICAC prior to the 27 October 2004?

[Mrs Abi-Saab] A: I probably would have. I wouldn't be sure. You tell me, because I don't keep a date of everything that's happening every day. I'm sorry, I don't do that. So, if I have, I have, and if I haven't, I haven't, but unless I am told how and when, I have no answer. We speak on a regular basis. We are friends. We dine together, and that's it.

Mrs Abi-Saab recalled typing two letters for her husband. She confirmed that she had typed the letter addressed to Councillor Tsang and dated 23 September 2004 in which her husband alleged that Mr Tsang was wearing a recording device. She clearly recalled that the references to the ICAC had been crossed out in the final version delivered to the Council.

She was then asked about the second letter:

Q: In general terms can you tell us what was the topic or subject of the letter?

A: It must've been something to do with the same subject, either it was John's evidence which he corrected when I — maybe he said the dates, and I said "It's impossible, look at the calendar", or something like that, I'm not sure. I'm happy to look at it and verify it. I'll know whether I wrote it or not.

She doubted that she would have discussed the letter with Mrs Bechara and did not recall whether it concerned her at all. She did not think she had discussed with Mrs Bechara what she had told her barrister.

She was then shown a document.

Q: Would you have a look at this document please?

A: Yes, that's my writing, yes.

Q: That's your handwriting?

A: Yes.

Q: I'll ask you again, did you discuss with Mrs Bechara what she had told her barrister?

A: On reading this I'd say I must have.

The document shown to Mrs Abi-Saab was one of the facsimile versions of the letter on which she had drawn attention to several passages and written:

She has told her barrister that she found it in her letterbox & destroyed it. Tear this up!

The passages indicated were inconsistent with her handwritten note. There was a further similar document on which she had deleted similar passages and written:

Tear this up. Her statement already made to Barrister can't be changed.

Mrs Abi-Saab said that she had written “tear this up” on the letter only because she had scribbled on the bottom of the letter. She acknowledged that she had communicated the information from Mrs Bechara to her husband but denied that she was helping him to tailor his evidence:

Q: *You communicated that to your husband, didn't you?*

A: *Of course.*

Q: *To help him with his draft?*

A: *No, to — so that he would tell the truth in his draft, to be correct.*

Q: *So that he would tell the same story as Mrs Bechara, wasn't it?*

A: *I don't know what story Mrs Bechara would tell —*

Q: *You were helping him to tailor his evidence, weren't you?*

A: *I was not helping him, I was merely printing up a statement for him, sir.*

It is evident that Mrs Abi-Saab was a party to the preparation of a statement which was false and prepared for the purpose of ensuring that Mr Abi-Saab and Mrs Bechara told the Commission a similarly false story.

However, the Commission makes no positive finding that Mrs Abi-Saab participated in the preparation of this document in an attempt to mislead the Commission. The proper interpretation of her evidence, in the opinion of the Commission, does not lead to a conclusion that she did any more than remind Mr Abi-Saab of what he was proposing to say was in conflict with what other people had said. That is to say that the Commission is not satisfied that she was involved in an attempt to deceive the Commission.

Mrs Bechara knew that John Abi-Saab wanted to adjust his evidence in relation to the times that he had first received the recordings and the time that she had returned them to him. She also confirmed that she discussed with Mrs Abi-Saab the letter that was being prepared and what she had earlier told her legal representatives.

[Counsel assisting] Q: Had you sought some advice prior to the time at which you and Mrs Abi-Saab were in Port Macquarie at the same time on or about 16 October 2004?

[Mrs Bechara] A: Yes.

Q: *While you were in Port Macquarie at around that time 16 October 2004 did you have some discussions with Noeline Abi-Saab in relation to what you had told your barrister, or your advisors?*

A: *I actually didn't tell her that it was a barrister, I said it was my solicitor.*

Q: *Your solicitor?*

A: *Yes. Yes, I did, sir.*

Q: *How did it come about that you had that conversation with her?*

A: *Mrs Abi-Saab told me that she was preparing for her husband some — a letter, and she was putting in the dates, and she was trying to figure out what dates they had bought the DVD and — and I think that Mr Abi-Saab was concerned that I may have put in the wrong date in my evidence.*

Q: *You mean in the information you had provided —*

A: *Yes.*

Q: *— to your solicitor?*

A: *Yes, yes.*

When Counsel Assisting first sought to tender the series of facsimiles during the hearing, Counsel appearing for Mr Abi-Saab objected to the tender on the basis that they were able to be the subject of a claim of legal professional privilege. For that reason the documents were marked for identification. The Commission indicated that it would consider the matter before deciding whether or not it should have regard to them.

The Commission is of the opinion that legal professional privilege did not attach to the documents. The Commission has formed the view that these documents were prepared in order to assist Mr Abi-Saab and Mrs Bechara to fabricate a version of events to be presented to the Commission if either or both of them was required

to give evidence. In fact, shortly afterwards, Mr Abi-Saab spoke to his solicitor. The latter then called the Commission and said that his client wished “to correct” his evidence. As recorded earlier Mr Abi-Saab gave evidence in private on 27 October 2004 for that purpose. During the public hearing this event was referred to by Mr Abi-Saab as resulting from a need “to adjust” his evidence – a telling description.

As it happened Mr Abi-Saab stuck to his own version of events even though it was inconsistent with what Mrs Bechara had told his wife. It was clear from the series of telephone calls that he resented any interference in the substance of what he wished to say and was upset that the matter had been discussed with Mrs Bechara. He telephoned Anne Bechara and told her that he would not finalise the statement before speaking with her. He later told the Commission that he had not spoken to her with a view to ensuring that their evidence coincided. When Mrs Bechara came to give evidence she also told the Commission that she had kept the disks for Mr Abi-Saab and later returned them to him.

Mrs Abi-Saab was also asked about her knowledge of copies of the recording. After first denying that she knew anything she acknowledged that she had picked up a copy of the recording from the Bechara home. She explained her initial denial as a misinterpretation of the questions as she did not know how to make copies of the recording. After listening to intercepted telephone calls between herself and her husband she agreed that she had known that Mrs Bechara’s son, Marcus Bechara, had made copies of the recording. She had picked up a parcel from him and given it to her husband. When it was suggested that she had been lying previously she said “Maybe I was confused, sir” and then, more firmly “No, not lying, sir, confused”. The Commission is prepared to accept this explanation from Mrs Abi-Saab in relation to this matter.

Elias Bechara

Mr Elias Bechara is a dentist and a developer in conjunction with his wife. At the March 2004 Council elections he ran on the Unity Party ticket with Mr Tsang but was not elected.

Mr Tsang gave evidence that after the 8 June 2004 Mayoral Minute he was approached by Elias Bechara who told him that he had been approached by persons with \$40,000 in cash which they were offering if Mr Tsang would delete the reference in the minute to the Anselm St/Bede St/Liverpool Rd

block. As a result Mr Bechara was called to give evidence.

Mr Bechara’s evidence was that there had been an approach to him by persons he knew in respect of the Mayoral Minute but placed the approach as occurring a few days before the Council meeting to deal with the Minute. The persons who approached him had a copy of the Minute with the reference to the particular block underlined. He said he was not offered any money and denied telling Mr Tsang anything about \$40,000 in cash. He was asked simply to pass on to the Mayor the copy of the Mayoral Minute with the underlining.

A copy of the Minute he passed on to Mr Tsang was in evidence. It is signed and dated 8 June 2004 and has a fax transmission date of 9 June 2004 as well as the underlining. Accordingly, it would appear that any approach was in fact after Council adopted the Mayoral Minute.

Mr Tsang acknowledged to the Commission that he did not report what could only have been regarded as a significant allegation. The fact that Elias Bechara in his evidence denied any approach with \$40,000 cash does not mean that Mr Tsang as Mayor of the Council should not have been concerned to report the allegation as he understood it.

Mr Tsang said that Mr Bechara told him of such an offer and that he, Mr Bechara had refused it. Mr Bechara said there was no offer of payment or \$40,000 and that he did not tell Mr Tsang that there was.

Bearing in mind that the Commission has formed an unfavourable view of the creditworthiness of Mr Tsang’s evidence and that there has been no challenge to the creditworthiness of Mr Bechara’s evidence, it is the opinion of the Commission that Mr Bechara’s evidence should be accepted.

Chapter 8: Findings and section 74A(2) statements

Findings of fact

The first step in determining if corrupt conduct has occurred is to make findings of fact. The Commission is satisfied of the following matters:

- a) At all relevant times Alfred Tsang and John Abi-Saab were duly elected Councillors of the Strathfield Municipal Council.
- b) On 2 December 2003 the Council adopted a Draft LEP and resolved to forward it to DIPNR so that the necessary action could be taken for the LEP to be made by the Minister.
- c) On 14 April 2004 Mr Tsang was elected as Mayor of Strathfield Council.
- d) On 8 June 2004 and on 6 July 2004 Mayoral Minutes were adopted by the Council which, if accepted by the Minister, would have had the effect of amending the zoning of certain areas in Strathfield South as proposed in the Draft LEP which adopted by Council on 2 December 2003.
- e) A number of developers including Michael Saklaoui and Anne Bechara would have been adversely affected financially had those Mayoral Minutes been accepted by the Minister.
- f) Between 8 June 2004 and 23 July 2004 Alfred Tsang and Michael Saklaoui had a meeting at which they discussed the development of a Council car park in Homebush Road.
- g) At that meeting Mr Saklaoui and Mr Tsang came to an agreement that Mr Saklaoui would pay Mr Tsang the sum of \$200,000 in return for the right to develop the car park and adjoining land. That development was to include provision, at no cost to the Council, of increased parking, a child care centre and library.
- h) Between 16 June 2004 and 13 July 2004 Scott Allman, at the request of Mr Saklaoui, purchased from Bing Lee and OzSpy electronic equipment capable of making covert audio and video recordings.
- i) At about 12 noon on 23 July 2004 Alfred Tsang and Michael Saklaoui visited the car park site in Homebush Road and again discussed the development of it. They then went to a restaurant.
- j) During the lunch at the restaurant Mr Saklaoui gave Mr Tsang a sum of money in \$100 dollar notes, either \$2,500 or \$3,000.
- k) Mr Saklaoui and Mr Tsang discussed the payment of the sum of \$200,000 to Mr Tsang for Mr Tsang's support in Mr Saklaoui getting development approval.
- l) On 23 July 2004 Scott Allman and Mr Saklaoui recorded private conversations and did so contrary to the provisions of the *Listening Devices Act 1984*.
- m) At that time Scott Allman was an officer of NSW Police and a public official. At no time did he inform his employer that Mr Tsang had apparently accepted a bribe, nor did he forward the evidence of that payment to the NSW Police.
- n) Shortly after the lunch Mr Saklaoui contacted Mr Abi-Saab and informed him of the successful outcome of the operation to record Mr Tsang accepting the bribe.
- o) On 1 August 2004 Scott Allman made copies of the video recording and shortly afterwards provided three or four CDs to Mr Saklaoui for use as Mr Saklaoui saw fit.
- p) On about 4 August 2004 Mr Saklaoui showed part of the video recording to Mr Abi-Saab and gave him a CD containing the recording referred to above.
- q) Between 1 August 2004 and 10 August 2004, Mr Abi-Saab had a number of meetings and telephone conversations with Mr Tsang.
- r) During that period Mr Abi-Saab spoke to Anne Bechara and Geoffrey Howe and informed them that there was evidence that Mr Tsang had engaged in corrupt conduct.
- s) Anne Bechara knew that Mr Abi-Saab had the recording and how and for what purpose he intended to use it.
- t) Mr Abi-Saab wanted to use the recording for the purpose of securing the resignation of Mr Tsang as Mayor, but not as a Councillor, in circumstances where Mr Abi-Saab became Mayor.
- u) Mr Abi-Saab and Mr Saklaoui participated in the scheme to put pressure on Mr Tsang to resign as Mayor while remaining a Councillor. They wished to ensure that the Draft LEP reverted to the proposal adopted in December 2003 by reversing the effect of the Mayoral Minutes.
- v) Geoffrey Howe was aware of the existence of the tape however the Commission is not persuaded

that he was aware of Mr Abi-Saab's ultimate intentions other than his intention to secure the resignation as Mayor of Mr Tsang.

- w) During the course of the meetings (which were lawfully recorded by the Commission) on 4, 6, 8 and 9 August 2004, Mr Abi-Saab attempted to persuade Mr Tsang to step aside as Mayor so that the video recordings would not be made public. At first he pretended he was motivated by friendship. Later he delivered an ultimatum to Mr Tsang that unless he did stand aside he would be exposed.
- x) Mr Abi-Saab suggested at the end of the last meeting referred to above that he would become Mayor with the support of Mr Tsang and Mr Tsang would become Deputy Mayor with the support of the Labor group in Council. Mr Abi-Saab also suggested that Mr Tsang become party to a dishonourable strategy which, if implemented, would have removed Councillor Gewandt from the position of Deputy Mayor, to be replaced by Mr Tsang.
- y) On 10 August 2004, Mr Abi-Saab announced at a Council meeting that there was a "shadow of corruption" over the Council.
- z) Between 4 August and 22 August 2004 Anne Bechara arranged for the preparation of copies of the CD and kept them in safekeeping for part of that period.
- aa) Mrs Bechara and Mr Saklaoui each stood to gain by the reversal of the effect of the Mayoral Minutes in that they could reasonably expect to profit significantly if the Draft LEP were made in the form adopted in December 2003.
- bb) On 22 August 2004 Mr Abi-Saab showed two recordings of the meeting of 23 July 2004 to Geoffrey Howe at his unit.
- cc) On or after 3 September 2004 Mr Abi-Saab discussed with his wife and with Anne Bechara the fact that he had given evidence to the Commission contrary to the section 112 direction affecting that evidence.
- dd) On or after 29 September 2004, Mr Howe told Mr Abi-Saab that he had given evidence to the Commission at a private hearing and he told Mr Abi-Saab what he had said, contrary to the section 112 direction affecting that evidence.⁸
- ee) On or about 16 October 2004 Mr Abi-Saab and Mrs Anne Bechara jointly prepared a document

encapsulating a false version of events that would be given in evidence to the Commission in the future.

- ff) In October 2004 Mrs Noeline Abi-Saab assisted Mr Abi-Saab in making a statement to give to the Commission which would accord with other statements made or other information the Commission had. As stated earlier the Commission does not find that Mrs Abi-Saab intended to mislead the Commission.

Findings of corrupt conduct

It is not proposed to set out in detail here the definition of "corrupt conduct" within sections 8 and 9 of the ICAC Act. That information is contained within Appendix 2.

Elected Councillors are "public officials" for the purposes of the ICAC Act and the Council is a "public authority". Scott Allman was also a public official at the time of the luncheon on 23 July 2004. Although the Commission does not have primary responsibility for investigating the conduct of members of the NSW Police it may do so in the context of matters involving other public officials (section 129, *Police Integrity Commission Act 1996*).

The Commission finds that the following persons engaged in corrupt conduct in respect of the following matters which could involve criminal offences.

- (a) Alfred Tsang and Melhem (Michael) Saklaoui in relation to the agreement that Mr Saklaoui would pay \$200,000 to Mr Tsang in connection with the proposed development of the car park.
- (b) Alfred Tsang and Melhem (Michael) Saklaoui in relation to the acceptance and payment of a sum of money on 23 July 2004.
- (c) John Abi-Saab and Melhem (Michael) Saklaoui in relation to the attempted removal of Mr Tsang from office (blackmail).

As at 23 July 2004 Mr Allman was an officer of the NSW Police. He made no attempt to report a criminal offence (the acceptance of a bribe) to NSW Police. This failure was contrary to his duty as a Police officer and, at the very least, would have involved a disciplinary offence.

Accordingly, the Commission finds that Mr Allman engaged in corrupt conduct in respect of his failure to report that offence.

⁸ Section 112 of the ICAC Act allows the Commission to restrict the publication of evidence given before it, and makes publication in contravention of a direction given under this section a criminal offence.

No findings of corrupt conduct or any breaches of the ICAC Act are made in respect of Councillor Gewandt or Councillor Doust.

Statements pursuant to section 74A(2)

This investigation has been the subject of a public hearing and the Commission is required to make a report to Parliament which includes statements in relation to each “affected person” as required under s74A(2) of the ICAC Act. That section states:

- (2) *The report must 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:*
- (a) *the prosecution of the person for a specified criminal offence,*
 - (b) *the taking of action against the person for a specified disciplinary offence,*
 - (c) *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.*

In formulating those statements the Commission must have regard to the nature and admissibility of the evidence that could be used in proceedings by way of prosecution for an offence or disciplinary action. It is not appropriate to state that consideration should be given to the prosecution of someone where there is clearly insufficient admissible evidence.

During hearings at the Commission witnesses are compelled to answer questions even though they may incriminate themselves. To compensate for that requirement they may give their evidence under objection and it cannot then be used against them except in limited circumstances. Many of the witnesses in the investigation gave their evidence with the benefit of a declaration by the Commissioner pursuant to section 38 of the ICAC Act. This has the effect that none of the evidence given by them or the documents or other things that may be produced by them is admissible in any subsequent criminal or disciplinary proceedings.

The protection of such a declaration does not extend to proceedings for offences under the ICAC Act. In particular, if a witness gives false or misleading

evidence to the Commission the evidence, including any subsequent admissions, may be used against the witness in a prosecution under section 87 of the ICAC Act. Were it otherwise a witness could lie with impunity and this would adversely affect the determination of the truth of the allegations before the Commission.

An affected person is one against whom substantial allegations have been made during the course of or in connection with the investigation (section 74A(3)). This includes persons who may have been involved in offences contrary to the ICAC Act.

The Commission has formed the view that the following persons are affected persons in the context of this investigation:

Alfred Tsang
Melhem (Michael) Saklaoui
John Abi-Saab
Scott Allman
Geoffrey Howe
Anne Bechara
Noeline Abi-Saab
Elizabeth Gewandt

Alfred Tsang

Mr Tsang brought matter to the attention of the ICAC in the first instance. However, as set out previously in this report, there was a delay in doing so and the Commission does not accept his version of the meeting on 23 July 2004 that he gave at that time and later as being truthful.

There is compelling evidence available in the form of the video and audio recordings of the meeting on 23 July 2004 of what happened on that occasion.

The Commission formally states that it is of the opinion that, in all the circumstances, consideration should be given to the prosecution of Alfred Tsang for offences under section 249B(1) of the *Crimes Act 1900* in relation to the following matters:

- (a) the receipt of a sum of money from Melhem Saklaoui on 23 July 2004;
- (b) the agreement between 8 June 2004 and 23 July 2004 to receive the sum of \$200,000 from Melhem Saklaoui.

Melhem (Michael) Saklaoui

The Commission is of the opinion that, in all the circumstances, consideration should be given to the prosecution of Melhem Saklaoui for offences under section 249B(2) of the *Crimes Act 1900* in relation to the following matters:

- (a) the giving of a sum of money to Mr Tsang on 23 July 2004; and
- (b) the agreement between 8 June 2004 and 23 July 2004 to give the sum of \$200,000 to Mr Tsang.

As is the case with Mr Tsang, the audio and video recordings made on 23 July 2004 are the most important evidence in relation to those matters. These recordings were made by Mr Saklaoui contrary to the provisions of the *Listening Devices Act 1984*. There is also admissible evidence of Mr Saklaoui's involvement in the purchase of the equipment used and his presence at the restaurant.

The Commission has documentary evidence of the interests that Mr Saklaoui had in the various properties that were potentially affected by the various proposals for rezoning and the Mayoral Minutes. This supports the inference that Mr Saklaoui was involved with Mr Abi-Saab in the plan to force Mr Tsang to resign as Mayor.

The Commission is also of the opinion that consideration should be given to the prosecution of Melhem Saklaoui for:

- (a) offences under section 5(1) of the *Listening Devices Act 1984* in respect of the recording of his conversation with Mr Tsang on 23 July 2004; and
- (b) an offence under section 100A of the *Crimes Act 1900* in relation to the attempt to remove Mr Tsang from office.

John Abi-Saab

The recordings obtained by the Commission's lawful use of listening devices clearly demonstrate the involvement of Mr Abi-Saab in the blackmail of Mr Tsang.

As set out earlier Mr Abi-Saab had scant regard for the truth. He admitted to the Commission that some of the statements he had made to the Commission both in and out of the hearing room were false. Those admissions can be used against him in proceedings in relation to offences under the ICAC Act. There is also evidence

available from the interception of telecommunications between Mr Abi-Saab and others.

The Commission is of the opinion that, in all the circumstances, consideration should be given to the prosecution of John Abi-Saab for:

- (a) offences under section 100A of the *Crimes Act 1900* in relation to the attempts to remove Mr Tsang from office;
- (b) offences under section 87 of the ICAC Act in relation to giving false or misleading evidence to the Commission;
- (c) offences under section 80(c) of the ICAC Act in relation to making false statements in order to mislead Commission officers; and
- (d) offences under section 89 of the ICAC Act in relation to the communications with Anne Bechara and Noeline Abi-Saab on 16 October 2004.

At the conclusion of the public hearing the Commission forwarded a brief of evidence to the Director of Public Prosecutions (DPP) requesting that consideration be given to the prosecution of Mr Abi-Saab for offences under section 112 of the ICAC Act. This action was taken prior to the publication of the report because proceedings for such offences must be commenced within six months of the alleged offence. The DPP recommended that proceedings be commenced in respect of two offences under section 112 of the Act. Proceedings were commenced on 1 March 2005.

Scott Allman

The Commission is of the opinion, in all the circumstances, that consideration should be given to the prosecution of Scott Allman for offences under section 5(1) of the *Listening Devices Act 1984* in respect of the recording of the private conversation of Mr Saklaoui with Mr Tsang on 23 July 2004.

The evidence given by Mr Allman in relation to this matter is not admissible against him as it was given under objection. Similarly the video tapes that he produced cannot be used. However, there is a deal of circumstantial evidence against him such as his purchase of the equipment that was used and his presence at the restaurant.

There is insufficient evidence to warrant consideration of the prosecution of Mr Allman in respect of any offence relating to the use that was made of those recordings by Mr Abi-Saab and Mr Saklaoui.

Mr Allman has left the NSW Police and accordingly no statement is made in relation to possible disciplinary action against him in relation to his failure to report a criminal offence.

Geoffrey Howe

Mr Howe did not tell the truth in the first instance. His subsequent admissions are available for use in a prosecution for offences under the ICAC Act. The Commission is of the opinion that, in all the circumstances, consideration should be given to the prosecution of Geoffrey Howe for:

- (a) offences under section 80(c) of the ICAC Act in relation to making false statements on 26 August 2004 in order to mislead Commission officers; and
- (b) offences under section 87 of the ICAC Act in relation to giving false or misleading evidence to the Commission.

Proceedings have already been commenced against Mr Howe for an offence under section 112 of the ICAC Act. This was done on the advice of the DPP.

Anne Bechara

The Commission is of the opinion that, in the circumstances, consideration should be given to the prosecution of Anne Bechara for:

- (a) offences under section 87 of the ICAC Act in relation to giving false or misleading evidence to the Commission; and
- (b) offences under section 89 of the ICAC Act in relation to the communications with John Abi-Saab and Noeline Abi-Saab on 16 October 2004.

Although Mrs Bechara gave evidence under objection, her admissions may be used against her in prosecutions for offences under the ICAC Act. The Commission recorded a number of intercepted telecommunications during the investigation which also provide evidence in relation to those offences.

Noeline Abi-Saab

The evidence shows that Mrs Abi-Saab was involved in communications with her husband and assisted in the preparation of a statement which was false. However, the Commission has concluded that she did no more than remind Mr Abi-Saab that what he was proposing to say was in conflict with what other people had said. The Commission is not satisfied that she was involved in an attempt to deceive the Commission.

After consideration of the evidence and the submissions on behalf of Mrs Abi-Saab the Commission is of the opinion that, in all the circumstances, consideration should not be given to the prosecution of Mrs Abi-Saab for any specified offence.

Elizabeth Gewandt

During the luncheon Mr Saklaoui made allegations concerning Mrs Gewandt with which Mr Tsang appeared to agree. None of the allegations was substantiated. The Commission formally states that it is of the opinion that, in all the circumstances, consideration should not be given to the prosecution of Mrs Gewandt for any offence.

Section 74C of the ICAC Act

The Commission is authorised under section 74C of the ICAC Act to include recommendations in its reports that relate specifically to local government authorities if it is of the opinion that prompt action is required in the public interest.

Counsel Assisting submitted that the Commission should make a recommendation that consideration be given to the suspension of each of John Abi-Saab and Alfred Tsang from civic office under the *Local Government Act 1993* with a view to their dismissal for serious corrupt conduct.

However, prior to making such a recommendation the Commission was required to give them an opportunity to respond to those submissions in accordance with the principles of procedural fairness. Councillors Abi-Saab and Tsang separately resigned as Councillors of Strathfield Municipal Council on 28 February 2005. Had that not happened the Commission would have made an interim report to Parliament containing such a recommendation.

Appendix 1: The Commission's role

The *Independent Commission Against Corruption Act 1988* ("the ICAC Act") is concerned with the honest and impartial exercise of official powers and functions in, and in connection with, the public sector of New South Wales, and the protection of information or material acquired in the course of performing official functions. It provides mechanisms which are designed to expose and prevent the dishonest or partial exercise of such official powers and functions and the misuse of information or material. In furtherance of the objectives of the ICAC Act, the Commission may investigate allegations or complaints of corrupt conduct, or conduct liable to encourage or cause the occurrence of corrupt conduct. It may then report on the investigation and, when appropriate, make recommendations as to any action which the Commission believes should be taken or considered.

The Commission can also investigate the conduct of persons who are not public officials but whose conduct adversely affects or 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. The Commission may make findings of fact and form opinions based on those facts as to whether any particular person, even though not a public official, has engaged in corrupt conduct.

The ICAC Act applies to public authorities and public officials as defined in section 3 of the Act. Strathfield Municipal Council is a public authority and its elected Councillors are public officials. Another person involved in this investigation was a serving member of the NSW Police, and a public official, at the time in which he engaged in relevant conduct.

The Commission was created in response to community and Parliamentary concerns about corruption which had been revealed in, inter alia, various parts of the public service, causing a consequent downturn in community confidence in the integrity of that service. It is recognised that corruption in the public service 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 role of the Commission is to act as an agent for changing the situation which has been revealed. Its work involves identifying and bringing to attention

conduct which is corrupt. Having done so, or better still in the course of so doing, 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 principal functions of the Commission, as specified in section 13 of the ICAC Act, include investigating any circumstances which in the Commission's opinion imply that corrupt conduct, or conduct liable to allow or encourage corrupt conduct, or conduct connected with corrupt conduct, may have occurred, and co-operating with public authorities and public officials in reviewing practices and procedures to reduce the likelihood of the occurrence of corrupt conduct.

It is not part of the Commission's function to prosecute for offences that an investigation undertaken by the Commission may reveal. However, the Commission may form and express an opinion as to whether or not any act, omission or decision which falls within the scope of its investigation has been honestly and regularly made, omitted or arrived at, and whether consideration should or should not be given to the prosecution or other action against any particular person or persons, be they public officials or not.

Appendix 2: Corrupt conduct defined and the relevant standard of proof

Corrupt conduct is defined in section 7 of the *Independent Against Corruption Act* (“the ICAC Act”) as any conduct which falls within the description of corrupt conduct in either or both subsections (1) or (2) of section 8 and which is not excluded by section 9 of the ICAC Act. An examination of conduct to determine whether or not it is corrupt thus involves a consideration of two separate sections of the ICAC Act.

Section 8 defines the general nature of corrupt conduct. Section 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.

Section 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 offences which are set out in that subsection. Such offences include:

- official misconduct (including breach of trust, extortion and imposition) (s8(2)(a));
- bribery (s8(2)(b));
- blackmail (s8(2)(c));
- obtaining or offering secret commissions (s8(2)(d)); and
- any conspiracy or attempt in relation to any of the above (s8(2)(γ)).

Section 9(1) provides that, despite section 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 a Member of a House of Parliament – a substantial breach of an applicable code of conduct.

Since 1 January 2005, section 9 of the ICAC Act has been amended⁹ so that the reference to a disciplinary offence in the section includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440(5) of the *Local Government Act 1993*. This investigation was concerned with the conduct of Councillors that took place prior to the commencement of this amendment and accordingly there is no need to take it into account in preparing this report.

Three steps are involved in determining whether or not corrupt conduct has occurred in a particular matter. The first step is to make findings of relevant facts. The second is to determine whether the conduct, which has been found as a matter of fact, comes within the terms of section 8(1) and/or (2) of the ICAC Act. The third and final step is to determine whether the conduct also satisfies the requirements of section 9 of the ICAC Act.

In applying the provisions of section 9 of the ICAC Act it is appropriate to recall the approach outlined by Priestley JA in *Greiner v Independent Commission Against Corruption* (1992) 28 NSWLR 125. His Honour said that the word “could” was to be construed as meaning “would, if proved”. In the course of discussing the proper construction of section 9(1)(a) of the ICAC Act, he said:

Despite s8, conduct does not amount to corrupt conduct unless, in the case of a criminal charge which could be tried before a jury, the facts found by the ICAC as constituting corrupt conduct would, if the jury were to accept them as proved beyond reasonable doubt, constitute the offence charged ...

Such a construction is also applicable to sections 9(1)(b), (c) and (d).

⁹ By the *Local Government Amendment (Discipline) Act 2004*, which came into force on 1 January 2005.

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 is no right of appeal against findings of fact made by the Commission nor, excluding error of law relating to jurisdiction or procedural fairness, is there any appeal against a determination that a person has engaged in corrupt conduct. 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 only reasonable satisfaction as opposed to satisfaction beyond reasonable doubt, as in criminal matters. The civil standard is the standard which has been applied consistently in the Commission. 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:

... reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts 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. (at 362)

This formulation is, as the High Court pointed out in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170, 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. (at 171)

Also relevant are *Rejtek v McElroy* (1965) 112 CLR 517, the report of McGregor J into Matters in Relation to Electoral Redistribution in Queensland in 1977 and the report by the Hon W Carter QC into An Attempt to Bribe a Member of the House of Assembly (Tasmania) in 1991.

As indicated above, the first step towards making a finding of corrupt conduct is to make a finding of fact. Findings of fact and determinations set out in this report have been made applying the principles detailed in this appendix.

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